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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Richland County Court of Common Pleas
George James, Jr., Circuit Court Judge
James F. Barber, Supervising Circuit Court Judge
(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. 2013-001634

**RECORD ON APPEAL
VOLUME I**

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-40-0511

Howard Hammer

Shirley Hammer, a/k/a Shirley Grace
Hightower

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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 (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Diaried for _____

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	Howard Hammer	\$20,000.00 actual damages \$60,000.00 punitive damages
		\$
		\$
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.**

B/1
Circuit Court Judge

2143

Judge Code

Date

1/29/13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-40-2889

1634 Main, L.P.

Shirley Hammer, a/k/a Shirley Grace
Hightower, Defendant/Third Party Plaintiff

PLAINTIFF(S)

Howard Hammer, Third Party Defendant
DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Plaintiff

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.
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- ☐ **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

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ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

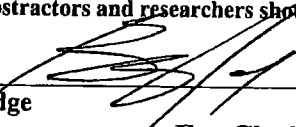
INFORMATION FOR THE JUDGMENT INDEX

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	Howard Hammer	\$25,000.00 actual damages \$50,000.00 punitive damages
	1634 Main, L.P.	\$25,000.00 actual damages
		\$
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

2143

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff,

v.

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,
Third Party Defendant

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-40-05911 and
2010-CP-40-2889

ORDER

2013 JAN 29 PM 12:27
CLERK OF COURT
COURT HOUSE
COLUMBIA, S.C.

By order of the South Carolina Supreme Court dated September 7, 2012, Judge James R. Barber, Chief Administrative Judge of the Fifth Judicial Circuit, was ordered to oversee any and all circuit court actions among the parties, to expedite the actions and provide status reports to the Chief Justice every thirty days. At a status conference held by Judge Barber on October 2, 2012, the undersigned was assigned to try the cases. The trial was held, without jury, on October 29 and 30, 2012, and was reconvened on January 15, 2013 for reasons set out below. Judge Barber consolidated the two matters for trial on October 10, 2012. At the trial, Mr. Hammer was represented by Arthur K. Aiken, Esq. in the case of Hammer v. Hammer, Case No. 2009-CP-40-05911)(hereafter referred to as "the contract action."). Until trial, Mr. Hammer represented himself in that litigation. Until trial, Mr. Aiken represented Mr. Hammer only in the case of 1634 Main LP v. Shirley Hammer v. Howard Hammer, Case No. 2010-CP-40-2889 (hereafter

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the "1634 action" or "1634 case"), but at trial, Mr. Hammer represented himself and Mr. Aiken did not represent Mr. Hammer in that action. Mrs. Hammer was represented in both actions by Desa Ballard. Susan B. Lipscomb, Esq., represents 1634 Main LP.

For convenience and clarity in the factual findings and discussion below, Howard Hammer may be referred to as "Howard" and Shirley Hammer may be referred to as "Shirley."

Pretrial Proceedings

On Friday, October 26, 2012, the court received a fax transmission (with copies to counsel) from Howard advising that he had discharged Mr. Aiken as his counsel in the 1634 case. The trial commenced the morning of October 29, 2012. At that time, Howard again advised that he had discharged Mr. Aiken as his counsel in the 1634 case but had retained him as counsel in the contract action. Howard stated he was appearing *pro se* in the 1634 case.

Shirley moved that Howard's reply to Shirley's counterclaim in the contract action be dismissed as a sanction for Howard's failure to participate in discovery since Howard failed to respond to any discovery in that action. That matter was taken under advisement pending the trial, and after considering the matter, the motion is DENIED.

I declined to address Shirley's pre-trial motion to dissolve the filed *lis pendens* in the contract action, deferring that matter to the conclusion of trial.

Trial proceeded with the counterclaims in the contract action being tried first¹, followed by the plaintiff partnership's claims in the 1634 case, followed by the counterclaims in the 1634 case. During trial, representation was as indicated above, with Howard representing himself in the 1634 case. The court received testimony from:

¹ Howard's complaint in the contract action was summarily dismissed by Judge Manning, which was upheld by the Court of Appeals by opinion filed June 6, 2012. (See, *infra*). Thus, only Shirley's counterclaims remain pending.

BJ 2/7/12

- Shirley Hammer
- Professor Gregory B. Adams
- Katherine Stokes, CFP
- Mary Nell Degenhart, Esquire
- Timothy E. Madden, Esquire
- Marion Turbeville
- Howard Hammer
- Bernard Ackerman, CPA (via deposition²)

Shirley introduced 32 documents into evidence, without objection. Howard introduced three (3) exhibits, and 1634 Main LP introduced three (3) exhibits. Shirley also requested that the court take judicial notice of the family court proceedings in the matter of Hammer v. Hammer, Case No. 2005-DR-40-2871. As for the transcripts of those proceedings, that motion is denied. Specific documents from the family court proceedings were introduced into evidence without objection and the court has not reviewed or considered any other portion of that record, so the judicial notice issue is moot.

During the hearing convened on January 15, 2013, Mr. Hammer, acting *pro se* in the 1634 matter, moved for a mistrial, but at the conclusion of that hearing, he withdrew that motion. However, by motion dated January 23 and filed January 24, Mr. Hammer again moved for a mistrial, apparently on the basis that he believes the court rendered a decision on the merits of the case before considering all the evidence. Mr. Hammer confirms in his January 23 motion that he had indeed withdrawn his oral motion for mistrial at the conclusion of the January 15 hearing. In his January 23 motion, he attempts to clarify the withdrawal of the motion by stating that he did not intend to fully withdraw the motion. The court concludes that the motion was withdrawn and cannot be re-asserted by later filing of the same or a similar motion. In any event, even if the motion had been properly made, the court would decline the motion for

² The deposition of Mr. Ackerman was taken by agreement in *lieu* of his appearance live for trial. The deposition was introduced into evidence jointly by Ms. Lipscomb and Ms. Ballard.

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mistrial. Mr. Hammer claims that the reconvening of the trial after the completion of the decision-making process was prejudicial error contrary to his and 1634's rights. However, any claimed prejudice is of no import, as the court agrees with Mr. Hammer that Shirley's right to present evidence of attorneys' fees as actual damages ended with the presentation of evidence during the October 29-30 trial. This issue will be discussed below.

FINDINGS OF FACT³

This matter was heard non-jury. All dispositive trial motions were heard at the conclusion of each case, or marked "heard" at the appropriate time, and argued prior to conclusion of trial. The court heard all the testimony and argument, reviewed the evidence, assessed and determined the credibility of witnesses, and, after having done so, finds and determines that the following facts were proved by the preponderance of the evidence. Any findings made by clear and convincing evidence are so noted.

Findings of Fact Applicable to Both Actions

1. I found Howard to be very bright and articulate, but his answers to just about every question, including very simple ones, were characterized by obfuscation and degenerated into areas having little to do with the issues germane to the cases. As the fact finder, this court can take into account the demeanor of a witness (including whether the witness is straightforward in answering questions) in determining the witness' credibility. Howard's credibility was tremendously damaged by his demeanor while testifying. His manner of answering questions clearly established that he is intent on using the civil process to unnecessarily and

³ Any finding of fact that should be construed as a conclusion of law is adopted as such, and *vice versa*.

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unfairly prolong any and all litigation involving Shirley. He appeared unwilling to respond forthrightly to any questions.

2. Shirley and Howard were married but were divorced by decree entered May 12, 2008. Their family court litigation, outlined below, has been excruciatingly tortuous and is apparently ongoing today. Shirley testified that after their separation, Howard threatened to engage her in litigation until she was bankrupt. Howard did not dispute this testimony. Even if he had disputed it, I find this statement was made and is clear and convincing evidence of Howard's intent to use unmeritorious litigation of any kind to harass and cause financial hardship to Shirley.

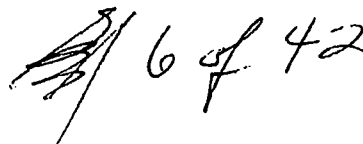
Hammer v. Hammer
(The contract action)

3. As noted above, Shirley and Howard were married. They have two (2) minor children. In September, 2005, Shirley left Howard and filed for relief in the family court in Action No. 2005-CP-40-2871 ("the family court action").
4. In May 2008, Shirley and Howard settled all property issues between them in the family court action. The settlement of property issues was achieved by the parties and reduced to a written settlement agreement dated May 9, 2008. (Shirley's Exhibit 15).
5. At a family court hearing on May 12, 2008, Family Court Judge Dorothy Mobley Jones found the settlement agreement to be fair to both of the parties; she approved the settlement agreement, incorporated it into her order and made the terms of the settlement agreement effective as an order of the family court on that date (hereafter referred to as "the property settlement order.") *Id.*

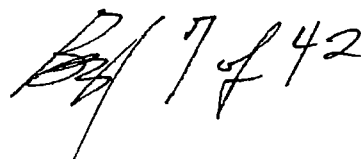
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6. Both Shirley and Howard had independent counsel in the family court matter, and both parties agreed to the terms of the settlement agreement and the property settlement order⁴. Judge Jones found that the parties entered into the settlement agreement freely and voluntarily. *Id.*
7. The property settlement order, at page 4, ¶5, required each party to “expeditiously sign all documents and do all things reasonably necessary to effectuate the terms, provisions, and intent of the agreement.” *Id.*
8. Among the terms of the property settlement order was a requirement that Howard transfer his interest in the marital home located at 320 St. James Street (hereafter “320 St. James”) to Shirley, free of any liens or encumbrances. *Id.*
9. On May 20, 2008, Howard executed a general warranty deed transferring all of his interest in 320 St. James to Shirley. (Shirley’s Exhibit 1). The deed was recorded on June 18, 2008 at Book 1439 at Page 1279 in Richland County. *Id.*
10. In the general warranty deed, Howard expressly “releas[ed] and discharge[ed] any and all rights that I may have, or hereafter acquire” in 320 St. James. *Id.*
11. Shirley and Howard also reached a final settlement agreement regarding custody and visitation of their two children at a hearing held in the family court on June 23, 2009. That settlement was also made an order of the family court by Judge John Rucker on August 19, 2009.
12. On June 29, 2009, Shirley listed 320 St. James with a real estate company for sale. (Shirley’s Exhibit 2).

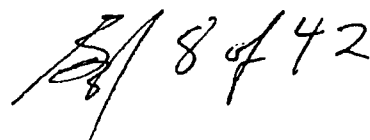
⁴ The parties were also divorced by separate divorce decree also issued on May 12, 2008.

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13. Howard filed a *lis pendens* in Richland County against 320 St. James on July 31, 2009. (Shirley's Exhibit 3). He did so with knowledge that Shirley was attempting to sell 320 St. James and with full knowledge that he lacked any interest whatsoever in 320 St. James.
14. Howard did not serve Shirley with a copy of the *lis pendens* nor did he provide notice to her of its filing.
15. Shirley accepted an offer to purchase 320 St. James from Ye Hu and Wei Tan (hereafter "the purchasers") for \$650,000.00 on June 29, 2009. (Shirley's Ex. 2)
16. After their divorce, Howard lived in a house which is approximately one block away from 320 St. James. He became aware of the pending sale and that attorneys Mary Nell Degenhart and Paul Degenhart were representing the purchasers.
17. Shirley had previously conveyed 320 St. James to her mother, Mary Hightower, in an effort to prevent Howard from interfering with the sale. Mary eventually conveyed it back to Shirley. Shirley's deed to her mother was an understandable attempt to get Howard to leave her alone and to distance Howard from any legal interest in the property at issue. In simple terms, it was none of Howard's business what Shirley did with this property, as he had conveyed all of his interest in the property pursuant to the aforesaid general warranty deed.
18. The purchase was scheduled to close at the office of attorneys Degenhart in Columbia on August 17, 2009. Shirley and the purchaser/wife, Ye Hu, appeared at the Degenharts' office and executed some of the closing documents.

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19. However, the closing could not be completed at that time because the updated title examination revealed the existence of the *lis pendens* filed by Howard on July 31, 2009. Mary Nell Degenhart explained the cloud on title to Shirley and Ye Hu, and the closing was postponed.
20. Howard filed this contract action *pro se* on August 18, 2009, and either the next day or the day after, tried to steer the purchasers toward purchasing his home instead of 320 St. James, as noted in paragraph 23.
21. The clerk's file does not reflect if or when the pleadings were served on Shirley.
22. Howard and Paul Degenhart had a telephone conversation after the closing fell through during which Paul Degenhart asked Howard to remove the *lis pendens*. Howard refused. The *lis pendens* is still of record and no action to foreclose on it has been commenced.
23. Instead, Howard suggested to Paul Degenhart that the purchasers buy his house instead, and that he (i.e., Howard) would buy 320 St. James. (Shirley's Exhibit 4).
24. Howard also told the Degenharts that there was a leak in the pool at 320 St. James and that there was a dispute regarding an encroachment on the property line. Both assertions were false. Howard made these statements for the purpose of trying to procure a breach of Shirley's contract to sell 320 St. James.
25. Howard had no ownership or other legal or equitable interest in 320 St. James; all of his interest had been transferred to Shirley more than a year earlier as set forth above. The contract action Howard filed against Shirley did not include a claim

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for title of 320 St. James and could not have awarded Howard any interest in 320 St. James.

26. The borrowers lost their financing and were unable to obtain title insurance because of the *lis pendens* filed by Howard.
27. However, through great effort by the Degenharts and others, Shirley was able to obtain title insurance through Investors Title Insurance Company.
28. In order to induce Investors Title to issue the policy, Shirley was required to sign a seller's affidavit which affirmed to Investors Title that "there are no actions now pending . . . which would constitute a lien . . . against the real estate." (Shirley's Exhibit 8). Shirley was required to indemnify Investor's Title for any loss or expense that Investor's Title might incur based on Shirley's representations. Shirley remains liable on that indemnification at present.
29. Since the purchasers lost their financing, Shirley made the decision to salvage the sale by providing owner financing to the purchasers. She received a down payment from the purchaser and financed approximately \$340,000.00 via a note secured by a mortgage with a three-year amortization, with a balloon payment at maturity.
30. After alternative financing was arranged and new title insurance obtained, the rescheduled closing occurred August 20, 2009. During the closing, Howard arrived at the Degenharts' office and delivered a letter which confirmed his suggestion that Shirley's purchasers buy his house, and asserted that he was making considerable financial sacrifice in order to assist Shirley to sell 320 St. James. His explanation for personal delivery of the letter was that he lacked an

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office or clerical assistance and it was easier simply to deliver the letter. He claimed to have no knowledge that Shirley's closing was actually occurring at the precise time he arrived at the Degenharts' office. The court finds this particular testimony not credible and that he calculated his arrival to disrupt the closing.

31. The closing occurred and title to the property was transferred to Shirley's purchasers. Had the closing occurred without Howard's interference, Shirley would have received \$618,922.95 net proceeds from the sale. Because of Howard's interference, the net proceeds Shirley received at closing were \$277,272.79. As noted above, the difference was financed by Shirley. Shirley invested the net proceeds she received from the sale.

32. Service of the pleadings in the contract action upon Shirley occurred sometime in September, 2009, very soon after Howard was unsuccessful in stopping the sale of 320 St. James. Shirley retained counsel and filed a motion to dismiss, answer and counterclaims on October 5, 2009⁵.

33. In addition to filing the summons and complaint in the contract action, Howard began filing motions in family court seeking to set aside the property settlement order. His efforts were unsuccessful at the trial level, but the issue is currently on appeal to the South Carolina Supreme Court.

34. Howard then retained attorney Susan Lipscomb, who filed an amended complaint dated November 4, 2009, in the contract action. Subsequent amended pleadings followed.

⁵ As set forth, *supra*, the clerk's file does not include an affidavit of service reflecting when Shirley was served with the summons and complaint in the contract action.

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35. Shirley's motion to dismiss Howard's contract action was heard by Circuit Judge Casey Manning on March 2, 2010. In his order dated April 14, 2010, Judge Manning ruled that Howard's contract action related to the family court settlement and that the circuit court did not have jurisdiction over Howard's contract claims.⁶

36. Howard appealed that order to the South Carolina Court of Appeals. By opinion dated July 12, 2012, the Court of Appeals affirmed Judge Manning's ruling. *Hammer v. Hammer*, 399 S.C. 100, 730 S.E.2d 874 (Ct.App. 2012). Howard filed a petition for rehearing, which was denied by the Court of Appeals on August 23, 2012. No further appellate proceedings occurred, and Judge Manning's order is now final.⁷

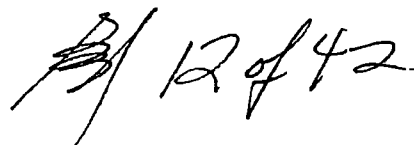
37. Included in the Court of Appeals' decision is discussion of an argument still being advanced by Howard to the undersigned that the circuit court had jurisdiction to enforce the settlement agreement between the parties which led to the property settlement order. The Court of Appeals expressly rejected Howard's argument, but Howard continues to argue the point.

⁶ Howard's complaint alleged that Shirley breached "a certain contract" but he did not disclose what that contract was. The contract he referred to was actually the 2008 family court settlement agreement and order approving it. He resisted disclosing that information to the circuit court. Eventually, he used the contract action to attempt to collaterally attack the 2008 family court order, based on "public policy" grounds. He contended that the agreement as confirmed by the 2008 family court order violated public policy because he obtained Shirley's agreement therein to ask the solicitor to *not* *prose* charges brought in 2008. He obtained this concession in the agreement, from which he benefitted, while at the same time negotiating a similar concession in the 2009 family court settlement agreement and order for separate charges brought in 2009.

⁷ The finality of this order was noted by Judge Barber at a status conference in this matter held on October 2, 2012. Howard could have sought a writ of certiorari from the South Carolina Supreme Court, and he had 30 days within which to do so after the Court of Appeals' denied rehearing. Rule 242(c), SCACR. Howard's counsel was unable to advise at the status conference on September 14, 2012 whether Howard would seek certiorari from the Supreme Court to review the decision of the Court of Appeals. See Supreme Court status report of Judge Barber dated October 11, 2012, which is a part of the clerk of court's file in both the contract action and the 1634 action.

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38. During the trial of the instant case, Howard continued to argue that this court had jurisdiction to revisit the validity of the 2008 property settlement agreement, relying on *Moseley v. Mosier*, 279 S.C. 353, 306 S.E.2d 624 (1983). This issue has already been addressed by Judge Manning and the Court of Appeals and the court does not address the argument further, except to say that the Court of Appeals did discuss and reject Howard's *Moseley v. Mosier* argument. Howard's argument that the Court of Appeals' discussion of *Moseley* was dicta is absolutely without merit.
39. Howard's contract action against Shirley had no merit and was brought to harass Shirley when no legal basis existed for the claim. The filing of the *lis pendens* was frivolous and had no legal merit.
40. I find by clear and convincing evidence that Howard's conduct was reprehensible in the sense that he, as an attorney, was aware that bringing the contract action in a forum that had no subject matter jurisdiction was totally improper, and especially in the sense that he was aware that filing the *lis pendens* on property he had deeded over a year prior was totally unfounded.
41. I find by clear and convincing evidence that Howard's filing of the *lis pendens* was reprehensible because he well-knew he had no claim to the property. Hand-in-hand with the filing of the *lis pendens* was Howard's attempt to have the purchasers buy his house instead of Shirley's house; this was reprehensible because it was a ridiculous and frivolous solution to a problem he created by his own actions, and his suggestions that the pool leaked and that the back fence

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encroached on a neighbor's property were further calculated to subvert a legitimate closing of that sale.

42. I find by clear and convincing evidence that Howard's filing of the *lis pendens* was calculated to be done just as Shirley's sale of the house at 320 St. James was slated to close, and in that sense she was in a financially vulnerable position.

43. I find by clear and convincing evidence that Howard was aware of the frivolity of his conduct, and while he did not try to conceal it in the traditional sense, he did cloak his conduct under the guise of trying to attack a family court order in circuit court. I find by clear and convincing evidence that the duration of Howard's conduct has been relatively long lasting, and specifically, that his conduct continued from the time he filed the *lis pendens* on July 31, 2009 and filed this action on August 18, 2009, and through the time Judge Manning dismissed his action in April, 2010, and only ending with the Court of Appeals' decision. The *lis pendens* against 320 St. James is still in effect because Howard has refused to cancel it, as discussed below.

44. Shirley has incurred attorneys' fees and costs in the defense of the action and in pursuit of counterclaims. She testified that she has incurred attorneys' fees and costs in the amount of \$175,445.00 for representation in the two actions. However, at trial, she did not break out the specific costs of each action, or identify which fees were for defense of the claims filed against her and which were for prosecuting the counterclaims. The court is unable to conclude, based on the presentation of evidence at the October 29-30 trial, what fees and costs were incurred for what reason. At a subsequent hearing on January 15, 2013, Shirley's

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attorney presented an "Affidavit of Attorneys' Fees and Costs" for this action and the 1634 action, in which counsel attempted to break out the fees and costs between the defense of the contract and 1634 actions and the pursuit of counterclaims.

45. Any recoverable attorney fees and costs for defense of the contract action (insofar as Shirley's claim for abuse of process is concerned) ended at the latest when Judge Manning's order was affirmed by the Court of Appeals. Shirley agrees she is not entitled to recover attorney fees incurred for her prosecution of her counterclaims against Howard. The court convened the January 15, 2013 hearing to allow presentation of evidence on the breakout of fees and costs, and Shirley's sole evidence was the aforesaid affidavit. Howard and 1634 objected to the hearing being held on the ground that the court had concluded the trial on October 30, 2012 and that it would be improper to re-open the record for additional trial evidence. I agree. Any issues pertaining to an award of fees and costs will be left for resolution upon the filing and hearing of any motion made by Shirley under the South Carolina Frivolous Civil Proceedings Sanctions Act.

46. Shirley has sustained damages for frustration as a result of having to defend Howard's claims in this action and as a result of having to combat the *lis pendens*. These damages are assessed and based on the level of frustration that, in my view, would be incurred by a reasonable person as a basic human response to being forced to defend baseless legal claims and is not predicated on any pre-existing emotional condition of Shirley. In my view, Howard is unable to entertain the thought that his relationship with Shirley is over, and he has chosen to resort to

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commencing and continuing a baseless *lis pendens* and baseless litigation in a completely improper forum for reasons that are nothing but abusive. Even during his trial testimony, he would not admit under questioning by his own attorney, Mr. Aiken, that he and Shirley were divorced. Instead, Howard testified that even though a divorce decree was entered in 2008, he felt the decree was invalid because the final hearing was held and the decree was entered during a time the divorce action was technically stayed. This is but one example of the logic employed by Mr. Hammer at every turn to keep the litigation waters churning. Shirley has been faced with the prospect of having to combat a frivolous *lis pendens* which almost cost her the sale of her home. She was forced to litigate Howard's contract action after Howard was unsuccessful in using the *lis pendens* to stop the sale. The contract action against her continued for almost three years until the Court of Appeals affirmed Judge Manning's decision in July 2012. The court concludes that any reasonable person would be frustrated at being hounded by meritless litigation for such a long period of time.

47. The court first noted its finding of damages in the form of frustration in a December 2012 memorandum to the parties outlining the court's preliminary factual and legal determinations and then placed this finding in a proposed order, not yet signed at the time of the hearing of January 15, 2013. At the January 15, 2013 hearing, Howard proffered the testimony of Russell Bergmann, an expert in the field of psychology and psychotherapy. He was asked only one basic question, that being "What is 'frustration'?", and testified that "frustration" is an "emotion" or an "emotional response". Howard and 1634 argue that since Shirley

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withdrew at trial all her claims for "emotional distress", she cannot recover damages in the nature of "frustration". The court finds it interesting that Howard and 1634 have contended (and in fact Howard moved for a mistrial on this ground) that it was improper for the court to reconvene the hearing to address *attorneys' fees* as an element of actual damages because the evidentiary record had been closed, but at the same hearing chose to introduce evidence to rebut this court's proposed finding of actual damages in the form of *frustration*. These two components of actual damages (attorneys' fees and frustration) have no real relationship to one another, and Howard's attempt to couch the Bergmann testimony as pertaining to attorneys' fees is of no avail. In any event, the court has determined in paragraph 47 above that its consideration of additional evidence presented after October 30 would be improper. Therefore, the court will also not entertain the additional evidence in the form of Dr. Bergmann's testimony, and it is in the record as a proffer only. Even if properly introduced, the court concludes that Dr. Bergmann's characterization of "frustration" as an emotion or an emotional response does not have any bearing upon Shirley's entitlement to recover damages for frustration in her abuse of process cause of action.

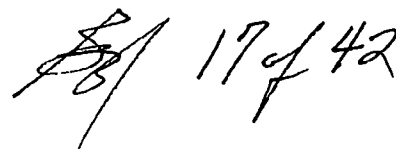
1634 Main LP v. Shirley Hammer v. Howard Hammer
(The 1634 action)

48. Any findings above pertaining to the 1634 litigation are incorporated herein by reference.

49. SH5, LLC was the general partner in 1634 Main LP. Howard was the sole member of SH5, LLC. Thus, he controlled the general activities of 1634.

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50. The 2008 property settlement order also required that as part of the property division, Howard would receive “[a]ny interest of either party in the office building which houses Howard Hammer’s law office . . . and in any business entity related to this building” subject to any existing liens. (Shirley’s Exhibit 15). The property in question was an office building located at 1634 Main Street in Columbia.
51. Prior to 2002, the real estate located at 1634 Main Street had been owned by a South Carolina limited partnership called 1634 Main LP (hereafter referred to as “1634” or “1634 LP” or “the limited partnership”).
52. Shirley had become the owner of eight percent (8%) of the limited partnership in 2000 and 2001, via transfers of interest from Howard’s parents, Henry and Eleanor Hammer. (1634 Main LP’s Exhibit 1). Shirley never owned more than 8% of the limited partnership. Howard and some of his family members owned the remainder of the limited partnership.
53. In 2002, Shirley purchased a 52.75% interest in real property at 1634 Main Street in Columbia (an office building) owned by the limited partnership. (Shirley’s Exhibit 14). This was the end result of a tax-deferred exchange after Shirley sold some real estate on the Isle of Palms. The deed to Shirley was executed by Howard, in his capacity as sole member of SH5, LLC, which is the general partner of the limited partnership. *Id.* See also, Shirley’s Exhibit 11 (Agreement of Limited Partnership). In short, there is no doubt that Howard was 1634 Main LP.

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54. During their marriage, Howard and Shirley employed Bernard Ackerman, CPA, as the accountant for filing their joint tax returns. They filed jointly as a married couple for 2005 and 2006.
55. Howard was the exclusive source of information provided to Ackerman for preparation of the parties' joint tax returns.
56. Ackerman also prepared the tax returns for the limited partnership. The information provided to Ackerman for the limited partnership came exclusively from Howard and from Marion Turbeville, a principal with Danville Business Advisors, (hereafter "Turbeville") which managed the 1634 building at Howard's request.
57. Ackerman never received any information or instruction from Shirley regarding the personal or limited partnership tax returns. No finding herein is to be construed as remotely implying that Mr. Ackerman did anything improper.
58. Sometime while dealing with the 2005 limited partnership tax returns, Howard instructed Ackerman to change Shirley's percentage ownership in the tax returns of the limited partnership to reflect that she owned 56.8% of the limited partnership. (Shirley's Exhibit 19). This was inaccurate, and it is persuasive to the court that there is no writing to support the transfer of any additional partnership interest to Shirley. Also, there is no written evidence, whether in the form of a bill of sale, certificate, partnership minutes, or memoranda, indicating that the transfer of an additional interest was ever made or was intended to be made.

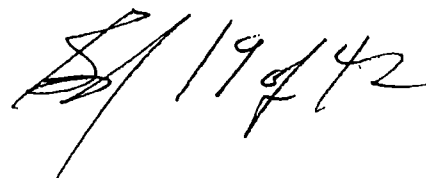
59. Howard contends that Shirley was supposed to convey her 52.75% interest in the real property located at 1634 Main Street back to the limited partnership as part of their marital tax planning. There is nothing in writing to support this conclusion. I find no such agreement on Shirley's part existed.

60. The court concludes that the transfer of the additional partnership interest to Shirley did not occur. There is no evidence, other than Howard's uncorroborated and suspect testimony, that the transfer was supposed to occur. If this transfer occurred, or was supposed to occur, it could have and should have been addressed in the family court in the property settlement order. At the least, it could have been evidenced through appropriate record-keeping channels such as minutes of the limited partnership.

61. Shirley authorized Ackerman to electronically file the 2005 and 2006 joint personal tax returns by signing a form in which she attested that the contents were correct. Those joint tax returns contained K-1s from the limited partnership (also prepared by Ackerman) indicating that Shirley owned 56.8% of the limited partnership.

62. These returns were inaccurate because Shirley owned only eight percent (8%) of the limited partnership for the time period for which the 2005 and 2006 tax returns were applicable. Shirley never owned more than eight percent (8%) of the limited partnership.

63. While Shirley's signing of the electronic filing authorization indicated not only that she had reviewed the tax returns, but also that she had confirmed their accuracy, her failure to discover and correct the erroneous K-1 reflecting that she

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owned 56.8% does not make it true. The court concludes she owned an 8% interest and that she had tendered that interest as early as October 29, 2009 or November 5, 2009. This tender will be discussed below.

64. During 2005, Howard caused to be transferred from the limited partnership significant amounts of cash to himself and others, including a payment to himself on December 29, 2005 (after Shirley first filed for relief in the family court), in the amount of \$59,062.50. (Shirley's Exhibit 26).
65. During the calendar year 2005, Howard received, at a minimum, cash payments from the limited partnership of \$131,299.00, despite owning only a fractional interest. (Shirley's Exhibit 26(b)).
66. Also during 2005, under Howard's sole direction, the limited partnership went from having significant cash on hand to suffering a loss of more than \$150,000.00. (Shirley's Exhibits 26, 26(b) and 31).
67. At Howard's direction, Ackerman continued to prepare tax returns for the limited partnership through 2010.
68. Each tax return for the limited partnership from 2005 through 2010 erroneously reflected that Shirley owed 56.8% of the limited partnership. Howard signed the return for the limited partnership from 2005 through 2010 knowing that the ownership interest for Shirley was not supported by any documentation and that it was incorrect.
69. Shirley was represented at the time of the 2008 property settlement order by attorney Timothy Madden, Esq. Mr. Madden prepared a quit-claim deed to transfer Shirley's interest in the real estate located at 1634 Main Street to Howard.

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He also prepared an assignment to Howard of any and all interest Shirley had in the limited partnership.

70. Shirley executed these documents at a meeting the parties had at the courthouse on or about November 5, 2009. Madden delivered the transfer documents to Howard's attorney, but Howard refused to accept the documents and they were returned to Madden.
71. A few days later, on November 10, 2009, Turbeville sent Howard copies of proposals from various vendors to do repair and/or maintenance work to the building at 1634 Main, "[p]ursuant to our most recent meeting." (Shirley's Exhibit 23).
72. Howard discussed with Turbeville possible sources of funds for the repairs. Howard said he was financially unable to contribute (either in his capacity as a limited partner of the limited partnership or sole member of general partner SH5, LLC), but he discussed giving a confession of judgment to the limited partnership. Howard took no action to prepare, execute, or deliver a confession of judgment for his own admitted share of the expense and instead focused his efforts on having Shirley sued for her alleged share.
73. Howard, in his capacity as the sole member of SH5, LLC, the general partner of the 1634 Main LP, prepared a memo on November 12, 2009 to "all limited and general partners of 1634 Main LP" making a "formal demand for payment" based on the estimates provided by Turbeville on November 10, 2009. (Shirley's Exhibit 23). The memorandum shows copies being sent to Howard Hammer,

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Shirley Hammer, SH5, LLC (in which Howard was the sole member), and David Hammer, who is one of the Hammers' minor children.

74. Shirley claims she did not receive this memorandum or any other demand for contribution from the limited partnership or any agent of the limited partnership. Whether she did or did not is not germane to the following findings.

75. Howard advised Turbeville that since Shirley owned 56.8% of the limited partnership, 1634 should retain counsel to sue Shirley for the money she owed for repairs. At the time, he knew Shirley did not own but 8% and that she had tendered that interest to him. Howard did not suggest that he or SH5, LLC be named as defendants in the action to recover the repair funds. Howard suggested to Turbeville that his own attorney, Susan Lipscomb, might handle the case, obviously knowing she would not sue him or SH5, LLC. Turbeville retained Lipscomb to file suit on behalf of 1634 Main LP seeking a contribution from Shirley for 56.8% of the funds needed to repair the building. Nothing herein should imply that Ms. Lipscomb has conducted herself improperly.

76. On April 30, 2010, sixteen days after Judge Manning dismissed Howard's claims in the contract action, 1634 Main LP filed suit against Shirley seeking to require Shirley to pay \$88,040.00 toward repairs of the building located at 1634 Main. This amount was clearly based on Howard's false representation to both Turbeville and Ackerman that Shirley was responsible for 56.8% of the limited partnership's repairs, although she owned only an 8% interest in the limited partnership, which she had tendered to Howard, but which he had rejected.

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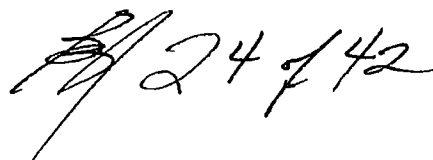
Howard instigated the suit to continue to harass Shirley and to financially burden her, because he could not entertain the thought that the relationship was over.

77. Howard did not provide Turbeville with any information for Turbeville to understand Howard's true motives. I find beyond any doubt that it was Howard's intent that the 1634 case be brought to further harass Shirley and to attempt to obtain an unfair financial advantage since Howard's claim against her in the contract action had been dismissed. As noted above, he had warned Shirley that he would bankrupt her.
78. Shirley counterclaimed against the limited partnership and filed a third party action against Howard.
79. Howard has occupied a portion of the building at 1634 Main Street continuously for all relevant time periods. Howard and/or his law firm paid rent of approximately \$60,000.00 per year to the limited partnership in 2005, 2006, 2007, and in rent in a small amount in 2009 and 2011. Howard paid no rent, although he occupied office space, throughout 2008, 2010, and at least through May, 2012. (Shirley's Exhibit 31).
80. Howard testified that for some period of time he occupied less office space than others, and suggested some portion of the rent due should be paid by someone else who shared his office space for a period of time. However, he did not deny that he owed rent to the limited partnership for several years. I conclude that Howard arranged for 1634 to commence this action against Shirley on baseless grounds, while not ensuring that an action was brought against himself or SH5, LLC for their *pro rata* share of the repairs. It is clear that one reason the

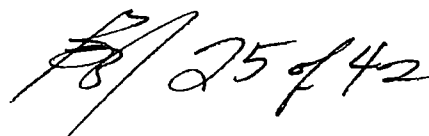
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partnership did not have sufficient funds on hand to pay for repairs was because Howard himself was not paying rent due the partnership. Howard then arranged for Shirley to be sued for her supposed share of repair costs while making sure he was not sued for his share. This clearly and convincingly establishes that Howard's and 1634's purpose in initiating this action was to harass Shirley over a partnership interest she had tried to convey to Howard in accordance with the family court order.

81. Shirley's interest in 1634 Main Street and in the limited partnership effectively terminated (at least for the purposes of 1634 collecting a repair assessment) no later than November 5, 2009, when the deed and partnership transfer documents were tendered to Howard's counsel. The fact that Howard rejected the court-ordered tenders does not alter the fact that the tenders were made. It would be patently unfair for Shirley to be charged with responsibility for repairs to the building almost six months **after** she had duly tendered her interest in the real estate and the limited partnership to Howard.
82. Because Shirley's interest in the real estate and the limited partnership had been tendered as noted above, the action brought against her by the limited partnership had no merit, was frivolous, and was brought to harass Shirley when no legal basis existed for the claim. (Exhibit 16)
83. The 1634 action was timed by Howard to extract money from Shirley or to harass her while a valid family court order was in place on the issue of her interest in the real estate and the limited partnership.

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84. After the property settlement order in family court in May, 2008, the parties continued to have issues pertaining to the children, etc. Through June, 2009, Howard tried to get the May 2008 property settlement agreement and order voided, vacated, and rescinded.
85. In May 2009, Judge Dorothy Mobley Jones had a hearing on that issue and denied Howard relief from the bench, but no written order was issued.
86. Howard continued to file proceedings in the family court attempting to invalidate the property settlement order, and a hearing was held on October 27, 2009. Judge John Rucker issued his order from that hearing and affirmed the agreement.
87. Howard and Shirley were again in family court in January, May, August, and September of 2010. By order dated September 24, 2010, Judge Rucker ordered, *inter alia*, that the parties do all things necessary to complete "the transfer from [Shirley] to [Howard] of the interest in the law office building and related entity." Of course, Shirley had previously attempted to do just that.
88. The chronology of events in family court and in the circuit court contract action is compelling evidence that the 1634 action was brought at Howard's behest to continue his harassment of Shirley and to try to collect maintenance money for real and/or personal property that Shirley had, in obedience to the family court order, tried to convey to Howard.
89. In my view, the timing of Turbeville's November 10, 2009 memo, which was orchestrated by Howard and addressed only to Howard (which Howard claimed was forwarded by Howard to himself, Shirley, and their minor son David on



November 12, 2009), was not coincidental. (Shirley's Exhibit 23). It was just after Shirley's attempted tender of November 5, 2009.

90. As found above, at the time he instructed Turbeville to initiate the 1634 action against Shirley, Howard knew that Shirley had tendered her partnership interest to Howard in November, 2009 in accordance with the family court order. He also knew that Shirley owned only 8% of the limited partnership at the time of that tender.

91. Marion Turbeville and Danville Business Advisors acted in good faith when taking steps to sue Shirley in the 1634 action. They apparently had no knowledge that Shirley had tendered her interest in the real property and the limited partnership in accordance with the family court directives. Mr. Turbeville only knew what Howard told him.⁸

92. Howard provided Turbeville with false information regarding Shirley's interest in the limited partnership.

93. Howard's claim that Shirley was obligated to deed her interest in 1634 Main Street to the limited partnership in exchange for a larger limited partnership interest for tax reasons is not supported by any written instrument. If there were any such instrument, that could have been addressed by the family court during the property settlement litigation and in any resulting order.

94. While Howard and Turbeville testified that Howard discussed providing an offer of judgment for his share of the repair costs, no offer of judgment has ever been

⁸ Although not necessary for my conclusion, I observe that limited partnership law and the limited partnership agreement did not allow the limited partnership to sue Shirley, or any limited partner, for repairs. When asked during cross-examination to find authority in the agreement for suing Shirley for repairs, Turbeville testified that he was unable to find any provision in the limited partnership agreement allowing Shirley to be sued for repairs.

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acted upon by the limited partnership or Howard, demonstrating further that the action against Shirley, instigated solely by Howard, was a sham attempt to collect a debt Shirley did not owe and was an attempt by Howard to harass Shirley. Again, he had warned her he would bankrupt her.

95. Shirley has established by clear and convincing evidence that Howard's conduct, and that of the limited partnership acting through Howard, was willful, wanton and in reckless disregard for Shirley's rights.

96. I note that Mr. Turbeville's conduct, and for that matter Ms. Lipscomb's and Mr. Aiken's conduct, was in no way objectionable in my view of the evidence, and any award of punitive damages in either action should not reflect adversely upon their involvement.

97. I find by clear and convincing evidence that the actions of Howard and the limited partnership were reprehensible in the sense that the actions were calculated to begin when Judge Manning dismissed Howard's claim in the contract action and were a continued effort to harass Shirley and to attack one or more family court orders in an obviously improper forum.

98. I find by clear and convincing evidence that these actions have been long lasting, *i.e.*, from at least November 10, 2009 to now, and both Howard and the limited partnership were aware of the wrongfulness of their conduct.

99. I find by clear and convincing evidence that Howard acted to conceal the wrongful nature of his conduct by withholding necessary information from Marion Turbeville regarding Shirley's tender of her interest in the real estate and in the limited partnership.

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100. I find by clear and convincing evidence that Howard acted in reckless disregard of Shirley's rights by misrepresenting to Turbeville that Shirley had a majority interest in the limited partnership, when she never had more than an 8% interest, which, as Howard already knew, had been tendered by Shirley to Howard.

101. I find by clear and convincing evidence that Howard concealed from Marion Turbeville that Shirley's transfers to Howard of her interest in the real estate and the limited partnership resulted in Howard owning all of the real estate and the majority of the partnership, such that suit against Shirley would be an unavailing effort in comparison to what Howard would owe by virtue of his majority ownership in the limited partnership and his exclusive ownership of the real estate.

102. Shirley has incurred attorneys' fees and costs in the defense of the 1634 action, which continued through trial and continue at present. However, the court is unable to ascertain what amount of fees and costs incurred were for the defense of this action.

103. Shirley has also sustained actual damages for frustration as a result of having to defend against the claim filed against her by Howard in this action. These damages are assessed and based on the level of frustration that would be incurred by a reasonable person and not on the basis of any pre-existing emotional condition of Shirley. The 1634 action was filed on April 30, 2010, only sixteen days after Judge Manning dismissed the contract action. Shirley's understandable relief at the dismissal of the contract action was indeed short-lived, and she again

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This is understandably very frustrating, and Shirley's frustration at having to combat continuous baseless legal claims has been deep and ongoing since the 1634 action was commenced against her. To paraphrase Shirley's trial testimony, Howard just wouldn't leave her alone. The court has not doubt that Howard will not leave her alone. The findings above in paragraphs 46 and 47 as to the court's general consideration of damages in the form of frustration and the court's findings pertaining to the testimony of expert witness Dr. Bergmann are incorporated herein by reference.

CONCLUSIONS OF LAW

Hammer v. Hammer, Case No. 2009-CP-40-05911
The Contract Action

104. Abuse of Process: To establish a claim for abuse of process, the moving party must establish (1) an ulterior purpose and (2) a willful act in the use of process not proper in the conduct of the proceeding. *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct. App. 1994). "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." *Id.*
105. Howard's ulterior purpose is established by virtue of his attempt to purposefully prevent closing of the sale of 320 St. James to purchasers and to avoid the family court agreement in an improper forum.
106. Howard's bringing of the contract action and the *lis pendens* to subvert the transaction with the purchasers, to prevent the sale, to avoid the family court agreement or to gain some leverage against Shirley in the family court constitutes an ulterior purpose that supports a claim for abuse of process.

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107. Typically, the focus of an abuse of process claim is upon the improper use of process after it has been issued. The improper purpose usually takes the form of coercion to obtain a collateral advantage. *Hainer v. American Medical Intern., Inc.* 328 SC 128, 492 SE2d 103 (1997); *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 730 S.E.2d 340, 398 S.C. 528 (Ct. App.)

108. However, our courts have also noted an abuse of process action may lie if a party prosecutes an entire cause of action for collateral purposes. See *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 73, 567 S.E.2d 251, 255 (Ct.App.2002).

109. Here, Howard not only initiated and continued the contract action and he *lis pendens* without any good faith belief that his claims were valid, but he also tried to use the *lis pendens* to entice the buyers to back away from buying 320 St. James.

110. Howard's actions in filing the *lis pendens* and attempting to subvert a valid contract of sale through the circuit court proceedings are a perversion of that process.

111. Invasion of Privacy: Shirley Hammer does not have a valid claim for invasion of privacy. No evidence in the record supports a valid cause of action for invasion of privacy.

112. Intentional Interference with a Contract: To establish intentional interference with a contract one must show: (1) the existence of the contract; (2) the other party's knowledge of the existence; (3) the other party's intentional

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procurement of the breach of the contract; (4) the absence of justification and (5) resulting damage. *D. R. Horton, Inc. v. Wescott Land Co., LLC, supra.*

113. Circumstantial evidence establishes that Howard had knowledge of the existence of the contract (*i.e.*, hand delivery of the letter at the exact time of closing and filing of the *lis pendens* when the closing was approaching and filing the contract action the day before closing).

114. In my view, Howard did everything he could to procure a breach of the contract; however the breach did not occur because the parties proceeded to closing, albeit with modified terms (owner financing instead of bank financing).

115. Even if there was a breach by virtue of the changed financing arrangement, resulting damages have not been proven by the greater weight of the evidence. There is no evidence that Shirley invested the proceeds she did receive at closing in a manner consistent with the investments upon which the certified financial planner based her projections and opinions. Also, there is no evidence as to what return Shirley received on the proceeds she did invest. Also, Shirley received interest on the amount she financed for the purchasers of her home, and I cannot conclude by the greater weight of the evidence that this interest return, combined with the return she realized on investment of the net proceeds was less than the return the certified financial planner projected if there had been no owner financing and all of the proceeds had been realized at closing. I conclude the certified financial planner's testimony was also speculative. While damages need not be proven to a mathematical certainty, the amount of damages awarded by a fact finder may not be based upon speculation, surmise, or conjecture.

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116. Slander of Title: The filing of a *lis pendens* is absolutely privileged in South Carolina, "even when a party files a *lis pendens* which is motivated by some malicious intent." *Pond Place Partners Inc. v. Poole*, 351 S.C. 1, 32, 567 S.E.2d 881, 897(Ct. App. 2002). As observed by the Court of Appeals, the proper avenue of relief is through a cause of action for malicious prosecution or abuse of process. *Id.*

117. While it is absolutely clear that Howard filed the *lis pendens* with malicious intent, that is not sufficient to invalidate the privilege afforded under state law insofar as a slander of title action is concerned, but is pertinent to the abuse of process claim.

118. Even if there were no privilege present here, Shirley has failed to prove all elements of slander of title by the greater weight of the evidence. To maintain an action for slander of title, one must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to the plaintiff's title and (5) that caused special damages (6) as a result of diminished value of the property in the eyes of third parties. *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct.App. 1995).

119. Shirley has not established elements (5) and (6). I find no evidence of special damages as a result of diminished value of the property in the eyes of third parties, as Shirley has failed to prove by the greater weight of the evidence that she sustained any damages as a result of diminished value of the property in the eyes of any third party.

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120. In her abuse of process claim, Shirley is awarded actual damages in the amount of \$20,000.00 for the frustration she experienced as a result of Howard's abuse of the system in the filing of the *lis pendens*. The finding of actual damages is based on upon what a reasonable person would experience in the way of frustration and is not based upon any pre-existing fragile mental state, and there is no evidence of such a pre-existing condition. The findings above in paragraphs 48 and 49 are included herein by reference. In *Swicegood v. Lott*, 379 S.C. 346, 665 SE2d 711 (Ct. App. 2008), the Court of Appeals noted the Supreme Court's holding in *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 166 SE2d 297 (1969) pertaining to an award of actual damages for harm resulting to the plaintiff in the form of humiliation and other mental suffering, *or injury to feelings*. In *Swicegood*, the court upheld an actual damages award based on testimony from the plaintiff about the degree of frustration, embarrassment, and humiliation he experienced as a result of the defendant's abuse of process. In my view, whatever one calls the assault on Shirley's feelings, an award of damages in this case has basis in the law. Even though Shirley may have abandoned all claims for "emotional distress", in my view that does not equate to an abandonment of a claim for damages founded in frustration or embarrassment.

121. As a result of the factual findings set forth above, Shirley is also entitled to recover punitive damages against Howard. Shirley has established by clear and convincing evidence that Howard's actions were reprehensible and in willful, wanton and reckless disregard of Shirley's rights. S.C.Code Ann. § 15-33-135 (Supp.1999); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996). The test

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for determining whether a party's conduct was willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff's rights. *Rogers v. Florence Printing Company*, 233 S.C. 567, 106 S.E.2d 258 (1958). This is established by not only clearly and convincingly, but also beyond doubt.

122. It is that present consciousness of wrongdoing that justifies the award of punitive damages. Punitive damages are awarded to vindicate the rights of the plaintiff and to deter the defendant and others from committing the same or similar conduct in the future. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964). Shirley has established her entitlement to punitive damages by clear and convincing evidence.

123. Before awarding punitive damages, the court undertakes to employ the test articulated by our Supreme Court in *Mitchell v. Fortis Ins. Company*, 385 S.C. 570, 686 SE2d 176 (2009). As this case was tried without a jury, this evaluation will be done at this stage even though many of the relevant factors are also applied at the post-judgment stage. An evaluation of the considerations set forth in *Gamble v. Stevenson*, 305 S.C. 104, 406 SE2d 350 (1991) is also appropriate, as these considerations are still pertinent: (1) defendant's degree of culpability, (2) duration of the conduct, (3) defendant's awareness or concealment, (4) existence of similar past conduct, (5) likelihood the award will deter the defendant and others from similar conduct, (6) whether the award is reasonably related to the harm likely to result from the conduct, (7) the defendant's ability to pay, and (8)

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any other factors deemed appropriate. The *Fortis* court observed the *Gamble* factors are still relevant to a due process analysis of a punitive damages award, but only insofar as they add substance to the guideposts set forth in *BMW v. Gore*, 517 U.S. 559 (1996). Under *Gore*, the court is required to analyze the degree of reprehensibility of the defendant's conduct, the disparity between the actual and potential harm sustained and the punitive damages award, and the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. Under *Fortis*, insofar as the reprehensibility of Howard's conduct is concerned, the court must consider whether (1) the harm caused was physical as opposed to economic, (2) the tortious conduct evinced an indifference to or reckless disregard for the health or safety of others, (3) the target of the harm had financial vulnerability, (4) the conduct involved repeated actions or was an isolated incident, and (5) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. Though the harm Howard caused was not physical, Shirley has undoubtedly been harmed in the form of incurring substantial fees and costs and in the form of the frustration at having to combat Howard's tactics at every turn, while obviously being concerned he would carry out his objective of bankrupting her. Shirley urges the court to also take into account the harm that *could have* been realized by Shirley if Howard's abuse of process bore fruit. The evidence is clear and convincing that if Shirley had not prevailed at the summary judgment stage, the attorneys' fees and frustration she could have experienced would have been overwhelming, and could have resulted in a financial hole from which she could have taken years to escape. Howard's

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conduct was no doubt in reckless disregard for Shirley's rights to a peaceful existence as noted above. She was financially vulnerable. Howard's conduct was repeated, intentional, consistent, and grounded in malice toward Shirley. The reprehensibility of Howard's conduct and Howard's awareness of the conduct are beyond doubt. He will simply not leave her alone. This court cannot sit by and allow the process to be abused in the manner set out above and not impose an award that will (1) serve to deter Howard and others from engaging in an onslaught of vexatious and unfounded litigation and (2) vindicate Shirley's right to conduct her life in peace and free from figuratively having to look over her shoulder while in a never-ending vortex of litigation. Further, the award must bear a relationship to the nature and extent of the conduct and the harm caused, including the actual damages award made. *Id.* Here, the court concludes the award imposed bears an appropriate relationship to the nature and extent of the harm caused by Howard and his overall conduct. The court must also consider, as a mitigating factor, any other penalty that may have been imposed for the conduct involved. The court must also consider whether the award of and the amount of punitive damages may deprive Howard of any profits derived from his improper conduct and whether any ill-gotten profits should be awarded to Shirley. Lastly, the court must note as a fact finder that any punitive damage award must be limited to punishment and may not affect economic bankruptcy and to that end, must consider the defendant's ability to pay; however, the economic bankruptcy factor is not an absolute bar to an award of punitive damages. *Id.* The court is compelled to conclude that the award should be mitigated somewhat because

Handwritten signature and page number 36 of 42.

Howard's conduct has resulted in disciplinary action against by our Supreme Court. To this point, the court knows of no "ill-gotten profits" Howard has realized through his conduct, except perhaps in the subjective form of his own perverted satisfaction that he has prolonged and abused the process in his attempt to harass and potentially bankrupt Shirley.

124. The court finds by clear and convincing evidence that an award of \$60,000.00 in punitive damages is proper, though perhaps low in light of Howard's conduct. This amount bears a 3:1 ratio to the actual damages award and in my view satisfies constitutional concerns in that regard. The court is aware of no reported cases addressing the issue of punitive damages assessed in an abuse of process action against a vexed former spouse, who is also an attorney.

CONCLUSIONS OF LAW
1634 Main LP v. Shirley Hammer v. Howard Hammer

125. The cause of action asserted by the limited partnership against Shirley is one for declaratory judgment. (See amended complaint dated June 9, 2010). As discussed above in the findings of fact, Shirley no longer owns any interest in the limited partnership, and has not owned any interest in the limited partnership since before this action was filed. For that reason, the limited partnership is not entitled to any relief on its declaratory judgment action against Shirley.⁹ Howard is the sole member of SH 5, LLC, which is the general partnership of 1634. Howard's refusal to accept the November 2009 tender does not leave Shirley open to liability for any share of the repairs sought by 1634.

⁹ Although not necessary to my conclusion, I observe that limited partnership law and the limited partnership agreement would not allow Shirley to be sued for repairs.

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126. The facts supporting Shirley's counterclaim and third party claim for abuse of process against the limited partnership and against Howard, as set forth above, have been established by the preponderance of the evidence. Her claims for conversion and civil conspiracy were pleaded in the alternative, in the event it was determined that she continued to own some interest in the real property and/or the limited partnership. Since the court has determined her interest in the real property and the limited partnership ended in 2009, it is not necessary to address the claims for conversion or for civil conspiracy.

127. Abuse of Process: The 1634 suit was timed by Howard to extract money from Shirley or to harass her while valid family court orders were in place regarding her interest in the real estate and the limited partnership, and after she had tendered her interest in both to Howard.

128. Throughout the litigation of this matter, both Howard and the limited partnership, through Howard, have continued to advance the claim set forth in the complaint for declaratory judgment and the amendments thereto, knowing full well that Shirley did not owe any money to the limited partnership. As discussed above, Howard's push for continued litigation against Shirley in this action has been undertaken for an ulterior purpose, primarily to attempt to escape his obligations under the family court orders and to generally harass her and obtain an unfair financial advantage. As noted above, Howard did advise Shirley that he would bankrupt her. The court is satisfied that there is clear and convincing evidence that Howard sponsored and propelled this litigation so there could be one more front on which he could attack Shirley without legal or factual

Bj 38 & 42

justification and attempt to accomplish his goal of harassing her and bankrupting her.

129. Shirley has incurred damages for frustration as a result of having to defend against the declaratory judgment action advanced by the limited partnership. Because the limited partnership brought this action at the behest of Howard, Shirley is entitled to recover damages for abuse of process against both the limited partnership and against Howard individually. All findings above pertaining to the frustration issue are incorporated herein by reference, and the court finds that a reasonable person in Shirley's position would be greatly frustrated at being faced with the prospect of being sued over a baseless claim for repair expenses when there was no justification for the claim.

130. The court concludes that a reasonable person in the place of Shirley would be justifiably frustrated by Howard's and the limited partnership's perversion of the process for illegitimate reasons and that she is entitled to actual damages on her counterclaim and third party complaint in the amount of \$25,000.00 against Howard and 1634 Main LP, jointly and severally.

131. Using the framework set forth in *Gore, Gamble, and Mitchell v. Fortis, supra*, discussed above in paragraphs 124-126, Shirley is also clearly and convincingly entitled to recover punitive damages against Howard individually. The elements the court must consider in determining the amount of punitive damages are set forth above and are incorporated herein as if repeated verbatim, and the specifics of the analysis pertaining to an award against Howard are incorporated herein by reference, as his conduct has been very similar in both

cases. In addition, the court is disturbed by Howard's use of Mr. Turbeville and Danville Business Advisors in his quest to harass Shirley and carry out his mission of financially ruining Shirley. Reprehensibility is established on that basis and on the basis that it is apparent Howard concealed from Turbeville the fact that Shirley had tendered her interest in the partnership. The activities of 1634 through Howard against Shirley have been long-term through today, as the unfounded assessment notice was issued in November 2009. Assessing an award of punitive damages against the partnership is a cumbersome thing, since the partnership's liability for these damages is wholly the result of the actions of Howard, which actions are to result in a punitive damages award against Howard, so the court concludes any punitive award against 1634 would be improper. Howard's motives for his machinations in the contract action and as the puppet-master in this action are for the most part the same, i.e., to engage Shirley in baseless litigation in his effort to harass her and bankrupt her. The court takes into account as a mitigating factor the fact that Howard has been disciplined. Again, the court will not sit by and allow Howard's efforts to go unpunished. The court finds by clear and convincing evidence that an award of punitive damages against Howard in the amount of \$50,000.00 is proper.

132. The award is 2:1 in ratio to the joint and several actual damages award against Howard and 1634 and therefore would survive constitutional scrutiny in my view. The court is not aware of any reported cases involving similar facts and conduct.

Shirley's Claims under S.C.Code Ann. Section 15-36-10, et seq.

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133. At the conclusion of the January 15, 2013 hearing, counsel for Shirley asserted a claim under the South Carolina Frivolous Civil Proceedings Sanctions Act (SCFCPA), S.C.Code Ann. Section 15-36-10. The SCFCPA is not a factor at this stage as the very terms of the Act do not apply until the post-trial stage and such claims must heard in accordance with the Act. As a result, the court denies that claim without prejudice to Shirley's right to seek relief under the SCFCPA after this matter is concluded. The court notes that counsel for Shirley handed to the court her unfiled motion for relief under this Act at the conclusion of the hearing. Counsel for Shirley is instructed to serve a filed copy of the motion upon all other parties and to mail the court a copy of the filed motion. The court will then hold a hearing on this issue in the manner contemplated by the statute.

Shirley's Motion to Dissolve *Lis Pendens*

134. Shirley asks the court to dissolve the *lis pendens* which encumbers 320 St. James. As indicated above, Shirley remains liable on the indemnification agreement she signed with Investor's Title at the time she sold 320 St. James.

135. A *lis pendens* remains valid for a period of five years. S.C.Code Ann. §15-11-50. The court may order a *lis pendens* cancelled after the action which supported it is "settled, discontinued, or abated. . ." Section 15-11-40. In the absence of a court order, the *lis pendens* may be cancelled only by the person who filed it. *Id.*

136. The court has concluded that the *lis pendens* was filed maliciously and has no legal merit, and consequently, the *lis pendens* must be dissolved. The Richland County Clerk of Court is directed to cancel the *lis pendens* filed by

Howard on July 31, 2009, as required by Section 15-11-40 and is to update all records accordingly.

CONCLUSION

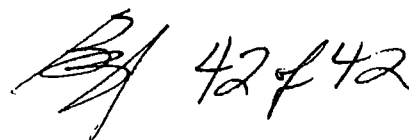
Based on the findings of fact set forth above and the conclusions of law, IT IS ORDERED:

- A. The Richland County Clerk of Court is directed to cancel the *lis pendens* filed by Howard on July 31, 2009, as required by Section 15-11-40, and is to update all records accordingly.
- B. Shirley is awarded actual damages against Howard for abuse of process in the contract action, Case No. 2009-CP-40-05911, in the amount of \$20,000.00 actual damages, and is awarded the sum of \$60,000.00 in punitive damages against Howard.
- C. The claim for declaratory relief by 1634 Main LP in Case No. 2010-CP-40-2889 is denied.
- D. In her abuse of process claims in 2010-CP-40-2889, Shirley is awarded actual damages against 1634 Main LP and Howard Hammer, jointly and severally, in the amount of \$25,000.00, actual damages. Shirley is awarded the sum of \$50,000.00 in punitive damages against Howard only.
- E. The court will entertain any motions made under S.C Code Section 15-36-10, et seq. in accordance with the court's comments above. A hearing date will be set by the court.

IT IS SO ORDERED.

January 28, 2013


George C. James, Jr., Circuit Judge



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-40-6911

Howard Hammer

Shirley Hammer, a/k/a Shirley Grace
Hightower

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

*The Court*Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ 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 (format 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	Howard Hammer	\$60,744.30
		\$
		\$
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

Date

6/3/13

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

PLAINTIFF(S)

Howard Hammer, Third Party Defendant
DEFENDANT(S)

Submitted by:

The Court
 Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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 (~~found 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

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

ATTORNEY(S) FOR THE DEFENSE
Francine W. Paride
 CLERK OF COURT

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Page 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	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**

RICHLAND COUNTY
FILED
2013 JUN -6 AM 10:27
JEANETTE W. MCBRIDE
C.C.P. & G.S.

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,

[Handwritten signature]

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 properly¹, 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.²

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

¹ 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.

² 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, SCRPC. 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

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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 unfilled 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 re-serve 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.

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, SCRCP. 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



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,

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, SCRCP

I now turn to the merits of Mrs. Hammer's sanctions claims and will first address her Rule 11 claim. Under Rule 11, SCRCP, 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. Chewning 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

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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

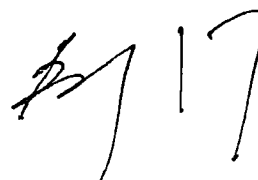
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the repair/maintenance estimate. Mr. Hammer and his young son were also partners and were not sued for and did not confess judgment for their admitted shares, nor did they pay it. His claim that he did not have the money to pay his share is beside 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.

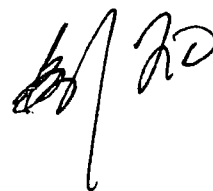
Under §15-36-10 (E), the court is to take into account the number of parties, the complexity of the claims, information disclosed or undisclosed during discovery and investigation, previous violations of the Act, the response, if any, to the allegations the Act had been violated, and all other factors 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.

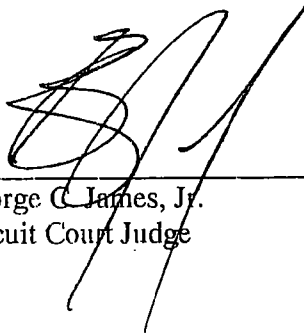
Based on the foregoing, it is ORDERED

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.

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

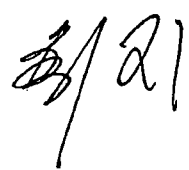
AND IT IS SO ORDERED.



George C. James, Jr.
Circuit Court Judge

Sumter, South Carolina

June 3, 2013



THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Howard Hammer, Appellant,

v.

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

Appellate Case No. 2010-164067

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Published Opinion No. 4980
Heard May 9, 2012 – Filed June 6, 2012

AFFIRMED

Susan Batten Lipscomb, of Lipscomb Law Firm, P.A., of
Columbia, for Appellant.

Stephanie Nichole Weissenstein and Desa Allen Ballard,
of Ballard, Watson, & Weissenstein, of West Columbia,
for Respondent.

LOCKEMY, J.: In this appeal, Howard Hammer (Appellant) argues the circuit court erred in dismissing his complaint for lack of subject matter jurisdiction. Appellant sought a declaratory judgment and other relief in connection with a contract with Shirley Hammer (Respondent). Appellant contends: (1) Respondent failed to file a proper motion to dismiss pursuant to Rule 7(b), SCRCP; (2) the

contract clearly demonstrated the parties' intent that the family court not have exclusive jurisdiction over the contract; and (3) sections 20-3-690 and 63-3-530 of the South Carolina Code do not provide for exclusive family court jurisdiction in the present case. We affirm.

FACTS/PROCEDURAL BACKGROUND

Appellant and Respondent were married on August 4, 1998 and had two children. On September 2, 2005, Respondent filed a complaint seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. Subsequently, on December 6, 2007, Respondent filed a second amended complaint seeking a divorce and other relief. The family court litigation was settled in two phases. First, the divorce and property settlements were agreed to and incorporated into the family court's May 12, 2008 order. The May 2008 order adopted a settlement agreement (May 2008 contract) which included terms involving the parties' former marital home and Appellant's retirement accounts. The May 2008 contract included a final clause stating, "[t]his agreement is a binding contract and is enforceable as such under law." In its May 2008 order, the family court stated it retained "jurisdiction to issue any orders necessary to effectuate the terms of the [May 2008 contract]." Second, in June 2009, the parties settled issues relating to child custody and visitation. On August 19, 2009, the family court entered an order approving the settlement agreement and ending the action. The family court also expressly re-affirmed the May 2008 order.

Appellant challenged the May 2008 contract, the 2009 settlement agreement, and the family court orders on four occasions. First, on May 4, 2009, Appellant sought to amend, modify, void, and set aside the May 2008 order and requested a new trial pursuant to Rule 60(b), SCRPC. The family court dismissed Appellant's motion with prejudice. Second, Appellant filed a motion to withdraw, rescind, and repudiate his consent to the June 2009 settlement agreement. The motion was denied by the family court on January 27, 2010. Third, on September 4, 2009, Appellant filed a motion to reconsider, amend, alter, modify, and/or for a new trial and stay of the following family court orders: (1) order for transfer of individual retirement account; (2) order sealing record; (3) order approving settlement agreement; and (4) order (ending action). The family court denied Appellant's motion.

On November 9, 2009, Appellant filed an amended complaint in the circuit court seeking a declaratory judgment and other relief in connection with the May 2008 contract. Appellant asserted the May 2008 contract was void *ab initio* as violating

public policy because a key term of the contract was a payment of funds by Appellant to Respondent in exchange for her agreement to drop certain criminal charges against Appellant. Appellant also asserted causes of action for breach of contract, breach of contract accompanied by fraudulent intent, conversion, and breach of covenant of good faith and fair dealing.

In her first amended answer, motion to dismiss, and counterclaims, Respondent asserted three defenses: (1) lack of subject matter jurisdiction; (2) failure to state facts sufficient to constitute a cause of action; and (3) *res judicata*. Respondent's counterclaims included slander of title, tortious interference with an existing contractual relationship, intentional infliction of emotional distress, abuse of process, invasion of privacy, wrongful intrusion as to contracts to sell and purchase, and malicious prosecution. A hearing was held before the circuit court on March 2, 2010. In an April 14, 2010 order, the circuit court dismissed Appellant's complaint for lack of subject matter jurisdiction. The circuit court held its decision did not end the action as to Respondent's counterclaims. Subsequently, the circuit court denied Appellant's motion to reconsider. This appeal followed.

STANDARD OF REVIEW

This is an appeal from the grant of a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP. "The question of subject matter jurisdiction is a question of law for the court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). "We are free to decide questions of law with no deference to the [circuit] court." *Id.*

LAW/ANALYSIS

Motion to Dismiss

Appellant argues the circuit court erred in granting Respondent's motion to dismiss because Respondent failed to file a proper motion pursuant to Rule 7(b), SCRCP.¹ Appellant also contends the circuit court erred in relying on the sealed family court record. We disagree.

Pursuant to Rule 7(b)(1), SCRCP

¹ Appellant incorrectly refers to Rule 7(b), SCRCP as Rule 7(e), SCRCP in his brief.

An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Appellant argues Respondent failed to make a separate and distinct motion to dismiss and "merely entered a denial of Appellant's allegation that the circuit court had subject matter jurisdiction." Appellant further contends the findings of the circuit court were based solely on statements of Respondent's counsel and on Respondent's memorandum of law, which referenced the sealed family court record. Appellant maintains portions of the sealed record contained in Respondent's memorandum were improperly included in the circuit court's findings of fact.

Respondent argues subject matter jurisdiction can be raised at any time. Respondent contends Appellant was on notice that lack of subject matter jurisdiction was asserted in the answer and had adequate notice of the March 2010 circuit court hearing. Respondent also argues the sealing order expressly provided the parties could access and use the sealed record in the domestic litigation. Respondent maintains Appellant "opened the door" to the sealed record by "attacking the family court order with his declaratory judgment action," and the circuit court properly determined it lacked subject matter jurisdiction.

We agree with Respondent. Subject matter jurisdiction can be raised at any time and by any means. Rule 12(h)(3), SCRCP provides, "[w]hensoever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the case." Here, Respondent specifically asserted in her answer, motion to dismiss and counterclaims that the circuit court lacked subject matter jurisdiction and asked the court to dismiss Appellant's complaint. This pleading gave Appellant notice that Respondent was moving to dismiss his complaint for lack of subject matter jurisdiction. Furthermore, Respondent served and filed a memorandum in support of her motion to dismiss on February 24, 2010 and Appellant had notice of the March 2, 2010 circuit court hearing to hear the motion.

Additionally, the sealing order expressly provides that the parties and the court may access and use the sealed file in the "litigation between [Appellant and

Respondent]." Here, the parties to the litigation are the same and the subject matter of the case, the May 2008 contract, was executed in partial settlement of the family court litigation and made an order of the family court. Because Appellant's complaint was a continuation of the marital dispute, the circuit court properly referenced the family court record. Accordingly, we find the circuit court did not err in dismissing Appellant's complaint.

Intent of the Parties

Appellant argues the circuit court erred in dismissing his complaint because the May 2008 contract clearly set forth the parties' intent that the family court did not have exclusive jurisdiction over the contract. We disagree.

In *Moseley v. Mosier*, 279 S.C. 348, 353, 306 S.E.2d 624, 627 (1983), our supreme court held that once a settlement agreement is approved by the family court, it may be enforced by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction. Here, the May 2008 contract and the May 2008 order expressly vest the family court with jurisdiction to enforce the contract. The family court's May 2008 order plainly states, "[t]his Court retains jurisdiction to issue any orders necessary to effectuate the terms of the [May 2008 contract]." Moreover, the May 2008 contract provides that "[w]hen this settlement is approved it shall be enforceable through the contempt powers of the [f]amily [c]ourt." Accordingly, we find the May 2008 contract does not evidence intent by the parties that the family court not have jurisdiction over the contract. Furthermore, under *Moseley*, the family court has continuing subject matter jurisdiction over the claims raised in Appellant's amended complaint.

§ 20-3-690 and § 63-3-530

Appellant argues the circuit court erred in finding the family court had exclusive subject matter jurisdiction pursuant to sections 20-3-690 and 63-3-530 of the South Carolina Code. We disagree.

Pursuant to section 20-3-690 of the South Carolina Code (Supp. 2011), "[t]he family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts." Section 63-3-530 provides

(A) The family court has exclusive jurisdiction:

...

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings;

...

(25) to modify or vacate any order issued by the court;

...

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition;

S.C. Code Ann. § 63-3-530(A)(2)(25)(30) (2010).

Appellant argues the circuit court has the authority to hear the present case pursuant to sections 15-53-20, 15-53-30, and 15-53-90 of the Declaratory Judgment Act. Section 15-53-20 provides "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations" S.C. Code Ann. § 15-53-20 (2005). Section 15-53-30 provides

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C. Code Ann. § 15-53-30 (2005). Pursuant to section 15-53-90,

When a proceeding under this chapter involves the determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. All existing rights to jury trials are hereby preserved.

S.C. Code Ann. § 15-53-90 (2005). Appellant contends, in light of the sealed family court record, there is no admissible evidence in the record from which the circuit court could determine any fact other than Appellant's allegations and Respondent's admission that a contract was entered into between the parties. Appellant argues, applying sections 15-53-20, 15-53-30, and 15-53-90, it is clear the circuit court had the power to declare the rights and status of the May 2008 contract, and had the power to hear and determine the question of the validity of the contract.

Respondent argues the circuit court properly relied on sections 20-3-690 and 63-3-530 in dismissing Appellant's complaint. Respondent contends South Carolina law expressly grants the family court subject matter jurisdiction over the construction and enforcement of the May 2008 contract and over all of the marital litigation between the parties.

We agree with Respondent. The May 2008 contract was part of the parties' divorce proceeding. Pursuant to section 20-3-690, the family court has exclusive jurisdiction over contracts relating to property in a divorce proceeding. S.C. Code Ann. § 20-3-690 (Supp. 2011). Moreover, by merging the May 2008 contract into the family court's order, the family court transformed it from a contract between the parties into a decree of the court. See *Emery v. Smith*, 361 S.C. 207, 214, 603 S.E.2d 598, 601 (Ct. App. 2004) (holding that merging an agreement into an order transforms it from a contract between the parties into a decree of the court). In *Emery*, this court held that "[s]ince *Moseley*, our courts 'assume that any settlement in a divorce decree is intended to be judicially decreed unless there is some explicit, clear and plain provision in the court approved separation agreement or the decree.'" *Id.* (quoting *Moseley*, 279 S.C. at 353, 306 S.E.2d at 627). "With the court's approval, the terms become a part of the decree and are binding on the parties and the court." *Id.* (quoting *Moseley* at 353, 306 S.E.2d at 627). As part of the family court order, the agreement "is fully subject to the family court's authority to interpret and enforce its own decrees." *Id.* at 214, 603 S.E.2d at 601-02 (citing e.g., *Terry v. Lee*, 308 S.C. 459, 419 S.E.2d 213 (1992) (stating that the family court has exclusive jurisdiction to determine the rights of the parties under

an agreement incorporated into a family court decree)). Accordingly, the circuit court did not err in finding it lacked subject matter jurisdiction to hear Appellant's complaint.

CONCLUSION

Based on the foregoing, we affirm the circuit court's dismissal of Appellant's complaint for lack of subject matter jurisdiction.

AFFIRMED.

THOMAS, J. and CURETON, A.J., concur.

CP277

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Howard Hammer,

Petitioner,

vs.

Shirley Hammer AKA Shirley Grace Hightower,

Respondent.

LIS PENDENS

2009 JUL 31 PM 4:42
JEANETTE W. McBRIDE
C.S.P. & G.S.

RICHLAND COUNTY
FILED

NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced by the above-named Petitioner against the above-named Respondents concerning among other things and matters the property described as follows:

All that certain piece, parcel, or lot of land, together with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and designated as Lot 6, Block A, on a plat prepared for Carolina Research and Development Foundation by McNair, Gordon, Johnson & Karasiewicz, dated May 1, 1981, and recorded in the Office of the RMC for Richland County in Plat Book Z at pages 363 and 363-A. Being more specifically shown and delineated on a plat prepared for Howard Hammer by Cox and Dinkins, Inc., dated June 20, 1985. Said lot is bounded and measures as follows: On the Southwest by St. James Street, whereon it fronts and measures first in a curved line the chord distance of 6.96 feet, and then in a straight line the distance of 71.09 feet; on the Northwest by Lot 7, Block A, whereon it measures 69.73 feet; on the North by Lot 8, Block A, whereon it measures 39.33 feet; on the East by Lot 10, Block A, whereon it measures 73.37 feet; and on the Southeast by Lot 5, Block A, whereon it measures 44.16 feet. Be all measurements a little more or less.

This being the same property conveyed to Howard Hammer by deed of Will H. Byrd Jr., dated July 25, 1985, and recorded July 26, 1985, in Deed Book D751 Page, 584, with an undivided one half interest in said property thereafter being conveyed to Shirley Hightower Hammer by

deed of Howard Hammer dated February 23rd, 2004 and recorded on February 27th, 2004 in Deed Book/Page 00906 – 3447, the remaining undivided one half interest of Howard Hammer being conveyed to Shirley Hammer by deed of Howard Hammer dated May 20th, 2008 and recorded June 18th, 2008 in Deed Book/Page 1439 – 1279 for which reference to each of deeds is hereby incorporated herein.

Said conveyance having been made is subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to any shown on recorded plats.

TMS# 11307-09-16

The action will sound inter alia in causes for breach of contract and tort.

Respectfully Submitted,



Howard Hammer, Petitioner

Pro-Se

July 30, 2009

Richland County Common Pleas

Clerk : Jeanette W. McBride
Richland County Judicial Center
Columbia, SC 29201
(803) 576-1999

89

Received From: Hammer,

Date : 7/31/2009

RECEIPT #: 88230

Clerk: COCBORER

Paying for: Hammer, Howard

Transaction Type: Payment

Payment Type: Check \$10.00

Total Paid \$10.00

Reference #: 11206

Comment:

Total Received \$10.00

Change Due \$0.00

Case #	Caption	Previous Balance	Amount Paid	Baiance Due	S/T
EP277	Howard Hammer vs Shirley Hammer	\$10.00	\$10.00	\$0.00	750



Total Cases:	1	\$10.00	\$10.00	\$0.00

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

HOWARD HAMMER,)

Plaintiff(s))

vs.)

SHIRLEY HAMMER AKA SHIRLEY)
GRACE HIGHTOWER,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009CP4005911

(Please Print)

Submitted By: Pro Se

Address: 1609 Catawba Street

Columbia, SC 29205

SC Bar #:

Telephone #: 803-530-8517

Fax #:

Other:

E-mail: howham1945@gmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check one box below)

- ☒ JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION
(Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☒ General (130) ☒ Wrongful Breach (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Other Malpractice (299)	Torts - Personal Injury ☐ Assault/Stander/Libel (300) ☒ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☒ Other (499) Breach
Inmate Petitions ☐ PCR (500) ☐ Sexual Predator (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750)** ☐ Other (799)	Administrative Law/Relief ☐ Driver License Reinstate (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: _____

Date: August 17, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

***FOR MANDATED ADR COUNTIES ONLY**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

* Florence, Horry, Lexington, Richland, Greenville, and Anderson

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer AKA Shirley Grace
Hightower,

Defendant.

2009CP4005911

SUMMONS
(Jury Trial)

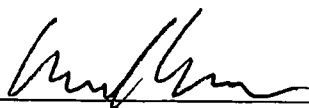
JEANETTE W. McBRIDE
C. CLERK & S.

2009 AUG 18 PM 4:27

RICHLAND COUNTY
CLERK

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscriber at 1609 Catawba Street Columbia, SC 20205, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.



Howard Hammer, *Pro Se*

Columbia, South Carolina

August 17th, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer AKA Shirley Grace
Hightower,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Civil Action No. : _____

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COMPLAINT

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

2009 AUG 18 PM 4:27

RICHLAND COUNTY
CLERK

Plaintiff complaining of Defendant alleges:

1. That Plaintiff and Defendant are residents and citizens of The State of South Carolina, County of Richland.

2. That in May 2008, Plaintiff and Defendant entered into a certain contract by which Defendant promised the performance of various acts in return for promises of performance of various acts by Plaintiff.

3. That the matters before the Court are various actions for damages on account of Defendants breach of her promises in connection with the aforesaid contract and on account of various other acts giving rise to causes of action as hereinafter set forth.

4. That this court has venue and jurisdiction over the matters set forth herein.

**FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

5. That Plaintiff has performed all acts required under the contract except those Plaintiff has been unable to perform because of impossibility.

6. That notwithstanding Plaintiffs performance which included payments to Defendant of the sum of over one million dollars cash, the payment of a mortgage on a home jointly owned by the parties in a sum greater than two hundred thousand

(200,000) dollars, and thereafter the deeding of Plaintiffs interest in said home to Defendant, and on the further performance of other obligations required of Plaintiff by Plaintiff, Defendant has failed and refused to perform any of the essential conditions and requirements of the contract on account of which Plaintiff has been caused to and has suffered a considerable financial loss including but not limited to the loss of monies paid to Defendant, loss of interest on said monies paid to Defendant, loss of any appreciation in value of any properties deeded to Defendant; loss of use of properties; loss of properties rightfully belonging to Plaintiff, which Defendant has refused and continues to refuse to convey to Plaintiff (personal and real properties), and diminution of values of properties real and personal which Defendant has failed to convey to Defendant as required under the terms of said contract.

**FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT INTENT)**

7. That paragraphs 1-6 are incorporated by reference and repeated as though fully set forth verbatim herein.

8. That upon information and belief Defendant made fraudulent and false representations relating to a preexisting fact and that Defendant intended to deceive Plaintiff and that further Plaintiff had a right to rely upon the representations made by Defendant.

9. That upon information and belief the falsity of the representation was known or should have been known to Defendant.

10. That upon information and belief the misrepresentation was material.

11. That upon information and belief the misrepresentation was made in reckless disregard for its truth or falsity

12. That upon information and belief the intent of the misrepresentation was that it be acted upon, that Plaintiff was ignorant of the falsity of the misrepresentation and relied upon the truth of the representation that the Plaintiff had a right to rely on the truth and that Plaintiff suffered consequential damages and proximate injury as a result of the said misrepresentations of Defendant.

13. That as a direct and proximate consequence of the above matters, Plaintiff has been damaged as hereinafter set forth

**FOR A THIRD CAUSE OF ACTION
(AGAINST PUBLIC POLICY)**

14. That paragraphs 1-13 are incorporated by reference and repeated as though fully set forth verbatim herein.

15. That the contract contained provisions obnoxious to, contrary to, against the principles of the common law and statutory enactments and/or constitutional provisions of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the contract is therefore void.

16. That as a direct and proximate consequence thereof, Plaintiff has been damaged in the manner that is hereinafter set forth.

**FOR A FOURTH CAUSE OF ACTION
(CONVERSION)**

17. That paragraphs 1-16 are incorporated by reference and repeated as though fully set forth verbatim herein.

18. That Defendant heretofore, in or about December 2007, unlawfully and illegally entered Plaintiff's residence.

19. That the entry into Plaintiffs home in December 2007, was thereafter accompanied by an unlawful, reckless, willful conversion of Plaintiff's property which unlawful, reckless and willful conversion continues though the present. Notwithstanding Plaintiff's request prior to the institution of this action for immediate inventory, accounting for and return of Plaintiff's property located in the home he was occupying at the time of the conversion.

20. That the aforesaid conversion was and has been aided by and through the assistance and actions of unknown co-conspirators including upon information and belief, but not limited to, actions directly or indirectly taken by Plaintiffs domestic attorneys, upon her request and with their full knowledge and acquiescence and upon information and belief also through the efforts of agents assisting her and at her behest in attempting to avoid her responsibility and liability for her unlawful, reckless and willful aforesaid conversion.

21. That as approximate result on the account of the unlawful, willful and malicious conversion by Defendant, Plaintiff has been caused to suffer loss of his property, loss of the use of his property, diminution in the value of his property and has been otherwise damaged all to his damage in such sum as The Court shall determine to be fair, just and proper.

**FOR A FIFTH CAUSE OF ACTION
(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

22. That paragraphs 1-22 are incorporated by reference and repeated as though fully set forth verbatim herein.

23. That all agreements entered into under the laws of The State of South Carolina carry with it a primary, absolute and unalterable covenant whether express or

not requiring good faith and fair dealing in connection with any agreement or purported agreement.

24. That Defendant has wrongfully, recklessly, carelessly and willfully breached the covenant of good faith and fair dealing in connection with the purported agreement with Plaintiff.

25. That as a result and in consequence thereof, that Plaintiff has suffered damages both actual and punitive as hereinafter set forth.

26. That on account of and in consequence of all of the above separately and/or in combination, Plaintiff has lost the value of the monies and other consideration paid to Defendant; Plaintiff has lost interest on the value of said monies; Plaintiff has been required to obtain loans in order to meet the obligations he has met under the said agreement leaving Plaintiff with the obligation of repayment of said loans and interest thereon; Plaintiff has suffered anguish, loss of earnings and income and loss of the value of the bargained for consideration and has been otherwise damaged all to his damage in addition to those damages hereinbefore set forth.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages in such amount as may be fair, just and proper on the aforesaid causes of action for return of properties both real and personal rightfully belonging to Plaintiff and for punitive damages on the aforesaid appropriate causes of action in such amount as the Court shall deem just and proper and for such other and further relief as may be required along with statutorily mandated costs.

Howard Hammer, *Pro Se*

Columbia, South Carolina

Dated: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2009-CP-40-05911
	)	
Howard Hammer,	)	
	)	
Plaintiff,	)	FIRST AMENDED
	)	ANSWER, MOTION TO DISMISS,
vs.	)	AND COUNTERCLAIMS
	)	
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant.	)	

Defendant, responding to the complaint of the Plaintiff herein, denies that the Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. Admits the allegations of paragraph 1, except denies that she is a resident of Richland County.
2. Admits that the parties entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, and that this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order.
3. No responsive pleading is required to the allegations in paragraph 3, except Defendant denies that she breached The Family Court Order described in paragraph 2 above.

ANSWER TO FIRST CAUSE OF ACTION

4. Denies that this Court has subject matter jurisdiction over matters contained in Plaintiff's complaint. Subject matter jurisdiction is proper only in Family Court.
5. Denies the allegations of paragraph 5.
6. Answering Paragraph 6, Defendant admits that Plaintiff performed some, but not all, obligations required of him by The Family Court Order. Defendant denies that she has failed to perform any requirements of The Family Court Order.

ANSWER TO SECOND CAUSE OF ACTION

7. Repeats and re-alleges her answers to paragraphs 1-6.
8. Denies the allegations of paragraph 8.
9. Denies the allegation of paragraph 9.
10. Denies the allegation of paragraph 10.
11. Denies the allegation of paragraph 11.
12. Denies the allegations of paragraph 12.
13. Denies the allegation of paragraph 13.

ANSWER TO THIRD CAUSE OF ACTION

14. Repeats and re-alleges her answers to paragraphs 1-13.
15. Denies the allegations of paragraph 15.
16. Denies the allegation of paragraph 16.

ANSWER TO FOURTH CAUSE OF ACTION

17. Repeats and re-alleges her answers to paragraphs 1-16.
18. Denies the allegation of paragraph 18.
19. Denies the allegations of paragraph 19.
20. Denies the allegations of paragraph 20.
21. Denies the allegations of paragraph 21.

ANSWER TO FIFTH CAUSE OF ACTION

22. Repeats and re-alleges her answers to paragraphs 1-21.
23. No responsive pleading is required to the legal conclusions stated in paragraph 23.
24. Denies the allegations of paragraph 24.
25. Denies the allegations of paragraph 25.



26. Denies the allegations of paragraph 26.

DEFENSES

27. This Court lacks subject matter jurisdiction over the matters contained in the complaint.

28. The Complaint fails to state facts sufficient to constitute a cause of action.

29. The claims asserted are barred by the doctrine of *res judicata*.

COUNTERCLAIMS

(Allegations Common to All Counterclaims)

30. To the extent relevant to these counterclaims, the responses set forth above are incorporated herein as fully as if repeated verbatim.
31. Defendant was the sole owner of the real estate located at 320 St. James Street, Columbia, SC, 29205 ("320 St. James") at all relevant times.
32. On or about February 9, 2009, Defendant placed 320 St. James on the market for sale.
33. On July 31, 2009, Plaintiff filed a *lis pendens* against 320 St. James (a copy of which is attached as **Exhibit A**) but did not provide notice of the *lis pendens* to Defendant.
34. At the time he filed the *lis pendens*, Plaintiff had no interest in or claim against 320 St. James.
35. Upon information and belief, Plaintiff's purpose in filing the *lis pendens* was to prevent the closing of the sale of 320 St. James under the contract of sale that had been entered into between Defendant and her purchaser.
36. On August 18, 2009, Plaintiff filed the complaint in this action but did not serve Defendant. The complaint alleges no interest of Plaintiff in 320 St. James.
37. On or about August 19, 2009, Plaintiff communicated with the closing attorneys for Defendant's purchaser under the contract of sale for 320 St. James, stating that he would cancel the *lis pendens* if Defendant's purchaser would instead buy his house at 1609 Catawba Street, Columbia, SC, 29205 and Plaintiff provided could purchase 320 St. James.
38. Plaintiff also communicated to the purchaser's closing attorneys the false information that the pool at 320 St. James had a current leak.
39. On or about July 25, 2009, Defendant entered into a contract to purchase the real estate located at 421 River Club Drive in Lexington County, SC ("421 River Club").

The closing was contingent on Defendant's consummation of the sale of 320 St. James because Defendant was to use the proceeds from that sale to fund the purchase of 421 River Club.

40. Upon information and belief, after Plaintiff became aware of Defendant's contract of sale to purchase 421 River Club, Plaintiff and/or his agent contacted Defendant's seller and offered to purchase 421 River Club for more than Defendant's contract price.
41. Because of Plaintiff's interference, including but not limited to his filing of the *lis pendens* and the complaint, Defendant's original contract of sale with her purchaser failed. Eventually, Defendant was able to sell 320 St. James to her purchaser on August 20, 2009, but on significantly less favorable terms than the original contract of sale.
42. On information and belief, sometime after Defendant purchased 421 River Club, Plaintiff began negotiating to purchase real estate in the same neighborhood as, and right down the street from, Defendant's new home at 421 River Club.
43. On or about September 8, 2009, Plaintiff served the complaint on Defendant.
44. Plaintiff's actions caused and continue to cause Defendant to sustain severe emotional distress as well as financial loss.

**FIRST COUNTERCLAIM
(SLANDER OF TITLE)**

45. Defendant repeats and re-alleges the allegations of paragraphs 30 through 44.
46. Plaintiff published false statements about Defendant's title to 320 St. James by filing the *lis pendens* and the complaint and/or making other false statements that Plaintiff had a claim to or interest in 320 St. James.
47. Upon information and belief, Plaintiff's false statements were made with malice for the purpose of preventing the closing of the sale of 320 St. James and to harass Defendant.
48. Plaintiff's false statements were derogatory to Defendant's title to 320 St. James and caused the original contract of sale to fail.
49. Plaintiff's false statements caused special damages to Defendant in the form of the lost sale of the property and the diminution of its sales price.
50. Plaintiff's false statements diminished the value of Defendant's property interest in 320 St. James.
51. Plaintiff's false statements constituted a slander of Defendant's title to 320 St. James

for which Defendant is entitled to recover actual and punitive damages from Plaintiff.

SECOND COUNTERCLAIM
(TORTUOUS INTERFERENCE WITH AN EXISTING CONTRACTUAL RELATIONSHIP)

52. Defendant repeats and re-alleges the allegations of paragraphs 30 through 51.
53. On information and belief, Plaintiff was aware of Defendant's contract to sell 320 St. James.
54. Upon information and belief, Plaintiff through his actions, including but not limited to his false statements, intended to cause the breach of Defendant's original contract to sell 320 St. James.
55. Plaintiff had no justification for his actions because he had no interest in 320 St. James.
56. Plaintiff's actions constituted a tortuous interference with Defendant's existing contractual relationship.
57. Plaintiff's tortuous interference with Defendant's existing contractual relationship caused damage to Defendant as set forth above for which Defendant is entitled to recover actual and consequential damages from Plaintiff.

THIRD COUNTERCLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE)

58. Defendant repeats and re-alleges the allegations of paragraphs 30 through 57.
59. Through his conduct, Plaintiff intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.
60. Plaintiff's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.
61. Plaintiff's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.
62. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff for damages as set forth above.

FOURTH COUNTERCLAIM
(ABUSE OF PROCESS)

63. Defendant repeats and re-alleges the allegations of paragraphs 30 through 62.

64. Upon information and belief, Plaintiff had an ulterior purpose in bringing this action: to harass Defendant and to prevent the Defendant from selling 320 St. James and from purchasing 421 River Club.
65. Plaintiff's willful actions in the use of process was not proper in the regular conduct of proceedings and was intended to gain an objective not legitimate in the use of process.
66. Defendant suffered damages as a result of Plaintiff's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.

**FIFTH COUNTERCLAIM
(INVASION OF PRIVACY/WRONGFUL INTRUSION
AS TO CONTRACTS TO SELL AND PURCHASE)**

67. Defendant repeats and re-alleges the allegations of paragraphs 30 through 66.
68. Plaintiff intruded into Defendant's private contractual arrangements involving the sale of 320 St. James and the purchase of 421 River Club.
69. Plaintiff intruded into Defendant's private contractual arrangements for which she had normal expectation to be free from exposure to Plaintiff.
70. Plaintiff's intrusion caused emotional distress to Defendant and was a blatant and shocking disregard of her rights.
71. Plaintiff's course of conduct was intentional.
72. Defendant suffered damage as a result of Plaintiff's invasion of Defendant's privacy for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.

**SIXTH COUNTERCLAIM
(MALICIOUS PROSECUTION)**

71. Defendant repeats and re-alleges the allegations of paragraphs 30 through 72.
72. The filing of this action by Plaintiff was filed with malice in instituting the proceedings, without probable cause.
73. On information and belief, Plaintiff's claims will be resolved in favor of Defendant.
74. Defendant has suffered injuries and damages as set forth above as the result of the actions of the plaintiff as described herein.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

- A. Dismissing the complaint in its entirety;
- B. For actual and punitive damages on the counterclaims set forth above;
- C. For the costs of this action and prejudgment interest as permitted by law;
- D. For such other and further relief as may be appropriate.



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ATTORNEY FOR DEFENDANT

October 30, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2009-CP-40-05911
	)	
Howard Hammer,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER TO AMENDED
	)	COMPLAINT, MOTION TO DISMISS
	)	AND COUNTERCLAIMS
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant.	)	

Defendant, responding to the amended complaint of the Plaintiff, denies that the Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. The motion to dismiss set forth in Defendant's Answer, Motion to Dismiss and Counterclaim filed on October 5, 2009 is incorporated by reference herein, and no defenses or claims set forth in Defendant's previously filed Answer, Motion to Dismiss and Counterclaims or the First Amended Answer, Motion to Dismiss and Counterclaims filed on November 3, 2009 are waived.
2. Defendant admits the allegations of Paragraph 1, except denies that she is a resident of Richland County.
3. Responding to Paragraph 3, Defendant admits that the parties entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, and that this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. As to the remaining assertions therein, Defendant believes no responsive pleading is required to the allegations in Paragraph 3, but to the extent this paragraph may be interpreted as an allegation against Defendant, such claim is denied.
4. Defendant denies that this Court has subject matter jurisdiction over matters contained in Plaintiff's complaint, and therefore denies Paragraphs 2 and 4. Subject matter jurisdiction is proper only in Family Court.

ANSWER TO FIRST CAUSE OF ACTION

5. Paragraph 5 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and

repeats and re-alleges her answers to Paragraphs 1-4.

6. Defendant admits only that she caused criminal warrants to be issued against Plaintiff. The remaining allegations set forth in Paragraph 6 are denied.
7. The assertions made in Paragraph 7 do not require a response; but, to the extent that any allegation may be derived therein against Defendant, Defendant denies these allegations and specifically incorporates her responses in Paragraph 3 above.
8. Defendant denies the allegations of Paragraph 8, except Defendant admits that she entered into an Agreement with Plaintiff that was incorporated into an order of the Family Court, as more fully described in Paragraph 3 above; that Plaintiff insisted that Defendant withdraw her own criminal complaints and request that the Richland County solicitor nol prosse with leave to restore charges brought by the Solicitor against Plaintiff, which Defendant eventually agreed to do in exchange for an Order of Protection; and, that Plaintiff, upon his own insistence, executed general releases in favor of Defendant and Florence and Alan Medlin in exchange for the execution of general releases in favor of Plaintiff by Defendant and Florence and Alan Medlin.
9. Defendant denies the allegations of Paragraph 9 and expressly incorporates her answer in Paragraph 8 above.
10. Defendant denies that this Court has jurisdiction over any matter related to The Family Court Order.
11. Defendant denies the allegations and assertions set forth in Paragraph 11, and specifically denies the Plaintiff is entitled to any of the relief claimed. Defendant is informed and believes that declaratory relief is not warranted because S.C. Code Ann. Section 15-53-70 precludes such relief since such relief would not terminate the controversy between the parties and, because jurisdiction resides exclusively in the Family Court.

ANSWER TO SECOND CAUSE OF ACTION

12. Paragraph 12 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-11.
13. Defendant admits that Plaintiff performed some, but not all, obligations required of him by The Family Court Order. Defendant denies that she failed to perform any obligations under The Family Court Order. The remaining allegations set forth in Paragraph 13 are denied.
14. Defendant denies the allegations in Paragraph 14. By way of additional response, Defendant would show that pursuant to the requirements of The Family Court Order, she deeded the real property located at 1 Rice Court in Columbia, South Carolina to

Plaintiff, who sold that real property to a third party and kept the proceeds from that sale.

ANSWER TO THIRD CAUSE OF ACTION

15. Paragraph 15 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-14.
16. Defendant denies the allegations in Paragraph 16.
17. Defendant denies the allegations of Paragraph 17.
18. Defendant denies the allegations of Paragraph 18.
19. Defendant denies the allegations of Paragraph 19.
20. Defendant denies the allegations of Paragraph 20.
21. Defendant denies the allegations of Paragraph 21.
22. Defendant denies the allegations of paragraph 22.

ANSWER TO FOURTH CAUSE OF ACTION

23. Paragraph 23 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-22.
24. Defendant denies the allegation of paragraph 24.
25. Defendant denies the allegations of paragraph 25.

ANSWER TO FIFTH CAUSE OF ACTION

26. Paragraph 26 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs Paragraphs 1-25.
27. Defendant denies the allegations of Paragraph 27.
28. Defendant denies the allegations of Paragraph 28 and further alleges that she had the exclusive right to possess 320 St. James in Columbia, South Carolina pursuant to an Order of the Richland County Family Court dated September 12, 2005.

29. Defendant denies the allegations of paragraph 29.

30. Defendant denies the allegations of paragraph 30.

ANSWER TO SIXTH CAUSE OF ACTION

31. Paragraph 31 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-30.

32. No responsive pleading is required to the legal conclusions stated in Paragraph 32.

33. The allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 are denied.

DEFENSES

36. This Court lacks subject matter jurisdiction over the matters contained in the Amended complaint.

37. The Amended Complaint fails to state facts sufficient to constitute a cause of action.

38. The claims asserted are barred by the doctrine of *res judicata*.

39. The Amended Complaint should be dismissed because there is another action pending between the parties for the same relief.

40. Plaintiff is not entitled to the relief requested because he is pursuing the same remedies in the family court.

41. Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Plaintiff is estopped, inter alia, because pursuant to the requirements of The Family Court Order, Defendant deeded the real property at 1 Rice Court, Columbia, South Carolina to Plaintiff, who sold that real property to a third party and then kept the proceeds from that sale.

42. Plaintiff is precluded from the relief sought because he executed a general release in favor of Defendant.

43. Plaintiff is precluded from the relief sought because there is an adequate remedy at law in the Family Court.

COUNTERCLAIMS
(Allegations Common to All Counterclaims)

44. To the extent relevant to these counterclaims, the responses set forth above are incorporated herein as fully as if repeated verbatim.
45. Defendant was the sole owner of the real estate located at 320 St. James Street, Columbia, South Carolina, 29205 ("320 St. James") at all relevant times.
46. On or about February 9, 2009, Defendant placed 320 St. James on the market for sale.
47. On July 31, 2009, Plaintiff filed a *lis pendens* against 320 St. James (a copy of which is attached as **Exhibit A**) but did not provide notice of the *lis pendens* to Defendant.
48. At the time he filed the *lis pendens*, Plaintiff had no interest in or claim against 320 St. James.
49. Upon information and belief, Plaintiff's purpose in filing the *lis pendens* was to prevent the closing of the sale of 320 St. James under the contract of sale that had been entered into between Defendant and her purchaser.
50. On August 18, 2009, Plaintiff filed the complaint in this action but did not serve Defendant. The complaint alleges no interest of Plaintiff in 320 St. James.
51. On or about August 19, 2009, Plaintiff communicated with the closing attorneys for Defendant's purchaser under the contract of sale for 320 St. James, stating that he would cancel the *lis pendens* if Defendant's purchaser would instead buy his house at 1609 Catawba Street, Columbia, SC, 29205, provided Plaintiff could purchase 320 St. James.
52. Plaintiff also communicated to the purchaser's closing attorneys the false information that the pool at 320 St. James had a current leak.
53. On or about July 25, 2009, Defendant entered into a contract to purchase the real estate located at 421 River Club Road in Lexington County, SC ("421 River Club"). The closing was contingent on Defendant's consummation of the sale of 320 St. James because Defendant was to use the proceeds from that sale to fund the purchase of 421 River Club.
54. Upon information and belief, after Plaintiff became aware of Defendant's contract of sale to purchase 421 River Club, Plaintiff and/or his agent contacted Defendant's seller and offered to purchase 421 River Club for more than Defendant's contract price.
55. Because of Plaintiff's interference, including but not limited to his filing of the *lis pendens* and the complaint, Defendant's original contract of sale with her purchaser

failed. Eventually, Defendant was able to sell 320 St. James to her purchaser on August 20, 2009, but on significantly less favorable terms than the original contract of sale.

56. On information and belief, sometime after Defendant purchased 421 River Club, Plaintiff began negotiating to purchase real estate in the same neighborhood as, and right down the street from, Defendant's new home at 421 River Club, and Plaintiff has now consummated that purchase.

57. On or about September 8, 2009, Plaintiff served the complaint on Defendant.

58. Plaintiff's actions caused and continue to cause Defendant to sustain severe emotional distress as well as financial loss.

FIRST COUNTERCLAIM (SLANDER OF TITLE)

59. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

60. Plaintiff published false statements about Defendant's title to 320 St. James by filing the *lis pendens* and the complaint and/or making other false statements that Plaintiff had a claim to or interest in 320 St. James.

61. Upon information and belief, Plaintiff's false statements were made with malice for the purpose of preventing the closing of the sale of 320 St. James and to harass Defendant.

62. Plaintiff's false statements were derogatory to Defendant's title to 320 St. James and caused the original contract of sale to fail.

63. Plaintiff's false statements caused special damages to Defendant in the form of the lost sale of the property and the diminution of its sales price.

64. Plaintiff's false statements diminished the value of Defendant's property interest in 320 St. James.

65. Plaintiff's false statements constituted a slander of Defendant's title to 320 St. James for which Defendant is entitled to recover actual and punitive damages from Plaintiff.

SECOND COUNTERCLAIM (TORTIOUS INTERFERENCE WITH AN EXISTING CONTRACTUAL RELATIONSHIP)

66. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

67. On information and belief, Plaintiff was aware of Defendant's contract to sell 320 St.

James.

68. Upon information and belief, Plaintiff through his actions, including but not limited to his false statements, intended to cause the breach of Defendant's original contract to sell 320 St. James.
69. Plaintiff had no justification for his actions because he had no interest in 320 St. James.
70. Plaintiff's actions constituted a tortious interference with Defendant's existing contractual relationship.
71. Plaintiff's tortious interference with Defendant's existing contractual relationship caused damage to Defendant as set forth above for which Defendant is entitled to recover actual and consequential damages from Plaintiff.

**THIRD COUNTERCLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE)**

72. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
73. Through his conduct, Plaintiff intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.
74. Plaintiff's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.
75. Plaintiff's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.
76. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff for damages as set forth above.

**FOURTH COUNTERCLAIM
(ABUSE OF PROCESS)**

77. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
78. Upon information and belief, Plaintiff had an ulterior purpose in bringing this action: to harass Defendant and to prevent the Defendant from selling 320 St. James and from purchasing 421 River Club.
79. Plaintiff's willful actions in the use of process was not proper in the regular conduct

of proceedings and was intended to gain an objective not legitimate in the use of process.

80. Defendant suffered damages as a result of Plaintiff's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.

**FIFTH COUNTERCLAIM
(INVASION OF PRIVACY/WRONGFUL INTRUSION
AS TO CONTRACTS TO SELL AND PURCHASE)**

81. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
82. Plaintiff intruded into Defendant's private contractual arrangements involving the sale of 320 St. James and the purchase of 421 River Club.
83. Plaintiff intruded into Defendant's private contractual arrangements for which she had normal expectation to be free from exposure to Plaintiff.
84. Plaintiff's intrusion caused emotional distress to Defendant and was a blatant and shocking disregard of her rights.
85. Plaintiff's course of conduct was intentional.
86. Defendant suffered damage as a result of Plaintiff's invasion of Defendant's privacy for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.

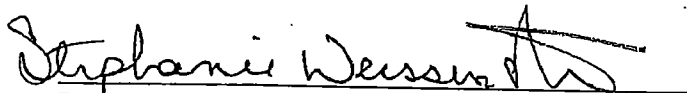
**SIXTH COUNTERCLAIM
(MALICIOUS PROSECUTION)**

87. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
88. The filing of this action by Plaintiff was filed with malice in instituting the proceedings, without probable cause.
89. On information and belief, Plaintiff's claims will be resolved in favor of Defendant.
90. Defendant has suffered injuries and damages as set forth above as the result of the actions of the plaintiff as described herein.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

- A. Dismissing the amended complaint in its entirety;

- B. For actual and punitive damages on the counterclaims set forth above;
- C. For the costs of this action and prejudgment interest as permitted by law;
- D. For such other and further relief as may be appropriate.



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ATTORNEYS FOR DEFENDANT

November 19, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer, a/k/a Shirley Grace
Hightower,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 09-CP-40-05911

AMENDED COMPLAINT FOR A
DECLARATORY JUDGMENT
AND/OR IN THE ALTERNATIVE
FOR DAMAGES

2009 NOV - 9 AM 9:30
C.C.P. & U.S.
CLERK OF COURT

NOW COMES Plaintiff Howard Hammer, through undersigned counsel, By way of his
Amended Complaint For a Declaratory Judgment and/or In the Alternative for Damages,
would respectfully show the court as follows:

- 1) Plaintiff is, and at the time this suit was commenced, Defendant was a resident and citizen of the State of South Carolina, County of Richland.
- 2) This court has personal jurisdiction of the parties.
- 3) This matter involves, *inter alia*, a request for a declaratory judgment by this court that a certain contract entered into by the parties as set forth below is invalid as against public policy, and/or that the contract contains provisions obnoxious to, contrary to, against principles of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the contract is therefore void and/or in the alternative for damages on account of Defendant's breach of her promises in connection with the aforesaid contract and on account of various other acts giving rise to causes of action as hereinafter set forth.
- 4) This court has subject matter jurisdiction of the issues set forth herein.

FOR A FIRST CAUSE OF ACTION

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(Declaratory Judgment)

- 5) The allegations of the foregoing Paragraphs are realleged herein as if verbatim.
- 6) Beginning in July 2007 through February 2008, Plaintiff made numerous spurious criminal complaints and caused criminal warrants to be issued against Plaintiff, thereby jeopardizing Plaintiff's law license.
- 7) Plaintiff seeks declaratory judgment and relief in connection with a certain contract entered between the parties in May 2008 ("May 2008 Contract"), which Contract involves, among other matters, property located at 320 St. James Street, Columbia, South Carolina and Plaintiff's retirement (IRA) accounts.
- 8) An integral part of the consideration of Plaintiff's agreements in the May 2008 Contract was Defendant's agreement to withdraw her criminal complaints and allow the criminal charges against Plaintiff to be dismissed in addition to which Defendant required that Plaintiff agree to an "Order of Protection" not only as to her, but also as to her sister, who was not a party to the contract, and the further requirement that the parties execute an Agreement and Release of claims one against the other and that Plaintiff execute a Receipt and Release in favor of Plaintiff's sister-in-law Florence Medlin and a Receipt and Release in favor of Plaintiff's brother-in-law Alan Medlin on account of any potential claims.
- 9) Plaintiff was required to agree to the terms and conditions of the May 2008 Contract as a prerequisite to Defendant's agreement to withdraw her criminal complaints and agree to the dismissal of the criminal charges filed against Plaintiff by Defendant and Defendant's sister/Plaintiff's sister-in-law, Florence Medlin.
- 10) Plaintiff is informed and believes that pursuant to S. C. Code of Laws § 15-53-10, *et. seq.* (1976, as amended) and the express terms of the May 2008 Contract itself this court has

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jurisdiction to declare the rights, status and other legal relations between Plaintiff and Defendant and to declare the invalidity of the May 2008 Contract.

11) Plaintiff is informed and believes that he is entitled to a declaratory judgment order declaring that the May 2008 Contract is against public policy, and/or that the May 2008 Contract contains provisions obnoxious to, contrary to, against principles of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the May 2008 Contract is therefore void *ab initio*; and, that all transfers, including but not limited to the transfer by Plaintiff to Defendant of any and all of his interest in 320 St. James Street, Columbia, S.C. was and is accordingly void *ab initio*, and all other terms, provisions, and requirements of the May 2008 Contract are invalid, void and unenforceable.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

12) The allegations of the foregoing Paragraphs are realleged herein as if verbatim. In the event the Court determines the May 2008 Contract is valid, Plaintiff pleads in the alternative as follows.

13) That Plaintiff has performed all acts required under the May 2008 Contract except those Plaintiff has been unable to perform because of impossibility. *above*

14) That notwithstanding Plaintiff's performance which included payments to Defendant of the sum of over one million dollars cash, the payment of a mortgage on a home located at 320 St. James Street, Columbia, SC jointly owned by the parties in a sum greater than two hundred thousand (200,000) dollars, and thereafter the deeding of Plaintiff's interest in said home to Defendant, and on the further performance of other obligations required of Plaintiff and by Plaintiff, Defendant has failed and refused to perform any of the essential material conditions

and requirements of the May 2008 Contract on account of which Plaintiff has been caused to and has suffered a considerable financial loss including but not limited to the loss of monies paid to Defendant, loss of interest on said monies paid to Defendant, loss of any appreciation in value of any properties deeded to Defendant including but not limited to the 320 St. James Street, Columbia, S.C. property referred to hereinabove; loss of use of properties; loss of properties rightfully belonging to Plaintiff, which Defendant has refused and continues to refuse to convey to Plaintiff (personal and real properties), and diminution of values of properties real and personal which Defendant has failed to convey to Defendant as required under the terms of said May 2008 Contract.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Intent)

- 15) The allegations of the foregoing Paragraphs are realleged herein as if verbatim.
- 16) Upon information and belief Defendant made fraudulent and false representations relating to a preexisting fact and that Defendant intended to deceive Plaintiff and that further Plaintiff had a right to rely upon the representations made by Defendant.
- 17) That upon information and belief the falsity of the representations was known or should have been known to Defendant.
- 18) That upon information and belief the misrepresentations were of material facts.
- 19) That upon information and belief the misrepresentations were made in reckless disregard for their truth or falsity.
- 20) That upon information and belief the Defendant intended that Plaintiff rely on the misrepresentations and that he act in reliance on them; that Plaintiff was ignorant of the falsity of the misrepresentations; and relied upon the truth of the representations that the Plaintiff had a

right to rely on the truth and that Plaintiff suffered consequential damages and proximate injury as a result of the said misrepresentations of Defendant.

21) That Defendant breached the May 2008 Contract; that she had a fraudulent intent relating to the breach; and that the breach was accompanied by a fraudulent act.

22) That as direct and proximate consequence of the above, Plaintiff has been damaged as hereinafter set forth.

FOR A FOURTH CAUSE OF ACTION
(Against Public Policy)

23) The allegations of the foregoing Paragraphs are realleged herein as if verbatim.

24) That the contract contained provisions obnoxious to, contrary to, against the principles of the common law and statutory enactments and/or constitutional provisions of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the contract is therefore void *ab initio*, including but not limited to the provisions relating to the transfer of the 320 St. James Street, Columbia, S.C. property to Defendant hereinabove referred to.

25) That as a direct and proximate consequence thereof, Plaintiff has been damaged in the manner that is hereinafter set forth.

FOR A FIFTH CAUSE OF ACTION
(Conversion)

26) The allegations of the foregoing Paragraphs are realleged herein as if verbatim.

27) That Defendant heretofore, in or about December 2007, unlawfully and illegally entered Plaintiff's residence.

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28) That the entry into Plaintiff's home in December 2007, was thereafter accompanied by an unlawful, reckless, willful conversion of Plaintiff's property which unlawful, reckless and willful conversion continues though the present, notwithstanding Plaintiff's request prior to the institution of this action for immediate inventory, accounting for and return of Plaintiff's property located in the home (320 St. James Street) he was occupying at the time of the conversion.

29) That the aforesaid conversion was and has been aided by and through the assistance and actions of unknown co-conspirators including upon information and belief, but not limited to, actions directly or indirectly taken by Plaintiff's domestic attorneys, upon information and belief on her request and/or at their direction with their knowledge and acquiescence and upon information and belief also at her behest through the efforts of agents assisting her in attempting to avoid her responsibility and liability for her unlawful, reckless and willful aforesaid conversion.

30) That as a proximate result and on the account of the unlawful, willful and malicious conversion by Defendant, Plaintiff has been caused to suffer loss of his property, loss of the use of his property, diminution in the value of his property and has been otherwise damaged all to his damage in such sum as The Court shall determine to be fair, just and proper.

FOR A SIXTH CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)

31) The allegations of the foregoing Paragraphs are realleged herein as if verbatim.

32) That all agreements entered into under the laws of the State of South Carolina carry with it a primary, absolute and unalterable covenant whether express or not requiring good faith and fair dealing in connection with any agreement or purported agreement.

33) That Defendant has wrongfully, recklessly, carelessly and willfully breached the covenant of good faith and fair dealing in connection with the purported agreement with Plaintiff.

34) That as a direct and proximate result and in consequence thereof, that Plaintiff has suffered damages both actual and punitive as hereinafter set forth.

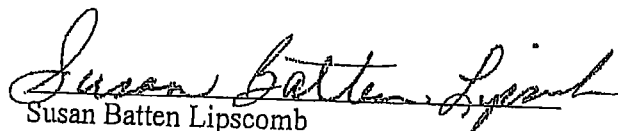
35) That on account of and as a direct proximate result and in consequence of all of the above separately and/or in combination, Plaintiff has lost the value of the monies and other consideration paid to Defendant; Plaintiff has lost interest on the value of said monies; Plaintiff has been required to obtain loans in order to meet the obligations he has met under the said agreement leaving Plaintiff with the obligation of repayment of said loans and interest thereon; Plaintiff has suffered anguish, loss of earnings and income and loss of the value of the bargained for consideration and has been otherwise damaged all to his damage in addition to those damages hereinbefore set forth. *

WHEREFORE, Plaintiff prays for judgment against Defendant for the following relief:

- A) For a declaratory judgment declaring that the May 9, 2008 contract between the parties is void *ab initio* as against public policy;
- B) For an order for actual damages in favor of Plaintiff against Defendant in such amount as may be fair, just and proper on the aforesaid causes of action;
- C) For an order requiring Defendant to return to Plaintiff properties both real and personal, including but not limited to his interest in the 320 St. James Street, Columbia, S.C. and all other property all rightfully belonging to Plaintiff;

- D) For an order for punitive damages in favor of Plaintiff against Defendant on the aforesaid appropriate causes of action in such amount as the Court shall deem just and proper;
- E) For an order for attorneys' fees and costs as appropriate in favor of Plaintiff against Defendant; and,
- F) For such other and further relief as may be just and fair.

Respectfully submitted,



Susan Batten Lipscomb
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 Attorneys for Plaintiff



Howard Hammer, Pro Se

by all w/permission

November 4, 2009
 Columbia, SC

Hammer 123-pleading

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer, a/k/a Shirley Grace
Hightower,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 09-CP-40-05911

REPLY

40
FAMETEM MCBRIDE
SCCPG
FAMILY COURT

2009 DEC 11 AM 11:05

RICHLAND COUNTY
FILED

NOW COMES Plaintiff Howard Hammer, through undersigned counsel, by way of his
Reply to Defendant's pleading designated as Answer to Amended Complaint, Motion to
Dismiss, and Counterclaims dated November 19, 2009, ("Answer to Amended Complaint,
Motion to Dismiss, and Counterclaims") would respectfully show the court as follows:

FOR A FIRST DEFENSE

1) Paragraphs 1 through 4 of the Answer to Amended Complaint, Motion to
Dismiss, and Counterclaims do not comply with the South Carolina Rules of Civil Procedure and
should therefore be stricken; or accordingly, to the extent the allegations are properly pled and
inconsistent with the allegations in Plaintiff's Amended Complaint For a Declaratory Judgment
and/or in the Alternative for Damages dated November 4, 2009, the allegations are denied.

2) Each and every allegation of the Answer to Amended Complaint, Motion to
Dismiss, and Counterclaims not hereinafter specifically admitted is denied.

3) Each and every allegation of the Answer to Amended Complaint, Motion to
Dismiss, and Counterclaims that is inconsistent with the allegations of the Amended Complaint
is denied.

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4) In addition to the other matters set forth in this Reply, to the extent the allegations of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims require interpretation of alleged contracts, covenants, statutes or regulations, Plaintiff refers the Court to those alleged documents and denies any allegations inconsistent therewith.

5) In addition to the other matters set forth in this Reply, Plaintiff denies the allegations of all Paragraphs of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims to the extent they assert legal conclusions that must be determined in due course based on all facts and circumstances at issue during this litigation.

6) Paragraphs numbered 1 through 43 of Answer to Amended Complaint, Motion to Dismiss, and Counterclaims constitute Defendant's Answer to the Amended Complaint and therefore require no response from Plaintiff.

7) The reallegations in Paragraph 44 are answered hereinabove and those responses are incorporated herein as if verbatim.

8) In response to the allegations of Paragraphs 45 through 90 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims, Plaintiff would show that he has sought by way of his Amended Complaint a determination of the validity of a contract between the parties. The outcome of the determination will impact Plaintiff's responses to Paragraphs 45 through 90, and therefore, on information and belief, to the extent the allegations are inconsistent with the Amended Complaint, they are denied at this time.,

9) In further response to the allegations of Paragraph 45 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims, those allegations are denied.

10) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraph 46 and therefore denies same.

11) In response to the allegations of Paragraph 47, Plaintiff admits that he filed a *lis pendens*, but would show that he gave Defendant notice as required as a matter of law and denies so much of Paragraph 47 as alleges or implies that he did not properly file, serve and provide notice to Defendant as required by law.

12) Plaintiff denies the allegations of Paragraphs 48 and 49 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

13) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraph 50 at this time and therefore denies same.

14) Plaintiff denies the allegations of Paragraphs 50, 51, and 52 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

15) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraph 53 and therefore denies same.

16) Plaintiff denies the allegations of Paragraphs 54, 55, and 56 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

17) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraph 57 at this time and therefore denies same.

18) Plaintiff denies the allegations of Paragraph 58 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

19) The reallegations in Paragraph 59 are answered hereinabove and those responses are incorporated herein as if verbatim.

20) Plaintiff denies the allegations of Paragraphs 60 through 65 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

21) The reallegations in Paragraph 66 are answered hereinabove and those responses are incorporated herein as if verbatim.

22) Plaintiff denies the allegations of Paragraphs 67 through 71 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

23) The reallegations in Paragraph 72 are answered hereinabove and those responses are incorporated herein as if verbatim.

24) Plaintiff denies the allegations of Paragraphs 73 through 76 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

25) The reallegations in Paragraph 77 are answered hereinabove and those responses are incorporated herein as if verbatim.

26) Plaintiff denies the allegations of Paragraphs 78 through 80 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

27) The reallegations in Paragraph 81 are answered hereinabove and those responses are incorporated herein as if verbatim.

28) Plaintiff denies the allegations of Paragraphs 82 through 86 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

29) The reallegations in Paragraph 87 are answered hereinabove and those responses are incorporated herein as if verbatim.

30) Plaintiff denies the allegations of Paragraphs 88 through 90 of the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims.

FOR A SECOND DEFENSE

31) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.

32) The Counterclaims fail to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

33) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.

34) Plaintiff pleads laches, waiver and estoppel as a complete defense to any and all of Defendant's Counterclaims.

FOR ADDITIONAL DEFENSES

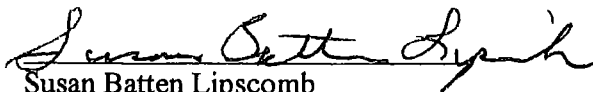
35) Under Rule 13(e) of the South Carolina Rules of Civil Procedure, Plaintiff reserves any and all defenses that mature or are discovered after the filing of this Reply.

36) Under Rule 13(f) of the South Carolina Rules of Civil Procedure, Plaintiff reserves any and all defenses and claims that justice requires be made after the filing of this Reply.

WHEREFORE, having fully replied to the Answer to Amended Complaint, Motion to Dismiss, and Counterclaims, Plaintiff hereby requests the Court issue an order granting the following relief:

- A) Dismissing the Counterclaims with prejudice;
- B) Granting Plaintiff the relief requested in the Amended Complaint, plus attorneys' fees and costs of collection; and,
- C) For such other and further relief as the Court deems appropriate.

Respectfully submitted,



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Attorneys for Plaintiff

Columbia, SC
December 9, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff,
v.

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,
Additional Defendant
On Counterclaim.

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 and
2010-CP-40-2889

PRETRIAL BRIEF
(Shirley Hammer)

Pursuant to Rule 16(a), SCRPC, Shirley Hammer ("Shirley") submits the following information for the Court's consideration in advance of trial. Following trial, Shirley intends to file a motion pursuant to S.C.Code Ann. Section 15-36-10 *et seq.* for sanctions for the filing of frivolous claims against her.

(1) A concise, non-argumentative statement of the facts of the case.

This case is the consolidation of two separate matters as described below, and the continuation of domestic litigation between Howard Hammer ("Howard") and Shirley Hammer that began in 2005 ("the domestic action"). The domestic action was fully and finally settled, with divorce granted and all issues adjudicated, in 2009. However, Howard has caused litigation to continue in the family court since then¹, including motions to enforce the settlements and

¹ Howard will contend that Shirley has filed many of the motions and other pleadings in the family court action. While it is true that Shirley has filed for relief in the family court on numerous occasions since the 2009 settlement, all of her filings have been efforts to enforce the original orders of the court which concluded the domestic action.

If this court concludes that it has subject matter jurisdiction over the claims asserted by the limited partnership against her, Shirley has also filed a motion for summary judgment on the merits of the claims against her in the 1634 Main action. To avoid an interlocutory appeal by Mr. Hammer that would otherwise prevent the trial from proceeding, Shirley has elected to defer the court's consideration of her motion for summary judgment and instead hear the matters at the close of the case-in-chief by 1634 Main LP, as a directed verdict motion instead, so trial can proceed to conclusion.

Summary Judgment Motion⁵

Prior to the final order in the domestic action, Shirley owned 8% interest in 1634 Main LP. She also owned the majority interest (52.75%) of the real estate located at 1634 Main Street. The remainder of the interest in the real property is owned by the limited partnership. The final order in the domestic action approved an agreement which distributed property interests held by Shirley and Howard, including Shirley's majority interest in both the real property and her individual ownership of 8% interest in the limited partnership. Although Shirley has tendered those interests to Howard, he purportedly refused to accept the tender, claiming some legal obstacles prevented him from complying with the family court order.

Even under Howard's incorrect assertion that Shirley owns 56.8% of the limited partnership, rather than a 52.75% interest in the real estate outright, she would not be responsible for additional contributions, because of her status as a limited partner.

Shirley has elected not to hear this summary judgment motion prior to trial; she will argue this issue at the close of the case-in-chief by 1634 Main LP in Case No. 2010-CP-40-2889 (assuming that claim is not dismissed because of exclusive jurisdiction in the family court, *see supra.*)

SUPREME COURT INVOLVEMENT

On June 21, 2012, Shirley filed a petition in the original jurisdiction of the South Carolina Supreme Court asking for extraordinary relief to limit the continuing abuse by Howard

⁵ Shirley's motion for Summary Judgment in the 1634 action was filed on September 24, 2012. As noted above, these issues will now be argued at the conclusion of the case-in-chief presented by 1634 Main LP.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Howard Hammer,)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-40-05911

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

Defendant Shirley Hammer ("Defendant" or "Mrs. Hammer"), by and through her undersigned attorney, submits this memorandum of law in support of her motion to dismiss for lack of subject matter jurisdiction.

I. PRELIMINARY STATEMENT

This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr. Hammer") as an attempt to circumvent and renege on two family court settlements, incorporated into family court orders that were voluntarily entered into by Plaintiff, with the advice and assistance of competent domestic counsel. By amended complaint dated November 4, 2009, Plaintiff seeks a

declaratory judgment and relief in connection with *a certain contract* entered between the parties in May 2008 ("*May, 2008 Contract*"), which contract involves, among other matters property located at 320 St. James Street, Columbia, South Carolina and Plaintiff's retirement (IRA) accounts.

Amended Complaint for Declaratory Judgment and/or In The Alternative for Damages (the "Amended Complaint"), Paragraph 7 (emphasis added).

The characterization of the May 2008 contract as a "certain contract" is patently misleading as Mr. Hammer failed to disclose that the May 2008 Contract was a partial

settlement of family court litigation that has been pending since September 2, 2005, and, more significantly, that the Family Court expressly "adopted, approved, incorporated into, merged, integrated with and made" the May 2008 Contract a court order. *Hammer v. Hammer*, C.A. NO: 2005-DR-40-2871 (Order of Judge Dorothy Mobley Jones at page 4, paragraph 1 (May 12, 2008) (the "May 2008 Order"). Moreover, the Family Court expressly retained "jurisdiction to issue any orders necessary to effectuate the terms of the Agreement." *Id.* at 4, ¶ 2 (A copy of the May 2008 Order is attached as Exhibit "A").

Mr. Hammer's amended complaint is an improper collateral attack on a valid, final, and binding order of the Family Court, which has exclusive jurisdiction over parties and their claims. Consequently, this court must dismiss the amended complaint for lack of subject matter jurisdiction.

II. FACTUAL BACKGROUND

Mrs. Hammer invoked the jurisdiction of the Family Court on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. She filed a Second Amended Complaint on December 6, 2007, seeking a divorce and other relief.

This Family Court litigation was settled in two phases. First, the divorce and property settlements were agreed to in May 2008 and made Orders by Judge Jones on May 12, 2008. Second, on June 23, 2009, the parties settled issues relating to child custody, visitation, and related issues. The Family Court entered its Orders approving this Settlement Agreement and Ending the Action on August 19, 2009 (A copy of these Orders are attached as Exhibit "B").

Beginning in May 2009, Mr. Hammer mounted at least four attacks on the 2008 and 2009 Settlement Agreements and Family Court Orders:

First, on May 4, 2009, Mr. Hammer sought to amend, modify, void, and set aside the May 12, 2008 Order and requested a new trial under Rule 60(b). By Order of Judge Jones entered September 1, 2009, this motion was dismissed with prejudice in view of the August 19, 2009 Order (A copy of this Order is attached as Exhibit "C").

Second, Mr. Hammer, *pro se*, filed a motion to withdraw, rescind, and repudiate his consent to the June 23, 2009, Settlement Agreement. That motion was denied by Order of the Family Court (Judge Rucker) on January 27, 2010. (A copy of this Order is attached as Exhibit "D").

Third, September 4, 2009, Mr. Hammer filed a Motion to Reconsider, Amend, Alter, Modify and/or For a New Trial and Stay of the following four family court orders, each dated August 19, 2009: (1) Order for Transfer of Individual Retirement Account; (2) Order Sealing Record; (3) Order Approving Settlement Agreement; and (4) Order (Ending Action). This omnibus motion was denied by Order of Judge Rucker on January 27, 2010 (A copy of which is attached as Exhibit "E").

Mr. Hammer's final attack is his ill-conceived and fundamentally flawed collateral attack on the Family Court's May 2008 Order in this declaratory judgment action. In her First Amended Answer, Motion to Dismiss, and Counterclaims to his Complaint, Mrs. Hammer asserted three affirmative defenses: (1) lack of subject matter jurisdiction (Rule 12(b)(1), SCRCP); (2) failure to state facts sufficient to constitute a cause of action (Rule 12(b)(6), SCRCP); and (3) *res judicata* (Rule 8(c), SCRCP).

III. ARGUMENT

A. The Family Court Has Exclusive Jurisdiction over the Issues Raised in the Amended Complaint.

In relevant part S.C. Code Ann. § 63-3-50 provides:

(A) The family court has exclusive jurisdiction

...

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings;

...

(25) to modify or vacate and order issued by the court;

...

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such prohibition;

...

(B) Notwithstanding another provision of law, the family court and the probate court have concurrent jurisdiction to hear and determine matters relating to paternity, common-law marriage, and interpretation of marital agreement; except that the concurrent jurisdiction of the probate court extends only to matters dealing with the estate, trust and guardianship and conservatorship actions before the probate court.

Moreover, S.C. Code Ann. § 20-3-690 provides that "[t]he family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts." S.C. Code Ann. § 20-3-690 (emphasis added). This article refers to Divorce and settlement agreements in South Carolina.

Plainly, each claim and related issues raised in this circuit court complaint has already been heard and determined by the Family Court, which had exclusive subject-matter jurisdiction under S.C. Code Ann. § 63-3-50(2)(25) & (30), and under § 20-3-690, S.C. Code Ann. (1976, as amended).

The First and Fourth Causes of Action for a Declaratory Judgment in Mr. Hammer's complaint declare the May 2008 Family Court Order void as against public policy. These issues were heard by the Family Court and rejected by orders of January 27, 2010. As described above, these orders (Exhibits D and E) rejected Mr. Hammer's post-trial attack on the June 2009 Settlement Agreement and August 19th order approving the settlement agreement and order ending the action (Exhibit B). The August 19, 2009 Order ending the action expressly reaffirmed the May 12, 2008, Order as later modified by the August 19, 2009 Order. Consequently, the May 2008 and the August 19, 2009, orders are both indivisible and indistinguishable.

Accordingly, the public policy attack was already heard, determined, and rejected by the Family Court as follows:

Defendant argues the agreement is contrary to public policy, and makes other general allegations of material misrepresentations by Plaintiff. Settlement agreements in Family Court are not contrary to public policy; in fact, they are encouraged. Upon careful review of the agreement approved by this Court, there are no provisions which cause this Court public policy concerns. Defendant presented no credible or independent support for his allegations regarding material misrepresentations.

Family Court Order Regarding Defendant's *Pro Se* Motion, January 27, 2010, at 4 (Exhibit D).

The Second, Third, Fifth, and Sixth causes of action in Mr. Hammer's complaint to this circuit court complaint all relate to disposition of the marital home, to transfer of

Mr. Hammer's IRA account, and to other matters intrinsically related to the domestic relations litigation within the exclusive jurisdiction of the family court.

All of the property settlements in the May 2008 and June 2009 Settlement Agreements are in connection with the divorce proceeding. The law in this State expressly grants subject matter jurisdiction to the family court over the construction and enforcement of all these contracts. S.C. Code Ann. § 20-3-690.

B. This Court Does Not Have Concurrent Jurisdiction Over Claims Asserted in the Amended Complaint.

S.C. Code Ann. § 63-3-50(B), quoted above, plainly demonstrates that when the legislature grants concurrent jurisdiction, it does so explicitly. This provision provides for concurrent jurisdiction by the family and probate courts to hear and determine matters relating to paternity, common-law marriage, and marital agreements only if these matters are relevant to pending probate court actions involving estate, trust, guardianship, and conservator matters.

Significantly, there is no similar provision for concurrent jurisdiction in the circuit court over the claims raised by the amended complaint.

C. Unless a Settlement Agreement Unambiguously Denies Continuing Jurisdiction, a Family Court Can Modify and Enforce Its Order by Contempt.

In the seminal case of *Moseley v. Mosler*, 279 S.C. 348, 306 S.E.2d 624 (1983), our Supreme Court, reversing and clarifying ambiguous and inconsistent prior authority, expressly held that once a settlement agreement is approved by the Family Court, it may be enforced by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction. *Id.* at 353, 306 S.E. 2d at 627 ("With the court's approval, the terms become a part of the decree and are binding on the parties and the

court. However, unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the court and enforceable by contempt.”).

Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements. See May 2008 Order at 4, ¶ 2 (Exhibit A); 2009 Order Ending Action at 8, ¶¶ 7 and 9 (Exhibit B).

Accordingly, under *Moseley*, the Family Court, and only the Family Court, has continuing subject matter jurisdiction over the claims raised by the Amended Complaint. See also, *Swentor v. Swentor*, 336 S.C. 472, 478-79, 520 S.E.2d 330, 334 (1999) (holding that, even in the face of an agreement to arbitrate, the Family Court does not lose jurisdiction).

D. Even Under Pre-Moseley Law, When the Circuit Court Could Have Concurrent Jurisdiction Over Domestic Settlements, the Family Court Would Have Had Exclusive Jurisdiction.

It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive. *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981). In affirming a circuit court order dismissing a complaint for lack of subject matter jurisdiction, the Supreme Court held:

Here, action involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction. *The family court acquired jurisdiction first, therefore, it acquired exclusive jurisdiction to hear all further proceedings in the case.* See: *Tucker v. Tucker*, 264 S.C. 172, 177, 213 S.E.2d 588 (1965)(emphasis added).

Id. at 575, 281 S.E.2d at 110. Accordingly, even if this court had concurrent jurisdiction, which it plainly does not under current law, the family court would have exclusive

subject matter jurisdiction because it acquired jurisdiction on September 2, 2005, almost four years before Mr. Hammer filed his complaint in this case.

E. Both the Law of the Case and Res Judicata Doctrines Require Dismissal of Plaintiff's Complaint and Amended Complaint.

It is firmly settled in South Carolina law that, under the law of the case doctrine, a judge may not overrule the unappealed order of a prior judge. See *Judy v. Martin*, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009); *Bakala v. Bakala*, 352 S.C. 612, 631, 576 S.E.2d 156, 166 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become the law of this case).

Mr. Hammer's Rule 60(b) motion for relief from the May 2008 Order was dismissed with prejudice on September 1, 2009. (Exhibit C). Previously, the parties agreed to the withdrawal of the Rule 60(b) motion with prejudice, and with no right of appeal. (Order Ending Action, dated August 19, 2009 at 8, ¶ 3). Under the recent authority of *Judy* and *Bakala*, *supra*, the September 1st decision is the law of the case and it cannot be reviewed by this Court.

Moreover, (i) the September 1, 2009, Order denying, with prejudice, Mr. Hammer's Rule 60(b) motion; (ii) the August 9, 2009, Order Ending the Action; and (iii) the May 2008 Settlement Order, which is collaterally attacked here, constitute a bar to this litigation under the doctrine of *res judicata*. Collectively, the Family Court Orders concern the same parties' in litigation and concern the same claims and issues, all of which were adversely determined against Mr. Hammer. Accordingly, he is barred from relitigating those claims and issues here. See generally JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROC. 642 *et seq.* (2d ed. 1996).

Mr. Hammer's *pro se* motion to withdraw his consent to the June 2009 Settlement Agreement claimed that the filing of this action in circuit court divested the family court of jurisdiction. Judge Rucker rejected this argument as follows:

As part of his argument regarding subject matter jurisdiction, Defendant alleges the filing by him of an action in the Circuit Court prior to the entry of the August 19, 2009 Order, in which action he challenges the validity of the May 12, 2008, Order issued by this Court, in some way divested this Court of subject matter jurisdiction. No such divestment of jurisdiction occurred nor is there any authority that would have transferred jurisdiction over the parties or the subject matter to the circuit court in the way suggested. To the extent Defendant elected to file a lawsuit in the Circuit Court ostensibly challenging an agreement he previously entered, and which was previously approved by this Court, and for which he withdrew all challenges (See the August 19, 2009, order (Ending Action)), such circumstances do not constitute a basis to deny this Court jurisdiction for the matter addressed on June 23, 2009, and reflected in the Order issued from that hearing.

See January 28, 2010, Order (Exhibit D) at page 5, n5. Judge Rucker's decision rejection is the law of the case on the issue of whether the family court was divested of jurisdiction when this circuit court action was filed.

By attacking the 2008 family court order as violating public policy, Mr. Hammer engages in hypocrisy. He insisted on, and received, the benefits of that 2008 order,¹ which he now wants to disavow. Further, more than one year after the 2008 settlement and family court order that he now attacks, Mr. Hammer entered into another settlement, which was incorporated into a family court order of June 2009. That agreement once again called for the dismissal of additional criminal charges that were pending against him. Thus, in 2009, he continued to participate in the very same settlement behavior –

¹ For example, pursuant to the 2008 family court order, he insisted that Mrs. Hammer convey certain real estate to him, which he then sold to a third party.

insisting on the dismissal of criminal charges against him — that he claims is inappropriate and against public policy under the 2008 order.

Perhaps more egregious, two months *after* he initiated this lawsuit, Mr. Hammer, his attorney, and an assistant solicitor signed a document (attached as Exhibit F) dated October 19, 2009, which stated that the criminal charges against him were dismissed pursuant to the June 2009 family court order and settlement.² Thus, even while he was claiming in this court that the May 2008 family court order was invalid for public policy reasons because it included a recommendation that criminal charges against him be dismissed, he was insisting on and acting upon the very same provision in the June 2009 family court order and settlement.

According to Mr. Hammer, the family court orders are valid and do not violate public policy while he is receiving his benefits under those orders; however, once he has obtained those benefits, he claims those Orders are invalid so that he does not have to perform his obligations.³

To allow this egregious and bad faith attack on the 2008 family court order, on which he has, himself, relied to his benefit, would be to open a Pandora's box for all family court litigants. No family court order would be final or could be relied on. Instead, any litigant could receive the benefits of the order, but when it came time for the litigant to perform his or her obligations under the order, he or she could then run to the

² The 2009 family court order confirmed the 2008 family court order and partial settlement agreement, except to the extent the 2009 order modified it. The October 19, 2009 document contains a misrepresentation about the position of Mrs. Medlin, a victim, who was not represented in the creation or execution of that document.

³ For example, he has failed to transfer a portion of his retirement account to Mrs. Hammer despite being ordered to do so in the 2008 and 2009 family court orders.

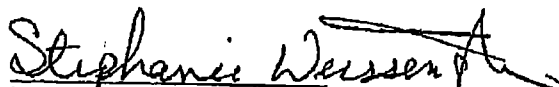
circuit court and attempt to overturn the family court. If Mr. Hammer is allowed to do this now, every litigant in family court will have a roadmap to disrupt the entire family court system. That is precisely why the legislature made family court jurisdiction exclusive in S.C. Code Ann. § 63-3-50.

IV. CONCLUSION

For all the foregoing reasons, the Defendant requests this Court to enter an Order:

- 1) Dismissing the Complaint and Amended Complaint for lack of subject matter jurisdiction;
- 2) Imposing sanctions under Rule 11, SCRPC, against Plaintiff, in part because there was no basis for asserting circuit court subject matter jurisdiction over claims exclusively within the jurisdiction of the family court;
- 3) Ordering that the parties be realigned and that jurisdiction over Defendant's counterclaims be retained by this Court as a complaint because they assert tort and related claims which are independent of the family court action; and
- 4) For such further or different relief as the court deems just and proper.

Respectfully submitted,



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Stephanie Weissenstein
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Telephone 803.796.9299
Facsimile 803.796.1066

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
February 24, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Case No. 2010-CP-40-2889)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)**MOTION TO COMPEL**Defendant/Third-)
Party Plaintiff,)

vs.)

Howard Hammer,)

Additional Defendant)
On Counterclaim.)

TO: 1634 Main, LLP, Plaintiff

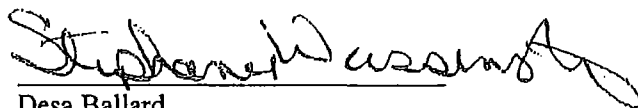
YOU WILL PLEASE TAKE NOTICE, Defendant Shirley Hammer, a/k/a Shirley Grace Hightower (herein, Ms. Hammer), by and through her attorneys, Desa Ballard and Stephanie Weissenstein, will move this Honorable Court within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order to compel Plaintiff 1634 Main, LLP (herein 1634 Main, LLP) to provide full and complete supplemental responses to Defendant/Counterclaimant's First Interrogatories and First Request to Produce to Plaintiff, which was served upon Plaintiff on or about June 18, 2010 through their attorney, Susan Lispcomb.

This motion is made pursuant to South Carolina Rule of Civil Procedure 37, and in support of her Motion to Compel Discovery, Ms. Hammer states as follows:

1. On or about June 18, 2010, Ms. Hammer caused to be served upon 1634 Main, LLP Defendant/Counterclaimant's First Interrogatories and First Request to Produce to Plaintiff. (**Collective Exhibit A**, Defendant/Counterclaimant's First Interrogatories and First Request to Produce to Plaintiff)
2. On or about July 23, 2010 Plaintiff, through counsel, served grossly incomplete responses to the discovery request on Ms. Hammer's counsel. (**Collective Exhibit B**, Plaintiff's Responses to Defendant/Counterclaimant's First Interrogatories and First Request to Produce to Plaintiff)
3. Plaintiff's counsel, through letter dated July 23, 2010, stated supplemental responses would be forthcoming the following week. (**Exhibit C**)
4. Ms. Hammer, through counsel's letter dated September 14, 2010, requested supplementary responses be provided by noon on Monday, September 20, 2010, to avoid filing of a Motion to Compel. (**Exhibit D**)
5. To date, 1634 Main, LLP has not provided adequate responsive information to the Defendant/Counterclaimant's discovery requests, specifically as to the following:
 - A. Plaintiff has failed to produce the documentation related to the operating procedures of the Plaintiff, including the paperwork establishing the business, management agreement, assignment or transfer of assets, operating agreement and other corporate documents. (Req No. 1)
 - B. Plaintiff has failed to produce the minutes, agenda, notices of meeting, voting records, exhibits, and communications between Plaintiff partnership and its members/partners. (Req. No. 4)
 - C. Plaintiff has failed to produce documentation setting forth who is now, and has been in the past, the general partner of Plaintiff. (Req. No. 6)
 - D. Plaintiff has failed to produce documents establishing or relating to the repairs supposedly needed to be made to the partnership's assets (as identified in Paragraph 8 of the complaint) and has not provided any proof that Defendant/Counterclaimant received

notice of the repairs or request for capital contribution prior to the Complaint being filed (Req. No. 7 and 8).

WHEREFORE, Defendant and Third-Party Plaintiff Shirley Hammer, requests that this Court enter an Order requiring Plaintiff 1634 Main, LLP to provide complete supplemental responses to the previously served discovery requests, award reasonable attorney's fees in connection with this Motion and hearing, and all other appropriate relief, pursuant to Rule 37, SCRCP.



Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
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Facsimile: 803-796-1066
E-mail: desab@desaballard.com
stephanie@desaballard.com
**ATTORNEYS FOR DEFENDANT AND
THIRD-PARTY PLAINTIFF**

September 27, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2009-CP-40-2889

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)**DEFENDANT/COUNTERCLAIMANT
SHIRLEY HAMMER'S FIRST
INTERROGATORIES TO PLAINTIFF**Defendant/Third-)
Party Plaintiff)

vs.)

Howard Hammer,)

Additional Defendant)
On Counterclaim.)

The Defendant, by and through her undersigned attorneys, hereby requires the Plaintiff to answer under oath the Interrogatories hereinafter set forth within thirty (30) days after the serving hereof in accordance with Rule 33 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "Plaintiff(s)" shall mean Plaintiff corporation, or any member, general or limited partner, predecessors, successor, or subsidiary thereof, its employees, agents, servants, officers, directors, or representatives, as well as all persons acting or purporting to act on its behalf for any purpose relevant to these Interrogatories.

2. "Person" shall mean any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.

3. "Identify" or "identity", when used in reference to a natural person, shall require you to state (a) his full name, (b) his present or last known address, and (c) his present or last known employer and job title. When used in reference to a corporation or business entity,



"identify" or "identity" shall require you to state (a) the full name of the corporation or business entity, (b) the present or last known address, and (c) the principal place of business and state of incorporation. When used in reference to a document, "identify" or "identity" shall require you to state (a) the date of such document, (b) the type of document, (c) the present location of such document or copies of such document, and (d) a brief summary of the contents of such document.

4. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, computer data bases or printouts, sketches, package inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, , or subject to the control of the defendants or their attorneys whether such document is stored in word processing files, calendaring program data, e-mails, hard drives, mobile electronic devices including mobile telephones, computer discs, portable drives, hard drives in copier machines, hard drives in fax machines and other computer logs or images of items that might constitute "documents" within the definition set forth herein.

INSTRUCTIONS

1. If all of the information furnished in response to all or any part of an interrogatory is not within the personal knowledge of the Plaintiff or its attorneys, identify each person to whom all or any part of the information furnished is a matter of personal knowledge or each person who communicated to the defendants or their attorneys all or any part of the information furnished.

2. If the answer to all or any part of an interrogatory is not presently known or available, include a statement to that effect.

3. If you do not have all or any part of the information requested in an interrogatory and are unable to obtain it within the time permitted by the South Carolina Rules of Procedure, state the information to the best of your knowledge upon information and belief and identify the source of that information.

4. If objections are entered to all or any part of an interrogatory, state the specific grounds for the objection and answer such interrogatory to the extent to which there is no objection.

5. If a privilege is asserted concerning all or any part of the information requested by an interrogatory, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.

6. For purposes of the interrogatories set forth herein, any attorney-client or work product privilege by and between the defendants and the plaintiffs is expressly waived.

7. The following interrogatories shall be deemed to continue from the time of service until the time of trial of the case so that information sought which comes to the knowledge of said party, his/her representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.

INTERROGATORIES

INTERROGATORY NO. 1: Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case, indicating whether written or recorded statements have been taken from the witnesses and who has possession of such statements.

INTERROGATORY NO. 2: Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

INTERROGATORY NO. 3: Furnish the name, address, place of employment and qualifications of each and every expert witness the Plaintiff plans to call at the trial of this case.

As to each person named in response to this interrogatory, state:

- a. The subject matter on which the expert or experts are expected to testify;
- b. The substance of the facts and opinions to which each of the experts named in response to the preceding interrogatory is expected to testify;
- c. Furnish a summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this interrogatory.

INTERROGATORY NO. 4: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 5: Identify by name and last known address all persons or entities known to presently be general or limited partner(s) of the Plaintiff entity, and as to each

person, or each entity, identify by name(s) and last known address all member(s)/shareholders, or other agents who have any ownership interest in that entity. As to each, please identify the ownership interest and identify who has possession of the documents regarding same.

INTERROGATORY NO. 6: Identify by name and last known address all persons or entities who are now serving or have served in the past as managers of the Plaintiff partnership assets.

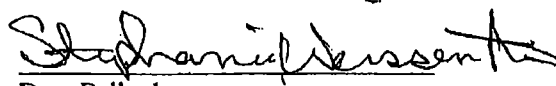
INTERROGATORY NO. 7: Identify all assets owned by the Plaintiff partnership.

INTERROGATORY NO. 8: Identify the general partner of the Plaintiff partnership and identify when and by what means the general partner was vested with that position.

INTERROGATORY NO. 9: If the division of ownership interest or management of the entity has changed in the last five years, identify by name and last known address all persons or entities known to have been general or limited partner(s) of the Plaintiff entity, and as to each or each entity, identify by name(s) and last known address all member(s)/shareholders, or other agents who have any ownership interest in that entity. As to each, please identify the ownership interest at all times over the last five years.

INTERROGATORY NO. 10: Identify by name and by relationship to Plaintiff, any and all persons or entities who created any of the corporate records, communications, and/or documents on behalf of the Plaintiff entity and set forth the location(s) of the identified parties at the time of creation of said documents.

[Signature on page 5]



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Stephanie Weissenstein
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ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

June 18
, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2009-CP-40-2889

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)**DEFENDANT/COUNTERCLAIMANT
SHIRLEY HAMMER'S FIRST REQUEST
TO PRODUCE TO PLAINTIFF**Defendant/Third-)
Party Plaintiff,)

vs.)

Howard Hammer,)

Additional Defendant)
On Counterclaim.)

The Defendant Shirley Hammer, by and through her undersigned attorneys, hereby requires the Plaintiff to serve upon said counsel, Responses to the following Requests for Production of Documents hereinafter set forth within thirty (30) days after the serving hereof in accordance with Rule 34 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "Plaintiff(s)" shall mean Plaintiff 1634 Main, L.P., its officers, managers, and agents, as well as all persons acting or purporting to act on its behalf for any purpose relevant to these Requests for Production including employees, attorneys, accountants, agents, or family members.

2. "Person" shall include any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.

3. "Identify" or "identity", when used in reference to a natural person, shall require

you to state (a) his full name, (b) his present or last known address, and (c) his present or last known employer and job title. When used in reference to a corporation or business entity, "identify" or "identity" shall require you to state (a) the full name of the corporation or business entity, (b) the present or last known address, and (c) the principal place of business and state of incorporation. When used in reference to a document, "identify" or "identity" shall require you to state (a) the date of such document, (b) the type of document, (c) the present location of such document or copies of such document, and (d) a brief summary of the contents of such document.

4. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, computer data bases or printouts, sketches, package inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control, or subject to the control of the defendants or their attorneys whether such document is stored in word processing files, calendaring program data, e-mails, hard drives, mobile electronic devices including mobile telephones, computer discs, portable drives, hard drives in copier machines, hard drives in fax machines and other computer logs or images of items that might constitute "documents" within the definition set forth herein.

5. Accompanying any document or item produced in response to these Requests should be in an inventory identifying what document(s) is responsive to what Request(s) set forth herein.

6. "Complaint" means the undated complaint in this matter filed on or about April 30, 2010 and which was amended and re-filed on or about June 9, 2010.

INSTRUCTIONS

1. If any or all of the documents or materials responsive to all or any part of a Request is not within the personal custody of the Plaintiff 1634 Main, L.P., its members, general partner, agents or its attorneys, identify each person or entity by name and address who is believed to have custody of such information or documents.

2. Identification of Privileges Claimed. If any of these requests are claimed by you to request privileged information, for each request, please state the ground upon which such privilege is claimed, and identify the documents wherein such privileged information is located by specifying:

- a. The type of document (e.g., letter, memorandum, photograph);
- b. The date(s) it was created;
- c. Its title, if any;
- d. Its originator(s) or creator(s);
- e. Its addressee(s), if any;

- f. Its present location; and
- g. The person(s) having possession, custody, or control of it or knowing of its existence.

5. For each Request or part thereof you refuse to answer on the grounds of burdensomeness, the answer should state: (1) the number of files and/or documents needed to be searched; (2) the location of each such file; (3) an estimation of the number of hours required to conduct the search; and, (4) the estimated cost of the search in U.S. Dollars.

6. These Requests are deemed continuing in character. If you, your counsel, or anyone representing your interests obtains further or different information or obtains any documents or statements within the scope of these Requests at any time prior to the final entry of judgment in this action, you are hereby requested and directed to furnish supplementary answers and/or documents and/or statements to the undersigned attorneys.

REQUESTS

REQUEST NO. 1: All documents or materials related to the establishment, operation and/or ownership of the Plaintiff partnership including the management agreement and/or amendments thereto, operating agreement and/or amendments thereto, assignments, relinquishments, transfers, or possession of assets, including any prior versions that were in effect at any time in the past, including the document(s) referred to in Paragraph 3 of the complaint and any documents filed with any government agency regarding the creation or continued existence of the Plaintiff partnership.

REQUEST NO. 2: All hard copy and electronic data, including metadata, of documents or materials, including correspondence and e-mails, by and between or related to the plaintiff and/or the defendant Shirley Hammer and/or the defendant Howard Hammer and the Plaintiff partnership, including but not limited to any communication of the items set forth in Paragraphs 8 and/or 9 of the complaint.

REQUEST NO. 3: All documents or other materials that may be used to establish or evidence the facts set forth in paragraph 4 of the complaint.

REQUEST NO. 4: Minutes, agenda, notices of meeting, voting records, exhibits, or

other materials related to meetings and/or communication by or between the Plaintiff partnership with any of its general or limited partners.

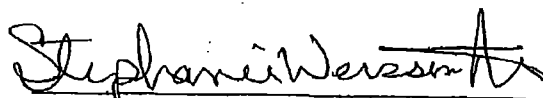
REQUEST NO. 5: Any agreements, contracts, correspondence, e-mails or other documents by and between the Plaintiff partnership and the Defendant Shirley Hammer including but not limited to any communication regarding the allegations set forth in Paragraph 8 of the complaint.

REQUEST NO. 6: All documents identifying who the general partner of the Plaintiff partnership is now or has been in the past.

REQUEST NO. 7: All documents relating to repairs supposedly needed to be made to the partnership assets as identified in Paragraph 8 of the undated complaint in this matter.

REQUEST NO. 8: Notice given to Defendant as referenced in Paragraph 10 of the complaint.

REQUEST NO. 9: All accounting books, spreadsheets, Quicken, Excel, Microsoft Money, or similar programs, print-outs, notes, mortgages, deeds, credit card statements, bank statements that set forth expenditures, assets and/or debts of or for the Plaintiff.



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ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

June 18, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer, a/k/a Shirley Grace Hightower,
Defendant/Third-Party Plaintiff,

vs.

Howard Hammer,

Additional Defendant on Counterclaim.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2010-CP-40-2889

**PLAINTIFF'S RESPONSES TO
DEFENDANT/COUNTERCLAIMANT'S
FIRST REQUEST TO PRODUCE TO
PLAINTIFF**

To: Desa Ballard, Attorney for Defendant:

Pursuant to the South Carolina Rules of Civil Procedure, Plaintiff, by and through the undersigned counsel, hereby submits responses to Defendant's First Request for Production to Plaintiff as follows:

GENERAL OBJECTIONS

A) The responses and objections herein are based upon information currently available to Plaintiff, who reserves the right to revise and supplement its Responses to Defendant's Requests for Production in the event that continued discovery reveals information contrary to the information provided.

B) Plaintiff objects to Defendant's Requests for Production to the extent they are inconsistent with or exceed the scope of the Rules of Civil Procedure.



C) Plaintiff objects to Defendant's Requests for Production to the extent they seek the disclosure of information that is protected by the attorney/client privilege, the work product doctrine or any other applicable privilege or doctrine.

D) Subject to and without waiving the objections stated above, Plaintiff responds to Defendant's Requests for Production as follows:

RESPONSES

REQUEST NO.1: All documents or materials related to the establishment, operation and/or ownership of the Plaintiff partnership including the management agreement and/or amendments thereto, operating agreement and/or amendments thereto, assignments, relinquishments, transfers, or possession of assets, including any prior versions that were in effect at any time in the past, including the document(s) referred to in Paragraph 3 of the complaint and any documents filed with any government agency regarding the creation or continued existence of the Plaintiff partnership.

RESPONSE: Plaintiff objects to this request because it is overbroad and requests documents not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO.2: All hard copy and electronic data, including metadata, of documents or material, including correspondence and e-mails, by and between or related to the plaintiff and/or the defendant Shirley Hammer and/or the defendant Howard Hammer and the Plaintiff partnership, including but not limited to any communication of the items set forth in Paragraphs 8 and/or 9 of the complaint.

RESPONSE: Plaintiff objects to Request No.2 on the grounds that it is overbroad and the documents requested are not reasonably calculated to lead to the discovery of any admissible evidence.

REQUEST NO.3: All documents or other materials that may be used to establish or evidence the facts set forth in paragraph 4 of the complaint.

RESPONSE: These documents will be produced.

REQUEST NO.4: Minutes, agenda, notices of meeting, voting records, exhibits, or other materials related to meetings and/or communication by or between the Plaintiff partnership with any of its general or limited partners.

RESPONSE: Plaintiff objects to Request No.4 on the grounds that it is overbroad and the documents requested are not reasonably calculated to lead to the discovery of any admissible evidence.

REQUEST NO.5: Any agreements, contracts, correspondence, e-mails or other documents by and between the Plaintiff partnership and the Defendant Shirley Hammer including but not limited to any communication regarding the allegations set forth in Paragraph 8 of the complaint.

RESPONSE: These documents will be produced.

REQUEST NO.6: All documents identifying who the general partner of the Plaintiff partnership is now or has been in the past.

RESPONSE: Plaintiff objects to Request No.6 on the grounds that it is overbroad, Plaintiff will produce documents identifying who the general partner of the Plaintiff is now or has been in the past.

REQUEST NO.7: All documents relating to repairs supposedly needed to be made to the partnership assets as identified in Paragraph 8 of the undated complaint in this matter.

RESPONSE: These documents will be produced.

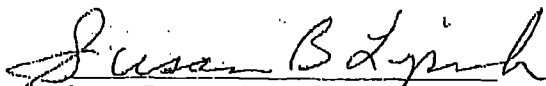
REQUEST NO.8: Notice given to Defendant as referenced in Paragraph 10 of the complaint.

RESPONSE: These documents will be produced.

REQUEST NO.9: All accounting books, spreadsheets, Quicken, Excel, Microsoft Money, or similar programs, print-outs, notes, mortgages, deeds, credit card statements, bank statements that set forth expenditures, assets and/or debts of or for the Plaintiff.

RESPONSE: These documents will be produced.

Respectfully submitted,


Susan Batten Lipscomb
John Richard Lipscomb

LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
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Email: Lipscomblaw@Gmail.com
Attorneys for Plaintiff, 1634 Main, L.P.

Columbia, SC
July 23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer, a/k/a Shirley Grace Hightower,

Defendant/Third-Party Plaintiff,

vs.

Howard Hammer,

Additional Defendant on Counterclaim.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2010-CP-40-2889

**PLAINTIFF'S RESPONSES TO
DEFENDANT/COUNTERCLAIMANT'S
FIRST INTERROGATORIES TO
PLAINTIFF**

To: Desa Ballard, Attorney for Defendant:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff, by and through its undersigned counsel, responds to Defendant's First Set of Interrogatories to Plaintiff as follows:

GENERAL OBJECTIONS/RESERVATIONS

- 1) All objections regarding the relevancy, admissibility at trial, or other use of any information disclosed herein are expressly reserved.
- 2) All applicable privileges are expressly reserved.
- 3) Discovery continues in this case. Plaintiff's responses are based on information obtained thus far. Further investigation and discovery may reveal information requiring Plaintiff to supplement, modify or otherwise alter his responses.
- 4) Plaintiff objects to all interrogatories to the extent they seek information protected from disclosure by the attorney-client privilege.

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5) Plaintiff objects to all interrogatories to the extent they seek information generated in anticipation of litigation by Plaintiff or its representative. These items are protected from disclosure by the work-product privilege.

6) Plaintiff objects to all interrogatories to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

7) Plaintiff objects to Defendant's Definitions to the extent they impose greater obligations than the South Carolina Rules of Civil Procedure.

RESPONSES

INTERROGATORY NO.1: Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case, indicating whether written or recorded statements have been taken from the witnesses and who has possession of such statements.

ANSWER:

- 1) Mr. Marion Turbeville
Danville Business Advisors
500 Taylor St., Suite 401
Columbia, SC 29201
- 2) Mr. Howard Hammer
Columbia, SC
- 3) Ms. Shirley Hammer, a/k/a Shirley Grace Hightower

A. As to each of the above witnesses, Plaintiff is informed and believes they have knowledge concerning facts and circumstances concerning each of the causes of action, and claims alleged in the Complaint and the defenses raised in the alleged in Defendant's Answer.

B. No written statements have been obtained by Plaintiff from any of the witnesses.

INTERROGATORY NO.2: Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: None at this time. This response will be supplemented

INTERROGATORY NO.3: Furnish the name, address, place of employment and qualifications of each and every expert witness the Plaintiff plans to call at the trial of this case. As to each person named in response to this interrogatory, state:

- a. The subject matter on which the expert or experts are expected to testify;
- b. The substance of the facts and opinion to which each of the experts named in response to the preceding interrogatory is expected testify;
- c. Furnish a summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this interrogatory.

ANSWER: No expert witnesses have been retained at this time. Plaintiff reserves the right to do so at such a time as may be appropriate.

INTERROGATORY NO.4: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See the answer to Interrogatory # 1 above.

INTERROGATORY NO.5: Identify by name and last known address all persons or entities known to presently be general or limited partner(s) of the Plaintiff entity, and as to each person, or each entity, identify by name(s) and last known address all member(s)/shareholders, or other agents who have any ownership interest in that entity. As to each, please identify the ownership interest and identify who has possession of the documents regarding the same.

ANSWER: This answer will be supplemented.

INTERROGATORY NO.6: Identify by name and last known address all persons or entities who are now serving or have served in the past as managers of the Plaintiff partnership assets.

ANSWER: This answer will be supplemented.

INTERROGATORY NO.7: Identify all assets owned by the Plaintiff partnership.

ANSWER: This answer will be supplemented.

INTERROGATORY NO.8: Identify the general partner of the Plaintiff partnership and identify when and by what means the general partner was vested with that position.

ANSWER: This answer will be supplemented.

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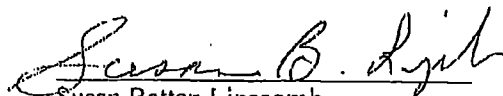
INTERROGATORY NO.9: If the division of ownership interest or management of the entity has changed in the last five years, identify by name and last known address all persons or entities known to have been general or limited partner(s) of the Plaintiff entity, and as to each or each entity, identify by name(s) and last known address all member(s)/shareholders, or other agents who have any ownership interest in that entity. As to each, please identify the ownership interest at all times over the last five years.

ANSWER: This answer will be supplemented.

INTERROGATORY NO.10: Identify by name and by relationship to Plaintiff, any and all persons or entities who created any of the corporate records, communications, and/or documents on behalf of the Plaintiff entity and set forth the location(s) of the identified parties at the time of creation of said documents.

ANSWER: This answer will be supplemented.

Respectfully submitted,



Susan Batten Lipscomb
John Richard Lipscomb
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Attorneys for Plaintiff, 1634 Main, L.P.

Columbia, SC
July 23, 2010

SLD

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

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July 23, 2010

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

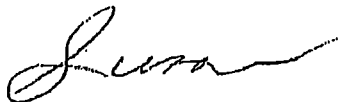
Re: 1634 Main, LLP v. Shirley Hammer
Civil Action #: 2010-CP-40-2889

Dear Desa and Stephanie:

Enclosed please find a copy of Plaintiff's Responses to Defendant/Counterclaimant's First Request to Produce to Plaintiff and Plaintiff's Responses to Defendant/Counterclaimant's First Interrogatories to Plaintiff. In accordance with the South Carolina Rules of Civil Procedure, we are retaining the original copies in our file.

I will try to get you the documents and supplement the responses next week.

Yours very truly,



Susan Batten Lipscomb

Enclosures





Law Offices of Desa Ballard

803.796.9299 telephone
803.796.1066 facsimile

www.desaballard.com

Desa Ballard
Certified Mediator
also admitted in D.C.
Harvey M. Watson III
Stephanie Weissenstein

226 State Street
West Columbia, SC 29169

September 14, 2010

Via United States Mail
Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia, South Carolina 29201

Re: *1634 Main, L.P. v. Shirley Hammer v. Howard Hammer*
Case No: 09-CP-40-2889

Dear Susan:

We received Plaintiff's discovery responses in late July, and they were patently insufficient. We wrote to you on or around July 25 requesting supplementary responses, which we were assure to receive on or before August 23.

Please have Mr. Turbeville or Mr. Hammer fully respond to the Interrogatories and Requests for Production by noon on Monday, September 20th. Otherwise, we will file a motion to compel and may request sanctions and costs against Plaintiff.

With warm personal regards, I am,

Sincerely yours,

Stephanie Weissenstein
stephanie@desaballard.com

c: Shirley Hammer (via e-mail only)



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer a/k/a Shirley Grace)
Hightower,
Defendant/Third-Party Plaintiff,

vs.

Howard Hammer,
Additional Defendant on Counterclaim

Defendant.)

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-2889

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Susan B. Lipscomb, Esquire, Bar No. ____ Address: 1632 Main Street, Suite 200 Columbia, South Carolina 29201 Phone: (803) 233 6654 Fax (803) 233-6663 E-mail: lipscomblaw@gmail.com Other: Arthur K. Alken, Esquire Alken & Hightower P.O. Box 11248 Columbia, SC 29211 (802) 799-5205 art@alkenandhightower.com	Defendant's Attorney: Desa Ballard and Stephanie Weissenstein, Bar No. 00498 and 72604 Address: 226 State Street West Columbia, South Carolina 29169 Phone: (803) 796.9299 Fax(803) 796-1066 E-mail: desab@desaballard.com and stephanle@desaballard.com Other: ____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	

SECTION I: Hearing Information	
Nature of Motion: Motion to Compel to Howard Hammer	
Estimated Time Needed: 15 mins before Judge Barber NO	Court Reporter Needed: ☒ YES/ ☐ NO
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)Defendant/Third-)
Party Plaintiff,)

vs.)

Howard Hammer,)

Additional Defendant)
On Counterclaim.)

IN THE COURT OF COMMON PLEAS

Case No: 2010-CP-40-2889

**MOTION TO COMPEL
HOWARD HAMMER**

TO: Art Aiken, Counsel for Howard Hammer

YOU WILL PLEASE TAKE NOTICE, Defendant Shirley Hammer, a/k/a Shirley Grace Hightower (herein, Ms. Hammer), by and through her attorneys, Desa Ballard and Stephanie Weissenstein, will move this Honorable Court within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order to compel Howard Hammer to provide full and complete supplemental responses to Defendant/Counterclaimant's First Interrogatories, which was served upon Mr. Hammer or about March 9, 2011. This motion is made pursuant to South Carolina Rule of Civil Procedure 37, and in support of her Motion to Compel Discovery. Ms. Hammer states as follows:



1. On or about March 9, 2011, Ms. Hammer caused to be served upon third-party defendant Howard Hammer the Defendant/Counterclaimant's First Interrogatories. (**Collective Exhibit A**)

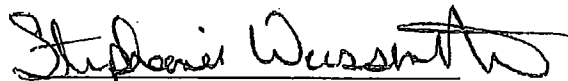
2. On or about April 11, 2011, Mr. Hammer, *pro se*, served on Ms. Hammer's counsel, a general objection to the discovery, claiming he would not answer until after his Motion for Dismissal was heard by the court. (**Exhibit B**).

3. On or about October 17, 2011, Judge Benjamin dismissed Mr. Hammer's motion and ruled that all but one of the causes of action in Ms. Hammer's third-party complaint were properly pled. (**Exhibit C**)

4. To date, Howard Hammer has not provided adequate responsive information to the Defendant/Counterclaimant's discovery requests.

5. Counsel is informed and believes that consultation with Mr. Hammer, even if through his counsel, will serve no useful purpose.

WHEREFORE, Defendant and Third-Party Plaintiff Shirley Hammer, requests that this Court enter an Order requiring Howard Hammer to provide complete responses to the previously served discovery requests, award reasonable attorney's fees in connection with this Motion and hearing, and all other appropriate relief, pursuant to Rule 37, SCRCP.



Stephanie Weissenstein
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone: 803-796-9299
Facsimile: 803-796-1066
E-mail: stephanie@desaballard.com
**ATTORNEYS FOR DEFENDANT AND
THIRD-PARTY PLAINTIFF**

September 27, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Case No. 2009-CP-40-2889)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)**DEFENDANT/COUNTERCLAIMANT**
SHIRLEY HAMMER'S FIRST
INTERROGATORIES TO
HOWARD HAMMER

Defendant)

vs.)

Howard Hammer,)

Additional Defendant)
On Counterclaim.)

The Defendant Shirley Hammer, by and through her undersigned attorneys, hereby requires the Defendant Howard Hammer to answer under oath the Interrogatories hereinafter set forth within thirty (30) days after the serving hereof in accordance with Rule 33 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "Defendant(s)" shall mean Howard Hammer the individual, as well as all persons acting or purporting to act on his behalf, for any purpose relevant to these Interrogatories including employees, attorneys, accountants, agents, or family members.
2. "Person" shall include any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.
3. "Identify" or "identity", when used in reference to a natural person, shall require



you to state (a) his full name, (b) his present or last known address, and (c) his present or last known employer and job title. When used in reference to a corporation or business entity, "identify" or "identity" shall require you to state (a) the full name of the corporation or business entity, (b) the present or last known address, and (c) the principal place of business and state of incorporation. When used in reference to a document, "identify" or "identity" shall require you to state (a) the date of such document, (b) the type of document, (c) the present location of such document or copies of such document, and (d) a brief summary of the contents of such document.

4. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, computer data bases or printouts, sketches, package inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control, or subject to the control of the defendants or their attorneys whether such document is stored in word processing files, calendaring program data, e-mails, hard drives, mobile electronic devices including mobile telephones, computer discs, portable drives, hard drives in copier machines, hard drives in fax machines and other computer logs or images of items that might constitute "documents" within the definition set forth herein.

INSTRUCTIONS

1. If all of the information furnished in response to all or any part of an Interrogatory is not within the personal knowledge of the Defendant Howard Hammer or his attorneys, identify each person to whom all or any part of the information furnished is a matter of personal knowledge or each person who communicated to the defendants or their attorneys all or any part of the information furnished.

2. If the answer to all or any part of an interrogatory is not presently known or available, include a statement to that effect.

3. If you do not have all or any part of the information requested in an interrogatory and are unable to obtain it within the time permitted by the South Carolina Rules of Procedure, state the information to the best of your knowledge upon information and belief and identify the source of that information.

4. If objections are entered to all or any part of an interrogatory, state the specific grounds for the objection and answer such interrogatory to the extent to which there is no objection.

5. If a privilege is asserted concerning all or any part of the information requested by an interrogatory, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.

6. For purposes of the interrogatories set forth herein, any attorney-client or work product privilege by and between the defendants and the plaintiffs is expressly waived.

7. The following interrogatories shall be deemed to continue from the time of service until the time of trial of the case so that information sought which comes to the knowledge of said party, his/her representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.

INTERROGATORIES

INTERROGATORY NO. 1: Give the names and addresses of persons known to the Defendant Howard Hammer or his counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2: Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

INTERROGATORY NO. 3: Furnish the name, address, place of employment and qualifications of each and every expert witness the Plaintiff plans to call at the trial of this case.

As to each person named in response to this interrogatory, state:

- a. The subject matter on which the expert or experts are expected to testify;
- b. The substance of the facts and opinions to which each of the experts named in response to the preceding interrogatory is expected to testify;
- c. Furnish a summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this interrogatory.

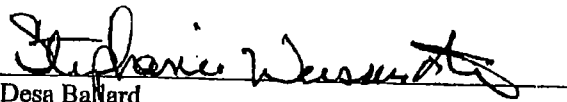
INTERROGATORY NO. 4: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 5: Identify by name and last known address of all persons or entities known to presently be general or limited partner(s) of the Plaintiff entity, and as to each entity, identify by name(s) and last known address all member(s)/shareholders, or other agents who have any ownership interest in that entity(ies). As to each, please identify the ownership interest.

INTERROGATORY NO. 6: Do you now or have you in the past had any partnership or ownership interest in the Plaintiff partnership either individually or through your position in or ownership of any corporation, partnership, sole proprietorship or other entity which holds any ownership in the Plaintiff partnership? If so, identify all documents which memorialize that status and the date(s) upon which you attained and/or released that status.

INTERROGATORY NO. 7: Identify all assets of which you are aware that are owned by the Plaintiff partnership.

INTERROGATORY NO. 8: Identify to the best of your knowledge the general partner of the Plaintiff partnership and identify when and by what means the general partner was vested with that position.



Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone: (803)796.9299
Facsimile: (803)796.1066
E-mail: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

March 9, 2011

I, *Christy Ransone*, an employee of the Law Offices of Desa Ballard, certify that I have this date served a copy of **Defendant/Counterclaimant Shirley Hammer's First Interrogatories to Howard Hammer** on Howard Hammer and opposing counsel by depositing a copy properly addressed, with sufficient First Class postage affixed, to each, in the United States Mail.

Date: 3/9/11 Signed: *Christy Ransone*
2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No. 2010-CP-40-2889

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant.

Howard Hammer,

Additional Defendant
on Counterclaim.

**OBJECTION
TO DEFENDANT/COUNTERCLAIMANT
SHIRLEY HAMMER'S FIRST
INTERROGATORIES TO
HOWARD HAMMER**

TO: DEFENDANT AND HER ATTORNEYS:

PLEASE TAKE NOTICE that Additional Defendant on Counterclaim, Howard Hammer, ~~objects to all interrogatories until after such time as his Motion regarding dismissal shall be~~ heard on the grounds that to require Answer prior to hearing of the Motion of Dismissal would not be in the interest of judicial economy, may be unduly and unnecessarily burdensome and is not in the best interest of justice or in accord with the spirit, if not the letter of SCRCP.


Howard Hammer, Pro Se
1609 Catawba Street
Columbia, SC 29205
(803) 530-8517 - Telephone



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.

Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant

vs.

Howard Hammer,

Additional Defendant,
on Counterclaim

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-2889

ORDER ADDRESSING MOTION
TO DISMISS AND MOTION FOR
MORE DEFINITE STATEMENT¹
BY HOWARD HAMMER¹

2011 OCT 17 PM 12:12
FILED
JEANETTE H. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

MOTION TO DISMISS

Additional Defendant on Counterclaim, Howard Hammer, (herein Mr. Hammer) has moved this court for an order dismissing the third party complaint and counterclaims filed against him by Defendant Shirley Hammer (herein Ms. Hammer)². At the hearing on the motions (held on September 1, 2011), Mr. Hammer, who filed the motions *pro se*, appeared with counsel Art Aiken. Also present were Stephanie Weissenstein for the defendant Ms. Hammer, and Susan Lipscomb for the plaintiff.

A motion to dismiss based on Rule 12(b)(6), SCRPC, must be based solely on the allegations set forth in the complaint and the court must presume all well-pled facts to be true.

¹ At the hearing, counsel for Mr. Hammer orally withdrew the motion to strike.

² Mr. Hammer's *pro se* motion requested dismissal of all causes of action against him pursuant to Rules 12(b)(4), 12(b)(5), 12(b)(6) and 12(b)(8), SCRPC. At the hearing, Mr. Aiken argued that the first, second, fourth, and fifth causes of action against Mr. Hammer must be dismissed pursuant to Rule 12(b)(6). Mr. Aiken conceded that the third cause of action, for infliction of emotional distress, was properly pled.



Gressette v. South Carolina Electric and Gas Co., 370 SC 377, 378, 365 SE2d 538 (2006). Furthermore, "The motion [on rule 12(b)(6)] will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Washington v. Lexington County Jail*, 337 S.C. 400, 404, 523 S.E.2d 204, 206 (Cl.App.1999). When viewing the pleadings and evidence in favor of Mr. Hammer, after hearing oral argument on behalf of the moving party, of Ms. Hammer and of plaintiff, and after reviewing applicable law, I find the Motion to Dismiss the causes of action against the moving party should be **denied** as to the first, fourth and fifth causes of action and **granted** as to the second cause of action, only.

As to the first cause of action asserted by Ms. Hammer, Mr. Hammer argued that filing a civil action cannot be a basis for abuse of process. Further, he alleges that since he is not the named-plaintiff in this litigation, then there is no ground upon which the allegation can be made against him. While he is correct that mere commencement of a civil action does not in itself constitute an abuse of process (*Bell Lines, Inc. v. Strickland*, 245 SC 148, 176 SE2d 788 (1970)), a complaint for abuse of process "embraces the full range of activities and procedures attendant to litigation". *Food Lion, Inc. vs. United Food & Commercial Workers International Union*, 351 S.C. 65, 567 S.E.2d 251, 253 (S.C.App. 2002). "A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." (*Id. citing, Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997)). Ms. Hammer pleaded the necessary elements for an abuse of process claim, so the motion to dismiss the first cause of action must be denied.

As to the second cause of action for malicious prosecution, Mr. Hammer argued that the

claims asserted by Ms. Hammer are not supported by probable cause and are improperly pled, as no proceeding initiated by Mr. Hammer that would touch or concern this lawsuit has been terminated with finality in Ms. Hammer's favor. *Jordan v. Deese*, 317 SC 260, 452 SE2d 838 (1995). The motion to dismiss the second cause of action is therefore granted because the cause of action fails to state facts for which relief can be granted.

— In arguing that the fourth cause of action for conversion should be dismissed, Mr. Hammer alleged that neither money nor real property is a thing which can be converted for purposes of tortious liability. This cause of action, he argues, was brought by the plaintiff partnership for purposes of collecting from Ms. Hammer certain assessments allegedly due to the Plaintiff, and those funds cannot be the basis of an action for conversion.

In pleading her cause of action for conversion, Ms. Hammer alleges that if Plaintiff's assertions in the Complaint are deemed true and it is found that she owns some portion of the building and/or the partnership, then Plaintiff and Mr. Hammer have converted rental payments and/or other income due to her to their own use without her permission. Ms. Hammer alleged she has received no distributions from the Plaintiff resulting from income payable related to the rental of 1634 Main Street and that Plaintiff and/or Hammer (or entities controlled by Hammer) and other parties, including Plaintiff's attorney, have occupied a substantial portion of the premises at 1634 Main Street for business purposes for years without tendering to her any rent or other distribution. I find that Ms. Hammer properly pled elements of conversion and that Mr. Hammer's motion to dismiss the fourth cause of action must be dismissed.

As for the fifth cause of action for conspiracy, Mr. Hammer alleges that it is impossible, as a matter of law, for a corporation and one its agents to conspire against an individual. This argument is only partially accurate. To plead an action for civil conspiracy, the plaintiff must

allege that a combination of two or more persons conspired to do some act for the purpose of injuring plaintiff, which has caused her special damages. A complaint that alleges agents of a corporation conspired to injure the plaintiff satisfies the element. *Lee v. Chesterfield General Hospital, Inc.* 289 SC 6, 344 SE2d 379 383 (Cl App 1986). Furthermore, the means of accomplishing the injury to plaintiff need not be unlawful. *LaMotte v. Punchline of Columbia, Inc.* 296 SC 6 370 SE2d 711 1988.

Rule 8, SCRCF, requires "a short and plain statement" of the grounds, facts, jurisdiction, and prayer for relief and Rule 8(e)(1) specifically states that "no technical forms of pleading are required" and that "all pleadings shall be construed to do substantial justice to all parties." *Justice v. The Pantry*, 330 SC 37, 496 SE2d 871, 873 (Cl. App. 199); Rule 8(e)(1), SCRCF. The pleadings set forth facts alleging that Howard Hammer, with others including Plaintiff, and necessarily its agent(s), conspired to bring this litigation for the sole purpose of harming Ms. Hammer. The motion to dismiss as to the fifth cause of action for civil conspiracy is thus denied.

MOTION FOR MORE DEFINITE AND CERTAIN

In his written motion for a more definite and certain statement under Rule 12(3), Mr. Hammer sets forth in twenty-one paragraphs purported deficiencies in Ms. Hammer's Answer, Counterclaim, and Third-party Complaint. At the motion hearing, Mr. Hammer's counsel only specifically addressed paragraphs 1, 10, 11, and 29.

The federal rule and South Carolina's rule are identical in substance. In *Valentine v. Brock & Scott, PLLC*, the Court quoted that, "A motion for a more definite statement is ordinarily restricted to situations where a pleading suffers from unintelligibility rather than want of detail." *Valentine v. Brock & Scott, PLLC* Slip Copy, 2010 WL 1727681 (D.S.C. 2010) (citing, *Gleichauf v. Ginsberg*, 859 F.Supp. 229, 233 (S.D.W.Va.1994)). After reviewing the

pleadings and hearing arguments, Mr. Hammer's motion for more definite statement is **granted** as to paragraphs 11 and 29 of Ms. Hammer's Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint. Ms. Hammer shall amend the pleading and mail the same to Mr. Hammer's counsel and to Plaintiff within fifteen days of this order, and they shall have the time allotted by the Rules of Civil Procedure to Answer.

Motion to Dismiss for Insufficiency of Service

In the motion to dismiss filed by Mr. Hammer, he alleged that the service of Ms. Hammer's third-party complaint was insufficient. Each party provided written discussion on the motion, but the issue was not argued at the hearing. In light of Mr. Hammer's failure to argue the motion, the court considers the motion to be withdrawn and no ruling is therefore required.

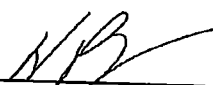
For the reasons set forth above, I find and ORDER the following:

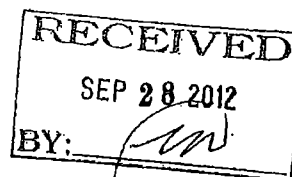
- A. The motion to dismiss by Howard Hammer is **DENIED** as to the first, fourth and fifth causes of action in the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint;
- B. The motion to dismiss by Howard Hammer is **GRANTED** only as to the second cause of action for malicious prosecution in the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint;
- C. The motion for more definite and certain statement filed by defendant Howard Hammer is **GRANTED** as to paragraphs 11 and 29 only of the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint;
- D. Within fifteen days of this order, Shirley Hammer shall amend paragraphs 11 and 29 to make more definite her allegations, and remove the cause of action for malicious

- prosecution in the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint and mail the same to Plaintiff and Howard Hammer;
- E. Howard Hammer and Plaintiff shall have the applicable number of days as set forth in the South Carolina Rules of Civil Procedure after receipt of the Second Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint to serve his Answer;
- F. The motion to strike and motion to dismiss for want of service are withdrawn, with prejudice.

IT IS SO ORDERED.

This 7 day of October, 2011
Columbia, South Carolina


DeAndrea G. Benjamin
Circuit Court Judge
Fifth Judicial Circuit



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 and
2010-CP-40-2889

Howard Hammer,

Plaintiff,

v.

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,

Additional Defendant

On Counterclaim.

**MOTION FOR SANCTIONS
AGAINST HOWARD HAMMER
AND ARTHUR K. AIKEN
AND 1634 MAIN LP.**

2013 JAN 15 PM 4:27
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO: HOWARD HAMMER, AND HIS COUNSEL ART AIKEN:

TO: 1634 MAIN LP AND ITS COUNSEL SUSAN LIPSCOMB:

YOU WILL PLEASE TAKE NOTICE, Defendant Shirley Hammer, a/k/a Shirley Grace Hightower (herein, Shirley), moves this Honorable Court for an Order issuing sanctions against Howard Hammer and his counsel, Art Aiken¹ and against 1634 Main LP. This motion is made pursuant to South Carolina Rule of Civil Procedure 11(a) and S.C. Code §15-36-10, 2005 as amended. In support of her motion, Shirley states as follows:

¹ Shirley recognizes that Howard's other attorney, Susan Lipscomb, attempted to be relieved as counsel several times and was denied that relief by the Court; therefore, this motion does not include a request for sanctions against Ms. Lipscomb.

FACTS

These matters came before the Court for trial on October 29, 2012, and at that time, Howard was represented by Arthur K. Aiken in the case of Hammer v. Hammer, (Case No. 2009-CP-40-05911)(hereafter referred to as "the contract action."), and also in his capacity as a third-party defendant in the case of 1634 Main LP v. Shirley Hammer v. Howard Hammer, (Case No. 2010-CP-40-2889)(hereafter the "1634 action"). The morning of trial, Howard discharged Mr. Aiken as his counsel in the 1634 Main action and appeared *pro se* for trial.

The facts of the case are revealed in the trial transcript, which is not yet available. The affidavit of Desa Ballard has been submitted as an exhibit for the actual damages portion of the trial; it outlines the pretrial litigation and the especially challenging legal and procedural issues which have been necessary to defend the actions brought by Mr. Hammer (including the 1634 Main action), including an unprecedented request to, and grant of relief from, the South Carolina Supreme Court.

On information and belief, Shirley has established by clear and convincing evidence that Howard's conduct, with the aid of his counsel, and that of the limited partnership acting through Howard, were willful, wanton and in reckless disregard for her rights.

Judge Manning's order of April 2010 acknowledged that Howard's action in the initial case, Hammer v. Hammer, had no legal basis, and that decision was upheld by the Court of Appeals. Hammer v. Hammer, 399 S.C. 100, 730 S.E.2d 874 (Ct.App. 2012).

The Supreme Court has ruled both that Howard is "obsessed with . . . [Shirley]" and that Howard has engaged in "abuse of the judicial system." *In re: Hammer*, 395 S.C. 385, 718 S.E.2d 442 (2011); Order dated September 7, 2011. Those points, therefore, have been established.

LAW

1. S.C. Code §15-36-10(C)(1) sets forth that, at the conclusion of a trial and after a verdict against damages has been rendered, the prevailing party may file a motion for sanctions against the other party, and the court shall proceed to determine if the claims or defenses of the non-prevailing party were frivolous. S.C. Code §15-36-10(c)(1), (2005, as amended)². "An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions: (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party." *Id.*
2. Subparagraph 4 of the statute states that an attorney or *pro se* litigant participating in a civil action or defense may be sanctioned for filing a frivolous pleading, motion, or document if a reasonable attorney in the same circumstances would believe that under the facts, the claim or defense was clearly not warranted and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law, or if a reasonable attorney presented with the same circumstances would believe that the continuation of a civil cause was intended merely to harass or injure the other party. SC Code §15-36-10(4) (2005, as amended).
3. In determining if an attorney, party, or a pro se litigant has violated the provisions of the frivolous proceedings statute, the court shall take into account: "(1) the number of parties;

1. S.C. Code §15-36-10(D): "A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations..."

(2) the complexity of the claims and defenses; (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions. . and (7) other factors the court considers just, equitable, or appropriate under the circumstances. SC Code §15-36-10(E)(2005, as amended).

4. If the court determines that Howard, Mr. Aiken and/or 1634 Main LP have violated the statute, it may issues such sanctions as ordering Howard to pay Shirley's reasonable costs and attorney's fees, including but not limited to "the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding".
5. The court may also issue "an order for the attorney to pay a reasonable fine to the court" or may issue ". . . a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith." §15-36-10 (G)(2005, as amended).
6. Shirley also moves for a finding against Howard, Mr. Aiken and 1634 Main LP, pursuant to Rule 11, of the South Carolina rules of Civil Procedure. The Rule states that when a party or his counsel signs a pleading, motion, or other paper, they are certifying that to the best of his knowledge, information and belief, there is good ground to support the allegations contained therein and that he is not merely filing the paper to interpose for delay. *Russell v. Wachovia Bank*, N.A 370 S.C. 5, 19, 633 S.E.2d 722 (2006)(explaining Rule 11, SCRPC). "If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an

order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing . . . including a reasonable attorney's fee.³ *Id.*

7. The South Carolina Courts have held that "a party who makes a frivolous claim or raises a frivolous defense has committed a more egregious act than one who merely acts without substantial justification, for purposes of awarding costs and/or attorney fees."

Father v. South Carolina Dept. of Social Services, 353 S.C. 254, 578 S.E.2d 11 (S.C. 2003))

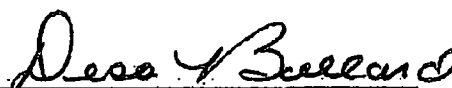
~~Shirley would show the court that Howard, both individually and through 1634 Main LP, with the assistance of his counsel Mr. Aiken, has willfully, deliberately and unapologetically attempted to misuse the legal process through both of these cases. With the assistance of his counsel, Art Aiken, Howard has engaged in such misconduct for ulterior purposes in seeking to promote Howard's own personal interests in harassing and torturing his ex-wife, Shirley.~~

The lack of respect Howard and 1634 Main LP have shown for this Court, the legal process, and the purposes of these legal proceedings, is likely unprecedented, certainly for this Court. Even viewed separately from Howard's conduct, Mr. Aiken's conduct in aiding and abetting Howard in his legal pursuits is ill-conceived, negligent and abusive. By the time he entered into the fray, Mr. Aiken would have been able to determine that the claims asserted by Howard were abusive, frivolous, and completely without merit. When viewed in conjunction with the lengthy period during which Howard has engaged in similar conduct in the Richland County courts and Appellate Courts, Howard's conduct is alarming and disturbing, and the assistance provided to Howard by Mr. Aiken in these endeavors is also. Howard, with assistance

³ In *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.* 393 S.C. 590, 713 S.E.2d 624, 628 (2011), the Supreme Court held that "A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed." (quoting) *Runyon*, 322 S.C. at 19, 471 S.E.2d at 162.

of Mr. Aiken, has engaged in a concerted effort to abuse the legal process in both cases for his own selfish purposes, abusing this Court and his colleagues in the process

WHEREFORE, Defendant Shirley Hammer, requests that this Court enter an Order awarding sanctions against Howard Hammer, his counsel, Arthur K. Aiken, and 1634 Main LP, as well as awarding a reasonable attorney's fees in connection with this motion and hearing, and all other appropriate relief.



Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone: 803-796-9299
Facsimile: 803-796-1066
E-mail: stephanie@desaballard.com
**ATTORNEYS FOR THE PREVAILING
PARTY, SHIRLEY HAMMER**

January 15, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911-~~and~~

Howard Hammer,)
Plaintiff,)

v.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
Defendant.)
-----)

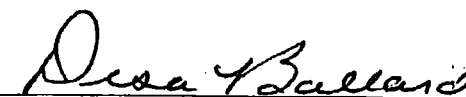
WITHDRAWAL OF:
Third Counterclaim
Certain damages in Fourth Counterclaim

To prevent discovery abuse by Howard Hammer, Defendant Shirley Hammer hereby:

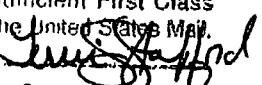
A. Withdraws her third cause of action for intentional infliction of emotional distress

B. Withdraws her claim for emotional distress damages in her fourth counterclaim for
abuse of process.

She reserves her right to seek and recover all other damages available to her in the fourth
counterclaim for abuse of process, and all other provisions of her counterclaims.


Desa Ballard
Stephanie Weissenstein

I, an employee of Desa Ballard, P.A., do
certify that I have this date served a copy of:

Withdrawal of: Third Counterclaim
on all opposing counsel by depositing a copy
properly addressed with sufficient First Class
Postage affixed, to each, in the United States Mail.
Date: 10-26-12 Signed: 

Terrie S. Stafford, Paralegal

BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, SC 29171
Phone: 803-796-9299
Fax: 803-796-1066
Email: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR SHIRLEY HAMMER

October 26, 2012

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

) **COURT OF COMMON PLEAS**

) **FIFTH JUDICIAL CIRCUIT**

) Case No.: 2009-CP-40-05911

)

) **HOWARD HAMMER'S MOTION**
) **TO DISMISS CLAIM FOR**
) **SANCTIONS**

)

)

)

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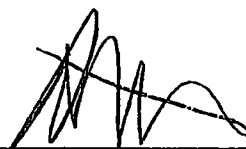
TO: ALL OTHER COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff, Howard Hammer, hereby moves to dismiss the Defendant's claim for sanctions against him. The Plaintiff bases this Motion on the grounds that the Defendant's Motion making this claim was neither timely filed nor timely served.

WHEREFORE, the Plaintiff prays that this Court dismiss the Defendant's claim for sanctions against him.

Respectfully submitted,

AIKEN & HIGHTOWER, PA

By: 

Arthur K. Aiken

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
February 25, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Howard Hammer,

CA No.: 2009-CP-40-5911

Plaintiff,

vs.

CERTIFICATE OF SERVICE

Shirley Hammer a/k/a Shirley Grace
Hightower,

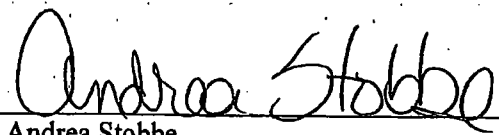
Defendant.

I, Andrea Stobbe, Paralegal at Aiken & Hightower, P.A., certify that I have on this day, January 7, 2013 affected service of **DEFENDANT HOWARD HAMMER'S MOTION TO DISMISS CLAIM FOR SANCTIONS** upon counsel for the Defendant via United States Mail addressed to:

Desa Ballard
Ballard Watson Weissenstein
226 State Street,
West Columbia, SC 29171
Attorney for Defendant

The Honorable George C. James, Jr.
Circuit Court Judge
Third Judicial Circuit
P.O. Box 1716
Sumter, SC 29151

By:



Andrea Stobbe
Paralegal for Aiken & Hightower, P.A.
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206
andrea@aikenandhightower.com

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

) **COURT OF COMMON PLEAS**
) **FIFTH JUDICIAL CIRCUIT**
) Case No.: 2009-CP-40-05911
)

) **HOWARD HAMMER'S MOTIONS**
) **TO AMEND FINDINGS OF FACT,**
) **TO ALTER OR AMEND**
) **JUDGMENT AND FOR A NEW**
) **TRIAL**
)
)

TO: ALL OTHER COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff, Howard Hammer, hereby moves, in accordance with Rules 52(b), 59(e) and 59(a) SCRPC, to amend findings of fact in this Court's January 29, 2013 Order (Order), to alter or amend the judgment entered in the Order and for a new trial on the cause decided in the Order. The Order was filed with the Clerk on January 29, 2013, and Plaintiff's counsel received written notice of the entry of the Order on January 30, 2013.

The Plaintiff bases these Motions on the general grounds that, in the Order, this Court makes findings of fact unsupported by the evidence and errs in its application of the law to the facts. As specific grounds for this Motion, the Plaintiff relies on the following:

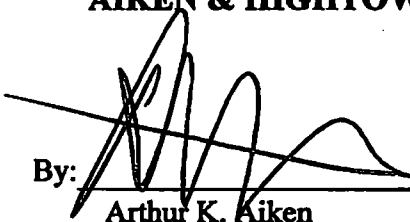
1. On page 1 of the Order, the court states that Howard Hammer represented himself in this case up to the beginning of trial. While Howard Hammer did file the original Summons and Complaint, Susan Lipscomb filed amended pleadings thereafter and represented Howard Hammer until Arthur K. Aiken took over the representation in defense of the Defendant's counterclaims.
2. Prior to trial, the Defendant withdrew all claims for emotional distress as elements of her damages on her counterclaims. The Order awards the Defendant twenty thousand and no/100s (\$20,000) dollars in actual damages for frustration. A careful review of the damages cases decided by the appellate courts of South Carolina yielded no cases

recognizing frustration as a separate element of damages. If frustration is recognizes as an element of damages, it certainly falls within the definition of emotional distress. The Order erroneously awards the Defendant damages of a type that the Defendant was not entitled to because she had specifically withdrawn any claim for those damages.

WHEREFORE, the Plaintiff prays that this Court amend its findings of fact, alter or amend its Order and grant him a new trial.

Respectfully submitted,

AIKEN & HIGHTOWER, PA

By: 

Arthur K. Aiken

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
February 11, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff,

v.

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,
Additional Defendant
On Counterclaim.

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 and
2010-CP-40-2889

**AMENDED AFFIDAVIT OF
ATTORNEYS' FEES AND COSTS**

Personally appeared before me, Stephanie Weissenstein, who being duly sworn, deposes
and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters set forth herein, except as to those matters stated on information and belief, and as to those, I have a good faith belief that they are true.
2. We have served as counsel for Shirley Hammer throughout the referenced proceedings. This affidavit supplements and amends Desa Ballard's affidavit in these matters dated January 14, 2013.
3. Our law firm maintains contemporaneous time records of work done on all matters by the responsible attorneys and non-administrative staff, which information is summarized



below. Actual costs, that is, costs billed to the firm by or paid to third parties are included in this affidavit.

4. As set forth in her affidavit of January 13 2013, Ms. Ballard was admitted to the Bar in 1983, and served as a staff attorney for the Supreme Court of South Carolina, law clerk the Honorable Ralph Kind Anderson Jr. on the circuit court and for the late Chief Justice Julius B. Ness on the Supreme Court. Since 1987, she has been continuously engaged in private practice concentrating on civil litigation, appellate litigation, and professional licensing. Ms. Ballard is also admitted to practice before the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, the United States Supreme Court, and am licensed (inactive) in the District of Columbia. She is a member of the South Carolina Bar Association, a member of the American Bar Association, and a member of the Association of Professional Responsibility Lawyers. Additionally, she has worked with numerous positions with the South Carolina Bar, including serving as Chairman of the Professional Responsibility Committee, and she regularly prepares materials and give presentations and lectures for the South Carolina Bar Continuing Legal Education and other legal and professional groups. Ms. Ballard has been recognized as, and has testified as, an expert witness in the area of lawyer ethics and professional responsibility by numerous courts in South Carolina. She has an AV rating with Martindale Hubbell. We bill Desa Ballard's services at a rate of \$400 per hour, and I am informed and believe that her hourly rate is reasonable.
5. I am Desa Ballard's law partner and have served as co-counsel in this matter. I was admitted to the Bar in 2004 and have been engaged in private practice concentrating on



civil litigation, appellate litigation, and professional licensing. I am admitted to practice before the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit. I am a member of the South Carolina Bar Association, Young Lawyers Division, a member of the American Bar Association, a member of South Carolina Women Lawyers Association, and a member of the South Carolina Association of Ethics Counsel. Additionally, I have been an authoring member of the South Carolina Ethics Advisory Committee since 2006, and I regularly prepare materials for the South Carolina Bar Continuing Legal Education courses taught by members of the firm. My time is billed at \$200.00 per hour, and I am informed and believe that my hourly rate is reasonable.

6. Our firm, Ballard Watson Weissenstein, PA (herein, "the firm"), was retained by Shirley Hammer in the fall of 2009, after Shirley's ex-husband Howard Hammer filed suit against her in the circuit court case identified above (Hammer v. Hammer). As that case progressed, Howard caused the 1634 Main LP case to be filed against Shirley in 2010, so our representation extended to the defense of that as well. This affidavit is for fees and costs related only to our defense against Howard's claims; we did not include our fees or costs related to the pursuit of any counterclaims or third-party claims filed in either action.
7. As the litigation crept forward, contemporaneously with numerous matters pending in the family court, for which Shirley has separate counsel, Howard repeatedly took actions to slow the proceedings. The situation was spiraling out of control, largely because of Howard's unprecedented (in our experience) tenacity in creating obscure issues and artful delay to hinder and damage Shirley. For example, when convenient, he would appear *pro*



se, even with his counsel present, he has changed lawyers multiple times; we have dealt with four (4) different lawyers at some point during the litigation, the latest being the morning of trial in this matter.

8. In June 2010, we attempted mediation after the circuit court appointed Jean Bergeron to mediate the 2009 case. Ms. Bergeron indicated her willingness to mediate a global discussion for mediation of all matters, and we explored that with opposing counsel. We provided a significant amount of materials to Ms. Bergeron in anticipation of mediation, but Howard did not attend the scheduled meeting; he sent his lawyer, Ms. Lipscomb, in his stead. The mediation lasted only two (2) hours.
9. Each time we would attempt to discuss resolution of these matters with the various attorneys who represented him, Howard's sole focus was to renegotiate the terms of prior orders of the family courts, including modifying provisions related custody, visitation, property division; those issues that had nothing to do with the circuit court litigation. At no point would Howard discuss the merits of these cases. It was clear that these cases had been brought for the purpose of putting pressure on Shirley to yield to his demands in in the family court matters.
10. Ms. Bergeron left mediation open in hope we could engage in global mediation, but eventually she filed a mediation report indicating that continued efforts at mediation would not be fruitful.
11. At the same time, Shirley's domestic lawyers reported that the domestic case was similarly out of control, with Howard filing as many as seven (7) appeals. My last information concerning these appeals is that all are pending¹.

¹ The appeals from the family court are all now before the Supreme Court as a result of the petition discussed *infra*. On February 13, 2013, the Supreme Court dismissed two of the appeals.



12. It became apparent to us all that that it would require extraordinary steps to curb Howard's manipulation of the judicial system. Left to his own devices, Howard was intent on destroying Shirley financially and emotionally. Shirley reported to Desa, and us all, that Howard had threatened to drive her to bankruptcy.
13. I am informed and believe from discussions with Shirley that much of the financial settlement Shirley received from the domestic case has been expended in payment of attorney fees in defending the actions brought by Howard in both the family court and circuit court; much of the expenses were incurred after Shirley had settled with Howard by agreement in 2008 and 2009, whereupon she received a divorce.
14. Attorney Pope Johnson, acting as Howard's attorney, approached us again about a global settlement in the fall of 2011. After consultation with Shirley and her domestic lawyers, we advised that we would engage in global settlement discussions if they agreed that any settlement reached could be approved by the Supreme Court; we felt that Supreme Court approval was the only way we could prevent further judicial manipulation by Howard. Shirley needed finality; prior settlements with Howard had simply brought more litigation. This time, Shirley wanted any settlement to actually conclude the matters and not exacerbate them, as had been the case in the prior family court settlements.
15. On September 21, 2011, Pope Johnson advised that Howard would not engage in settlement discussions if we required Supreme Court approval of the resulting agreement. Mr. Johnson stated "[Howard] views any such filing by you or (sic) an effort by you to interfere with his attempt to get his license back². . . we have no interest in exploring settlement if this is a condition."

² Howard's license to practice law had been placed on interim suspension in June, 2008, after he had been arrested on several criminal charges involving assault on Shirley and members of her family. *Matter of Hammer*,



16. Seeing there would be no end to the litigation in the near future, we assembled information regarding all of the litigation, both in the circuit court and family court, and drafted a petition to the South Carolina Supreme Court asking the court to assign a single judge to hear and decide all matters pending between the parties. Because of concern that Howard would attempt to make us witnesses, Shirley retained Robert Bockman, Esquire, to represent her in regard to the petition. We assisted Mr. Bockman both in preparing the pleadings for the Supreme Court and in replying to the response filed by Howard.
17. Preparation of the Supreme Court petition was a massive undertaking, and the petition to the Supreme Court was finalized and filed in June, 2012. Howard retained counsel, who wrote in the opposition that the Petition was "unprecedented and unheard of." (Return in Opposition dated July 23, 2012). Desa has significant experience with South Carolina Supreme Court matters, and I'm working on attaining such, and we agree that the petition was, in our experience, both unprecedented and unheard of. Nevertheless, Shirley, and we, believed the circumstances warranted unprecedented relief.
18. The Supreme Court issued an order on September 7, 2012, assigning Judge James Barber to oversee the civil cases and assigning Family Court judge Dana Morris to oversee all family court matters. Other relief was also granted, as set forth in the the Supreme Court order attached as Exhibit A.
19. When we received the Supreme Court's order, we contacted Judge Barber and requested a status conference for the circuit court cases. Judge Barber has since held a series of

378 S.C. 413,, 663 S.E.2d 37 (2008). He received a six-month suspension from the practice of law in November, 2011, and was reinstated on June 1, 2012. In its order of suspension, the Supreme Court said it was "deeply concerned about [Howard]'s emotional state and his ability to execute sound judgment. . . [Howard] is obsessed. . . with his ex-wife, from whom he has been separated and/or divorced for approximately six years." *Matter of Hammer*, 395 S.C. 385, 718 S.E.2d 442 (2011). Howard was placed on interim suspension again on June 12, 2012, after he was charged with additional criminal charges. *In re: Hammer*, 378 S.C. 413, 663 S.E.2d 37 (2012).

status conferences which ultimately resulted scheduling a consolidated trial before Judge George James on October 29, 2012. Judge James issued a final order in these matters on January 29, 2013. Post-trial motions have been filed by Howard Hammer, individually, and by 1634 Main Street LP.

20. It was only because Supreme Court intervened that the civil cases have proceeded to this point. Our office has not provided any representation in the domestic matter.
21. In my opinion, the time billed by Ms. Ballard and me, and other members of our firm, in defending Ms. Hammer against these claims were reasonable and necessary to adequately prepare and present these matters to the court. The litigation and ensuing attorney's fees and costs detailed herein were billed as a direct result of the defense of the litigation initiated by our client's ex-husband, Howard Hammer. We have separated any billings relating to counterclaims and cross claims for purposes of this affidavit, but we included those numbers below in hopes these billings also be considered in connection with the pending motions for sanctions.
22. This case was extraordinarily challenging and convoluted. On behalf of our client, we created a judicial remedy to bring these matters to a conclusion where it seemed none existed. Had we not sought and obtained the intervention of the Supreme Court, it is impossible to predict how much longer Howard could have bullied Shirley through the court system.
23. Rule 407, SCACR, Rule 1.5, contains the factors to be considered in determining the reasonableness of attorney's fees, including:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;



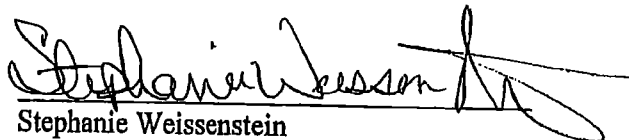
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

- 24. My firm charged the fees customary for matters of this nature (firm \$200.00 per hour for Watson and Weissenstein, and \$400.00 per hour for Ballard) and that hourly fee has been applied to all time hereinafter delineated. Such hourly fees are in the range of fees customarily charged in this location by attorneys of similar experience for matters of the complexity of these cases.
- 25. In addition to the procedural novelty of these cases, the legal issues presented by Howard were especially perplexing; he was arguing similar issues in various forums. Mr. Hammer, a suspended attorney, used his knowledge of the law to apply and promote tortured reasoning to law and procedure, asserting bizarre positions.
- 26. Most recently, he has filed a post-trial motion challenging Judge James' final order; that post-trial motion continues his pattern of obfuscation and tortured reasoning.
- 27. In all matters, we billed our typical hourly rates. We kept contemporaneously time in the 2009 case, but deferred billing until the case concluded; Shirley has not paid us any fees for that matter. We have billed monthly for the 1634 case, for the global discussions and for the Supreme Court matter. Shirley has paid us throughout the litigation in response to those invoices, although there is still an outstanding balance.
- 28. Our billings are separated into four (4) matters for the court's consideration. In preparing this affidavit, Desa personally reviewed our billings and separated out entries that related to our pursuit of counterclaims; I reviewed her work.

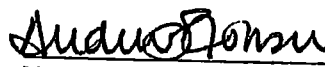


29. The four categories of billing, set forth herein below, were each directly and proximately incurred by our defending Shirley from the claims filed by Howard in the circuit court, and in seeking the extraordinary relief sought and received from the Supreme Court. The invoices are current through February 28, 2013.
30. Packet No. 1 reflects all billings related the petition to the Supreme Court, and both the civil mediation and global mediation which led us to filing the petition. This work included discussion of civil and domestic cases, but did not differentiate the sub-issues, such as which were claims and which were counterclaims. The fees billed in Packet 1 are \$38,935.59, and the total costs are \$544.58. The total for the matters forming Packet 1 is \$39,480.17.
31. Packet 2 reflects all billings for Shirley's defense against Howard's claims in the 2009 case, wherein he attempted to set aside the domestic settlement and placed a *lis pendens* on Shirley's house on St. James Street (*Hammer v. Hammer*). No billing is included in the packet regarding our pursuit of counterclaims. These fees were incurred through Howard's initial filing of the action though the issuance of Judge Manning's order of April 14, 2010, and throughout the post-trial motions that were precursors to the appeal. The total fees billed in Packet No. 2 are \$19,079.50, and the total costs are \$902.44, for a total of \$19,981.94.
32. Packet 3 reflects work done for Shirley's defense in the 1634 Main LP case. No billing is included herein related to the pursuit of counterclaims (although there were some common issues involved in discovery.) The total fees billed for the defense of the 1634 Main LP matter was \$96,449.00. There were costs in the amount of \$5,583.87. The defense of this matter results in charges totaling \$102,032.87.

33. Finally, packet 4 sets forth billings related to the appeal initiated after Judge Manning's order of April 14, 2010 in the *Hammer v Hammer*, 2009 matter. As set forth previously, no time related to the pursuit of the counterclaims, including the trial, in the 2009 matter are included in the totals set forth here. The total fees billed in this subgroup, 4 is \$39,635.50, with total costs amounting to \$1,126.96. Thus, the total for the appeal work is \$40,762.46.
34. Lastly, the amount of fees and costs incurred through January 31, 2013 to prepare and serve the Motion for Sanctions was \$980.00 and \$50.00 respectively, for a total of \$1,030.00
35. These billings for each of these subsections are summarized below.
36. Further, deponent sayeth not.


 Stephanie Weissenstein
BALLARD WATSON WEISSENSTEIN
 Counsel for Defendant Shirley Hammer

Sworn to before me this
29 day of March, 2013.


 Notary public for South Carolina
 My commission expires: 3/11/21

Summary		Fees	Costs	Total
Case 1	Petition	\$ 38,935.59	\$ 544.58	\$ 39,480.17
Case 2	Fees to NOA	\$ 19,079.50	\$ 902.44	\$ 19,981.94
Case 3	1634 LLP	\$ 96,449.00	\$ 5,583.87	\$ 102,032.87
Case 4	Post NOA	\$ 39,635.50	\$ 1,126.96	\$ 40,762.46
Case 5	Sanctions	\$ 980.00	\$ 50.00	\$ 1,030.00
Case 6	Counterclaim	\$ 14,241.50	\$ 665.51	\$ 14,907.01
Totals		\$ 209,321.09	\$ 8,873.36	\$ 218,194.45

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 and
2010-CP-40-2889

Howard Hammer,)
Plaintiff,)

v.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
Defendant.)

CERTIFICATE OF SERVICE

-----)
1634 Main, L.P.)
Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
Defendant/Third-Party Plaintiff,)

vs.)

Howard Hammer,)
Additional Defendant)
On Counterclaim.)

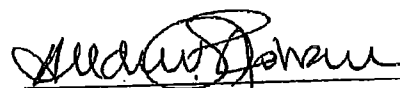
The undersigned certifies that he, on March 29, 2013, caused to be served a copy of the Amended Motion for Attorneys' Fees and Costs on all parties in this matter by regular U.S. mail delivery by depositing all in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Honorable George C. James, Junior
Post Office Box 1716
Sumter, South Carolina 29151

Arthur K. Aiken Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

**Howard Hammer, Esquire
1609 Catawba Street
Columbia, South Carolina 29205**

**Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia, South Carolina 29201**

A handwritten signature in cursive script, appearing to read "Andrew L. Johnson", written over a horizontal line.

Andrew L. Johnson, *Law Clerk*

March 29, 2013

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

vs.

Howard Hammer,

Additional Defendant on
Counterclaim.

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

CA No.: 2010-CP-40-2889

AFFIDAVIT OF ARTHUR K. AIKEN

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

CA No.: 2009-CP-40-05911

AFFIDAVIT OF ARTHUR K. AIKEN

**STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)**

Personally appeared before me, Arthur K. Aiken, who first being duly sworn deposes and says that:

1. I am now and have been since November 1989 a member in good standing of the South Carolina Bar

2. I represent Howard Hammer in C/A No.: 2009-CP-40-05911 captioned above,

and I am a Respondent on a Motion for sanctions filed in that case and in C/A No.: 2010-CP-40-2889 also captioned above.

3. I am over eighteen (18) years old, and I am otherwise fully competent to make a statement under oath.

4. I have first-hand knowledge of all facts stated in this Affidavit with the exception of those facts stated on information and belief, and as to those facts stated on information and belief, I reasonably believe them to be true.

5. On January 15, 2013, this Court held a hearing in the above cases, which I attended as attorney for Howard Hammer in C/A No.: 2009-CP-40-05911.

6. Also present at the January 15, 2013 hearing were Susan B. Lipscomb for 1634 Main, L.P., Desa Ballard for Shirley Hammer and Howard Hammer pro se in Case No.: 2010-CP-40-2889.

7. At the conclusion of the hearing, Desa Ballard announced that she was seeking sanctions against 1634 Main, L.P., Howard Hammer and me.

8. Desa Ballard then handed up to this Court an unfiled Motion for Sanctions.

9. Desa Ballard then came over to the counsel table where Susan B. Lipscomb, Howard Hammer and I were all sitting and dropped one copy of the unfiled Motion for Sanctions on the table.

10. Susan B. Lipscomb even asked Desa Ballard if she had a copy of the Motion for Sanctions for each of us, and Desa Ballard responded that she only had the one copy.

11. None of the Respondents on the Motion for Sanctions was validly served with that Motion on January 15, 2013.

12. Desa Ballard first validly served the Motion for Sanctions on the Respondents by

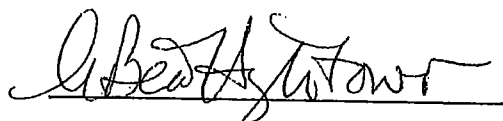
Mail on February 13, 2013.

FURTHER AFFIANT SAYETH NOT.



Arthur K. Aiken

SWORN and subscribed to before me
this 15th day of May, 2013.



Notary Public for South Carolina

Expires 9-27-2020

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

vs.

Howard Hammer,

Additional Defendant on
Counterclaim.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

CA No.: 2010-CP-40-2889

**AFFIDAVIT OF
SUSAN BATTEN LIPSCOMB**

JEANETTE W. M. B. B. B.
C.C.P. & G.S.

2013 MAY 16 PM 3:06

FILED

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

CA No.: 2009-CP-40-05911

**STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)**

Personally appeared before me, Susan Batten Lipscomb, who first being duly sworn deposes and says that:

1. My name is Susan Batten Lipscomb; I am over the age of eighteen and am now and have been since November 1978 a member in good standing of the South Carolina Bar.
2. I represent 1634 Main, LP in C/A No.: 2010-CP-40-02889 captioned above.

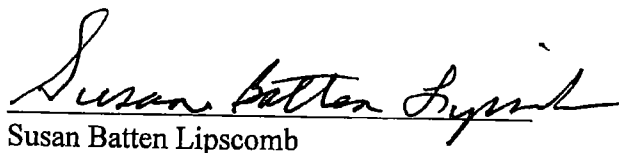
4. I make this Affidavit on my own personal knowledge, except as to those matters I state to be made on personal information and belief, and as to those facts stated on information and belief, I reasonably believe them to be true.

5. On January 15, 2013, this Court held a hearing in the above cases.

6. I have reviewed the Affidavit of Art Aiken, Esquire made with regard to the alleged service of the Motion for Sanctions and concur with his assertions made in the Affidavit as to the facts and events at the conclusion of the hearing, and concur that none of the Respondents to the Motion for Sanctions was validly served with that Motion on January 15, 2013.

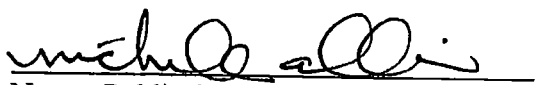
7. 1634 Main, LP was first validly served with the Motion for Sanctions by mail on February 13, 2013

FURTHER AFFIANT SAYETH NOT.


Susan Batten Lipscomb

SWORN and subscribed to before me

this 15 day of May, 2013.


Notary Public for South Carolina
My Commission expires: 12/05/22

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

1634 Main, L.P.,

CA No.: 2010-CP-40-2889

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

vs.

Howard Hammer,

Additional Defendant on
Counterclaim.

AFFIDAVIT OF HOWARD HAMMER

FILED
2013 MAY 16 PM 3:05
JEANETTE M. MURPHY
C.C.P. & G.S.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Howard Hammer,

CA No.: 2009-CP-40-05911

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

**STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)**

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, Howard Hammer, who being duly sworn,
deposes and says:

1. That I was present at a hearing held on January 15, 2013, before the Honorable George James, Jr., in the above captioned matters.
2. That the hearing was attended by Desa Ballard, attorney for Shirley Hammer, who sat at the table to the left facing the Judge's Bench along with Susan Lipscomb, Esquire, Art

Aiken, Esquire, and the undersigned who sat at a table to the right facing the Judge's Bench.

3. That the undersigned occupied the 1st chair at the table, Ms. Lipscomb occupied the 2nd chair, and Mr. Aiken was positioned at the end of the table facing the table so that the Judge's Bench was to his right.
4. That, sometime near the conclusion of the hearing Ms. Ballard stood, said she had a motion for sanctions and threw, actually slammed one set of papers on the desk occupied by Mrs. Lipscomb, Mr. Aiken and myself. She did not personally hand the papers to any of us. Mrs. Lipscomb made a request that she do so, however that request was ignored and Mrs. Lipscomb was not given any papers.
5. That a motion for sanctions dated January 15, 2013, was not served on Mr. Aiken, Mrs. Lipscomb, or myself. One copy was thrown on the desk where the attorneys and pro se litigant were seated.
6. That at a hearing on May 1, 2013, Ms. Ballard produced a certificate of service signed by her and filed January 17, 2013, in which she **certified** that she served a copy of the motion for sanctions dated January 15, 2013, on Art Aiken, Esquire, Howard Hammer, Esquire, and Susan Batten Lipscomb, Esquire, by hand delivering a copy to *each* of the above named.
7. That in addition to producing the certificate of service Ms. Ballard stated to the Judge on May 1, 2013, in response to a question by him, that she had on January 15, 2013, hand delivered/served a copy of her motion for sanctions dated January 15, 2013, on each of the above named.
8. That in truth and in fact Ms. Ballard's certificate of service is not accurate and her subsequent representation to the Court on May 1, 2013, is also not accurate.

9. That in truth and in fact neither Mrs. Lipscomb nor Mr. Aiken, nor myself, were validly served with Ms. Ballard's motion for sanction on January 15, 2013.
10. That the only service of the motion for sanctions on me was made by mail on February 13, 2013, subsequent to an Order of the Court implicitly requiring such service to be timely made if Ms. Ballard intended to proceed on the motion.
11. That I am over the age of 18, I have personal first-hand knowledge of the facts stated herein and that they are true except for those stated on information and belief which I reasonably believe to be true.

AFFIANT SAYETH NOT



Howard Hammer

Sworn and subscribed to me this

15 day of May, 2013.

Debra Cawington

Notary Public for South Carolina

My Commission Expires: 5/22/2018

11634 210
Pleading

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4002889

1634 Main LP

vs.

Shirley Hammer

Plaintiff

Defendant

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

Motion for Injunction Dismissed

Dated at Columbia, South Carolina, this 10 day of February, 2011.

PRESIDING JUDGE

This judgment was entered on the 18 day of Feb, 2011, and a copy mailed first class this 18 day of Feb, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Susan B Lipscomb

ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephanie Nichole Weissenstein

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Clerk of Court

SCAN

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2010CP4002889

IN THE COURT OF COMMON PLEAS

1634 Main LP

vs.

Plaintiff

Shirley Hammer

Defendant

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.
- ☐ **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;☐ Statement of Judgment by the Court:

Motion to Compel Dismissed

Dated at Columbia, South Carolina, this 10 day of February, 2011.

PRESIDING JUDGE

This judgment was entered on the 10 day of Feb, 2011, and a copy mailed first class this 10 day of Feb, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Susan B Lipscomb

ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephanie Nichole Weissenstein

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

SCRPC APP-24/FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4002889

1634 Main LP

vs.

Shirley Hammer

Plaintiff

Defendant

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.
- ☐ **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; ☐ Statement of Judgment by the Court:

motion to Dismiss taken Under Advisement

Dated at Columbia, South Carolina, this 10 day of February, 2011.

PRESIDING JUDGE

This judgment was entered on the 18 day of Feb, 2011, and a copy mailed first class this day of Feb, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Susan B Lipscomb

ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephanie Nichole Weissenstein

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Clerk of Court

SCANNED

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2010CP4002889

IN THE COURT OF COMMON PLEAS

1634 Main LP

vs.

Shirley Hammer

Plaintiff

Defendant

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.
- ☐ **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;☒ Statement of Judgment by the Court:

Motion for Default Denied.

Dated at Columbia, South Carolina, this 10 day of February, 2011.

PRESIDING JUDGE

This judgment was entered on the 18 day of Feb, 2011, and a copy mailed first class this 18 day of Feb, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Susan B Lipscomb

Stephanie Nichole Weissenstein

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeannette W. McBride

Clerk of Court

SCRPC APP-24/FORM 4

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a
Shirley Grace Hightower,)

Defendant)

vs.)

Howard Hammer,)

Additional Defendant,
on Counterclaim)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-2889

**ORDER ADDRESSING MOTION
TO DISMISS AND MOTION FOR
MORE DEFINITE STATEMENT
BY HOWARD HAMMER¹**

RICHLAND COUNTY
FILED
2011 OCT 17 PM 12:12
JEANETTE W. McBRIDE
C.C.P. & G.S.

MOTION TO DISMISS

Additional Defendant on Counterclaim, Howard Hammer, (herein Mr. Hammer) has moved this court for an order dismissing the third party complaint and counterclaims filed against him by Defendant Shirley Hammer (herein Ms. Hammer)². At the hearing on the motions (held on September 1, 2011), Mr. Hammer, who filed the motions *pro se*, appeared with counsel Art Aiken. Also present were Stephanie Weissenstein for the defendant Ms. Hammer, and Susan Lipscomb for the plaintiff.

A motion to dismiss based on Rule 12(b)(6), SCRCP, must be based solely on the allegations set forth in the complaint and the court must presume all well-pled facts to be true.

¹ At the hearing, counsel for Mr. Hammer orally withdrew the motion to strike.

² Mr. Hammer's *pro se* motion requested dismissal of all causes of action against him pursuant to Rules 12(b)(4), 12(b)(5), 12(b)(6) and 12(b)(8), SCRCP. At the hearing, Mr. Aiken argued that the first, second, fourth, and fifth causes of action against Mr. Hammer must be dismissed pursuant to Rule 12(b)(6). Mr. Aiken conceded that the third cause of action, for infliction of emotional distress, was properly pled.

Gressette v. South Carolina Electric and Gas Co., 370 SC 377, 378, 365 SE2d 538 (2006). Furthermore, "The motion [on rule 12(b)(6)] will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Washington v. Lexington County Jail*, 337 S.C. 400, 404, 523 S.E.2d 204, 206 (Ct.App.1999). When viewing the pleadings and evidence in favor of Mr. Hammer, after hearing oral argument on behalf of the moving party, of Ms. Hammer and of plaintiff, and after reviewing applicable law, I find the Motion to Dismiss the causes of action against the moving party should be **denied** as to the first, fourth and fifth causes of action and **granted** as to the second cause of action, only.

As to the first cause of action asserted by Ms. Hammer, Mr. Hammer argued that filing a civil action cannot be a basis for abuse of process. Further, he alleges that since he is not the named-plaintiff in this litigation, then there is no ground upon which the allegation can be made against him. While he is correct that mere commencement of a civil action does not in itself constitute an abuse of process (*Bell Lines, Inc. v. Strickland*, 245 SC 148, 176 SE2d 788 (1970)), a complaint for abuse of process "embraces the full range of activities and procedures attendant to litigation". *Food Lion, Inc. vs. United Food & Commercial Workers International Union*. 351 S.C. 65, 567 S.E.2d 251, 253 (S.C.App. 2002). "A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." (*Id. citing, Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997)). Ms. Hammer pleaded the necessary elements for an abuse of process claim, so the motion to dismiss the first cause of action must be denied.

As to the second cause of action for malicious prosecution, Mr. Hammer argued that the

claims asserted by Ms. Hammer are not supported by probable cause and are improperly pled, as no proceeding initiated by Mr. Hammer that would touch or concern this lawsuit has been terminated with finality in Ms. Hammer's favor. *Jordan v. Deese*, 317 SC 260, 452 SE2d 838 (1995). The motion to dismiss the second cause of action is therefore granted because the cause of action fails to state facts for which relief can be granted.

In arguing that the fourth cause of action for conversion should be dismissed, Mr. Hammer alleged that neither money nor real property is a thing which can be converted for purposes of tortious liability. This cause of action, he argues, was brought by the plaintiff partnership for purposes of collecting from Ms. Hammer certain assessments allegedly due to the Plaintiff, and those funds cannot be the basis of an action for conversion.

In pleading her cause of action for conversion, Ms. Hammer alleges that if Plaintiff's assertions in the Complaint are deemed true and it is found that she owns some portion of the building and/or the partnership, then Plaintiff and Mr. Hammer have converted rental payments and/or other income due to her to their own use without her permission. Ms. Hammer alleged she has received no distributions from the Plaintiff resulting from income payable related to the rental of 1634 Main Street and that Plaintiff and/or Hammer (or entities controlled by Hammer) and other parties, including Plaintiff's attorney, have occupied a substantial portion of the premises at 1634 Main Street for business purposes for years without tendering to her any rent or other distribution. I find that Ms. Hammer properly pled elements of conversion and that Mr. Hammer's motion to dismiss the fourth cause of action must be dismissed.

As for the fifth cause of action for conspiracy, Mr. Hammer alleges that it is impossible, as a matter of law, for a corporation and one its agents to conspire against an individual. This argument is only partially accurate. To plead an action for civil conspiracy, the plaintiff must

allege that a combination of two or more persons conspired to do some act for the purpose of injuring plaintiff, which has caused her special damages. A complaint that alleges agents of a corporation conspired to injure the plaintiff satisfies the element. *Lee v. Chesterfield General Hospital, Inc.* 289 SC 6, 344 SE2d 379 383 (Ct App 1986). Furthermore, the means of accomplishing the injury to plaintiff need not be unlawful. *LaMotte v. Punchline of Columbia, Inc.* 296 SC 6 370 SE2d 711 1988.

Rule 8, SCRCF, requires "a short and plain statement" of the grounds, facts, jurisdiction, and prayer for relief and Rule 8(e)(1) specifically states that "no technical forms of pleading are required" and that "all pleadings shall be construed to do substantial justice to all parties." *Justice v. The Pantry*, 330 SC 37, 496 SE2d 871, 873 (Ct. App. 199); Rule 8(e)(1), SCRCF. The pleadings set forth facts alleging that Howard Hammer, with others including Plaintiff, and necessarily its agent(s), conspired to bring this litigation for the sole purpose of harming Ms. Hammer. The motion to dismiss as to the fifth cause of action for civil conspiracy is thus denied.

MOTION FOR MORE DEFINITE AND CERTAIN

In his written motion for a more definite and certain statement under Rule 12(3), Mr. Hammer sets forth in twenty-one paragraphs purported deficiencies in Ms. Hammer's Answer, Counterclaim, and Third-party Complaint. At the motion hearing, Mr. Hammer's counsel only specifically addressed paragraphs 1, 10, 11, and 29.

The federal rule and South Carolina's rule are identical in substance. In *Valentine v. Brock & Scott, PLLC*, the Court quoted that, "A motion for a more definite statement is ordinarily restricted to situations where a pleading suffers from unintelligibility rather than want of detail." *Valentine v. Brock & Scott, PLLC* Slip Copy, 2010 WL 1727681 (D.S.C. 2010) (citing, *Gleichen v. Ginsberg*, 859 F.Supp. 229, 233 (S.D.W.Va.1994)). After reviewing the

pleadings and hearing arguments, Mr. Hammer's motion for more definite statement is **granted** as to paragraphs 11 and 29 of Ms. Hammer's Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint. Ms. Hammer shall amend the pleading and mail the same to Mr. Hammer's counsel and to Plaintiff within fifteen days of this order, and they shall have the time allotted by the Rules of Civil Procedure to Answer.

Motion to Dismiss for Insufficiency of Service

In the motion to dismiss filed by Mr. Hammer, he alleged that the service of Ms. Hammer's third-party complaint was insufficient. Each party provided written discussion on the motion, but the issue was not argued at the hearing. In light of Mr. Hammer's failure to argue the motion, the court considers the motion to be withdrawn and no ruling is therefore required.

For the reasons set forth above, I find and ORDER the following:

- A. The motion to dismiss by Howard Hammer is **DENIED** as to the first, fourth and fifth causes of action in the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint;
- B. The motion to dismiss by Howard Hammer is **GRANTED** only as to the second cause of action for malicious prosecution in the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint;
- C. The motion for more definite and certain statement filed by defendant Howard Hammer is **GRANTED** as to paragraphs 11 and 29 only of the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint;
- D. Within fifteen days of this order, Shirley Hammer shall amend paragraphs 11 and 29 to make more definite her allegations, and remove the cause of action for malicious

prosecution in the Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint and mail the same to Plaintiff and Howard Hammer;

- E. Howard Hammer and Plaintiff shall have the applicable number of days as set forth in the South Carolina Rules of Civil Procedure after receipt of the Second Amended Answer to Complaint, Motion to Dismiss, Motion for Injunction and Third-Party Complaint to serve his Answer;
- F. The motion to strike and motion to dismiss for want of service are withdrawn, with prejudice.

IT IS SO ORDERED.

This 7 day of ^{October} September, 2011
Columbia, South Carolina



DeAndrea G. Benjamin
Circuit Court Judge
Fifth Judicial Circuit

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

CASE NUMBER: 2010CP4002889

1634 Main LP

Shirley Hammer

Shirley Grace Hightower

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.
- ☐ 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 (formal 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 PUBLIC 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
		\$
		\$
		\$

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 _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 19 September 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Susan Batten Lipscomb

Stephanie Nichole Weissenstein
Howard Hammer

Pope D. Johnson III

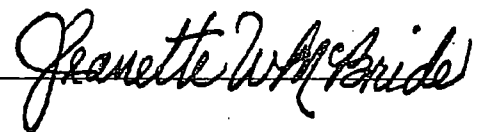
Howard Hammer

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	2010-CP-40-2889
1634 Main, L.P.,	)	
	)	
Plaintiff,	)	
	)	
vs	)	
	)	
Shirley Hammer, a/k/a	)	ORDER DENYING 1634 MAIN, L.P.,
Shirley Grace Hightower,	)	AND HOWARD HAMMER'S MOTIONS
	)	FOR RECONSIDERATION OF 6/3/13
Defendant/Third Party Plaintiff,	)	ORDER, AND DENYING HOWARD
	)	HAMMER'S MOTION FOR NEW TRIAL
vs	)	ON SANCTIONS CLAIM
	)	
Howard Hammer,	)	
	)	
Addition Defendant on	)	
Counterclaim,	)	

RICHLAND COUNTY
 FILED
 2013 SEP 19 PM 3:35
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

Currently pending before this court are 1634 Main, L.P.'s "Motion to Reconsider, Alter, Amend or Modify" dated July 15, 2013 and Howard Hammer's "Motion for an Order Reconsidering, Amending, Altering, and Modifying the June 3, 2013 Order and Motion to the Extent Allowed by Law for a New Trial on the Frivolous Proceedings Act" dated July 19, 2013. Both motions are directed at this court's order dated June 3, 2013. In that order, this court imposed sanctions against the two moving parties under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Section 15-36-10, et seq., and under Rule 11, SCRCP.

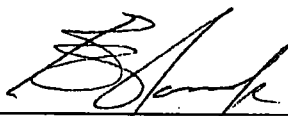
1634 Main's motion raises five points, all of which the court has carefully considered. The motion is respectfully denied.

Mr. Hammer's motion purports to be divided into a motion for reconsideration of this court's order imposing sanctions and a motion for a new trial on the "sanctions

matter", as he puts it. Mr. Hammer presents fifty-nine points for consideration in his motion, all under the heading "I. Sanctions Matter". There are no separate arguments framed for the motion for reconsideration, but since the arguments he raises are, as a practical matter, germane to both motions, the court has reviewed the "Sanctions Matter" arguments in conjunction with the motion for reconsideration.

The court has considered all of the arguments set forth by Mr. Hammer and respectfully denies his motion for reconsideration and his motion for a new trial.

AND IT IS SO ORDERED.



George C. James, Jr.
Circuit Court Judge

Sumter, South Carolina

September 19, 2013

The Supreme Court of South Carolina

Ex Parte: Shirley Hammer, Petitioner.

In re: Shirley Hammer,

v.

Howard Hammer.

Case No. 2005-DR-40-2871

In Re: Howard Hammer,

v.

Shirley Hammer.

Case No. 2009-CP-40-05911

In re: 1634 Main LP,

v.

Shirley Hammer.

Case No. 2010-CP-40-2889

In Re: Howard Hammer,

v.

Shirley Hammer.

Case No. 2010-DR-40-3712

In re: Howard Hammer,

v.

Shirley Hammer and Richard Whiting.

Case No. 2011-DR-40-1094



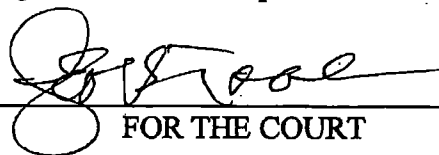
Appellate Case No. 2012-212288

ORDER

Petitioner has filed a document with this Court entitled "Petition and Complaint for Consolidation and Assignment for Full and Final Adjudication" in which she asks this Court to consolidate the above referenced matters for adjudication, assign them to one judge for adjudication in a single proceeding, subject to the jurisdiction of this Court, for a full and final resolution of all issues. While we cannot grant the relief petitioner seeks, we can take other measures in an effort to curtail Howard Hammer's abuse of the judicial system.

First, all appeals currently pending before the Court of Appeals involving petitioner, Mr. Hammer or 1634 Main LP shall be transferred to this Court. Rule 204(b), SCACR. After the appeals are transferred to this Court and their status assessed, instructions will be given to the parties for expediting the appeals.

Second, the Honorable James R. Barber, III, and the Honorable Dana A. Morris are hereby assigned to oversee any actions involving petitioner, Mr. Hammer or 1634 Main LP currently pending in the circuit court and family court respectively, and any subsequent actions involving the parties that may be filed, and shall expedite any such actions and provide status reports to the Chief Justice every thirty days from the date of this order until all litigation between the parties has been resolved.



C.J.

FOR THE COURT

Columbia, South Carolina

September 7, 2012

cc:

Robert T. Bockman

Arthur Kerr Aiken

Desa Allen Ballard

Pope D. Johnson, III

Susan Batten Lipscomb
Timothy E. Madden
Howard Hammer, Esq.
Richard Giles Whiting
The Honorable Jenny Abbott Kitchings

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Shirley Hammer, Respondent,

v.

Howard Hammer, Appellant.

Appellate Case No. 2011-203087

Appeal From Richland County
John M. Rucker, Family Court Judge

Memorandum Opinion No. 2013-MO-004
Submitted February 5, 2013 – Filed February 13, 2013

AFFIRMED

Howard Hammer of Columbia, *Pro Se* Appellant.

Timothy E. Madden of Nelson Mullins Riley &
Scarborough, LLP, of Greenville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b)(1), SCACR, and the following authorities: Issues 1 through 13: Where an appellant fails to provide arguments or supporting authority with regard to an issue on appeal, the issue is deemed abandoned and will not be considered on appeal. *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994); *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct.

App. 2006); *Arnal v. Arnal*, 363 S.C. 268, 609 S.E.2d 821 (Ct. App. 2005), *aff'd as modified* 371 S.C. 10, 636 S.E.2d 864 (2006); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004); *Fields v. Fields*, 342 S.C. 182, 536 S.E.2d 684 (Ct. App. 2000). An issue is also deemed abandoned if the argument in the brief is not supported by authority or is only conclusory. *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *Butler v. Butler*, 385 S.C. 328, 684 S.E.2d 191 (Ct. App. 2009); *State v. Howard*, 384 S.C. 213, 682 S.E.2d 42 (Ct. App. 2009); *Pack v. S.C. Dept. of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009); *Bryson v. Bryson*, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008).

AFFIRMED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2010-CP-40 DEER

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant.

SUMMONS

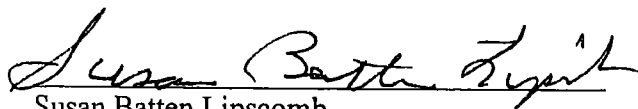
RICHLAND COUNTY
FILED
2010 APR 30 PM 5:05
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO DEFENDANTS, [REDACTED]

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint to the subscriber at the following address:

LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
Columbia, SC 29201

within thirty (30) days of service herewith, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Susan Batten Lipscomb
John Richard Lipscomb
LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
Columbia, SC 29201
Tel.: (803) 233-6654
Fax: (803) 233-6663
Email: LipscombLaw@Gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2010-CP-40

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant.

COMPLAINT

The Plaintiff, complaining of Defendant alleges:

1. That this is an action for declaratory judgment brought pursuant to the Declaratory Judgment Act of the Code of Laws of the State of South Carolina and that as such this Court has jurisdiction and venue of the matters contained herein.
2. Plaintiff is a limited partnership organized and existing under the laws of the State of South Carolina, owning property and doing business in the State of South Carolina, County of Richland.
3. That the partnership agreement was duly executed and entered in the State of South Carolina, County of Richland and that the partnership assets are located in the State of South Carolina, County of Richland and the matters at issue here arise out of acts occurring or to occur in the State of South Carolina, County of Richland.
4. That Defendant is duly qualified member of said limited partnership having a 56.8% interest in said partnership.

5. That under the terms of the partnership agreement the general partner shall determine in its discretion the amounts of payment for reserve accounts for operations, maintenance and repair of partnership assets.

6. That under the terms of the partnership agreement the general partner shall employ such entities to manage the partnership assets as shall be necessary.

7. That Danville Business Associates is and has been employed for a period of time to as the manager for the partnership assets.

8. That the partnership assets have been determined to be in need of repair and that notification of said repairs with request for payment to reserve account in accord with respective interest of the limited partners had been heretofore made.

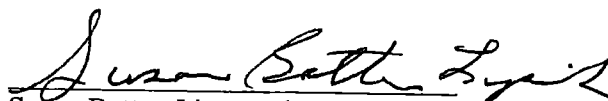
9. That the general partner has in accord with the partnership agreement executed amendment to said agreement prohibiting the sale or transfer of any portion of any limited partners interest when such limited partner has not complied with any reasonable request for payment for repairs, reserve account or any other types of payment permitted under the partnership agreement.

10. That notwithstanding the right of the general partner to create account for maintenance and repairs and determine the amounts of payment to said account by the general partners and further notwithstanding that the management company of the general partnership pursuant to the general partners instruction has given notice to Defendant of the amount of payment owed by it to the partnership, the Defendant has failed and refused to make such payment.

11. That the partnership is entitled to immediate payment by the Defendant of the amount heretofore requested of it in the sum of \$88,040.00 and to have the same

immediately paid and any necessary lien to secure payment against any of Defendant's partnership interest or any other properties of Defendant.

WHEREFORE, Plaintiff prays for declaratory judgment against Defendant requiring Defendant to make immediate payment of in the sum of \$88,040.00 in accord with the demand for said payment duly made on behalf of the partnership at the instance of the general partner and for the same to be declared a lien on the Defendant's partnership interest and for an order prohibiting the offering for sale or transfer of any portion of Plaintiff's partnership interest until payment is fully made, and for the same to be declared a judgment lien till fully paid and for attorneys' fees and the cost of this action, and for such other and further relief as the Court deems fair and just.



Susan Batten Lipscomb, SC Bar #3354

LIPSCOMB LAW FIRM, PA

1634 Main Street, Suite 200

Columbia, SC 29201

Tel. (803) 233-6654

Fax: (803) 233-6663

Lipscomblaw@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2010-CP-40 *2088*

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace
Hightower,

Defendant.

AMENDED SUMMONS

FILED
2010 JUN -9 PM 2:53
JEANETTE W. McBRIDE
CLERK, C.P. & G.S.

TO DEFENDANT: Shirley Hammer a/k/a Shirley Grace Hightower:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint to the subscriber at the following address: LIPSCOMB LAW FIRM, P.A., 1634 Main St., Suite 200, Columbia, SC 29201 within thirty (30) days of service herewith, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Susan B. Lipscomb

Susan Batten Lipscomb
John Richard Lipscomb
LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
Columbia, SC 29201
Tel.: (803) 233-6654
Fax: (803) 233-6663
Email: LipscombLaw@Gmail.com
Attorneys for Plaintiff

June 9
May 2010
Columbia, SC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2010-CP-40

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant.

COMPLAINT

FILED
2010 JUN -9 PM 2:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, complaining of Defendant alleges:

1. That this is an action for declaratory judgment brought pursuant to the Declaratory Judgment Act of the Code of Laws of the State of South Carolina and that as such this Court has jurisdiction and venue of the matters contained herein.

2. Plaintiff is a limited partnership organized and existing under the laws of the State of South Carolina, owning property and doing business in the State of South Carolina, County of Richland.

3. That the partnership agreement was duly executed and entered in the State of South Carolina, County of Richland and that the partnership assets are located in the State of South Carolina, County of Richland and the matters at issue here arise out of acts occurring or to occur in the State of South Carolina, County of Richland.

4. That Defendant is duly qualified member of said limited partnership having a 56.8% interest in said partnership.

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5. That under the terms of the partnership agreement the general partner shall determine in its discretion the amounts of payment for reserve accounts for operations, maintenance and repair of partnership assets.

6. That under the terms of the partnership agreement the general partner shall employ such entities to manage the partnership assets as shall be necessary.

7. That Danville Business Associates is and has been employed for a period of time to as the manager for the partnership assets.

8. That the partnership assets have been determined to be in need of repair and that notification of said repairs with request for payment to reserve account in accord with respective interest of the limited partners had been heretofore made.

9. That the general partner has in accord with the partnership agreement executed amendment to said agreement prohibiting the sale or transfer of any portion of any limited partners interest when such limited partner has not complied with any reasonable request for payment for repairs, reserve account or any other types of payment permitted under the partnership agreement.

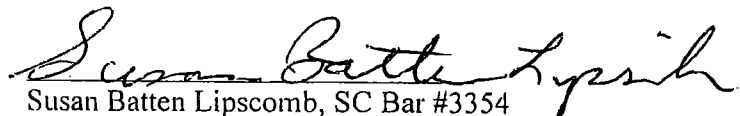
10. That notwithstanding the right of the general partner to create account for maintenance and repairs and determine the amounts of payment to said account by the general partners and further notwithstanding that the management company of the general partnership pursuant to the general partners instruction has given notice to Defendant of the amount of payment owed by it to the partnership, the Defendant has failed and refused to make such payment.

11. That the partnership is entitled to immediate payment by the Defendant of the amount heretofore requested of it in the sum of \$88,040.00 and to have the same

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immediately paid and any necessary lien to secure payment against any of Defendant's partnership interest or any other properties of Defendant.

WHEREFORE, Plaintiff prays for declaratory judgment against Defendant requiring Defendant to make immediate payment of in the sum of \$88,040.00 in accord with the demand for said payment duly made on behalf of the partnership at the instance of the general partner and for the same to be declared a lien on the Defendant's partnership interest and for an order prohibiting the offering for sale or transfer of any portion of Plaintiff's partnership interest until payment is fully made, and for the same to be declared a judgment lien till fully paid and for attorneys' fees and the cost of this action, and for such other and further relief as the Court deems fair and just.



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June 9, 2010

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Page 236

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
1634 Main, L.P.)
)
Plaintiff,)
)
vs.)
)
Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
)
Defendant/)
Third-Party Plaintiff,)
)
vs.)
)
Howard Hammer,)
)
Third-Party Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-2889

**ANSWER TO COMPLAINT
MOTION TO DISMISS,
MOTION FOR INJUNCTION,
AND THIRD-PARTY COMPLAINT**

MOTION TO DISMISS

Defendant moves to dismiss this action in its entirety pursuant to Rule 12(b)(1), SCRPC, in that this court lacks subject matter jurisdiction over this action, in that the matters in dispute have already been litigated in a related family court matter, Hammer v. Hammer, Case No. 2005-DR-40-2871. It is requested that this Court take judicial notice of that file for purposes of addressing this Motion to Dismiss.

**MOTION FOR INJUNCTION OR IN THE ALTERNATIVE
MOTION TO CONSOLIDATE**

The general partner of Plaintiff is a company called SH5, LLC and Third-Party Defendant Howard Hammer is the sole member of SH5, LLC (see Exhibit A); therefore, Howard Hammer has effectively caused the captioned suit to be filed against Defendant. Defendant moves to enjoin Howard Hammer from filing suit against her in this or any court other than the

Family Court for South Carolina. This injunction would enjoin Howard Hammer individually and as an agent for any entity that may own or control any real or personal property that is subject to the Family Court orders in the matter, Hammer v. Hammer, Case No. 2005-DR-40-2871. Defendant Shirley Hammer and Third-Party Defendant Howard Hammer entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008; this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance and caused this action to be filed against Defendant.

Furthermore, Hammer sought to collaterally attack the Family Court Order in the circuit court, which by Order of the Honorable L. Casey Manning dated April 14, 2010, dismissed Hammer's complaint for lack of subject matter jurisdiction. In an Order dated May 18, 2010 and filed May 21, 2010, Judge Manning denied Hammer's Motion to Reconsider. Defendant's counterclaims remain pending against Hammer. Upon information and belief, Howard Hammer will continue to cause improper litigation to be filed against defendant, and thus deprive Defendant and the courts of this State of time, resources, and funds unless enjoined against such action.

In the alternative, Defendant requests that this action, and all actions filed in the future by Mr. Hammer either individually or as an agent for another entity, that touch or concern the subject matter of the Family Court Order, referenced above, be referred to the Family Court for consolidation with the pending action and adjudicated therein.

It is requested that this Court take judicial notice of that file for purposes of addressing this motion.

ANSWER

Reserving rights under the motion to dismiss set forth above, Defendant, responding to the complaint of Plaintiff, denies that Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. Paragraph 1 is denied. Defendant denies that the Court has subject matter jurisdiction over matters contained in the complaint, for which subject matter jurisdiction is proper only in Family Court.
2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.
3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.
4. Defendant denies paragraph 4; Defendant affirmatively avers that she was the individual owner of a 52.75% interest of that certain piece of real property located at 1634 Main Street, Columbia, S.C. as shown in the attached copy of deed, and that Defendant's said 52.75% ownership interest is in the real property and not in Plaintiff's limited partnership. Upon information and belief, Defendant owns an 8% interest in Plaintiff's limited partnership. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Howard Hammer (her former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company serving as general partner of Plaintiff) (hereinafter referred as "Hammer"). . The agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.
5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, 6, 7, 8, and 9.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10, except that Defendant did receive some request for payment and has not made any such payment.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, except that Defendant denies that Plaintiff is entitled to any relief.

DEFENSES

8. This Court lacks subject matter jurisdiction over the matters contained in the complaint.

9. The Complaint fails to state facts sufficient to constitute a cause of action.

10. The claims asserted are barred by the doctrine of *res judicata*.

11. The complaint should be dismissed because there is another action pending between the parties for the same relief.

12. Plaintiff is not entitled to the relief requested because third-party defendant, Hammer, is pursuing the same remedies in the family court.

13. Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to third-party defendant Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order. All of these issues continue to be litigated in family court.

14. Plaintiff is precluded from the relief sought because Hammer executed a general release in favor of Defendant.

15. Plaintiff is precluded from the relief sought because there is an adequate remedy at law.

COUNTERCLAIM AND THIRD PARTY COMPLAINTS (Allegations Common to All Claims)

16. To the extent relevant to these counterclaims and third party complaints, the responses set forth above are incorporated herein as fully as if repeated verbatim.

17. Pursuant to SCRCF Rules 13(h) and 20, Defendant adds Howard Hammer

("Hammer") as a third party defendant.

18. Hammer is Defendant's former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company (SH, LLC) serving as general partner of Plaintiff.

19. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Hammer, which was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

20. In a related matter, Hammer has improperly, and contrary to the Family Court Order, sought to collaterally attack the Family Court Order in the circuit court. The circuit court, by Order of the Honorable L. Casey Manning dated April 14, 2010, dismissed Hammer's complaint for lack of subject matter jurisdiction. In an Order dated May 18, 2010 and filed May 21, 2010, Judge Manning denied Hammer's Motion to Reconsider. Defendant's counterclaims remain pending against Hammer in that action.

21. Upon information and belief, Hammer caused Plaintiff and/or Plaintiff's counsel, to file the Complaint in this action after Judge Manning's Order of April 14, 2010.

22. Hammer's actions demonstrate a pattern of abusing process for the purpose of harassing Defendant.

23. Pursuant to a like-kind exchange involving her funds, Defendant was deeded a 52.75% interest in the real property at 1634 Main Street, Columbia, S.C., (as shown by the attached copy of deed). Upon information and belief, Defendant also owns an 8% interest in Plaintiff (a limited partnership).

24. The deed conveying to Defendant a 52.75% interest in the real property located at 1634 Main Street, Columbia, S.C., was executed by Hammer, as a member of SH5, LLC. In that deed, it is purported SH5, LLC is the general partner of Plaintiff; upon information and belief, Hammer was and remains the sole member of SH5, the general partner of Plaintiff limited partnership. Defendant is unaware of any change in the status of general partner of Plaintiff since the execution of that deed. Defendant is unaware of any involvement by Danville Business

Associates as manager of the partnership assets.

25. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order.

**FIRST COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(ABUSE OF PROCESS – AGAINST PLAINTIFF AND HOWARD HAMMER)**

26. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

27. Upon information and belief, Plaintiff and Third Party Defendant Hammer had an ulterior purpose in bringing this action: to harass Defendant, to wit: Hammer executed a deed conveying to Defendant the 52.75% interest in the real property located at 1634 Main Street, Columbia, SC, yet, as the sole member of the LLC serving as general partner of Plaintiff, Hammer caused Plaintiff to allege in the complaint that Defendant owned a 56.8% interest in Plaintiff limited partnership, which is a knowing misrepresentation to this Court. Further, as the effective general partner of Plaintiff, Hammer is aware of whatever ownership interest Defendant has in Plaintiff limited partnership, yet he misrepresented that interest to this Court because as the effective general partner of Plaintiff, Hammer is aware that the limited partnership agreement does not provide for further contributions from limited partners and that his requested relief is therefore not appropriate under the agreement.

28. Furthermore, in a recent family court hearing examining Hammer's failure to provide child support, Hammer testified under oath that he did not cause Plaintiff to bring the complaint against Defendant in this case and that he could not recall if he instructed Plaintiff's counsel to bring this complaint. Yet, within a couple of hours of Hammer as effective general partner of Plaintiff causing Defendant to be served with the complaint in this action, he called Defendant and mocked her and laughed at her about the complaint being served.

29. Plaintiff's and Hammer's willful actions in the use of process were not proper in the regular conduct of proceedings and were intended to gain an objective not legitimate in the use of process.

30. Defendant suffered damages as a result of Plaintiff's and Hammer's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff and Hammer.

**SECOND COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(MALICIOUS PROSECUTION – PLAINTIFF AND HOWARD HAMMER)**

31. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

32. The filing of this action by Plaintiff and Hammer was filed with malice in instituting the proceedings, without probable cause.

33. On information and belief, Plaintiff's claims will be resolved in favor of Defendant / Third Party Plaintiff.

34. Defendant /Third Party Plaintiff has suffered injuries and damages as set forth above as the result of the actions of Plaintiff and Hammer as described herein.

**THIRD COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE
– PLAINTIFF AND HOWARD HAMMER)**

35. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

36. Through their conduct, Plaintiff and Hammer intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from their conduct.

37. Plaintiff's and Hammer's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.

38. Plaintiff's and Hammer's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from Plaintiff and Hammer.

39. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff and Hammer for damages as set forth above.

**FOURTH COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(IN THE ALTERNATIVE)
(CONVERSION – PLAINTIFF AND HOWARD HAMMER)**

40. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

41. Pursuant to the Family Court Order, Defendant denies having any current ownership interest in 1634 Main Street. However, Defendant alleges the following in the alternative, assuming arguendo that she does have an ownership interest in 1634 Main Street.

42. If, in fact, Defendant and Hammer, individually, continue to be the owners of a 52.75% (and majority) interest in the real property located at 1634 Main Street, Columbia, S.C., Defendant controls all decisions regarding said real property and is not subject to the direction of Plaintiff.

43. Defendant and Hammer were separated by Order of the Family Court dated September 12, 2005, and were divorced by the Family Court Order dated May 8, 2008.

44. From the date of Defendant's separation from Hammer in 2005 to the present date, Defendant has received no distributions resulting from income payable related to the rental of 1634 Main Street.

45. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) have occupied a substantial portion of the premises at 1634 Main Street for business purposes.

46. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) has allowed other tenants to maintain office space at 1634 Main Street.

47. On information and belief, Plaintiff's attorney in this action, who is also Hammer's attorney in the action referred to in paragraph 20 above, maintains office space at 1634 Main Street.

48. Upon information and belief, Plaintiff and Hammer have converted rental payments and/or other income due to Defendant to their own use without Defendant's permission.

**FIFTH COUNTERCLAIM AND THIRD PARTY ACTION
(IN THE ALTERNATIVE)
(CIVIL CONSPIRACY – PLAINTIFF AND HOWARD HAMMER)**

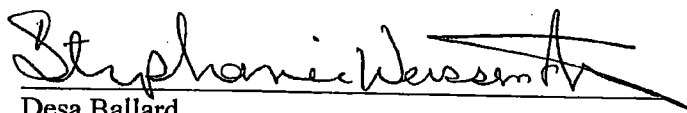
49. Defendant repeats and re-alleges the allegations of paragraphs set forth above to

the extent such paragraphs are relevant.

50. On information and belief, Plaintiff and Hammer, acting in concert with themselves and possibly with others, conspired to injure Defendant and cause special damages by withholding any rental payments due to Defendant and, in filing the complaint, causing Defendant to incur special damages in defending the frivolous complaint.

WHEREFORE, Defendant prays for judgment against Plaintiff and Hammer as follows:

- A. Dismissing the complaint in its entirety;
- B. Enjoining Hammer, individually and as an agent for any entity that owns, represents, or controls any real or personal property addressed in the family court matter, from filing actions against Defendant in this, or any other court; or in the alternative, consolidating all such matters in the Family Court action;
- C. For actual and punitive damages on the counterclaims and third party complaints set forth above;
- D. For the costs of this action and prejudgment interest as permitted by law;
- E. For such other and further relief as may be appropriate.



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ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

June 18, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2010-CP-40-2889

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,

Defendant)

vs.)

Howard Hammer,)

Additional Defendant,
on Counterclaim)**AMENDED ANSWER TO COMPLAINT
MOTION TO DISMISS,
MOTION FOR INJUNCTION,
AND THIRD-PARTY COMPLAINT****COPY****FILED**
2010 JUN 24 AM 10:48
JEANETTE W. McBRIDE
C.G.P. & G.S.**MOTION TO DISMISS**

Defendant moves to dismiss this action in its entirety pursuant to Rule 12(b)(1), SCRPC, in that this court lacks subject matter jurisdiction over this action, in that the matters in dispute have already been litigated in a related family court matter, Hammer v. Hammer, Case No. 2005-DR-40-2871. It is requested that this Court take judicial notice of that file for purposes of addressing this Motion to Dismiss.

**MOTION FOR INJUNCTION OR IN THE ALTERNATIVE
MOTION TO CONSOLIDATE**

The general partner of Plaintiff is a company called SH5, LLC and Third-Party Defendant Howard Hammer is the sole member of SH5, LLC (see Exhibit A); therefore, Howard Hammer has effectively caused the captioned suit to be filed against Defendant. Defendant moves to enjoin Howard Hammer from filing suit against her in this or any court other than the Family Court for South Carolina. This injunction would enjoin Howard Hammer individually

and as an agent for any entity that may own or control any real or personal property that is subject to the Family Court orders in the matter, Hammer v. Hammer, Case No. 2005-DR-40-2871. Defendant Shirley Hammer and Third-Party Defendant Howard Hammer entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008; this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance and caused this action to be filed against Defendant.

Furthermore, Hammer sought to collaterally attack the Family Court Order in the circuit court, which by Order of the Honorable L. Casey Manning dated April 14, 2010, dismissed Hammer's complaint for lack of subject matter jurisdiction. In an Order dated May 18, 2010 and filed May 21, 2010, Judge Manning denied Hammer's Motion to Reconsider. Defendant's counterclaims remain pending against Hammer. Upon information and belief, Howard Hammer will continue to cause improper litigation to be filed against defendant, and thus deprive Defendant and the courts of this State of time, resources, and funds unless enjoined against such action.

In the alternative, Defendant requests that this action, and all actions filed in the future by Mr. Hammer either individually or as an agent for another entity, that touch or concern the subject matter of the Family Court Order, referenced above, be referred to the Family Court for consolidation with the pending action and adjudicated therein.

It is requested that this Court take judicial notice of that file for purposes of addressing

this motion.

ANSWER

Reserving rights under the motion to dismiss set forth above, Defendant, responding to the complaint of Plaintiff, denies that Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. Paragraph 1 is denied. Defendant denies that the Court has subject matter jurisdiction over matters contained in the complaint, for which subject matter jurisdiction is proper only in Family Court.

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. Defendant denies paragraph 4; Defendant affirmatively avers that she was the individual owner of a 52.75% interest of that certain piece of real property located at 1634 Main Street, Columbia, S.C. as shown in the attached copy of deed, and that Defendant's said 52.75% ownership interest is in the real property and not in Plaintiff's limited partnership. Upon information and belief, Defendant owns an 8% interest in Plaintiff's limited partnership. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Howard Hammer (her former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company serving as general partner of Plaintiff) (hereinafter referred as "Hammer"). The agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, 6, 7, 8, and 9.

6. Defendant denies knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraph 10, except that Defendant did receive some request for payment and has not made any such payment.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, except that Defendant denies that Plaintiff is entitled to any relief.

DEFENSES

8. This Court lacks subject matter jurisdiction over the matters contained in the complaint.

9. The Complaint fails to state facts sufficient to constitute a cause of action.

10. The claims asserted are barred by the doctrine of *res judicata*.

11. The complaint should be dismissed because there is another action pending between the parties for the same relief.

12. Plaintiff is not entitled to the relief requested because third-party defendant, Hammer, is pursuing the same remedies in the family court.

13. Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to third-party defendant Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order. All of these issues continue to be litigated in family court.

14. Plaintiff is precluded from the relief sought because Hammer executed a general release in favor of Defendant.

15. Plaintiff is precluded from the relief sought because there is an adequate remedy at law.

COUNTERCLAIM AND THIRD PARTY COMPLAINTS (Allegations Common to All Claims)

16. To the extent relevant to these counterclaims and third party complaints, the responses set forth above are incorporated herein as fully as if repeated verbatim.

17. Pursuant to SCRPC Rules 13(h) and 20, Defendant adds Howard Hammer ("Hammer") as a third party defendant.

18. Hammer is Defendant's former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company (SH, LLC) serving as general partner of Plaintiff.

19. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Hammer, which was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

20. In a related matter, Hammer has improperly, and contrary to the Family Court Order, sought to collaterally attack the Family Court Order in the circuit court. The circuit court, by Order of the Honorable L. Casey Manning dated April 14, 2010, dismissed Hammer's complaint for lack of subject matter jurisdiction. In an Order dated May 18, 2010 and filed May 21, 2010, Judge Manning denied Hammer's Motion to Reconsider. Defendant's counterclaims remain pending against Hammer in that action.

21. Upon information and belief, Hammer caused Plaintiff and/or Plaintiff's counsel, to file the Complaint in this action after Judge Manning's Order of April 14, 2010.

22. Hammer's actions demonstrate a pattern of abusing process for the purpose of harassing Defendant.

23. Pursuant to a like-kind exchange involving her funds, Defendant was deeded a 52.75% interest in the real property at 1634 Main Street, Columbia, S.C., (as shown by the attached copy of deed). Upon information and belief, Defendant also owns an 8% interest in Plaintiff (a limited partnership).

24. The deed conveying to Defendant a 52.75% interest in the real property located at 1634 Main Street, Columbia, S.C., was executed by Hammer, as a member of SH5, LLC. In that deed, it is purported SH5, LLC is the general partner of Plaintiff; upon information and belief, Hammer was and remains the sole member of SH5, the general partner of Plaintiff limited partnership. Defendant is unaware of any change in the status of general partner of Plaintiff since the execution of that deed. Defendant is unaware of any involvement by Danville Business Associates as manager of the partnership assets.

25. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order.

**FIRST COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(ABUSE OF PROCESS – AGAINST PLAINTIFF AND HOWARD HAMMER)**

26. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

27. Upon information and belief, Plaintiff and Third Party Defendant Hammer had an ulterior purpose in bringing this action: to harass Defendant, to wit: Hammer executed a deed conveying to Defendant the 52.75% interest in the real property located at 1634 Main Street, Columbia, SC, yet, as the sole member of the LLC serving as general partner of Plaintiff, Hammer caused Plaintiff to allege in the complaint that Defendant owned a 56.8% interest in Plaintiff limited partnership, which is a knowing misrepresentation to this Court. Further, as the effective general partner of Plaintiff, Hammer is aware of whatever ownership interest Defendant has in Plaintiff limited partnership, yet he misrepresented that interest to this Court because as the effective general partner of Plaintiff, Hammer is aware that the limited partnership agreement does not provide for further contributions from limited partners and that his requested relief is therefore not appropriate under the agreement.

28. Furthermore, in a recent family court hearing examining Hammer's failure to provide child support, Hammer testified under oath that he did not cause Plaintiff to bring the complaint against Defendant in this case and that he could not recall if he instructed Plaintiff's counsel to bring this complaint. Yet, within a couple of hours of Hammer as effective general partner of Plaintiff causing Defendant to be served with the complaint in this action, he called Defendant and mocked her and laughed at her about the complaint being served.

29. Plaintiffs and Hammer's willful actions in the use of process were not proper in the regular conduct of proceedings and were intended to gain an objective not legitimate in the use of process.

30. Defendant suffered damages as a result of Plaintiff's and Hammer's abuse of

process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff and Hammer.

**SECOND COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(MALICIOUS PROSECUTION – PLAINTIFF AND HOWARD HAMMER)**

31. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

32. The filing of this action by Plaintiff and Hammer was filed with malice in instituting the proceedings, without probable cause.

33. On information and belief, Plaintiff's claims will be resolved in favor of Defendant / Third Party Plaintiff.

34. Defendant /Third Party Plaintiff has suffered injuries and damages as set forth above as the result of the actions of Plaintiff and Hammer as described herein.

**THIRD COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE
– PLAINTIFF AND HOWARD HAMMER)**

35. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

36. Through their conduct, Plaintiff and Hammer intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from their conduct.

37. Plaintiff's and Hammer's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.

38. Plaintiff's and Hammer's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from Plaintiff and Hammer.

39. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff and Hammer for damages as set forth above.

**FOURTH COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(IN THE ALTERNATIVE)
(CONVERSION – PLAINTIFF AND HOWARD HAMMER)**

40. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

41. Pursuant to the Family Court Order, Defendant denies having any current ownership interest in 1634 Main Street. However, Defendant alleges the following in the alternative, assuming arguendo that she does have an ownership interest in 1634 Main Street.

42. If, in fact, Defendant and Hammer, individually, continue to be the owners of a 52.75% (and majority) interest in the real property located at 1634 Main Street, Columbia, S.C., Defendant controls all decisions regarding said real property and is not subject to the direction of Plaintiff.

43. Defendant and Hammer were separated by Order of the Family Court dated September 12, 2005, and were divorced by the Family Court Order dated May 8, 2008.

44. From the date of Defendant's separation from Hammer in 2005 to the present date, Defendant has received no distributions resulting from income payable related to the rental of 1634 Main Street.

45. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) have occupied a substantial portion of the premises at 1634 Main Street for business purposes.

46. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) has allowed other tenants to maintain office space at 1634 Main Street.

47. On information and belief, Plaintiff's attorney in this action, who is also Hammer's attorney in the action referred to in paragraph 20 above, maintains office space at 1634 Main Street.

48. Upon information and belief, Plaintiff and Hammer have converted rental payments and/or other income due to Defendant to their own use without Defendant's permission.

**FIFTH COUNTERCLAIM AND THIRD PARTY ACTION
(IN THE ALTERNATIVE)
(CIVIL CONSPIRACY – PLAINTIFF AND HOWARD HAMMER)**

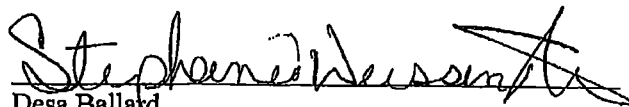
49. Defendant repeats and re-alleges the allegations of paragraphs set forth above to

the extent such paragraphs are relevant.

50. On information and belief, Plaintiff and Hammer, acting in concert with themselves and possibly with others, conspired to injure Defendant and cause special damages by withholding any rental payments due to Defendant and, in filing the complaint, causing Defendant to incur special damages in defending the frivolous complaint.

WHEREFORE, Defendant prays for judgment against Plaintiff and Hammer as follows:

- A. Dismissing the complaint in its entirety;
- B. Enjoining Hammer, individually and as an agent for any entity that owns, represents, or controls any real or personal property addressed in the family court matter, from filing actions against Defendant in this, or any other court; or in the alternative, consolidating all such matters in the Family Court action;
- C. For actual and punitive damages on the counterclaims and third party complaints set forth above;
- D. For the costs of this action and prejudgment interest as permitted by law;
- E. For such other and further relief as may be appropriate.



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ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

June 22, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2010-CP-40-2889
	)	
1634 Main, L.P.	)	
	)	
Plaintiff,	)	AMENDMENT TO
	)	AMENDED ANSWER TO COMPLAINT
vs.	)	AND THIRD-PARTY COMPLAINT
	)	
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant	)	
	)	
vs.	)	
	)	
Howard Hammer,	)	
	)	
Additional Defendant,	)	
<u>on Counterclaim</u>	)	

Reserving all rights and motions set forth in the Answer, Motion to Dismiss, Motion for Injunction and Third Party Complaint filed on June 21, 2010 and in the Amended Answer, Motion to Dismiss, Motion for Injunction and Third Party Complaint filed on June 24, 2010, Defendant Shirley Hammer hereby supplements her pleadings pursuant to Order of Judge DeAndrea G. Benjamin, filed on October 17, 2010.

ANSWER

Reserving rights under the motion to dismiss set forth above, Defendant, responding to the complaint of Plaintiff, denies that Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. Paragraph 1 is denied. Defendant denies that the Court has subject matter jurisdiction over matters contained in the complaint, for which subject matter jurisdiction is proper only in Family Court.

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. Defendant denies paragraph 4; Defendant affirmatively avers that she was the individual owner of a 52.75% interest of that certain piece of real property located at 1634 Main Street, Columbia, S.C. as shown in the attached copy of deed, and that Defendant's said 52.75% ownership interest is in the real property and not in Plaintiff's limited partnership. Upon information and belief, Defendant owns an 8% interest in Plaintiff's limited partnership. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Howard Hammer (her former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company serving as general partner of Plaintiff) (hereinafter referred as "Hammer"). . The agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, 6, 7, 8, and 9.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10, except that Defendant did receive some request for payment and has not made any such payment.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, except that Defendant denies that Plaintiff is entitled to any relief.

DEFENSES

8. This Court lacks subject matter jurisdiction over the matters contained in the complaint.

9. The Complaint fails to state facts sufficient to constitute a cause of action.

10. The claims asserted are barred by the doctrine of *res judicata*.

11. The complaint should be dismissed because there are other actions pending in both the lower and appellate courts addressing the same subject and relief, namely: Shirley Hammer v. Howard Hammer, 05-DR-40-02871, Howard Hammer v Shirley Hammer, 10-DR-40-3712., and Howard Hammer v Shirley Hammer, 2009-CP-40-05911.

12. Plaintiff is not entitled to the relief requested because third-party defendant, Hammer, is pursuing the same remedies in the family court.

13. Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to third-party defendant Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order. All of these issues continue to be litigated in family court.

14. Plaintiff is precluded from the relief sought because Hammer executed a general release in favor of Defendant.

15. Plaintiff is precluded from the relief sought because there is an adequate remedy at law.

COUNTERCLAIM AND THIRD PARTY COMPLAINTS
(Allegations Common to All Claims)

16. To the extent relevant to these counterclaims and third party complaints, the responses set forth above are incorporated herein as fully as if repeated verbatim.

17. Pursuant to SCRPC Rules 13(h) and 20, Defendant adds Howard Hammer ("Hammer") as a third party defendant.

18. Hammer is Defendant's former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company (SH, LLC) serving as general partner of Plaintiff.

19. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Hammer, which was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order

provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

20. In a related matter, Hammer has improperly, and contrary to the Family Court Order, sought to collaterally attack the Family Court Order in the circuit court. The circuit court, by Order of the Honorable L. Casey Manning dated April 14, 2010, dismissed Hammer's complaint for lack of subject matter jurisdiction. In an Order dated May 18, 2010 and filed May 21, 2010, Judge Manning denied Hammer's Motion to Reconsider. Defendant's counterclaims remain pending against Hammer in that action.

21. Upon information and belief, Hammer caused Plaintiff and/or Plaintiff's counsel, to file the Complaint in this action after Judge Manning's Order of April 14, 2010.

22. Hammer's actions demonstrate a pattern of abusing process for the purpose of harassing Defendant.

23. Pursuant to a like-kind exchange involving her funds, Defendant was deeded a 52.75% interest in the real property at 1634 Main Street, Columbia, S.C., (as shown by the attached copy of deed). Upon information and belief, Defendant also owns an 8% interest in Plaintiff (a limited partnership).

24. The deed conveying to Defendant a 52.75% interest in the real property located at 1634 Main Street, Columbia, S.C., was executed by Hammer, as a member of SH5, LLC. In that deed, it is purported SH5, LLC is the general partner of Plaintiff; upon information and belief, Hammer was and remains the sole member of SH5, the general partner of Plaintiff limited partnership. Defendant is unaware of any change in the status of general partner of Plaintiff since the execution of that deed. Defendant is unaware of any involvement by Danville Business Associates as manager of the partnership assets.

25. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order.

**FIRST COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(ABUSE OF PROCESS – AGAINST PLAINTIFF AND HOWARD HAMMER)**

26. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

27. Upon information and belief, Plaintiff and Third Party Defendant Hammer had an ulterior purpose in bringing this action: to harass Defendant, to wit: Hammer executed a deed conveying to Defendant the 52.75% interest in the real property located at 1634 Main Street, Columbia, SC, yet, as the sole member of the LLC serving as general partner of Plaintiff, Hammer caused Plaintiff to allege in the complaint that Defendant owned a 56.8% interest in Plaintiff limited partnership, which is a knowing misrepresentation to this Court. Further, as the effective general partner of Plaintiff, Hammer is aware of whatever ownership interest Defendant has in Plaintiff limited partnership, yet he misrepresented that interest to this Court because as the effective general partner of Plaintiff, Hammer is aware that the limited partnership agreement does not provide for further contributions from limited partners and that his requested relief is therefore not appropriate under the agreement.

28. Furthermore, in a recent family court hearing examining Hammer's failure to provide child support, Hammer testified under oath that he did not cause Plaintiff to bring the complaint against Defendant in this case and that he could not recall if he instructed Plaintiff's counsel to bring this complaint. Yet, within a couple of hours of Hammer as effective general partner of Plaintiff causing Defendant to be served with the complaint in this action, he called Defendant and mocked her and laughed at her about the complaint being served.

29. Plaintiff's and Hammer's willful actions in the use of process were not proper in the regular conduct of proceedings and were intended to gain an objective not legitimate in the use of process, as the ownership, liabilities and assets of the parties, including ownership and responsibility for the plaintiff corporation, hereto have been determined by the Family Court, as set forth in paragraph 11 herein. As demonstrated in the Family Court action, Shirley Hammer has attempted to convey her interest in certain property, including the plaintiff to Howard Hammer, in accordance with the settlement and order of the Family Court. Howard Hammer has refused the tender, leaving ownership and management of the plaintiff corporation in legal limbo, while Howard Hammer is the defacto operator and manager of the Plaintiff corporation. At the same time he has engineered this action for the purpose of, on information and belief, harassing and intimidating Defendant Shirley Hammer, neither the plaintiff corporation nor Howard Hammer has claimed any funds due from anyone else who has any ownership or

management interest in the real property which is the subject of this action. Clearly, Howard Hammer's only intent is to harass Shirley Hammer through this, and numerous other litigation.

30. Defendant suffered damages as a result of Plaintiff's and Hammer's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff and Hammer.

**SECOND COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(MALICIOUS PROSECUTION - PLAINTIFF AND HOWARD HAMMER)**

31. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

32. The filing of this action by Plaintiff and Hammer was filed with malice in instituting the proceedings, without probable cause.

33. On information and belief, Plaintiff's claims will be resolved in favor of Defendant / Third Party Plaintiff.

34. Defendant /Third Party Plaintiff has suffered injuries and damages as set forth above as the result of the actions of Plaintiff and Hammer as described herein.

**THIRD COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE
- PLAINTIFF AND HOWARD HAMMER)**

35. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

36. Through their conduct, Plaintiff and Hammer intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from their conduct.

37. Plaintiff's and Hammer's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.

38. Plaintiff's and Hammer's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from Plaintiff and Hammer.

39. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff and Hammer for damages as set forth above.

**FOURTH COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(IN THE ALTERNATIVE)**

(CONVERSION – PLAINTIFF AND HOWARD HAMMER)

40. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

41. Pursuant to the Family Court Order, Defendant denies having any current ownership interest in 1634 Main Street. However, Defendant alleges the following in the alternative, assuming arguendo that she does have an ownership interest in 1634 Main Street.

42. If, in fact, Defendant and Hammer, individually, continue to be the owners of a 52.75% (and majority) interest in the real property located at 1634 Main Street, Columbia, S.C., Defendant controls all decisions regarding said real property and is not subject to the direction of Plaintiff.

43. Defendant and Hammer were separated by Order of the Family Court dated September 12, 2005, and were divorced by the Family Court Order dated May 8, 2008.

44. From the date of Defendant's separation from Hammer in 2005 to the present date, Defendant has received no distributions resulting from income payable related to the rental of 1634 Main Street.

45. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) have occupied a substantial portion of the premises at 1634 Main Street for business purposes.

46. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) has allowed other tenants to maintain office space at 1634 Main Street.

47. On information and belief, Plaintiff's attorney in this action, who is also Hammer's attorney in the action referred to in paragraph 20 above, maintains office space at 1634 Main Street.

48. Upon information and belief, Plaintiff and Hammer have converted rental payments and/or other income due to Defendant to their own use without Defendant's permission.

**FIFTH COUNTERCLAIM AND THIRD PARTY ACTION
(IN THE ALTERNATIVE)
(CIVIL CONSPIRACY – PLAINTIFF AND HOWARD HAMMER)**

49. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

50. On information and belief, Plaintiff and Hammer, acting in concert with themselves and possibly with others, conspired to injure Defendant and cause special damages by withholding any rental payments due to Defendant and, in filing the complaint, causing Defendant to incur special damages in defending the frivolous complaint.

WHEREFORE, Defendant prays for judgment against Plaintiff and Hammer as follows:

- A. Dismissing the complaint in its entirety;
- B. Enjoining Hammer, individually and as an agent for any entity that owns, represents, or controls any real or personal property addressed in the family court matter, from filing actions against Defendant in this, or any other court; or in the alternative, consolidating all such matters in the Family Court action;
- C. For actual and punitive damages on the counterclaims and third party complaints set forth above;
- D. For the costs of this action and prejudgment interest as permitted by law;
- E. For such other and further relief as may be appropriate.



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ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

November 3, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Case No. 2010-CP-40-2889)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)**CERTIFICATE OF SERVICE**Defendant/Third-)
Party Plaintiff,)

vs.)

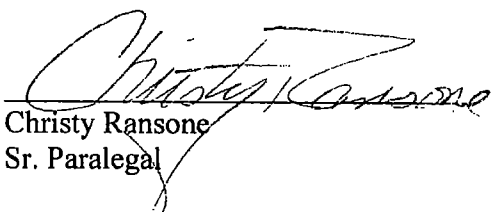
Howard Hammer,)

Additional Defendant)
On Counterclaim.)

The undersigned certifies that she has, this date, caused to be served a copy of the **Amendment to Amended Answer to Complaint and Third-Party Complaint** to all parties in this matter by depositing in the United States Mail, with sufficient first class postage affixed, addressed as follows:

**Arthur K. Aiken Esquire
Aiken & Hightower
Post Office Box 11248
Columbia South Carolina 29211**

**Susan Batten Lipscomb
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia South Carolina 29201**


Christy Ransone
Sr. Paralegal

November 3, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Case No. 2010-CP-40-2889)

1634 Main, L.P.)

Plaintiff,)

**SECOND AMENDMENT TO
AMENDED ANSWER TO COMPLAINT,
COUNTERCLAIMS AND
THIRD PARTY COMPLAINT**

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)

Defendant)

vs.)

Howard Hammer,)

Additional Defendant,)
on Counterclaim)

Reserving all rights and motions set forth in the original and subsequent amendments of the Answer, Motion to Dismiss, Motion for Injunction and Third Party Complaint filed in this matter¹, and with the consent of all counsel in this litigation, Shirley Hammer hereby amends the *Answer to Complaint and Third Party Complaint* by deleting the second counterclaim/third party cause of action.

ANSWER

Reserving rights under the motion to dismiss incorporated herein by reference, Defendant, responding to the complaint of Plaintiff, denies that Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. Paragraph 1 is denied. Defendant denies that the Court has subject matter jurisdiction over matters contained in the complaint, for which subject matter jurisdiction is proper only in Family Court.

¹ Filed June 21, 2010; June 24, 2012; and November 4, 2011.

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. Defendant denies paragraph 4; Defendant affirmatively avers that she was the individual owner of a 52.75% interest of that certain piece of real property located at 1634 Main Street, Columbia, S.C. as shown in the attached copy of deed, and that Defendant's said 52.75% ownership interest is in the real property and not in Plaintiff's limited partnership. Upon information and belief, Defendant owns an 8% interest in Plaintiff's limited partnership. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Howard Hammer (her former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company serving as general partner of Plaintiff) (hereinafter referred as "Hammer"). . The agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, 6, 7, 8, and 9.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10, except that Defendant did receive some request for payment and has not made any such payment.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, except that Defendant denies that Plaintiff is entitled to any relief.

DEFENSES

8. This Court lacks subject matter jurisdiction over the matters contained in the complaint.

9. The Complaint fails to state facts sufficient to constitute a cause of action.

10. The claims asserted are barred by the doctrine of *res judicata*.

11. The complaint should be dismissed because there are other actions pending in both the lower and appellate courts addressing the same subject and relief, namely: Shirley Hammer v. Howard Hammer, 05-DR-40-02871, Howard Hammer v Shirley Hammer, 10-DR-40-3712., and Howard Hammer v Shirley Hammer, 2009-CP-40-05911.

12. Plaintiff is not entitled to the relief requested because third-party defendant, Hammer, is pursuing the same remedies in the family court.

13. Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to third-party defendant Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order. All of these issues continue to be litigated in family court.

14. Plaintiff is precluded from the relief sought because Hammer executed a general release in favor of Defendant.

15. Plaintiff is precluded from the relief sought because there is an adequate remedy at law.

COUNTERCLAIM AND THIRD PARTY COMPLAINTS
(Allegations Common to All Claims)

16. To the extent relevant to these counterclaims and third party complaints, the responses set forth above are incorporated herein as fully as if repeated verbatim.

17. Pursuant to SCRCP Rules 13(h) and 20, Defendant adds Howard Hammer ("Hammer") as a third party defendant.

18. Hammer is Defendant's former husband and, on information and belief, a limited partner of Plaintiff and sole member of the limited liability company (SH, LLC) serving as general partner of Plaintiff.

19. Defendant entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, with Hammer, which was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. The Family Court Order

provided for Defendant to convey her interest in 1634 Main Street to Hammer and, despite Defendant's attempts to do so, Hammer has refused to accept the proffered conveyance.

20. In a related matter, Hammer has improperly, and contrary to the Family Court Order, sought to collaterally attack the Family Court Order in the circuit court. The circuit court, by Order of the Honorable L. Casey Manning dated April 14, 2010, dismissed Hammer's complaint for lack of subject matter jurisdiction. In an Order dated May 18, 2010 and filed May 21, 2010, Judge Manning denied Hammer's Motion to Reconsider. Defendant's counterclaims remain pending against Hammer in that action.

21. Upon information and belief, Hammer caused Plaintiff and/or Plaintiff's counsel, to file the Complaint in this action after Judge Manning's Order of April 14, 2010.

22. Hammer's actions demonstrate a pattern of abusing process for the purpose of harassing Defendant.

23. Pursuant to a like-kind exchange involving her funds, Defendant was deeded a 52.75% interest in the real property at 1634 Main Street, Columbia, S.C., (as shown by the attached copy of deed). Upon information and belief, Defendant also owns an 8% interest in Plaintiff (a limited partnership).

24. The deed conveying to Defendant a 52.75% interest in the real property located at 1634 Main Street, Columbia, S.C., was executed by Hammer, as a member of SH5, LLC. In that deed, it is purported SH5, LLC is the general partner of Plaintiff; upon information and belief, Hammer was and remains the sole member of SH5, the general partner of Plaintiff limited partnership. Defendant is unaware of any change in the status of general partner of Plaintiff since the execution of that deed. Defendant is unaware of any involvement by Danville Business Associates as manager of the partnership assets.

25. Pursuant to the Family Court Order, Defendant has attempted to transfer her interest in 1634 Main Street to Hammer, but he has refused to accept the proffered conveyance. However, pursuant to the Family Court Order, Hammer has demanded and received from Defendant other property to which he claimed entitlement. Nevertheless, Hammer has refused to convey property to Defendant as required by the Family Court Order.

**FIRST COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(ABUSE OF PROCESS – AGAINST PLAINTIFF AND HOWARD HAMMER)**

26. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

27. Upon information and belief, Plaintiff and Third Party Defendant Hammer had an ulterior purpose in bringing this action: to harass Defendant, to wit: Hammer executed a deed conveying to Defendant the 52.75% interest in the real property located at 1634 Main Street, Columbia, SC, yet, as the sole member of the LLC serving as general partner of Plaintiff, Hammer caused Plaintiff to allege in the complaint that Defendant owned a 56.8% interest in Plaintiff limited partnership, which is a knowing misrepresentation to this Court. Further, as the effective general partner of Plaintiff, Hammer is aware of whatever ownership interest Defendant has in Plaintiff limited partnership, yet he misrepresented that interest to this Court because as the effective general partner of Plaintiff, Hammer is aware that the limited partnership agreement does not provide for further contributions from limited partners and that his requested relief is therefore not appropriate under the agreement.

28. Furthermore, in a recent family court hearing examining Hammer's failure to provide child support, Hammer testified under oath that he did not cause Plaintiff to bring the complaint against Defendant in this case and that he could not recall if he instructed Plaintiff's counsel to bring this complaint. Yet, within a couple of hours of Hammer as effective general partner of Plaintiff causing Defendant to be served with the complaint in this action, he called Defendant and mocked her and laughed at her about the complaint being served.

29. Plaintiff's and Hammer's willful actions in the use of process were not proper in the regular conduct of proceedings and were intended to gain an objective not legitimate in the use of process, as the ownership, liabilities and assets of the parties, including ownership and responsibility for the plaintiff corporation, hereto have been determined by the Family Court, as set forth in paragraph 11 herein. As demonstrated in the Family Court action, Shirley Hammer has attempted to convey her interest in certain property, including the plaintiff to Howard Hammer, in accordance with the settlement and order of the Family Court. Howard Hammer has refused the tender, leaving ownership and management of the plaintiff corporation in legal limbo, while Howard Hammer is the defacto operator and manager of the Plaintiff corporation. At the same time he has engineered this action for the purpose of, on information and belief,

harassing and intimidating Defendant Shirley Hammer, neither the plaintiff corporation nor Howard Hammer has claimed any funds due from anyone else who has any ownership or management interest in the real property which is the subject of this action. Clearly, Howard Hammer's only intent is to harass Shirley Hammer through this, and numerous other litigation.

30. Defendant suffered damages as a result of Plaintiff's and Hammer's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff and Hammer.

**SECOND COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE
- PLAINTIFF AND HOWARD HAMMER)**

31. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

32. Through their conduct, Plaintiff and Hammer intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from their conduct.

33. Plaintiff's and Hammer's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.

34. Plaintiff's and Hammer's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from Plaintiff and Hammer.

35. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff and Hammer for damages as set forth above.

**THIRD COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION
(IN THE ALTERNATIVE)
(CONVERSION - PLAINTIFF AND HOWARD HAMMER)**

36. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

37. Pursuant to the Family Court Order, Defendant denies having any current ownership interest in 1634 Main Street. However, Defendant alleges the following in the alternative, assuming arguendo that she does have an ownership interest in 1634 Main Street.

38. If, in fact, Defendant and Hammer, individually, continue to be the owners of a 52.75% (and majority) interest in the real property located at 1634 Main Street, Columbia, S.C.,

Defendant controls all decisions regarding said real property and is not subject to the direction of Plaintiff.

39. Defendant and Hammer were separated by Order of the Family Court dated September 12, 2005, and were divorced by the Family Court Order dated May 8, 2008.

40. From the date of Defendant's separation from Hammer in 2005 to the present date, Defendant has received no distributions resulting from income payable related to the rental of 1634 Main Street.

41. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) have occupied a substantial portion of the premises at 1634 Main Street for business purposes.

42. On information and belief, Plaintiff and/or Hammer (or entities controlled by Hammer) has allowed other tenants to maintain office space at 1634 Main Street.

43. On information and belief, Plaintiff's attorney in this action, who is also Hammer's attorney in the action referred to in paragraph 20 above, maintains office space at 1634 Main Street.

44. Upon information and belief, Plaintiff and Hammer have converted rental payments and/or other income due to Defendant to their own use without Defendant's permission.

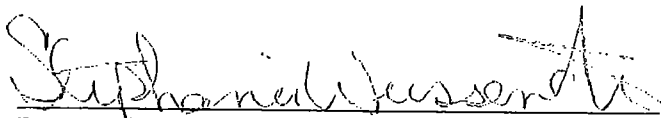
**FOURTH COUNTERCLAIM AND THIRD PARTY ACTION
(IN THE ALTERNATIVE)
(CIVIL CONSPIRACY - PLAINTIFF AND HOWARD HAMMER)**

45. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

46. On information and belief, Plaintiff and Hammer, acting in concert with themselves and possibly with others, conspired to injure Defendant and cause special damages by withholding any rental payments due to Defendant and, in filing the complaint, causing Defendant to incur special damages in defending the frivolous complaint.

WHEREFORE, Defendant prays for judgment against Plaintiff and Hammer as follows:

- A. Dismissing the complaint in its entirety;
- B. Enjoining Hammer, individually and as an agent for any entity that owns, represents, or controls any real or personal property addressed in the family court matter, from filing actions against Defendant in this, or any other court; or in the alternative, consolidating all such matters in the Family Court action;
- C. For actual and punitive damages on the counterclaims and third party complaints set forth above;
- D. For the costs of this action and prejudgment interest as permitted by law;
- E. For such other and further relief as may be appropriate.



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stephanie@desaballard.com

ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF

March 14, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case Number: 2010-CP-40-2889

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant
on Counterclaim.

**REPLY TO SECOND AMENDMENT TO
AMENDED ANSWER TO COMPLAINT,
COUNTERCLAIMS AND THIRD-PARTY
COMPLAINT**

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

2012 APR -3 PM 3:32

RICHLAND COUNTY
FILED

NOW COMES Plaintiff, who, not waiving and specifically reserving all rights under its Motion to Dismiss previously made, by way of its **Reply** to Defendant's Second Amendment to Amended Answer and Counterclaim and Third-Party Complaint ("Amended Answer and Counterclaim"), would show the Court as follows:

FOR A FIRST DEFENSE

- 1) Each and every allegation of the Second Amended Answer and Counterclaim not hereinafter specifically admitted is denied.
- 2) Each and every allegation of the Second Amended Answer and Counterclaim which is inconsistent with the allegations of the Complaint is denied.
- 3) In addition to the other matters set forth in this Reply, to the extent the allegations of the Second Amended Answer and Counterclaim require interpretation of alleged contracts,

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covenants, statutes or regulations, Plaintiff refers the Court to those alleged documents and denies any allegations inconsistent therewith.

4) In addition to the other matters set forth in this Reply, Plaintiff denies the allegations of all Paragraphs of the Second Amended Answer and Counterclaim to the extent they assert legal conclusions that must be determined in due course based on all facts and circumstances at issue during this litigation.

5) Paragraphs 1 through 15 of Defendant's Second Amended Answer and Counterclaim constitute the Defendant's Answer to the Complaint and therefore require no response from Plaintiff.

6) In response to Paragraph 4 as realleged in Paragraph 16 Plaintiff denies any averments in that Paragraph to the extent they are different from or inconsistent with the allegations in the Amended Complaint.

7) Plaintiff denies the allegation in Paragraphs 8, 9, 10, 11, 12 and 13, as realleged in Paragraph 16.

8) Plaintiff denies the allegation in Paragraphs 14, as realleged in Paragraph 16, in that the alleged release is embodied in an agreement that is void *ab initio* as being against public policy and is on appeal.

9) Plaintiff denies the allegation in Paragraph 15, as realleged in Paragraph 16.

10) The allegation of Paragraph 17 is an allegation as to a matter of law and requires no response from Plaintiff.

11) The allegations of Paragraph 18 are admitted on information and belief.

12) The allegations of Paragraph 19 are denied as characterized.

13) The allegations of Paragraphs 20, 21, and 22 are denied as characterized.

14) In response to the allegations of Paragraphs 23, Plaintiff refers to the deed and other documents relating to the transfer and denies any allegation inconsistent therewith.

15) In response to the allegations of Paragraphs 24, Plaintiff refers to the deed and other documents relating to the transfer and the partnership documents and denies any allegation inconsistent therewith. In further response Plaintiff has no information as to Defendant being unaware of any involvement by Danville Business Associates as manager and therefore denies same.

16) Plaintiff denies the allegations of Paragraph 25 on information and belief.

17) The reallegations of Paragraph 26 are answered hereinabove and those responses are incorporated herein as if verbatim

18) Plaintiff denies the allegations of Paragraph 27.

19) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraph 28 and therefore denies same.

20) Plaintiff denies the allegations of Paragraphs 29 and 30.

21) The reallegations of Paragraph 31 are answered hereinabove and those responses are incorporated herein as if verbatim

22) The allegations of Paragraphs 32, 33, 34 and 35 are denied.

23) The reallegations of Paragraphs 36 are answered hereinabove and those responses are incorporated herein as if verbatim

24) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraphs 37, 38 and 40, except as reflected by documents of record or in possession of Plaintiff and refers to those documents and denies any allegation inconsistent therewith. .

25) Plaintiff admits the allegations of Paragraph 39, on information and belief.

- 26) Plaintiff denies the allegations of Paragraph 41.
- 27) Plaintiff admits so much of the allegations of Paragraph 42 as allege that there are tenants in the office space at 1634 Main Street.
- 28) Plaintiff admits so much of the allegations of Paragraph 43 as allege that Lipscomb Law Firm, P.A. who is acting as attorneys for Plaintiff, has a lease with Plaintiff through Danville and Associates, who manages the property at 1634 Main Street, Columbia, SC.
- 29) Plaintiff denies the allegations of Paragraph 44.
- 30) The reallegations of Paragraph 45 are answered hereinabove and those responses are incorporated herein as if verbatim.
- 31) Plaintiff denies the allegations of Paragraph 46.

FOR A SECOND DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

- 32) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.
- 33) The Second Amended Answer and Counterclaim fail to state facts sufficient to constitute a cause of action and should therefore be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE

(Equitable Estoppel)

- 34) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.
- 35) Plaintiff pleads equitable estoppel as a complete defense to all causes of action or Counts set forth in the ^{second set} Amended Answer and Counterclaim.

FOR ADDITIONAL DEFENSES AND COUNTERCLAIMS

36) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.

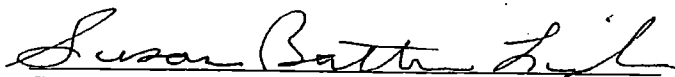
37) Under Rule 13(e) of the South Carolina Rules of Civil Procedure, Plaintiff reserves any and all defenses that mature or discovered after the filing of this Reply.

38) Under Rule 13(f) of the South Carolina Rules of Civil Procedure, Plaintiff reserves any and all defenses and claims that justice requires be made after the filing of this Reply.

WHEREFORE, having fully replied to Defendant's Second Amended Answer and Counterclaim, Plaintiff hereby requests the Court issue an Order granting the following relief:

- a) Dismissing the Counterclaims with prejudice;
- b) Granting Plaintiff the relief requested in the Complaint, plus attorneys' fees and the costs of collection; and,
- c) For such other and further relief as the Court deems appropriate.

Respectfully Submitted,



Susan Batten Lipscomb
John Richard Lipscomb
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Telephone: (803) 233-6654
Attorneys for Plaintiff

Columbia, SC
April 3, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case Number: 2010-CP-40-2889

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant
on Counterclaim.

REPLY TO COUNTERCLAIM

CLARK COUNTY
FILED
2011 NOV 28 AM 11:33
JEANETTE W. MCBRIDE
C.C.P. & G.S.

NOW COMES Plaintiff, who, not waiving and specifically reserving all rights under its Motion to Dismiss previously made, by way of its **Reply** to Defendant's Amendment to Amended Answer and Counterclaim and Third-Party Complaint ("Amended Answer and Counterclaim"), would show the Court as follows:

FOR A FIRST DEFENSE

- 1) Each and every allegation of the Amended Answer and Counterclaim not hereinafter specifically admitted is denied.
- 2) Each and every allegation of the Amended Answer and Counterclaim which is inconsistent with the allegations of the Complaint is denied.
- 3) In addition to the other matters set forth in this Reply, to the extent the allegations of the Amended Answer and Counterclaim require interpretation of alleged contracts, covenants,

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statutes or regulations, Plaintiff refers the Court to those alleged documents and denies any allegations inconsistent therewith.

4) In addition to the other matters set forth in this Reply, Plaintiff denies the allegations of all Paragraphs of the Amended Answer and Counterclaim to the extent they assert legal conclusions that must be determined in due course based on all facts and circumstances at issue during this litigation.

5) Paragraphs 1 through 15 of Defendant's Amended Answer and Counterclaim constitute the Defendant's Answer to the Complaint and therefore require no response from Plaintiff.

6) In response to Paragraph 4 as realleged in Paragraph 16 Plaintiff denies any averments in that Paragraph to the extent they are different from or inconsistent with the allegations in the Amended Complaint.

7) Plaintiff denies the allegation in Paragraphs 8, 9, 10, 11, 12 and 13, as realleged in Paragraph 16.

8) Plaintiff denies the allegation in Paragraphs 14, as realleged in Paragraph 16, in that the alleged release is embodied in an agreement that is void *ab initio* as being against public policy and is on appeal.

9) Plaintiff denies the allegation in Paragraph 15, as realleged in Paragraph 16.

10) The allegation of Paragraph 17 is an allegation as to a matter of law and requires no response from Plaintiff.

11) The allegations of Paragraph 18 are admitted on information and belief.

12) The allegations of Paragraph 19 are denied as characterized.

13) The allegations of Paragraphs 20, 21, and 22 are denied as characterized.

14) In response to the allegations of Paragraphs 23, Plaintiff refers to the deed and other documents relating to the transfer and denies any allegation inconsistent therewith.

15) In response to the allegations of Paragraphs 24, Plaintiff refers to the deed and other documents relating to the transfer and the partnership documents and denies any allegation inconsistent therewith. In further response Plaintiff has no information as to Defendant being unaware of any involvement by Danville Business Associates as manager and therefore denies same.

16) Plaintiff denies the allegations of Paragraph 25.

17) The reallegations of Paragraph 26 are answered hereinabove and those responses are incorporated herein as if verbatim

18) Plaintiff denies the allegations of Paragraph 27.

19) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraph 28 and therefore denies same.

20) Plaintiff denies the allegations of Paragraphs 29 and 30.

21) The reallegations of Paragraph 31 are answered hereinabove and those responses are incorporated herein as if verbatim

22) The allegations of Paragraphs 32, 33 and 34 are denied.

23) The reallegations of Paragraphs 35 are answered hereinabove and those responses are incorporated herein as if verbatim

24) Plaintiff denies the allegations of Paragraphs 36, 37, 38, and 39.

25) The reallegations of Paragraph 40 are answered hereinabove and those responses are incorporated herein as if verbatim

26) Plaintiff has no information sufficient to form a belief as to the allegations of Paragraphs 41, 42, and 44, except as reflected by documents of record or in possession of Plaintiff and refers to those documents and denies any allegation inconsistent therewith. .

27) Plaintiff admits the allegations of Paragraph 43.

28) Plaintiff denies the allegations of Paragraph 45.

29) Plaintiff admits so much of the allegations of Paragraph 46 as allege that there are tenants in the office space at 1634 Main Street.

30) Plaintiff admits so much of the allegations of Paragraph 47 as allege that Lipscomb Law Firm, P.A. who is acting as attorneys for Plaintiff, has a lease with Plaintiff through Danville and Associates, who manages the property at 1634 Main Street, Columbia, SC.

31) Plaintiff denies the allegations of Paragraph 48.

32) The reallegations of Paragraph 49 are answered hereinabove and those responses are incorporated herein as if verbatim.

33) Plaintiff denies the allegations of Paragraph 50.

FOR A SECOND DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

34) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.

35) The Amended Answer and Counterclaim fail to state facts sufficient to constitute a cause of action and should therefore be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A THIRD DEFENSE

(Equitable Estoppel)

36) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.

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37) Plaintiff pleads equitable estoppel as a complete defense to all causes of action or Counts set forth in the Amended Answer and Counterclaim.

FOR ADDITIONAL DEFENSES AND COUNTERCLAIMS

38) Plaintiff realleges and incorporates the foregoing Paragraphs of this Reply as if repeated herein verbatim.

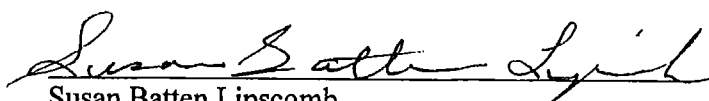
39) Under Rule 13(e) of the South Carolina Rules of Civil Procedure, Plaintiff reserves any and all defenses that mature or discovered after the filing of this Reply.

40) Under Rule 13(f) of the South Carolina Rules of Civil Procedure, Plaintiff reserves any and all defenses and claims that justice requires be made after the filing of this Reply.

WHEREFORE, having fully replied to Defendant's Amended Answer and Counterclaim, Plaintiff hereby requests the Court issue an Order granting the following relief:

- a) Dismissing the Counterclaims with prejudice;
- b) Granting Plaintiff the relief requested in the Complaint, plus attorneys' fees and the costs of collection; and,
- c) For such other and further relief as the Court deems appropriate.

Respectfully Submitted,



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Telephone: (803) 233-6654
Attorneys for Plaintiff

Columbia, SC
November 23, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-2889

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant
on Counterclaim,

**REPLY OF DEFENDANT HOWARD
HAMMER TO SECOND AMENDMENT TO
AMENDED ANSWER TO COMPLAINT,
COUNTERCLAIMS AND THIRD-PARTY
COMPLAINT OF DEFENDANT SHIRLEY
HAMMER A/K/A SHIRLEY GRACE
HIGHTOWER**

The Additional Defendant on the Defendant's Counterclaims, Howard Hammer, replies to the Defendant's Counterclaims alleged in her Second Amendment to Amended Answer to Complaint, Counterclaims and Third-Party Complaint (Amended Answer and Counterclaims) as follows:

FOR A FIRST DEFENSE AND BY WAY OF REPLY

1. Howard Hammer denies and demands strict proof of all allegations in the Amended Answer and Counterclaim except for those allegations expressly admitted in this Reply.
2. Howard Hammer refers to the Court all allegations interpreting alleged contracts, covenants, statutes, regulations or rules and denies and demands strict proof of all of these allegations.
3. Howard Hammer denies and demands strict proof of all allegations that set forth legal conclusions.

4. Paragraphs 1 through 15 of the Amended Answer and Counterclaim are the Defendant's Answer to the Plaintiff's Amended Complaint, and they require no response from Howard Hammer.
5. As his response to the allegations in Paragraph 16 of the Amended Answer and Counterclaim, Howard Hammer denies and demands strict proof of all allegations realleged in that Paragraph.
6. Howard Hammer denies and demands strict proof of the allegations in Paragraph 17 of the Amended Answer and Counterclaim.
7. Howard Hammer admits only so much of Paragraph 18 of the Amended Answer and Counterclaim as alleges or could be construed to allege that he is the Defendant's former husband but denies and demands strict proof of the remaining allegations in Paragraph 18.
8. Howard Hammer denies and demands strict proof of the allegations in Paragraph 19 of the Amended Answer and Counterclaim as those allegations are characterized in that Paragraph.
9. Howard Hammer denies and demands strict proof of the allegations in Paragraph 20 of the Amended Answer and Counterclaim as those allegations are characterized in that Paragraph.
10. Howard Hammer denies and demands strict proof of the allegations in Paragraphs 21 and 22 of the Amended Answer and Counterclaim.
11. In response to the allegations in Paragraph 23 of the Amended Answer and Counterclaim, Howard Hammer craves reference to the deed and other documents related to the referenced transfer, denies and demands strict proof of all allegations inconsistent with that deed and those other documents and denies and demands strict proof of all allegations in Paragraph 23 that relate to any other subject.
12. In response to the allegations in Paragraph 24 of the Amended Answer and Counterclaim, Howard Hammer craves reference to the deed and other documents related to the referenced transfer, denies and demands strict proof of all allegations inconsistent with that deed and those

other documents and denies and demands strict proof of all allegations in Paragraph 24 that relate to any other subject.

13. Howard Hammer denies and demands strict proof of the allegations in Paragraph 25 of the Amended Answer and Counterclaim.

14. As his response to the allegations in Paragraph 26 of the Amended Answer and Counterclaim, Howard Hammer realleges all prior allegations in this Reply.

15. Howard Hammer denies and demands strict proof of the allegations in Paragraph 27, 28, 29 and 30 of the Amended Answer and Counterclaim.

16. As his response to the allegations in Paragraph 31 of the Amended Answer and Counterclaim, Howard Hammer realleges all prior allegations in this Reply.

17. Howard Hammer denies and demands strict proof of the allegations in Paragraph 32, 33, 34 and 35 of the Amended Answer and Counterclaim.

18. As his response to the allegations in Paragraph 36 of the Amended Answer and Counterclaim, Howard Hammer realleges all prior allegations in this Reply.

19. Howard Hammer denies and demands strict proof of the allegations in Paragraph 37, 38, 39, 40, 41, 42, 43 and 44 of the Amended Answer and Counterclaim.

20. As his response to the allegations in Paragraph 45 of the Amended Answer and Counterclaim, Howard Hammer realleges all prior allegations in this Reply.

21. Howard Hammer denies and demands strict proof of the allegations in Paragraph 46 of the Amended Answer and Counterclaim and denies and demands strict proof of all allegations in the prayer for relief.

FOR A SECOND DEFENSE

22. Howard Hammer pleads absolute privilege as a complete defense to all counterclaims.

FOR A THIRD DEFENSE

23. Howard Hammer pleads qualified privilege as a complete defense to all counterclaims.

FOR A FOURTH DEFENSE

24. Howard Hammer pleads waiver as a complete defense to all counterclaims.

FOR A FIFTH DEFENSE

25. Howard Hammer pleads estoppel as a complete defense to all counterclaims.

FOR A SIXTH DEFENSE

26. Howard Hammer pleads authorization in law as a complete defense to all counterclaims.

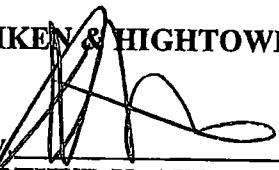
FOR A SEVENTH DEFENSE

27. Howard Hammer pleads authorization in fact as a complete defense to all counterclaims.

WHEREFORE, Howard Hammer prays that this Court dismiss all of the Defendant's Counterclaims, award him judgment on all of the Defendant's Counterclaims, award him costs and grant him such other and further relief as this Court may deem just and proper,

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

By 

ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, South Carolina 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR HOWARD HAMMER

Columbia, SC
April 4, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No. 2010-CP-40-2889

1634 Main, L. P.,)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)

Defendant,)

vs.)

Howard Hammer,)

Additional Defendant)
on Counterclaim,)

**AMENDED
REPLY/ANSWER/COUNTERCLAIM/CROSS-
CLAIM OF ADDITIONAL DEFENDANT ON
COUNTERCLAIM AS CAPTIONED BY
DEFENDANT TO SECOND AMENDMENT
TO AMENDED ANSWER TO COMPLAINT,
COUNTERCLAIMS AND THIRD PARTY
COMPLAINT DATED MARCH 14, 2012 OF
DEFENDANT SHIRLEY HAMMER A/K/A
SHIRLEY GRACE HIGHTOWER**

ADDITIONAL DEFENDANT ON COUNTERCLAIM, Howard Hammer, (hereinafter "Counterclaim Defendant") specifically reserving and not waiving any statutory, case law, and/or any Federal or State Constitutional rights along with any subject matter jurisdictional rights and/or any jurisdictional rights together with any rights arising out of any appeals pending between Defendant and "Counterclaim Defendant" Answers/Replies/Counterclaims/Cross-Claims against Defendant as follows:

FOR A FIRST DEFENSE AND BY WAY OF REPLY

1. That Defendant Hightower's first Counterclaim (abuse of process) and fifth Counterclaim (civil conspiracy) fails to state causes of action against "Counterclaim Defendant" upon which relief can be granted.

FOR A SECOND DEFENSE AND BY WAY OF REPLY

2. "Counterclaim Defendant" denies and demands strict proof of all allegations in the second amendment to amended answer and counterclaim except for those allegations expressly admitted in this pleading.
3. "Counterclaim Defendant" denies and demands strict proof of all allegations that set forth legal conclusions.
4. As to Paragraphs 1 through 15 of the second amendment to amended answer and counterclaim, et. al., they are Defendant's answer to Plaintiff's amended Complaint and require no response by "Counterclaim Defendant" except as to the affirmative averments in Paragraph 4 referencing an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document dated May 9, 2008, between Defendant and "Counterclaim Defendant" for which "Counterclaim Defendant" specifically alleges that the referenced agreement "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document dated May 9, 2008, is against and/or contrary to and/or violative of public policy and accordingly is void *ab initio*.
5. "Counterclaim Defendant" denies all allegations interpreting alleged agreements, covenants, statutes, regulations and/or rules and demands strict proof in regard to any such allegation and reference as appropriate to the Court.
6. As to Paragraph 16, "Counterclaim Defendant" denies the allegations contained therein and demands strict proof of all allegations realleged in that Paragraph.
7. As to Paragraph 17, "Counterclaim Defendant" denies and demands strict proof of the allegations therein.

8. As to Paragraph 18, "Counterclaim Defendant" denies and demands strict proof of the allegations therein.
9. As to Paragraph 19, "Counterclaim Defendant" admits that a document entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" was executed on May 9, 2008, between "Counterclaim Defendant" and Defendant Hightower, but in connection therewith alleges that the referenced "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document was and is against and/or contrary to and/or violative of public policy and is void *ab initio* and that accordingly to the extent that it was approved and made an Order by the Family Court "Counterclaim Defendant" alleges such adoption and approval was improper as an approval of an invalid attempted agreement void *ab initio*, further as to the "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document dated May 9, 2008, referenced in Paragraph 19 and other Paragraphs by Defendant Hightower "Counterclaim Defendant" hereby incorporates *in toto* into this pleading the "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document for the sole purposes of exhibiting that it is against and/or contrary to and/or violative of public policy and is void *ab initio*. "Counterclaim Defendant" denies the remainder of Paragraph 19 and, on information and belief, denies the validity of the allegations of Paragraph 19 and demands strict proof of them.
10. As to Paragraph 20 "Counterclaim Defendant" denies and demands strict proof of the allegations in Paragraph 20, as those allegations are characterized in that Paragraph and affirmatively alleges that the accusations of any improper act is inappropriate, contrary and obnoxious to the civility requirements of our Courts and, on information and belief,

is an attempt to deny "Counterclaim Defendant" his right of due process and resort to the Courts of this state.

11. As to Paragraph 21 and 22 "Counterclaim Defendant" denies and demands strict proof of the allegations in Paragraph 21 and 22, and affirmatively alleges that the allegations of the Paragraphs are irrelevant and impertinent to the matters before the Court and further attempt by Defendant Hightower to insert improper, inappropriate allegations contrary to the requirements of civility established in and by our Courts.
12. As to Paragraph 23 "Counterclaim Defendant" craves reference to the Deed and other documents related to the referenced transfer, including tax return of Defendant Hightower by which she swore under penalty of perjury to having an interest greater than eight percent in the Limited Partnership and, upon information and belief, such interest as is set out in the Complaint of the Limited Partnership. "Counterclaim Defendant" denies and demands strict proof of all allegations inconsistent with Defendant Hightower's sworn statement of ownership as set forth in her tax return and in Plaintiff's Limited Partnership Complaint and other documents and denies and demands strict proof of all allegations in Paragraph 23 relating thereto or to any other subject.
13. As to Paragraph 24 "Counterclaim Defendant" craves reference to all documents pertinent to the matter of Defendant Hightower's interest particularly including her initial tax return after receipt of the interest referenced in Plaintiff's Limited Partnership Complaint and denies and demands strict proof of all allegations inconsistent with Defendant Hightower's sworn statement of ownership as set forth in her tax return and in Plaintiff's Limited Partnership Complaint and denies and demands strict proof of all allegations in Paragraph 24 relating thereto or to any other subject.

14. As to Paragraph 25 "Counterclaim Defendant" denies and demands strict proof of all allegations of that Paragraph.
15. As his response to the allegations in Paragraph 26 "Counterclaim Defendant" re-alleges all prior allegations in this pleading.
16. As to Paragraphs 27, 28, 29, and 30 "Counterclaim Defendant" denies and demands strict proof of the allegations in those Paragraphs and alleges that they contain irrelevant and impertinent allegations which upon information and belief are improper to the complaint and for the sole purpose of attempting to prejudice the "Counterclaim Defendant."
17. As his response to the allegations of Paragraph 31 "Counterclaim Defendant" re-alleges all prior allegations in this pleading.
18. As to Paragraphs 32, 33, 34, and 35 "Counterclaim Defendant" denies and demands strict proof of the allegations of those Paragraphs.
19. As his response to the allegations of Paragraph 36 "Counterclaim Defendant" re-alleges all prior allegations in this pleading.
20. As to Paragraphs 37, 38, 39, 40, 41, 42, 43 and 44 "Counterclaim Defendant" denies and demands strict proof of the allegations of those Paragraphs.
21. As his response to the allegations of Paragraph 45 "Counterclaim Defendant" re-alleges all prior allegations in this pleading.
22. As to Paragraph 46 "Counterclaim Defendant" denies and demands strict proof of all allegations, including all allegations praying for relief.

FOR A THIRD DEFENSE

23. "Counterclaim Defendant" pleads absolute privilege as a complete defense to all Third-Party Complaint/Counterclaims.

FOR A FORTH DEFENSE

24. "Counterclaim Defendant" pleads qualified privilege as a complete defense to all Third-Party Complaint/Counterclaims.

FOR A FIFTH DEFENSE

25. "Counterclaim Defendant" pleads waiver as a complete defense to all Third-Party Complaint/Counterclaims.

FOR A SIXTH DEFENSE

26. "Counterclaim Defendant" pleads estoppel as a complete defense to all Third-Party Complaint/Counterclaims.

FOR A SEVENTH DEFENSE

27. "Counterclaim Defendant" pleads authorization in law as a complete defense to all Third-Party Complaint/Counterclaims.

FOR A EIGHTH DEFENSE

28. "Counterclaim Defendant" pleads authorization in fact as a complete defense to all Third-Party Complaint/Counterclaims.

BY WAY OF COUNTERCLAIM/CROSS-CLAIM AGAINST DEFENDANT

"Counterclaim Defendant" alleges as follows:

29. That in accord with the allegations of Defendant's Third-Party pleading she has invoked the jurisdiction of this Court by adding additional Defendant on Counterclaim as a Third-Party Defendant ("Counterclaim Defendant") and making in her pleading dated March 14, 2012, allegations "common to all claims" involving matters set forth in this Counterclaim/Cross-Claim against Defendant Hightower.

30. That the document referred to in Defendant Hightower's Third-Party Complaint/Counterclaim allegations as "an agreement entitled 'PARTIAL SETTLEMENT OF OUTSTANDING ISSUES'" of May 9, 2008, is invalid and void *ab initio* as against public policy and/or contains provisions obnoxious to , contrary to, against principals of this state and repugnant to justice and morality and further in contravention of the public policy of this state as found in either the constitution or the statutes or judicial decisions.
31. That pursuant to SC Code of Laws, Section 15-53-10 et. seq. and by the express terms of the "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document of May 9, 2008, repeatedly referenced in Defendant Hightower's Third-Party Complaint/Counterclaim, jurisdiction is conferred in this Court with respect to the filing of any lawsuits, and particularly this lawsuit, Counterclaim/Cross-Claim, Defendant Hightower and "Counterclaim Defendant" Hammer might have against one another on account of matters arising out of the "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document specifically incorporated by reference *in toto* herein.
32. That "Counterclaim Defendant" is informed and believes that he is entitled to a Declaratory Judgment Order declaring that the May 9, 2008, "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document is against public policy and/or contains provisions obnoxious to, contrary to, against principals of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution and/or the statutes and/or judicial decisions and that the May 9, 2008, "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document is therefore void *ab initio*; and that all terms, provisions, and requirements of the May 9, 2008,

"PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document are invalid, void and unenforceable, and that the parties accordingly are required to be returned, in connection with all matters involved in the "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document, to the status and position and ownership they had prior to May 9, 2008.

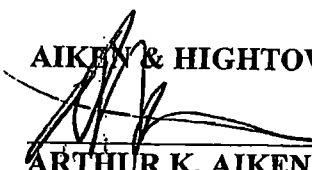
33. That pursuant to the applicable rules of SCRCF and SC Code of Laws, Section 15-53-10 et. seq. "Counterclaim Defendant" is entitled to have the matter of the Declaratory Judgment heard as a priority and is further entitled to a jury trial on all issues of fact.

WHEREFORE, "Counterclaim Defendant" prays that the Third-Party Complaint/Counterclaim of Defendant Hightower be dismissed with prejudice and/or for judgment on same in his favor for costs and for such other relief as may be just and proper and,

FURTHER PRAYS, for judgment against Defendant Hightower for a Declaratory Judgment that the May 9, 2008 "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document between the parties is void *ab initio* as against public policy and that the parties be returned in connection with all matters involved in the "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES" document to the status and position and ownership as they had prior to May 9, 2008; for attorneys fees, for jury trial on all issues of fact, for costs, and for such other relief as may be just and proper.

Respectfully Submitted,

(SIGNATURE ON THE FOLLOWING PAGE)


AIKEN & HIGHTOWER, P. A.

ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, South Carolina 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR HOWARD HAMMER

May1, 2012
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM RICHLAND COUNTY SEP 23 2013
Court of Common Pleas

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

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 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

NOTICE OF APPEAL IN A CIVIL CASE

1634 Main, L.P. previously appealed 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.)

1634 Main L.P. also appeals the Order of the Honorable George C. James, Jr. entitled **Order Denying 1634 Main, L.P.'s and Howard Hammer's Motions for Reconsideration of 6/3/13 Order, and Denying Howard Hammer's Motion for New Trial on Sanctions Claim**, dated and filed on September 19, 2013, attached as **Exhibit C**.

Susan Batten Lipscomb
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

Arthur K. Aiken, Esquire
Law Office of Aiken and
Hightower
2231 Devine Street
Columbia, SC 29205

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer a/k/a Shirley Grace)
Hightower,)
Defendant,)

vs.)

Howard Hammer,
Additional Defendant on Counterclaim

Defendant.)

IN THE COURT OF COMMON PLEAS 11-11-10
5TH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-2889

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

NOTE
several motions
sep. & 1d sep. by m
11/10/11

Plaintiff's Attorney:

Susan B. Lipscomb, Esquire, Bar No. _____
Address:
1632 Main Street, Suite 200
Columbia, South Carolina 29201
Phone: (803) 233 6654 Fax (803) 233-6663
E-mail: lipscomblaw@gmail.com Other:

Defendant, Pro Se:

Howard Hammer
1609 Catawba Street
Columbia, South Carolina 29205
803-530-8517

Defendant's Attorney:

Desa Ballard and Stephanie Weissenstein, Bar
No. 00498 and 72604
Address:
226 State Street
West Columbia, South Carolina 29169
Phone: (803) 796.9299 Fax(803) 796-1066
E-mail: desab@desaballard.com and
stephanie@desaballard.com Other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Compel

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT:** \$ 25

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2010-CP-40-2889
	)	
1634 Main, L.P.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Shirley Hammer, a/k/a	)	MOTION TO COMPEL
Shirley Grace Hightower,	)	
	)	
	)	
Defendant/Third-	)	
Party Plaintiff,	)	
	)	
vs.	)	
	)	
Howard Hammer,	)	
	)	
Additional Defendant	)	
On Counterclaim.	)	
	)	

TO: HOWARD HAMMER, Third Party-Defendant on Counterclaims

YOU WILL PLEASE TAKE NOTICE, Defendant Shirley Hammer, a/k/a Shirley Grace Hightower (herein, Ms. Hammer), by and through her attorney, Desa Ballard, will move this Honorable Court within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order to compel Third-Party Defendant Howard Hammer (herein Howard Hammer) to provide full and complete responses to Defendant's Subpoena, which was served upon him on or about October 7, 2010. (Exhibit A, affidavit of service)

This motion is made pursuant to South Carolina Rule of Civil Procedure 37, and in support of her Motion to Compel Discovery, Ms. Hammer states as follows:

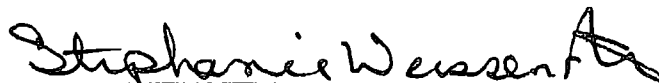
1. On October 7, 2010, Ms. Hammer caused to be served upon Howard Hammer a Subpoena, for:

"All documents, books, papers, memoranda, or other items related to incorporation, ownership, membership, management ,operations, and/or assets and debts of the following companies (for which you are registered agent): D&M Chateau, LLC; Grand Fountain, LLC; Hammer & Hammer, LLC; SH3, LLC; SH4, LLC; and 1634 Main, L.P, insofar as those materials reference, touch or concern 1634 Main, L.P. This subpoena also includes, but is not limited to, any and all correspondence or communications (including transmitted by mail, personal delivery, electronic mail, text message or instant

message) about any of these companies and/or between you and any agent of or member of the listed companies, as well as to/from any party in the above-captioned action that references any of the listed companies regarding 1634Main, LP." (Exhibit B, subpoena).

2. To date, Howard Hammer has not provided responsive information to the Subpoena.

WHEREFORE, Defendant and Third-Party Plaintiff Shirley Hammer, requests that this Court enter an Order requiring Defendant Howard Hammer to provide responsive information to Third-Party Plaintiff's Subpoena, award reasonable attorney's fees in connection with this Motion and hearing, and all other appropriate relief, pursuant to Rule 37, SCRPC.



Desa Ballard
Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone: 803-796-9299
Facsimile: 803-796-1066
E-mail: desab@desaballard.com
**ATTORNEYS FOR DEFENDANT AND
THIRD-PARTY PLAINTIFF**

November 11, 2010

Affidavit of Service

Re: 1634 Main, LLP v. Shirley Hammer, a/k/a Shirley Grace Hightower, v. Howard Hammer
Case No.: 2010-CP-40-2889

PERSONALLY APPEARED before me the undersigned, who being duly sworn, deposes and says that he served the following: Summons and Amended Answer To Complaint Motion to Dismiss, Motion For Injunction, And Third-Party Complaint in the above title action

The foregoing was served upon: **Mr. Howard Hammer**

- (X) By delivering to him personally:
- () By delivering to NA a person of discretion and age residing at the residence and being at said residence at the time of service.
- () By delivering to NA a person of discretion employed at the place of business and being at said place of business at the time of service and authorize to receive the documents.

(Desc) Sex: Male Race: White Color of hair: Bald Age: 58-65 Height: 6-1 6-3

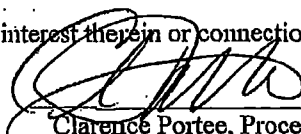
Weight: 180-190 Note:

Place of Service: 1609 Catawba Street
 Columbia, South Carolina 29205

Date of Service: October 7, 2010 @ 7:25 P.M.

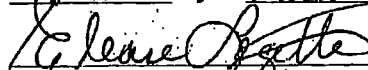
Defendant is not a member of the U.S. Armed Forces

Deponent is not a party to this action and has no interest therein or connection therewith.



Clarence Portee, Process Server
 Address of Server: P.O. Box 50872
 Columbia, South Carolina 29250-0872
 Phone No.: (803) 312-0081 or (803) 446-9818

SWORN to before me this
8th day of October, 2010


 NOTARY PUBLIC FOR SOUTH CAROLINA
 My commission expires: October 26, 2019

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF RICHLAND

1634 Main, L.P., Plaintiff

SUBPOENA

v.

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

Case Number: 2010-CP- 40-2889

v.

Howard Hammer, Additional Defendant On
Counterclaim

TO: Howard Hammer, Registered Agent, 1634 Main Street, Columbia, South Carolina 29201

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

All documents, books, papers, memoranda, or other items related to incorporation, ownership, membership, management, operations, and/or assets and debts of the following companies (for which you are registered agent): D&M Chateau, LLC; Grand Fountain, LLC; Hammer & Hammer, LLC; SH3, LLC; SH4, LLC; and 1634 Main, L.P. insofar as those materials reference, touch or concern 1634 Main, L.P. This subpoena also includes, but is not limited to, any and all correspondence or communications (including transmitted by mail, personal delivery, electronic mail, text message or instant message) about any of these companies and/ or between you and any agent of or member of the listed companies, as well as to/from any party in the above-captioned action that references any of the listed companies regarding 1634 Main, LP.

PLACE

Law Offices of Desa Ballard - 226 State Street
West Columbia, South Carolina 29169

DATE AND TIME

Thursday, October 21, 2010 at or before 4:30 PM

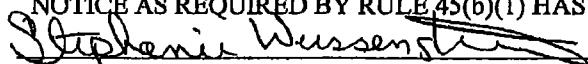
☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



DATE October 7, 2010

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT AND THIRD PARTY PLAINTIFF)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

CASE NO.: 2010-CP-40-2889

1634 Main, L.P.)**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Shirley Hammer a/k/a Shirley Grace)
Hightower,
Defendant,)

vs.)

Howard Hammer,
Additional Defendant on CounterclaimDefendant.)**Plaintiff's Attorney:**

Susan B. Lipscomb, Esquire, Bar No. _____

Address:

1632 Main Street, Suite 200

Columbia, South Carolina 29201

Phone: (803) 233 6654 Fax (803) 233-6663

E-mail: lipscomblaw@gmail.com Other: _____

Defendant, Pro Se:

Howard Hammer

1609 Catawba Street

Columbia, South Carolina 29205

803-530-8517

Defendant's Attorney:Desa Ballard and Stephanie Weissenstein, Bar
No. 00498 and 72604**Address:**

226 State Street

West Columbia, South Carolina 29169

Phone: (803) 796.9299 Fax (803) 796-1066

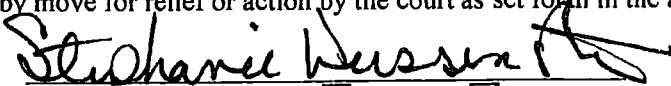
E-mail: desab@desaballard.com and
stephanie@desaballard.com Other: _____☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)****SECTION I: Hearing Information**

Nature of Motion: Motion for Default Judgment

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant11/11/10
Date submitted**SECTION III: Motion Fee**☒ **PAID - AMOUNT: \$** 25☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-40-2889

1634 Main, L.P.

Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant/Third-party Plaintiff

vs.

Howard Hammer,

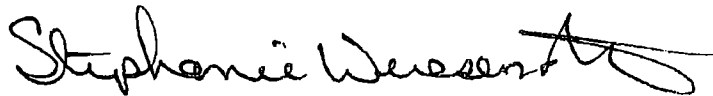
Additional Defendant,
on Counterclaim

**MOTION FOR DEFAULT JUDGMENT
AS TO HOWARD HAMMER**

TO: HOWARD HAMMER, PRO SE:

This matter comes before the Court upon the filing of a Motion for Default Judgment by the Defendant/Third-party Plaintiff against Howard Hammer, Defendant on Counterclaim. Grounds for this motion are that the Defendant Howard Hammer was properly and personally served with a Summons and Complaint on October 7, 2010 and, he failed to Answer the Summons, Amended Complaint, Motion to Dismiss, Motion for Injunction, and Third Party Complaint. The Affidavit of Service for this matter was filed on or near October 11, 2010 a copy of which is attached hereto.

THEREFORE, it is respectfully requested that a default judgment be entered against the defendant Howard Hammer.



Desa Ballard
Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone: (803)796.9299
Facsimile: (803)796.1066
E-mail: desab@desaballard.com

November 11, 2010

TATE OF SOUTH CAROLINA
PLEAS
COUNTY OF RICHLAND

IN THE COURT OF COMMON

Case No. 2010-CP-40-2889

1634 Main, L.P.

Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant/Third-party Plaintiff

vs.

Howard Hammer,

Additional Defendant,
on Counterclaim

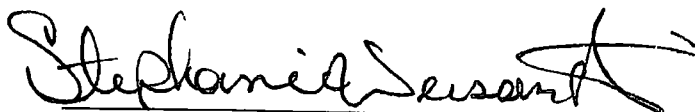
**AFFIDAVIT OF DEFAULT
AS TO HOWARD HAMMER**

Personally appeared before me, Stephanie Weissenstein, who, being duly sworn,
deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am counsel for the Defendant/Third-party Plaintiff, Shirley Hammer, in this proceeding.
3. On or about October 7, 2010, Defendant Howard Hammer was served a copy of the Summons and Amended Complaint, Motion to Dismiss, Motion for Injunction and Third-party Complaint via personal service, as shown by the Proof of Service by Clarence Portee, Process Server, filed with this Honorable Court in connection with the Motion for Default (a copy attached hereto).

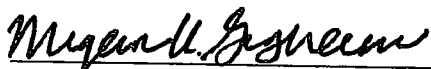
4. More than thirty (30) days have passed since the pleadings were served upon Mr. Hammer. No answer, motion, or responsive pleading of any kind has been served on or received by the undersigned, and as such, this defendant is now and has been in default on the matters alleged in the Amended Complaint.

Further, deponent sayeth not.



Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone: 803.796.9299
Facsimile: 803.796.1066
E-mail: stephanie@desaballard.com
ATTORNEYS FOR SHIRLEY HAMMER

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 11 DAY OF NOVEMBER, 2010/



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: July 14, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-40-2889

1634 Main, L.P.)

Plaintiff,)

vs.)

**AFFIDAVIT OF NON-MILITARY
SERVICE**

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)

Defendant/Third-party Plaintiff)

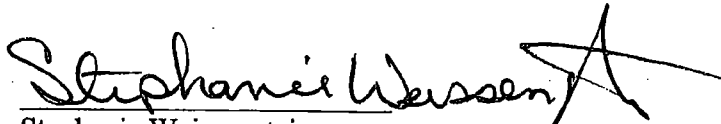
vs.)

Howard Hammer,)

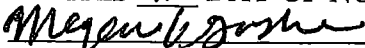
Additional Defendant,
on Counterclaim)

PERSONALLY appeared before me, Stephanie Weissenstein, who being duly sworn,
deposes and states:

That the Defendant Howard Hammer is not a member of the United States Armed
Services nor deployed to any foreign station and as such is not subject to relief under the
Soldier's and Sailor's Relief Act.


Stephanie Weissenstein
Attorney for Shirley Hammer

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 11 DAY OF NOVEMBER, 2010



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: July 14, 2014

16348
308
Filed

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

CASE NO.: 2010-CP-40-2889

1634 Main Street, L.P.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)

Shirley Grace Hightower,)

Defendant)

vs.)

Howard Hammer,,)

Additional Defendant)

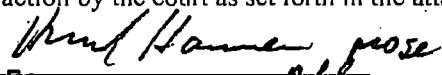
on Counterclaim)

Defendant.)

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

2011 MAR 28 PM 4:56

FILED

Plaintiff's Attorney: See List Attached Bar No. _____ Address: _____ Phone: F ax _____ E-mail: Oth er: _____		Defendant's Attorney: See List Attached Bar No. _____ Address: _____ Phone: Fax _____ E-mail: Oth er: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: 12(b) as per attached and 12(e) More Definate and Certain as attached and 12(f) to Strike as attached Estimated Time Needed: 1 hour and 15 minutes Court Reporter Needed: ☒ YES/ ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of <u>Plaintiff</u> for ☐ Plaintiff / ☒ Defendant Date submitted <u>3/28/11</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	

☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

Attorney for Plaintiff:

Susan Batten Lipscomb

Bar No.: 3354

1634 Main Street, Ste. 200

Columbia, South Carolina 29201

Telephone: (803) 233-6654

Facsimile: (803) 233-6664

Email: lipscomblaw@gmail.comAttorney for Defendant:

Stephanie Weissenstein

Desa Ballard

226 State Street

West Columbia, South Carolina 29169

Telephone: (803) 796-9299

Facsimile: (803) 796-1066

Email: Stephanie@desaballard.comdesab@desaballard.comAdditional Defendant on Counterclaim:

Howard Hammer, Pro Se

1609 Catawba Street

Columbia, South Carolina 29205

Telephone: (803) 530-8517

Facsimile c/o: (803) 799-9202

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No. 2010-CP-40-2889

1634 Main L.P.,

Plaintiff,

vs.

Shirley Hammer a/ka Shirley Grace
Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant
on Counterclaim,

NOTICE OF MOTIONS

AND

(1) MOTION PURSUANT
TO 12(b)

AND

(2) MOTION PURSUANT
TO 12(e) FOR

MORE DEFINITE STATEMENT

(3) MOTION TO STRIKE

PURSUANT TO 10(b), 11(a) AND 12(c)

2011 MAR 28 PM 4:56
FILED
JEANETTE M. NORTON
C.C. & G.

TO DEFENDANT SHIRLEY GRACE HIGHTOWER AND HER ATTORNEYS:

Please take notice that Howard Hammer designated by Defendant Shirley Grace Hightower as "additional Defendant on counterclaim", specifically reserving and not waiving any jurisdictional rights, will move before the Chief Administrative Judge for Richland County, and/or presiding judge, ten (10) days hereafter, or as soon thereafter as the matter may be heard, at such time and place as may be set, for an Order for appropriate relief on the grounds of insufficiency of process, insufficiency of service of process, that another action is pending between the same parties for the same claims, failure to state facts sufficient to constitute a cause of action as to first, second, and fourth counterclaims and on the further ground that process was not served for nearly eight (8) months after the filing of the amended answer and 3rd party complaint against additional Defendant on counterclaim, Howard Hammer, and that as such the same was not filed within a reasonable time, as contemplated under the laws of this state and on account of all or any thereof should be dismissed.

This Motion is made on the above grounds on the statutes and laws in such cases made and provided and upon affidavits and/or testimony and/or other evidence as may be introduced at the hearing on this matter.

Thereafter, please take further notice that specifically reserving and not waiving all rights under motions hereinabove set forth and further specifically reserving and not waiving any jurisdictional rights, Howard Hammer, designated as additional Defendant on counterclaim will also move before the Chief Administrative Judge for Richland County, and/or the presiding judge, ten (10) days hereafter or as soon thereafter as the matter may be heard at such time and place as may be set, for an order pursuant to Rule 12(e) requiring a more definite statement before interposing a responsive pleading on the grounds that Defendant's pleadings are so vague and ambiguous that additional Defendant on Counterclaim cannot reasonably frame a responsive pleading. The defects complained of and details required are to make more definite and certain in the following respects:

1. By setting forth with particularity and in detail the basis on which and why Defendant denies in Paragraph 1 of her pleadings that the Circuit Court has subject matter jurisdiction.
2. By setting forth with particularity and in detail the specific basis on which and why the Defendant avers in her pleading that subject matter jurisdiction is proper only in the Family Court.
3. By setting forth with particularity and in detail the specific basis on which and how Defendant comes about to aver in Paragraph 4 of her pleadings that "the agreement, referred to therein, was adopted, approved, incorporated into, merged, integrated with, and made an order of The Family Court for the Fifth Judicial Circuit Richland Count on May 12, 2008."
4. By setting forth with particularity and in detail the specific basis on which and how Defendant comes about to aver in Paragraph 4, "The Family Court expressly retained jurisdiction to enforce this Order."
5. By setting forth with particularity and in detail the specific basis on which and how the Defendant comes about to aver in Paragraph 4, "The Family Court Order provided for Defendant to convey her interest in 1634 Main Street to Hammer."
6. By setting forth with particularity and in detail the basis on which Defendant asserts in Paragraph 10 of her pleading that the claims presented in the complaint are barred by the doctrine *res judicata*.

7. By setting forth with particularity and in detail the caption of the "another action pending between the parties for the same relief" Defendant asserts in Paragraph 11 of her pleading.
8. By setting forth with particularity why Plaintiff would not be entitled to the relief Plaintiff request merely because third party Defendant Hammer is alleged to be pursuing the same remedies in Family Court.
9. By setting forth with particularity and in detail the precise property Defendant claims was "received from Defendant" as set forth in Paragraph 13 of her pleading, particularly stating the date the property was transferred, along with the name of the person making delivery of the deed for the property and the person receiving delivery of the deed for the property.
10. By setting forth with particularity and in detail the responses Defendant refers to in Paragraph 16 of the Amended Answer and third party Complaint which she claims are relevant and are incorporated therein along with the basis on which any such said response is claimed to be relevant.
11. By setting forth with particularity and in detail the basis on which Defendant adds Howard Hammer as a third party Defendant in Paragraph 17 of her Amended Answer and third party Complaint.
12. By setting forth with particularity and in detail the basis on which Paragraph 18 is relevant to any matters in the Counterclaim, Amended Answer and/or alleged third party Complaints.
13. By setting forth with particularity and in detail the basis on which Paragraphs 19, 20, 23, and 24 of Defendant's pleadings has any relevancy to the instant action and is not in violation of Rule 11 SCRCF.
14. By setting forth with particularity and in detail the relevancy of the portion of Paragraph 21 alleging the Complaint filed in this action was after an Order dated April 14, 2010, in a separate and distinct action not involving Plaintiff.
15. By setting forth with particularity and in detail all paragraphs Defendant claims in her pleadings are relevant to the allegations of Paragraph 26.
16. By setting forth with particularity and in detail the "process" that Defendant claims were not proper in Paragraph 29 of her pleading.

17. By setting forth with particularity and in detail why any such process was not in the regular conduct of proceedings and the particular proceedings Defendant refers to in Paragraph 29 of her pleading.
18. By setting forth with particularity and in detail all paragraphs Defendant claims in her pleadings are relevant to the allegations of Paragraph 31.
19. By setting forth with particularity and in detail all paragraphs Defendant claims in her pleadings are relevant to the allegations of Paragraph 35.
20. By setting forth with particularity and in detail all paragraphs Defendant claims in her pleadings are relevant to the allegations of Paragraph 40.
21. By setting forth with particularity and in detail all paragraphs Defendant claims in her pleadings are relevant to the allegations of Paragraph 49.

PLEASE TAKE FURTHER NOTICE that specifically reserving and not waiving all rights under motions hereinabove set for the and further specifically reserving and not waiving any jurisdictional rights Howard Hammer, designated as additional Defendant on Counterclaim will also move before the Chief Administrative Judge of Richland County and/or the presiding Judge, ten (10) days hereafter or as soon thereafter as the matter may be heard at such time and place as may be set will move to strike so much of the Amended Answer and third party Complaint as follows:

1. Paragraph 4 beginning at the sentence the agreement was adopted, approved.....through the end of said paragraph on the ground that the same is irrelevant, immaterial and impertinent to any issues in the Complaint and Counterclaim on the further ground that the same is not in accord with Rules 8(e)(1), 8(b), and 10(b) limiting averments to a statement of a single set of circumstances.
2. Paragraph 12 on the grounds that it does not state a legal defense and/or facts sufficient to constitute a legal defense.
3. Paragraph 13 of the Amended Answer and third party Complaint beginning at the second sentence of said paragraph, even if true which it is not, the same is irrelevant, immaterial and impertinent to issues in the Complaint and Counterclaim and on the further ground that the same is not in accord with Rule

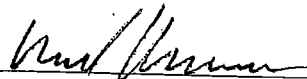
- 8(e)(1), 8(b) and 10(b) limiting averments to a statement of a single set of circumstances.
4. Paragraph 14 on the grounds that it does not state a legal defense and/or facts sufficient to constitute a legal defense.
 5. Paragraph 15 on the grounds that it does not state a legal defense and/or facts sufficient to constitute a legal defense.
 6. Paragraph 19 of the Amended Answer and third party Complaint is irrelevant, immaterial and impertinent to issues in the Complaint and the Counterclaim and on the further ground that the same is redundant to paragraph 4 and not in accord with Rule 8(e)(1), 8(b) and 10(b) limiting averments to a statement of a single set of circumstances.
 7. Paragraph 20 of the Amended Answer and third party Complaint on the ground the same is irrelevant, immaterial and impertinent to issues in the Complaint and the Counterclaim and on the further ground that the same is not in accord with Rule 8(e)(1), 8(b) and 10(b) limiting averments to a statement of a single set of circumstances.
 8. Paragraph 23 of the Amended Answer and third party Complaint is irrelevant, immaterial and impertinent to issues in the Complaint and the Counterclaim and on the further ground that the same is not in accord with Rule 8(e)(1), 8(b) and is redundant to Defendant's denial in paragraph 4 and her averment in paragraph 4.
 9. Paragraph 24 of the Amended Answer and third party Complaint on the grounds that it is irrelevant, immaterial and impertinent to issues in the Complaint and the Counterclaim and on the further ground that the same is not in accord with Rule 8(e)(1), 8(b) and is redundant to Defendant's denial in paragraph 4 and her averment in paragraph 4.
 10. Paragraph 25 of the Amended Answer and third party Complaint, which is inaccurate on the grounds that it is irrelevant, immaterial and impertinent to issues in the Complaint and Counterclaim and on the further ground that the same is not in accord with Rule 8(e)(1), 8(b) and is redundant to paragraph 13.
 11. Paragraph 27 of the Amended Answer and third party Complaint beginning at "to wit...which is a knowing misrepresentation to the court", on the ground the

portion of Paragraph 27 is irrelevant, immaterial, impertinent, scandalous, contrary to the truth and facts and a breach of the requirement of civility and Rule 11 SCRPC.

12. Paragraph 28 of the Amended Answer and third party Complaint on the ground that it is irrelevant, immaterial and impertinent to the Complaint and Counterclaim and on the further ground that the same is not in accord with Rule 8(e)(1), 8(b).
13. Paragraph 41 of the Amended Answer and third party Complaint as states pursuant to the Family Court Order "on the ground that any Family Court Order is irrelevant, immaterial and impertinent to the issues of the Complaint and Counterclaim and on the further ground that it is an unnecessary and redundant phrase in view of Defendant's denial in Paragraph 41 of any current ownership in 1634 Main Street".
14. Paragraph 43 of the Amended Answer and third party Complaint on the ground that it is irrelevant, immaterial and impertinent to the issues of the Complaint and Counterclaim.

Columbia, South Carolina

March 28 2011



Howard Hammer, *Pro Se*
1609 Catawba Street
Columbia, South Carolina 29205
Telephone: (803) 530-8517

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
 Shirley Grace Hightower,)

Defendant/Third-Party Plaintiff,)

vs.)

Howard Hammer,)
 Additional Defendant)
 On Counterclaim.)

IN THE COURT OF COMMON PLEAS
 Case No. 2010-CP-40-02889

WITHDRAWAL OF:
Certain claims for damages

To prevent discovery abuse by Howard Hammer, Defendant Shirley Hammer hereby:

A. Withdraws her claim for emotional distress damages as an element of damages in her first counterclaim and third party claim for abuse of process.

She reserves her right to seek and recover all other damages available to her in all other provisions of her counterclaims and third party claims.

I, an employee of Desa Ballard, P.A., do
 certify that I have this date served a copy of:

Withdrawal of: Certain claims for
on all opposing counsel by depositing a copy damages
 properly addressed with sufficient First Class
 Postage affixed, to each, in the United States Mail
 Date: 10-26-12 Signed: Terrie S. Stafford

Terrie S. Stafford, Paralegal

Desa Ballard
 Desa Ballard

Stephanie Weissenstein

BALLARD WATSON WEISSENSTEIN

Post Office Box 6338

West Columbia, SC 29171

Phone: 803-796-9299

Fax: 803-796-1066

Email: desab@desaballard.com

stephanie@desaballard.com

ATTORNEYS FOR SHIRLEY HAMMER

October 26, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 ~~and~~

Howard Hammer,)
Plaintiff,)

v.)

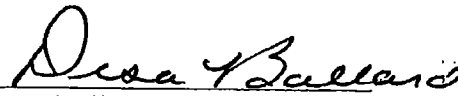
Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
Defendant.)

WITHDRAWAL OF:
Third Counterclaim
Certain damages in Fourth Counterclaim

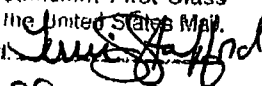
To prevent discovery abuse by Howard Hammer, Defendant Shirley Hammer hereby:

- A. Withdraws her third cause of action for intentional infliction of emotional distress
- B. Withdraws her claim for emotional distress damages in her fourth counterclaim for abuse of process.

She reserves her right to seek and recover all other damages available to her in the fourth counterclaim for abuse of process, and all other provisions of her counterclaims.


Desa Ballard
Stephanie Weissenstein

I, an employee of Desa Ballard, P.A., do
certify that I have this date served a copy of:

Withdrawal of: Third Counterclaim
on all opposing counsel by depositing a copy
properly addressed with sufficient First Class
Postage affixed, to each, in the United States Mail.
Date: 10-26-12 Signed: 

Terrie S. Stafford, Paralegal

BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, SC 29171
Phone: 803-796-9299
Fax: 803-796-1066
Email: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR SHIRLEY HAMMER

October 26, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

1634 Main Street, LP)

CASE NO.: 2010-CP-40-2889

MOTION AND ORDER INFORMATION

Plaintiff

vs.

Shirley Hammer a/k/a
Shirley Grace Hightower

Plaintiff,)

FORM AND COVERSHEET

vs.)

Howard Hammer,

Third Party)

Defendant.)

Plaintiff's Attorney:

Susan B. Lipscomb, Esq.
1634 Main St., Ste. 200
Columbia, South Carolina 29201
Phone: 803-233-6654
Fax: 803-233-6663
eMail: sbl@lipscomblaw.com

Defendant's Attorney:

Desa Ballard, Bar No. _____
Address:
226 State Street
West Columbia, South Carolina 29169
Phone: 803-796-9299 Fax 803-796-1066
E-mail: desaballard.com Other: _____

Defendant's Attorney:

Third Party Defendant's Attorney:

Howard Hammer, Pro Se

, Bar No. _____

Address:

1609 Catawba Street

Columbia, South Carolina 29205

Phone: 803-530-5817 Fax 803-799-9202

E-mail: howham1945@gmail.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: MistrialEstimated Time Needed: 15 minCourt Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant 3d Date submitted 1/23/13

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ 25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS

Case No. 2010-CP-40-2889

1634 Main, L.P.

Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant
on Counterclaim,

MOTION

RICHLAND COUNTY
FILED
2013 JAN 24 PM 4:47
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO: DESA BALLARD, ESQUIRE, ATTORNEY FOR SHIRLEY HAMMER:

PLEASE TAKE NOTICE THAT THIRD PARTY DEFENDANT, will move before the Honorable James R. Barber or such assigned Circuit Court Judge in Richland County hearing non-jury matters at such time and place as may be set at the Richland County Courthouse, as follows:

¹For a mistrial in the above captioned matter on the grounds that the hearing scheduled for January 15, 2013, and matters heard regarding actual damages in accord with the notice of hearing, attached hereto and incorporated herein, after the conclusion of the case and after the Court had made a determination in the case, rendered the said hearing improper, prejudicial and contrary to the settled principal that the decision making process should not be commenced until all the evidence has been presented. In the instance case the decision making process was not

¹ Out of an abundance of caution and to ensure clarification in the record.

only commenced but completed and that the reconvening of the trial after completion of decision making process was prejudicial error contrary to the rights of fundamental fairness, constitutional rights of due process and equal protection and the rules, statutes and case law governing the conduct of trials.

For full clarification, third party Defendant states that this Motion is made as a result of confusion that may have arisen by the withdrawal of a Motion for mistrial and an apology to the Court made on the grounds of a prejudicial tone by the Court towards the Defendant. The mistrial Motion on the grounds of the prejudicial tones were intended only as a second grounds for Motion for mistrial. In withdrawing the Motion for mistrial the third party Defendant intended and believed that he was only withdrawing the second grounds made on the basis of prejudicial tone and reiterates the withdrawn of the second ground with continued apologies to the Court for third party Defendant's initial impression concerning the tone of the Court.

For further clarification, the Motion is made to ensure that the first ground based upon the rendering of a decision by the Court before the completion of taking of all of the evidence on actual damages is prejudicial as a matter of law for the reasons set forth.

Respectfully submitted,



Howard Hammer, *Pro Se*
1609 Catawba Street
Columbia, South Carolina 29205
(803) 530-8517
(803) 799-9202 (Fax)
Email: howham1945@gmail.com

January 23 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff,

v.

Shirley Hammer, a/k/a
Shirley Grace Hightower,
Defendant.

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 and
2010-CP-40-2889

**AMENDED
NOTICE OF HEARING**

1634 Main, L.P.
Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,
Defendant/Third-Party Plaintiff,

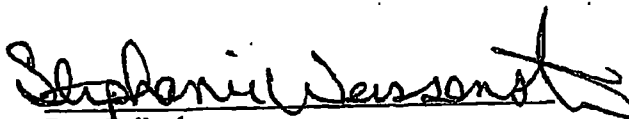
vs.

Howard Hammer,
Additional Defendant
On Counterclaim.

Pursuant to direction of the Honorable James R. Barber, III, the hearing in these cases previously scheduled for Tuesday, January 15, 2013 3:00 at the Kershaw County Courthouse will now, instead, be held on Tuesday, January 15, 2013 at the Richland County Judicial Center, at . The hearing will begin at 2:00 PM, before the Honorable George C. James in an as yet determined courtroom.

Evidence and arguments will be received pertaining to (1) attorney's fees as actual damages sustained by Shirley Hammer as actual damages; (2) any remaining issues regarding the amount of punitive damages to be awarded; and (3) any argument for recovery under the Frivolous Civil Proceedings Sanctions Act. Additionally, any Motion to Quash or other outstanding matters will be heard at that time; Counsels and Mr. Hammer should be prepared to argue any and all unresolved issues in both of the cases referenced above.

This Notice is being filed and served as notice to all parties and counsel of the scheduled proceedings, and shall be served by email and U.S. mail upon Susan Lipscomb, Esquire, Art Aiken, Esquire and Howard Hammer, *pro se*.

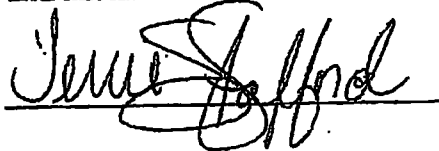


Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
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stephanie@desaballard.com

Counsel for Defendant and Third Party Plaintiff
Shirley Hammer

January 8, 2013

I, Terrie Stafford, certify that I did, this date, place this Notice of Hearing in the United States Mail, first class postage affixed, to the parties set forth above. I also emailed the notice to the parties at their last known email address.



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.

Plaintiff,

vs.

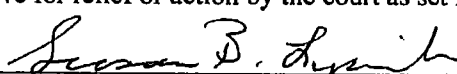
Shirley Hammer a/k/a Shirley Grace Hightower v.
Howard Hammer

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-2889

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**RICHLAND COUNTY
FILED
2013 FEB 13 AM 10:47
CLERK OF COURT
C.C.P. & J.S.

Plaintiff's Attorney: Susan Batten Lipscomb, Bar No. 03354 John Richard Lipscomb, Bar No. 77492 LIPSCOMB LAW FIRM, P.A. Address: 1634 Main St., Suite 200 Columbia, SC 29201 Phone #: (803) 233-6654 Fax #: (803) 233-6663 E-mail: SBL@LipscombLawFirmSC.com	Defendant's Attorney: Desa Ballard Stephanie Welssenstein Law Offices of Desa Ballard Address: 226 State Street West Columbia, SC 29169 Phone #: (803) 796-9299 Fax #: (803) 796-1066 E-mail: desab@desaballard.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>For a New Trial or in the Alternative to Reconsider</u> Estimated Time Needed: <u>30 Minutes</u> Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant <u>February 11, 2013</u> Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer, a/k/a Shirley Grace Hightower,

Defendant/Third-Party Plaintiff,

vs.

Howard Hammer,

Additional Defendant on Counterclaim.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2010-CP-40-2889

NOTICE OF MOTION AND
MOTION FOR NEW TRIAL OR IN
THE ALTERNATIVE TO
RECONSIDER, ALTER, AMEND OR
MODIFY

2013 FEB 13 AM 10:42
FILED
RICHLAND COUNTY
CLERK OF COURT
JANETTE W. MOORE
C.C.P. & G.S.

To: ALL COUNSEL OF RECORD:

Please take notice that 1634 Main, L.P., and, by and through its undersigned attorneys, will move, before the Circuit Court for the Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina on the tenth (10th) day after service hereof, or as soon as counsel may be heard, pursuant to the provisions of Rules 50, 52(b), 59(e), 60(a) and 62 SCRPC, and other applicable statutes and rules, for a new trial or for an Order reconsidering, amending, altering and modifying the January 28, 2013 Order of the Honorable George C. James, Jr. A copy of the January 28, 2013 order is attached hereto as "Exhibit A."

The grounds for this Motion are as follows:

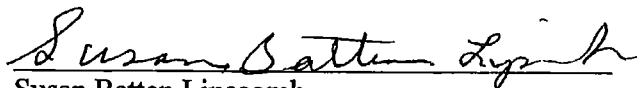
1. The court erred in the January 28, 2013 Order in awarding damages for frustration when "frustration" by necessity is a type of emotional distress damage and Shirley had withdrawn any and all claims for emotional distress damages.

28/

2. The Court erred in the January 28, 2013 Order in finding that Mr. Hammer provided all information to Mr. Ackerman for preparation of the tax returns and information about the tax planning related to Shirley's interest in the building and real estate when the testimony was that the information was provided by Mr. Hammer, Marion Turbeville and the tax attorney (see Ackerman deposition p. 156, 160)

3. To the extent the grounds for error noted in Defendant Howard Hammer's Motion for New Trial and in the Alternative for the Granting of a New Trial are legally applicable to Plaintiff 1634 Main, L.P., those grounds are adopted herein.

Respectfully Submitted,



Susan Batten Lipscomb

LIPSCOMB LAW FIRM, P.A.

1634 Main Street, Suite 200

Columbia, SC 29201

Telephone: (803) 233-6654

Fax: (803) 233-6663

Email: SBL@LipscombLawFirmSC.com

Attorneys for Plaintiff, 1634 Main, L.P.

Columbia, SC
February 11, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

CASE NO.: 2010-CP-40-2889

1634 Main Street, LP

MOTION AND ORDER INFORMATION

Plaintiff

vs.

Shirley Hammer a/k/a
Shirley Grace Hightower

Plaintiff,)

FORM AND COVERSHEET

vs.)

Howard Hammer,

Third Party)

Defendant.)

Plaintiff's Attorney:

Susan B. Lipscomb, Esq.
1634 Main St., Ste. 200
Columbia, South Carolina 29201
Phone: 803-233-6654
Fax: 803-233-6663
eMail: sbl@lipscomblaw.com

Defendant's Attorney:

Desa Ballard, Bar No. _____
Address:
226 State Street
West Columbia, South Carolina 29169
Phone: 803-796-9299 Fax 803-796-1066
E-mail: desaballard.com Other: _____

Defendant's Attorney:

Third Party Defendant's Attorney:

Howard Hammer, Pro Se

, Bar No. _____

Address:

1609 Catawba Street

Columbia, South Carolina 29205

Phone: 803-530-5817 Fax 803-799-9202

E-mail: howham1945@gmail.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: *New trial & Recross examination, voir dire, misfeasance & malfeasance & mistrial*Estimated Time Needed: *1 hr*Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-2889

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,
Additional Defendant
on Counterclaim,

**NOTICE OF MOTION AND MOTION
FOR A NEW TRIAL AND IN THE
ALTERNATIVE MOTION TO RECONSIDER,
ALTER, AMEND, OR MODIFY ORDER OF
JANUARY 28, 2013, ISSUED BY THE
HONORABLE GEORGE C. JAMES, JR.
AND/OR IN THE ALTERNATIVE MOTION
FOR MISTRIAL**

TO: DEFENDANT SHIRLEY HAMMER, A/K/A SHIRLEY GRACE HIGHTOWER, AND
HER ATTORNEYS

PLEASE TAKE NOTICE that pursuant to the applicable South Carolina Rules of Civil Procedure and the law in such cases made and provided, Additional Defendant, Howard Hammer, will respectfully move in the above captioned matter before the Honorable George C. James, Jr., at 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day after service hereof or as soon as counsel may be heard for a new trial on the grounds set forth hereinafter.

Please take further Notice that said Defendant will move in the alternative in the above captioned action matter before the Honorable George C. James, Jr., at 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day after service hereof or as soon as counsel may be heard pursuant to the provision of Rule 50, 52(b), 59(e), and 62 SCRPC and other applicable statutes and rules and law in such cases made and provided for an Order reconsidering,

amending, altering and modifying the January 28, 2013, Order of the Honorable George C. James, Jr., attached hereto as Exhibit "A" on the grounds as hereinafter set forth.

1. That the trial Judge as Trier of the facts misperceived the nature of the case of Hammer vs. Hammer, no. 2009-CP-40-05911, as being a contract action and referred to such case as a contract action in connection with his findings, when in truth and in fact, the case was one for Declaratory Judgment thereby reflecting a confusion in connection with principals used to determine among other things the questions relating to good faith and motive which necessarily impacts upon abuse of process claims and further caused the rendering of an inconsistent verdict. Vinson v. Harley, 477 S.E. 2d, 715, 324 S.C. 389. Further, that the findings of fact are against the preponderance of the evidence and/or contrary to the weight of the evidence. Specifically, among other things, the finding that Mr. Hammer's "manner of answering questions clearly establish that he is intent on using the civil process to unnecessarily and unfairly prolong any and all litigation involving Shirley" is without evidentiary foundation or support based on supposition and therefore is contrary to and against the preponderance of evidence. Moreover the findings throughout overlook that a Declaratory Judgment action as opposed to a contract action is one in which a request is made to the Court for a determination of the *validity* of the legal and or factual issue presented. The fact that a litigant is asking the Court to make a determination of the validity of the issues he or she is presenting in and of itself negates a finding that the institution of a DJ action can be grounds for a verdict in an abuse of process action based upon the bringing of the DJ action. In the instant case the fact that no contention has been made and there is no evidence of record that

attorney, Susan Lipscomb, Esquire, was not in compliance of Rule 11 in bringing the Declaratory Judgment action or that she brought the same in bad faith, which finding would in fact be contrary to the evidence of record based not only upon Ms. Lipscomb's testimony, which was erroneously excluded, but also upon the fact that the facts and legal issues determined in the DJ action were not found to be frivolous or brought in bad faith by either the Circuit Court or the Court of Appeals and accordingly any conclusion by the trial Court to the contrary is against the preponderance and/or greater weight of the evidence. Moreover Ms. Hammer had her opportunity in the DJ action to move that the same lacked merit and was frivolous. She is now prohibited by principals of res judicata and/or estoppel from bringing any such claim and likewise for the same reason it is respectfully submitted the Trier of the fact is prohibited based upon principals of res judicata and estoppel from making any such finding which would include any finding of clear and convincing evidence to support a verdict for punitive damages and any such finding would be contrary to established principals of law as well as against the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

2. That the trial Judge erred in failing to direct a verdict in favor of 1634 Main L.P. in the Declaratory Judgment case in that the evidence conclusively revealed that Defendant, Shirley Hammer, had at least an 8% interest in the L.P. which was never tendered to Mr. Hammer and accordingly she would be responsible for 8% of the assessment. Moreover it is respectfully submitted that any finding to the contrary

would be against the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

3. That the trial Judge erred in failing to find that Shirley Hammer had a 58% plus interest in the L.P. which was never tendered to Mr. Hammer when the only uncontroverted evidence was that Ms. Hammer certified on two years tax returns that she had read the same and that she had a 58% interest as shown on the tax returns and she further signed a separate document by which she *swore under oath* that the 58% plus interest in the L.P. correctly stated her interest for the years 2005 and 2006. The sworn document was executed in late 2007. Further, no other tax returns or evidence contradicted the amount of her interest and this uncontroverted fact along with the uncontroverted testimony of the accountant who acted for Ms. Hammer in 2006 and 2007 and who testified that he had worked with and received information from Ms. Hammer's tax attorney that she was to receive a 48% plus interest in 2005 in return for a Deed to the L.P. for any interest she may have had in the building and land rendering, it is respectfully submitted, the finding of the Trier of the fact against the preponderance and/or greater weight of the evidence. Moreover the transfer of the 48% interest giving Ms. Hammer a total of 56% plus interest when added to the 8% interest she already had should have been consummated in 2005 and Ms. Hammer's failure to deliver a Deed in 2005 in return for the 48% interest she received and acknowledged receiving on her tax returns, was not excused by any Family Court Order to which 1634 Main, L.P. was not a party. Nor did any act by Mr. Hammer

excuse Ms. Hammer's failure to transfer her interest to the L.P. in 2005, after receiving her promised interest in the L. P. Mr. Hammer acted and could only have acted in an individual capacity when entering the 2008 marital settlement agreement and any act by him individually could not and did not bind the L.P.

Accordingly 1634 Main, L.P. was entitled to be found to have had an equitable interest in Ms. Hammer's portion of the real estate and it is respectfully submitted the findings of the Court are thus contrary to the preponderance and/or greater weight of the evidence and further reflect error by reason of the failure of the Court to grant a directed verdict and/or final finding in favor of 1634 Main L.P. requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

4. The Court erred in finding damages on account of frustration when damages for any such emotional response were withdrawn by Shirley's attorney by motion made and granted in open Court to withdraw any claim for emotional damages. Furthermore any damages for frustration would as a matter of common knowledge be emotional damages, as frustration is an emotional response to either external or internal stimuli. Since the emotional damage claim was withdrawn, damages for frustration would be inappropriate and improper and it is respectfully submitted not based on any evidence of record. Moreover even assuming that frustration is a "basic human response", which "basic human response" is somehow deemed to be anything other than an emotional response, there is an absence of any evidence of proximate cause between defending a legal claim whether baseless or not and the frustration the Court attributed without any bases other than it is respectfully submitted supposition to

support that finding. Accordingly any verdict in favor of Shirley against 1634 Main, L. P and/or Howard in either of the actions is error of law requiring verdicts to be entered in 1634 Main, L.P. and Howard's favor on the counterclaims for abuse of process in both actions. Moreover the uncontradicted direct testimony of Dr. Bergman makes the finding, it is respectfully submitted against the preponderance and/or greater weight of the evidence all requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

5. It is respectfully submitted that the Court's determination in paragraph 47 that its consideration of additional evidence presented after October 30 would be improper and is in essence a direct affirmation that Howard's Motion for a mistrial on this ground should have and essentially should be interpreted as being granted by the Court's statement in paragraph 37. In the alternative the testimony of Dr. Bergman should have been considered as it relates to actual damages which was noted as an issue in the notice for hearing and on the issue of punitive damages which was also noted on the notice of hearing as an issue, for the reason that without the actual damage of frustration, absent any other damages as so found by the Trier of the fact no punitive damages could properly have been awarded. Moreover the Court's conclusion, it is respectfully submitted, that Dr. Bergman's characterization of frustration as an emotion or emotional response is contrary to a finding that same did not have any bearing upon Shirley's entitlement to recover damages for abuse of process when that was the only damage the Court found she incurred and it is, respectfully submitted, contrary to and not based on any evidence of record and

therefore additionally against the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

6. The finding in paragraph 43 that Howard was aware of the frivolity of his conduct is unexplained and without any evidentiary support seemingly based merely upon the supposition that the Circuit Court action was a contract action intended only for the purpose of attacking a Family Court Order. The evidence does not support such a finding. There was no direct attack on the Family Court Order by institution of a contract action in Circuit Court contrary to the finding of the Trier of the fact. Rather a Declaratory Judgment action was instituted for the purpose of determining the legitimate issue of the intent of the parties as to whether the settlement agreement in the Family Court maintained its contractual viability. The Circuit Court determined not that the action was frivolous but only after due consideration and study of the positions of the parties that the agreement in Family Court did not maintain its contractual viability and that therefore the Circuit Court did not have jurisdiction. Likewise the Appellant Court did not render a decision that the action was in anyway frivolous. The decision of the Appellant Court, like the decision of the Circuit Court merely determined that its reading of the agreement did not support a contention that the position advanced in the Declaratory Judgment action by Howard was frivolous. Moreover, Shirley had opportunity at time of the dismissal by Judge Manning to request a finding that the Declaratory Judgment action should not only have been dismissed but that it was frivolous. Having not done so she is now prohibited by

principals of *res judicata* and estoppel from so maintaining and the Trier of the fact is likewise so prohibited. The findings in paragraph 43 are contrary to the preponderance and/or greater weight of the evidence and the law governing *res judicata* and estoppel requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

7. It is respectfully submitted that the finding in paragraph 45 are in and of itself contradictory. The Court issued a Memorandum of its initial findings on November 14, 2012, which Memorandum is attached hereto and incorporated herein in full by reference. The Memorandum requested that the attorney for Ms. Hammer prepare an Order in accord with the Memorandum attached hereto and incorporated herein by reference. Thereafter subsequent to the date on which the Order, requested by the Court, was to have been finalized, the Court issued a second Memorandum which is attached hereto and incorporated herein by reference by which the Court essentially stated that in order to avoid confusion in connection with the timing of any 59E Motion or any other motions, the Court had decided to hold a hearing on the issue of attorney's fees as actual damages and punitive damages, clearly thereby revealing that the Court had determined at that point that there was insufficient evidence to make an award of punitive damages or at the very least more evidence was required in connection therewith. The Court after holding such hearing and denying motions (later clarified by separate Motion to be one for mistrial) that it would be improper to reopen the testimony went forth with such hearing on January 15, 2013. A separate Motion and clarification of the Motion for mistrial regarding the continuance to take

testimony after the close of the trial filed prior to the issuance of any final Order has also been denied by the Court. Said Motion for mistrial and clarification is attached hereto and incorporated herein as part of this Motion. Notwithstanding the denial of the mistrial Motion the Court now determines that it was improper to open the record for additional evidence. Such determination is in essence an affirmation that the denied Motion for mistrial should rightfully have been granted. Accordingly since the Court was unable to find clear and convincing evidence initially for punitive damages, and now reverses its holding on Howard's motion on January 15, 2013, it becomes contradictory to now hold on the one hand it was improper to reopen the trial to take evidence on actual and punitive damages for which the Court originally in its memorandum implied and/or directly indicated that no evidence to support a verdict for punitive damages was introduced in evidence during the trial, and on the other hand to now state that the trial ended on October 30, 2012, and yet to now make an award of punitive damages in either or both claims by Shirley. Such action and findings are, it is respectfully submitted, errors of law and/or findings contrary to the preponderance and/or greater weight of the evidence, inconsistent with the present holding that the opening of the trial was improper when the reason for such reopening was, according to the Court's notice and memo, to take testimony of punitive and actual damages, all requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor and/or the granting of a mistrial on Movant's Motion for same set forth in this paragraph.

8. That the Court's statement that any finding of fact that should be construed as a conclusion of law is adopted as such, and vice versa, amounts to an improper conclusion of law and at the same time negates countervailing evidence regarding liability presented by Mr. Hammer which outweighed any evidence of liability by Ms. Hammer requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
9. That the making of finding of facts applicable to both actions is prejudicial error because even though the cases were combined, they were tried separately and the attorneys and Mr. Hammer were not allowed to cross examine except in the case in which they were listed as counsel or *pro se*. Accordingly the use of testimony from one case for the purpose of one of the other cases, amounts to a denial of due process in that, among other reasons, cross examination and objections were limited to only counsel in the case being separately tried. Furthermore any finding of fact used in one of the cases for the purpose of one of the other cases as was done would cause the use to be contrary to the preponderance and/or greater weight of the evidence requiring for all of the above reasons the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
10. Paragraphs 1 and 2 "**Listed Findings of Facts Applicable to Both Actions**" for the reasons set forth above are improper for use in all actions and negate the finding of clear and convincing evidence and therefore punitive damages were improperly awarded for this and other reasons to be stated hereafter.

11. That the finding of fact in paragraph 2 that “after their separation, Howard threatened to engage her [Ms. Hammer] in litigation until she was bankrupt” and the further finding that this statement is “clear and convincing evidence of Howard’s intent to use unmeritorious litigation of any kind to harass and cause financial hardship to Shirley” is indisputably contrary to the preponderance and/or greater weight of the evidence for the reason that:

- a. The alleged statement was purportedly made “after their separation” which occurred in 2005 some four years before the commencement of the instant litigation as opposed to after their divorce which occurred in 2008, is therefore inconsistent with the 2008 agreement both as to the Declaratory Judgment action counterclaims by Shirley and as to the action brought by 1634 Main, L.P. and accordingly against the preponderance and/or greater weight of the evidence
- b. It is contrary to the evidence as set forth in the partial settlement document of 2008 by which Mr. Hammer agreed to a generous settlement (per pronouncement of Judge Dorothy Mobley) in the amount of approximately 2.25 million dollars cash, plus his one-half interest in a house valued at the time at approximately \$750,000, for a seven and one-half year marriage, thereby negating any notion that the one Declaratory Judgment action brought by Mr. Hammer could possible bankrupt Ms. Hammer or that such one action is clear and convincing evidence of intent to use unmeritorious litigation of any kind to harass and cause financial harm. This is especially true in view

of the Court's specific statement on page 3 of its opinion that the Court had not reviewed or *considered any other portion of the Family Court record except for those matters introduced into evidence which did not include any matters concerning the extent of litigation in the Family Court* requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

12. The findings of fact in paragraphs numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 contain matters not of record and not relevant to the issue concerning abuse of process and are therefore against the preponderance and/or greater weight of the evidence necessary to entitle Ms. Hammer to a verdict. Moreover, the finding that Mr. Hammer filed a Lis Pendens with knowledge that Ms. Hammer was attempting to sell 320 St. James, lacks any evidentiary support in the record and is therefore contrary to the preponderance and/or greater weight of the evidence. Further, the corresponding purportedly supporting finding and conclusion that Mr. Hammer filed the Lis Pendens with full knowledge that he lacked any interest in 320 St. James is contrary to the preponderance and/or greater weight of the evidence necessary to support a verdict on the abuse of process claim in that the Declaratory Judgment action was necessarily for the purpose of asking the Court to determine the propriety of Howard's allegation of whether he had an interest in 320 St. James by reason of the question of the validity of the contract of May 2008 between Ms. Hammer and himself. Further negating the finding of full knowledge is the fact that in determining the propriety of

the validity of the contract by instituting a Declaratory Judgment action the Circuit Court would necessarily have to make a determination of the parties intent by applying the principles of *Mosier v. Mosley* 279 S.C. 353, 306 S.E. 2d, 624 (1983). As per the uncontradicted and uncontroverted testimony of Susan Lipscomb, Esquire, and the Court's finding of proper conduct by Ms. Lipscomb, the question raised by the Declaratory Judgment action and the Declaratory Judgment action itself was made and filed in good faith based upon a reasonable belief that the intent of the parties from the language of the May 2008 settlement agreement clearly indicated the parties expected to retain the right of a contract action at law which would include the right if they so wished for damages requiring Circuit Court action. Even though this question was ultimately determined contrary to the position of Mr. Hammer in the DJ action, 1634 Main, L.P. was not the Plaintiff bringing the action in the DJ case and accordingly under the principle of res judicata the finding cannot apply against it. Even if it did, and even without Ms. Hammer's testimony, there is a multitude of evidence based on a fair reading of the May 2008 contract that gives rise to a question of intent thereby for that reason along with the other reasons set forth herein negating this Court's finding regarding full knowledge; it is respectfully submitted that any finding in the DJ action can't and should not have been used against 1634 Main explicitly or implicitly as it was so used by the trial Court since such use is contrary to the principals of res judicata and estoppel. And further any finding based thereon is contrary to the preponderance and/or greater weight of the evidence. The third party Defendant refers to and incorporates the May 2008 contract into this Motion and calls attention to that portion of the contract, which states that the "agreement is

a binding contract and is enforceable as such under law". Such statement in and of itself clearly supports the conclusion that the statement along with others could *reasonably* give rise to a conclusion that the intent of the parties was that the contract maintained its contractual viability even after being approved by the Family Court. This is especially true in view of the holding in Mosier that the words incorporated, merged, adopted, etc., no longer had meaning after Mosier and a determination of intent would necessarily therefore require a parsing of the contract terms. Accordingly, again for these reasons, the findings of the Trier of the fact, it is respectfully submitted, are contrary to the weight of the evidence and should not have been a basis for a finding of abuse of process especially since the parties used the term under law in paragraph 15 of the agreement which includes rights in equity and at law thereby eliminating the conclusion as an absolute certainty or even implicitly to a reasonable degree that prior to the holding in 1634 Main, L.P. the parties were required to bring the action only in equity in the Family Court.

The verdict is further contrary to the weight of the evidence in that the Trier of fact made his finding and conclusion of law based upon the incorrect impression that the action giving rise to Ms. Hammer's abuse of process claim was one in contract as opposed to being one for Declaratory Judgment. This is an important distinction since the law regarding Declaratory Judgment actions, as opposed to the law applicable to contract actions, which the Trier of fact necessarily applied would negate the finding of full knowledge and would in fact be evidence of absence of knowledge concerning Mr. Hammer's interest in 320 St. James by reason of the fact that the Declaratory Judgment was in essence a request for a judicial determination of

that issue. For any and all of the above reasons a new trial is required and/or reconsideration, alteration, modification and/or amendment of the Order of the Honorable George C. James, Jr. to reflect verdict in Movant's favor.

13. There is no evidence that Mr. Hammer was aware of the findings of paragraph number 12 and accordingly the same is not relevant and/or against the preponderance of evidence necessary to give rise to a verdict on the abuse of process claims requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

14. The findings of paragraph number 7, that the parties were to expeditiously sign all documents to effectuate the terms, provisions and intent of the agreement are in conflict with and negate any finding necessary to support the abuse of process claims for the reason that the evidence is that Ms. Hammer did not expeditiously sign all documents but rather waited for at least eighteen (18) months before acting on her obligation and then only signed a Deed, never signing any proper document to transfer her interest in 1634 Main L.P., whether such admittedly, by her, 8% interest, or a 56.8% interest as alleged in the 1634 Main L.P.. Accordingly in the 1634 Main real estate any finding regarding this issue used to support a verdict on the claims of abuse of process is contrary to the preponderance and/or greater weight of the evidence and conflictual with the evidence and therefore does not support the abuse of process claim requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

15. The finding of fact in paragraph 13 that third party Defendant, Howard Hammer, filed a Lis Pendens on July 31, 2009, with full knowledge that Ms. Hammer was attempting to sale 320 St. James and with full knowledge that he lacked any interest whatsoever in 320 St. James is without any evidentiary support regarding knowledge by Mr. Hammer of Shirley's attempt to sale 320 St. James as of July 31, 2009, at the time of the filing of the Lis Pendens and therefore contrary to the preponderance and/or greater weight of the evidence and since this finding uses the word and requiring full knowledge of both elements set forth it is therefore contrary to the preponderance to the evidence for that reason also. Even if the finding can be construed as being two separate findings, a finding of full knowledge of lack of interest is contrary to the preponderance and/or greater weight of the evidence for the reasons hereinabove set out. Likewise the findings of paragraph 16 is without evidentiary support in that the evidence is clear that the third party Defendant did not become aware of the sale until August 19th the date of his conversation with Paul Deganhart some nineteen days after the filing of the Lis Pendens thereby negating any evidence of improper motive for the filing of the Lis Pendens and in fact being the only evidence of when Mr. Hammer became aware of the sale, thereby not only negating any finding of clear and convincing evidence regarding motive but also evidence that the finding is contrary to the preponderance and/or greater weight of the evidence of record and supportive of a finding that Howard did not know of the sale at the time of the filing of the Lis Pendens which is the underpinning conclusion used by the Court to find ulterior motive to support its verdicts. For the foregoing reasons, it is respectfully submitted, the granting of a new trial is required and/or

reconsideration, amendment, alteration and/or modification of the Order to reflect a verdict in Movant's favor.

16. The findings of paragraphs numbered 14, 15, and 16 are contrary to the preponderance and/or greater weight of the evidence weight regarding the abuse of process claims and verdict by reason of the uncontroverted evidence that Mr. Hammer became aware of the pending sale of 320 St. James only upon a conversation with one of the attorneys representing the purchaser which conversation took place nineteen days after the filing of the Lis Pendens thereby requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
17. The finding of fact in paragraph 17 regarding the Deed to Shirley's mother is without any evidentiary support of the conclusion that the Deed was an attempt to get Howard to leave Shirley alone and to distance Howard from any legal interest in the 320 St. James property and is therefore contrary to the preponderance and/or greater weight of the evidence. Further the finding that Shirley was trying to distance Howard from any legal interest in the property would necessarily require a conclusion that Shirley thought that Howard had some legal interest in the property and for that reason would also negate any wrongdoing by Howard since if Shirley thought he had an interest in the property at the time of the filing of the Lis Pendens and/or DJ action such mindset on Shirley's part certainly makes it reasonable for Howard to have thought likewise and therefore reasonable along with the other reasons set forth to file the DJ action. To state it another way if Shirley believed as the reasonable inference from the finding of fact indicates that Howard had an interest in the property, then that finding

supports a conclusion that Shirley also believed, as did Howard, that the agreement between them of May 2008, was intended as a contract. The only way Howard could have a legal interest in the property was if Shirley had breached the contract which clearly she had by among other things not simultaneously signing necessary documents for transfer of the interest in the L.P. until eighteen (18) months after the 2008 contract. Moreover, such finding would raise the inference that Shirley conveyed her interest to her Mother because of her belief and recognition of the possibility of the contract being found void as against public policy on account of the provision prohibiting filing of grievances against lawyers contained in the 2008 agreement which is before this Court. For all of these reasons while it may have been none of Howard's business what Shirley did with the property, the fact that Shirley did do something with the property after the filing of the Lis Pendens indicates that Shirley may somehow have known of the Lis Pendens, even though it had not been served on her, and was merely trying to avoid its affect which again would negate any wrongdoing by Howard and cause the finding to be against the preponderance and/or greater weight of the evidence to support and sustain a verdict on the abuse of process action requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

18. The finding of fact that Mr. Hammer tried to steer the purchasers toward purchasing his home instead of 320 St. James upon which the verdict of abuse of process, on account of what the Court thought was a contract action (actually a DJ action), was contrary to the preponderance and/or greater weight of the evidence in that

correspondence between Mr. Hammer and Mr. Deganhart specifically set forth that Mr. Hammer was not in favor of Mr. Deganhart's clients, the purchasers, purchasing his home and that it would not be something that would be advantageous to him but would rather be detrimental to him and something "he really did not want to do". Accordingly any conclusion from the language of the letter other than Mr. Hammer was **not** interested in having Mr. Deganhart's clients purchase his home, would conclusively indicate, or at least to the greater weight and/or preponderance of the evidence would indicate that the suggestion was made by Mr. Deganhart. Further, Mr. Hammer's letter to Mr. Deganhart does not indicate that Mr. Deganhart spoke to Mr. Hammer "after the closing fell through" as found by the Court as Trier of the fact in support of the verdict for abuse of process and is therefore another finding upon which the verdict was based which is contrary to the greater weight and/or preponderance of the evidence.

A reasonable interpretation and implication of the letter from Mr. Hammer to Mr. Deganhart which is the only evidence on the issue is conclusive that Mr. Hammer was not told that the closing had fallen through, that in fact the closing had *not* fallen through, that Mr. Hammer had not refused to remove the Lis Pendens but in fact acted in good faith contradictory to any finding of ulterior motive by stating he would do anything reasonable to reach a satisfactory arrangement to resolve any problem. The letter is conclusive evidence that Mr. Hammer acting in good faith was awaiting further communication from Mr. Deganhart on a satisfactory resolution to be suggested by Mr. Deganhart. Accordingly the finding of the Court to the contrary is against the preponderance and/or greater weight of the evidence requiring the

granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

19. The finding in paragraph 24 is further against the preponderance of the evidence in that the testimony and Deeds of record conclusively show that there was an encroachment and further that Howard's statement of knowledge of a leak was not contradicted by any direct evidence but merely by hearsay from the purchasers who may not have discovered the leak immediately at the time of the closing when the statement was purportedly made. Accordingly this finding is against the weight and/or preponderance of the evidence and therefore since it was used to support a verdict on the Declaratory Judgment action counterclaim requires that the verdict be set aside as being improperly made requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
20. That each and every time hereinabove and hereinafter reference is made to a finding being contrary to the preponderance and/or greater weight of the evidence the same is hereby clarified by stating that the meaning of such phrase is hereby amended and should be read that the finding is contrary to the preponderance and/or greater weight of the evidence and accordingly is an insufficient basis on which to rest a verdict on abuse of process and that the verdict should be set aside as being improperly made.
21. The findings of fact in paragraphs 24, 25, 26, 27, 28 and 29 are not relevant to the question of abuse of process and accordingly to the extent that they were relied upon in the abuse of process action counterclaim in the Declaratory Judgment

(misconstrued throughout the trial as a contract action by the court) would make such findings of fact unnecessary and accordingly contrary to the preponderance and/or weight of the evidence regarding the abuse of process claims and further since these finding were made as a basis to support the abuse of process verdicts those verdicts should be set aside as being improperly made requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

22. The finding of fact in paragraph 30 relied upon by the Trier of the fact for a verdict in Ms. Hammer's favor on the process action counterclaim in the Declaratory Judgment case (misconstrued throughout the trial as a contract action by the court) is contrary to the greater weight of the evidence in that a fair and reasonable reading of the letter confirms that Mr. Hammer did not make the suggestion that the purchaser's buy his house, that he only confirmed that the suggestion was made. The fact that the letter stated that Mr. Hammer was not particularly in favor of that suggestion is against the weight of the evidence that it was Mr. Hammer's suggestion that Ms. Hammer's purchaser's buy his house. Further, the finding that Mr. Hammer's uncontradicted and uncontroverted testimony that he did not know the closing was taking place when he delivered a letter to the Deganhart office, and the fact that there is no basis on which a conclusion could be made that Mr. Hammer knew the closing was occurring when he delivered the letter, makes the finding that his arrival was calculated to disrupt the closing against the preponderance and greater weight of the evidence and accordingly improper to support the verdict in Ms. Hammer's favor on the abuse of process claim in the declaratory judge counterclaim action requiring the granting of a

new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

23. The findings of fact in paragraphs 31 and 32 are irrelevant to any factors supporting an abuse of process verdict in the Declaratory Judgment counterclaim and therefore would have no evidentiary basis and be against the preponderance of evidence in connection with the Court's verdict in the Declaratory Judgment abuse of process counterclaim. Howard could only have known of the closing if he was told where and when the closing was to take place. Not only is there no evidence he was told where and when the closing was to take place, it defies reason that he would have been told, requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
24. It is respectfully submitted that the findings in paragraph 40, that Howard was aware that he was bringing the contract action in an improper form is contrary to the preponderance and/or greater weight of the evidence of record. The action was not a contract action and therefore as previously stated was appropriately brought in good faith for a declaration of rights requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
25. That the finding of fact in paragraph 33 upon which the Trier of fact based its verdict of DJ counterclaim abuse of process in favor of Ms. Hammer that Howard began filing motions in Family Court seeking to set aside the property settlement order is contrary to the specific findings and statement of the Court on page 3 of its Order that

it did not consider any litigatory matters in the Family Court case not introduced into evidence and accordingly causes the verdict on the abuse of process claims to be based upon conflicted findings and conflicting statements of fact and law and therefore improper as a basis for a finding of a verdict in favor of Ms. Hammer on abuse of process claims requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

26. The finding of fact in paragraph 35 is not based on any evidence of record. If anything, in view of the fact that Judge Manning took the matter under advisement with a request for proposed Orders/Memorandum and deliberated for approximately six weeks after the hearing, supports an evidentiary conclusion that the Declaratory Judgment action (misnomer contract action by Trier of fact) was one that took considerable deliberation thereby supporting Howard's contention that the action was filed in good faith and if so to the extent that the Trier of the fact found otherwise such finding is contrary to the preponderance and/or greater weight of the evidence as set forth above and requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

27. That the finding in paragraph 41 that there was clear and convincing evidence that Howard's filing of the Lis Pendens was reprehensible because he well knew he had no claim to the property is contrary to the weight of the evidence for the reasons regarding the timing of the filing of the Lis Pendens set forth hereinabove along with the reasonable conclusions set forth hereinabove to be drawn from the filing of the

Declaratory Judgment action makes the Court's finding to not only be without evidentiary support but also against the preponderance and/or greater weight and of the evidence. The further finding in paragraph 41 that Howard attempted to have the purchasers buy his house is contrary to the preponderance and/or greater weight of the evidence for the reasons hereinbefore set forth in this Motion and incorporated by reference again herein. The finding in paragraph 41 that Howard's attempt to have the purchasers buy his house was reprehensible ridiculous and frivolous and created by his suggestion is against the preponderance and/or greater weight of the evidence in that it is contrary to a reasonable conclusion from the reading of the Deganhart letter and certainly is contrary to a finding of being clear and convincing evidence against Howard by the preponderance and/or greater weight of the evidence on account of not only the letter but the other matters regarding the Lis Pendens and the encroachment as set forth herein . Moreover, even if the question of the purchase of Howard's house was Howard's suggestion as opposed to Deganhart's, there is no evidence that Deganhart as representative of the purchasers, conveyed that suggestion or anything else in the conversation relating to the pool to his clients and/or related the matter of the encroachment to his clients, which he would have known to have been a true fact from his title search. Accordingly even assuming for the sake of discussion that the statements in paragraph 41 could be attributable to Howard in view of the fact that there is no evidence that they were never conveyed to either Shirley or the purchasers prior to the closing makes such statements of no effect as regards the closing and would negate any proximate cause that the filing of the Lis Pendens had or could have had any effect on the sale of the 320 St. James property or

could support a verdict on the abuse of process claim much less a finding of clear and convincing evidence to support any punitive damage claim requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

28. The finding of paragraph 42 of clear and convincing evidence that the Lis Pendens was calculated to be done just as the sale of the 320 St. James property was slated to close is against the preponderance and/or greater weight of the evidence in that the Lis Pendens was filed 19 days before the sale at a time that Howard would have had no knowledge of the contract of sale based on the evidence of record and that the further finding that Shirley was in a financially vulnerable position is against the preponderance and/or greater weight of the evidence based upon the fact that Shirley had received over two million dollars cash from Howard approximately only a year before the sale of the 320 St. James house and is further against the preponderance and/or greater weight of the evidence that Shirley was financially vulnerable which is used as a basis of clear and convincing evidence for the imposition of punitive damages is rather than being clear and convincing evidence actually against the preponderance and/or greater weight of the evidence as found by the Trier of the fact given Shirley's financially stable two plus million dollars cash position in addition to the Sims Street property she also owned requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
29. The findings of paragraph 36 are irrelevant. To the extent they may be considered relevant however, the opinion of the Court of Appeals reflects that great consideration

was given to the contentions poised by Mr. Hammer and accordingly negates any findings that the Declaratory Judgment action was unmeritorious or frivolous and any finding to the contrary is therefore error requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

The Court in footnote 6 calls attention to the fact that the Declaratory Judgment complaint references "a certain contract", seemingly casting aspersion upon the fact that the contract was not more definitively referenced. The Court's footnote uses language very similar to the language used by Ms. Hammer's attorneys in documents presented in connection with the Appeal and otherwise. In so doing the Court overlooks the fact that a sealed Order was in effect which prohibited precise reference without obtaining the permission of the specific Family Court Judge who issued the Order and that Mr. Hammer and his attorney were merely complying with the Order sealing the Family Court file. Since the use of the term "a certain contract" was at an initial stage there was ample opportunity if necessary for a Motion to Make More Definite and Certain which would have been an additional basis to request that the seal as to the contract be lifted. It is interesting to note that rather than make any such Motion the attorneys for Ms. Hammer simply filed a Memorandum setting forth numerous matters that were sealed by the Family Court Judge without ever attempting to move as required before Judge Rucker for an Order lifting the seal as to the portions Ms. Hammer's attorneys wanted to make reference to. It is also interesting to note that footnote 6 speaks to a Family Court action which was not introduced or referenced in the trial before this Court referring to that action as a

collateral attack on the Family Court Order. Not only does it speak to the action it sets forth factual matters that were not presented in connection with the action. Accordingly the reference in footnote 6 and information contained therein, since it was not part of the record of evidence in this case, should not have been known to the Court and the fact that it was known reflects that the attorney and/or agents for Ms. Hammer improperly inserted that information into the Order they were requested to prepare and/or otherwise improperly disclosed such information to the Court. The effect of this information is impossible to determine and since it is set forth in connection with Judge Manning's rulings raises the specter that the verdict of the Court was improperly influenced and that accordingly a new trial is required or in the alternative the granting of a Motion for mistrial on account of the possibility of prejudicial effect of the information improperly conveyed to the Court which does not accurately reflect the sequence of events in connection with the information should be granted and that Motion for mistrial is hereby made on the basis stated above. Further, it is respectfully submitted, the matters in 29 above require reconsideration, alteration, amendment and/or modification of the Court's Order for the reason that the matters set forth were prejudicial to the Defendant and it is impossible to determine whether such prejudice improperly influenced the verdict against Movant.

30. That the Court's finding that there is clear and convincing evidence entitling Shirley to punitive damages on the abuse of process counterclaims is against the preponderance and/or greater weight of the evidence. Among other respects there is no evidence that Howard made a false representation to Turbeville or Ackerman concerning Shirley's interest in the L.P.. The evidence rather is clear based on

Ackerman's testimony that he learned of the 56.8% interest from Shirley's tax advisor rather than from Howard. Furthermore the purported tender was not properly made and therefore appropriately rejected, not by Howard, but by the attorneys representing Howard who determined the inappropriateness of the tender and the notion that the Declaratory Judgment action suit and/or the action by the L.P. was instigated to harass Shirley, financially burden her, and because Howard could not entertain the thought that their relationship was over, is without evidentiary support, is based purely on supposition, and against the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

31. The finding that the 1634 Main, L.P. case was brought to harass Shirley is also without evidentiary support and overlooks the fact that the action was brought by Susan B. Lipscomb, Esquire, a respected attorney, who would be prohibited from filing an action by Rule 11 unless she believed the allegations and action had a good faith basis for being pursued. Clearly the only reasonable conclusion from the fact that the action was filed by attorney Lipscomb, along with the absence of any evidence that she did not have a good faith belief that the actions were meritorious, negates any finding that the actions were brought based on Howard's intent to harass Shirley and accordingly is against the preponderance and/or greater weight of the evidence. Further the evidence regarding Howard's occupancy of the building and/or payments or lack thereof had anything to do with the filing of the lawsuit lacks evidentiary support is purely based on supposition and against the preponderance

and/or greater weight of the evidence and lacks basis for finding that same is clear and convincing evidence that the purpose of the 1634 Main, L. P. initiating its action was to harass Shirley; for any and all of the reason herein above set forth such conclusion is against the preponderance and/or greater weight of the evidence. Moreover the finding that the 1634 Main, L.P. action had no merit was frivolous and brought to harass Shirley is contrary to the evidence in view of the attorneys return of any transfer documents with no evidence other than the reasonable conclusion that the determination was made by the attorneys and not Howard on their view of the efficacy of tender to return same. The evidence is uncontradicted that the L.P. attorney was hired by Turbeville. The evidence is further clear that the L. P. attorney reached the same conclusion regarding the efficacy of Shirley's tender as did Howard's initial attorney in the domestic case, that is that the tender was not properly made. Accordingly the worst that can be said is that Howard was guided by the advice of counsel and did not therefore act with malicious intent since there is no implication indication or evidence of record that the attorneys return of the documents tendered were not made in good faith and in fact the reasonable conclusion is that both attorneys independently returned the documents as being insufficient to comply with the 2008 contract that their actions in doing so were in good faith. Accordingly the referenced finding is against the preponderance and/or greater weight of the evidence and without evidentiary support. Likewise the finding regarding the validity of the Family Court Orders has no bearing on the question of abuse of process as they were not final at the time of the filing of the 1634 Main, L. P. and/or the Declaratory Judgment action by reason of appeal of the Orders and any inference

of impropriety in filing either of the actions is negated by the appeal then pending as well as the evidence of good faith on the part of the attorneys in returning the tendered documents. The finding of clear and convincing evidence that any actions of Howard and the L.P. were reprehensible and were for harassment is negated by the finding that neither Mr. Turbeville, Ms. Lipscomb or Mr. Aiken acted improperly, and in fact the finding that their conduct was proper. The further evidence that Mr. Turbeville hired Ms. Lipscomb and that she acted in good faith, and the further finding that Mr. Aiken acted in good faith in defending Mr. Hammer is contrary to the Court's finding of clear and convincing evidence of reprehensible conduct and harassment. Rule 11 applies not only to the filing of a complaint but also to the filing of any answer to a complaint. The only reasonable conclusion that could have been drawn from the fact that both attorneys acted in good faith is that there is a lack of any evidence, clear, convincing or otherwise that Mr. Hammer's conduct was in anyway improper since all actions by Mr. Hammer were based upon advise of attorneys and the actions of attorneys requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

32. The Court erred in its conclusion of law that Mr. Hammer brought a contract action, which he did not, and that the ulterior purposes is established by an attempt to prevent a closing of a sale of 320 St. James and/or avoid a Family Court agreement in an improper forum when not only does the evidence establish that the action was brought in the Circuit Court in good faith, but also there is a lack of any evidence of any attempt to prevent the closing of the sale by reason of the fact that there is no

evidence that any conversations that Howard may have had with purchasers attorney were transmitted to the purchaser and that in fact the evidence is clear that there was no attempt to purposely prevent the closing. The conclusion of law based upon the Court's view that Howard brought a contract action, which he did not, and that the Lis Pendens was to subvert the transaction with the purchasers, fails to consider and is contrary to any reasonable inference of wrongdoing since the Lis Pendens was filed some 19 days before Howard learned of the sale of 320 St. James. Moreover the further conclusion that the contract action was to avoid the Family Court agreement or gain leverage in the Family Court is without any evidentiary support and is in fact contrary to the reasonable conclusion that since the action was one for Declaratory Judgment and not on contract and since it was brought in good faith by Howard's attorneys the purpose was not to gain some leverage against Shirley in Family Court and/or avoid a Family Court agreement but was rather clearly for the purpose of asking the Court for a declaration as to Howard's right to bring an action in Circuit Court based upon the contention that the Family Court agreement was to allow such Circuit Court action. Nor is there basis for the conclusion that the Declaratory Judgment action and/or the Lis Pendens were for any collateral purpose.

For all of these reasons it is respectfully submitted that the finding of fact of clear and convincing evidence to support a verdict for punitive damages along with other reasons stated herein is against the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

33. That the findings of paragraph 48 are in error in that the actions while combined were tried separately and that therefore findings pertaining to one action were not properly transferable to any other action and accordingly the findings of paragraph 48 in and of itself require reversal of the verdict against 1634 Main L.P. and/or the granting of a mistrial in connection with the verdict against 1634 Main L.P. which Motion for mistrial is hereby respectfully made requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
34. That the finding of paragraph 50 are an improper basis upon which to sustain any verdict against 1634 Main L.P. in that there is no evidence that Howard was acting except in an individual capacity in connection with the 2008 property settlement agreement and since the verdict is based upon the finding in whole or in part in paragraph 50 the same is error of law against to the preponderance and/or greater weight of the evidence applicable to the question at issue requiring the verdict of 1634 Main L.P. being vacated and requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.
35. That the finding of paragraphs 51, 52 and 53 are irrelevant to the issue of culpability on the part of 1634 Main L.P. in view of the uncontroverted evidence that, (a) the action by 1634 Main, L.P. was brought in good faith; and, (b) the engagement of the lawyer to bring the action, which was the final and necessary factor in instituting the suit was not made as a result of direct action by Howard but rather by Mr. Turbeville, who had authority under his contract with 1634 Main, L.P. to bring such action at his

discretion requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

36. It is respectfully submitted that the findings of paragraph 54, 55, 56, 57, and 58 are contrary to the evidence of record and to the preponderance and/or greater weight of the evidence particularly the finding that Howard instructed the accountant to change Shirley's percentage ownership when in fact the accountant testified that he believed he got the information regarding the change of ownership from Turbeville which merely confirmed the prior instruction of Shirley's tax attorney regarding change of her ownership was appropriate in 2005. This is especially so in view of Shirley's four (4) written confirmations regarding the change in ownership, two (2) of which were under oath. The four (4) confirmations by Shirley contradict and completely undermine the Court's finding in paragraph 58 regarding the absence of a writing to support the transfer of any partnership interest to Shirley and accordingly such finding is against the preponderance and/or greater weight of the evidence. Moreover the Court's conclusion that the information for tax returns for L.P. came exclusively from Howard is contrary to the testimony that Danville Business Associates prepared the annual accounting information and that the same was verified by the accountant through the bank as necessary, thereby making it clear that the information primarily came from Turbeville and/or the bank and not from Howard, respectfully confirming that the findings of fact by the trial Court was contrary to the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or

reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

37. The finding in paragraph 58 is contrary to the uncontroverted testimony of the accountant for Shirley and 1634 Main L.P. that he had conference with Shirley's tax attorney regarding the planned for transfer in 2005 which plan was for the benefit of Shirley on account of the 1031 tax free exchange requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

38. It is respectfully submitted that the Court's conclusion in paragraph 60 is contrary to an the preponderance and/or greater weight of the evidence in that Shirley four (4) times corroborated in writing the transfer in addition to the corroboration by the accountant's testimony. There is no evidence that the transfer was not addressed in the Family Court in the property settlement agreement. To the contrary the agreement provided any interest in the building or otherwise, etc., which would include the 56.8% interest on the tax returns further undermines the conclusion of the Court. Additionally the fact that the accountant testified Mr. Mooring, who was Shirley's accountant after 2007 and who received copies of the K-1s did not deny Shirley's interest also undermines the conclusion of the Court regarding evidence of transfer. The Court's conclusion that Shirley, an individual with over 20 years experience as a banker and familiar with tax returns and complex transactions, on four (4) occasions did not correct what she claims to be an erroneous K-1 filing, it is respectfully submitted, is contrary to what is reasonably supported by the evidence and what would reasonably be expected from a person in the same or similar situation

with the same or similar knowledge and banking background as Shirley. The conclusion is therefore without evidentiary support and contrary to the preponderance and/or greater weight of the evidence and reasonable expectation from an ordinary prudent person requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

39. There is no evidence that the findings in paragraph 62 is inaccurate and in fact Shirley's corroboration four (4) times of the returns is contrary to the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

40. The finding in paragraph 63 may not make Shirley's verification that she owned 56.8% true but it certainly preponderates or would cause Trier of the facts to conclude by the greater weight or preponderance of the evidence that it is true. While it might be implied that anyone, even a person with a sophisticated background as Shirley had might overlook the percentage attributed to her on one (1) occasion, to conclude that she would have done so on four (4) occasions, two (2) of which required her to do so under oath subject to penalties of perjury, is it is respectfully submitted, contrary to what would be expected of a reasonably prudent person in the same or similar circumstances thereby making the Court's findings contrary to the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

41. That the findings of paragraphs 64, 65 and 66 are unsupported by the evidence of record from the testimony of the accountant who explained that Howard did not get the payments that were found to have been made to Howard in 64, 65, and 66, and that notwithstanding Shirley's exhibits, those payments were explained to be book entries for accounting purposes only and not representative of cash distributions thereby making the findings contrary to the preponderance and/or greater weight of the evidence and improper as a basis for use in whole or in part for a verdict in Shirley's favor on the abuse of process claim and accordingly resulting in error for these reasons in the verdict requiring that the verdict be set aside, reconsidered, and/or amended and/or that a new trial be granted.
42. That the findings in paragraphs 69 and 70 overlook the fact that the documents presented by Mr. Madden were returned because they did not conform to the requirements of a proper transfer as set forth in the 1634 Main L.P. By-Laws and that they were returned in good faith on account thereof by the attorney for 1634 Main L.P. without Mr. Madden ever attempting to correct or contact the attorney for 1634 Main L.P. and/or Mr. Hammer's attorney, Art Aiken, Esquire, who contrary to the findings of the Trier of the fact, represented Mr. Hammer in the counterclaim on the DJ action from the time of its filing.
43. The findings in paragraph 71, 72 and 73 are irrelevant and constitute no basis for the verdicts of abuse of process requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

44. The finding in paragraph 75 that Howard knew that Shirley did not own but 8% is contrary to the overall evidence and especially that of the accountant and Shirley's four (4) documentations confirming her 56.8% interest and accordingly is against the preponderance and/or greater weight of the evidence. Moreover the fact of the finding that Ms. Lipscomb did not do anything improperly is conclusively supportive of the fact that Ms. Lipscomb filed the action in good faith and thereby conclusively undermines the finding of lack of good faith, unmeritorious filing, etc., upon which the Court concluded Shirley was entitled to a verdict on abuse of process based upon ulterior motive and accordingly such findings are against the preponderance and/or greater weight of the evidence are contradictory and in conflict with the ultimate finding requiring a new trial and/or reconsideration, amendment, modification and/or alteration of the verdicts on abuse of process.

45. The finding in paragraph 76 that Howard made a false representation to Turbeville and Ackerman that Shirley had a 56.8% interest in the L.P. is contrary to the testimony of Ackerman wherein he stated that information came as a result of conference with the tax attorney and further that it was his belief that the percentage interest most likely came from Turbeville and not Hammer and further and more telling that the representation, regardless of where it came, was accurate and not false, based on Shirley's own confirmation four (4) times, two (2) of which were under oath, of her 56.8% interest in the L.P. and the failure of her accountant for over one (1) year or anytime to deny that she had such interest when presented with tax returns showing that interest for the purpose of allowing him to clarify if she did not in fact have such interest. The absence of introduction of any tax returns by Shirley, which

would have been a simple matter, clarifying that she did not claim that interest subsequent to the 2006 return and verified in 2007 when the parties were in the midst of contentious disagreements in Family Court is compelling evidence that Shirley did own the 56.8% interest and that the trial Court therefore, it is respectfully submitted, erred in its finding concerning the ownership interest when the preponderance and/or greater weight of the evidence was contrary to the trial Court's findings requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

46. The finding in paragraph 80 that the 1634 Main L.P. action was commenced on baseless grounds is contrary and inconsistent with the finding that Mr. Turbeville nor Ms. Lipscomb acted improperly for the reason that such finding precludes a finding that the action was brought on baseless grounds. Moreover, there is no basis for any finding that an action should have been brought against Mr. Hammer personally for rents when it was his law firm who owed monies, if any. In fact the testimony from Mr. Hammer explained the reduction in space and therefore the reduction in the amount that would have been owed. There is no indication that the amount paid in 2009 and 2011 was not an appropriate amount for the space being rented. Furthermore, Mr. Hammer explained with uncontradicted testimony that another law firm occupied the subject's space in 2008 and part of 2009 and that there was no evidence regarding whether or not a payment had been ultimately made in 2012 and therefore the findings concerning the rentals are not based upon proper evidence of record nor pertinent to the issues on the abuse of process claims and clearly not of a

nature of clear and convincing evidence to establish that 1634 Main L.P.'s purpose in initiating the action was to harass Shirley especially in view of the overwhelming evidence set forth above to the contrary. The findings of the Court in paragraph 80 are respectfully against the preponderance and/or greater weight of the evidence as to the issue of liability and as to the issue of punitive damages for which a new trial, it is respectfully submitted, is required and/or a reconsideration, alteration, modification or amendment of the findings is required.

47. The findings in paragraph 81 are contrary to the evidence of record, it is respectfully submitted, and therefore against the preponderance and/or greater weight of the evidence in that Howard did not reject the tenders, his lawyers did on legal grounds having legitimate basis in the law for so doing, and that Shirley's tenders were a nullity and that the DJ and 1634 Main L.P. actions, implicitly if not explicitly contrary to the findings of the trial Court, were brought in good faith requiring a new trial and/or reconsideration, alteration, modification or amendment of the verdict to reflect the true facts and reverse the verdict on the abuse of process counts.

48. For all and any of the reasons set forth hereinabove the findings of paragraph 82 and 83 are contrary to the preponderance and/or greater weight of the evidence and are improper as a bases for verdict on the abuse of process actions requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

49. That the findings of paragraph 84, 85, 86, and 87 are not part of the record and even if they were they are either irrelevant or contrary to the preponderance and/or greater weight of the evidence of the Court's determination that there was an ulterior purpose

to gain an objective not legitimate in the use of process by the filing of the DJ action which in and of itself because of the nature of a DJ action refutes any notion of ulterior purpose and further by reason of the matters hereinabove set forth regarding among others the good faith of the attorney in filing the action along with the unassailable evidence that the conclusion that the ulterior purpose is established by Howard's attempt to purposely prevent the closing of the sale of 320 St. James by the filing of a Lis Pendens, is against the preponderance and/or greater weight of the evidence and in fact is contrary to a reasonable conclusion because of the fact that the Lis Pendens was filed before Howard could possibly have known about the sale of the 320 St. James property and therefore could not have filed the Lis Pendens for the ulterior purpose to prevent the closing of the sale and for the further reason that the DJ action by reason of the fact that it was an attempt to have the Court make a declaration as to significant questions of law, it is respectfully submitted, eviscerates the trial Court's finding concerning the conclusion that any action was filed in an improper form.

50. The Court's finding in paragraph 106 that Howard's bringing of the contract action and the Lis Pendens was to subvert the transaction with the purchasers, to prevent the sale to avoid the Family Court agreement or to gain some leverage against Shirley in the Family Court is against the preponderance and/or greater weight of the evidence, and accordingly does not support the conclusion that the same was an ulterior motive on which a verdict for abuse of process can be made for all of the reasons set forth herein and accordingly such conclusion is against the preponderance and/or greater weight of the evidence requiring the granting of a new trial and/or reconsideration,

amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor. Further more the perponderance and/or greater weight of the evidence does not support any conclusion that Howard initiated and continued the contract action when in fact no contract action was continued but rather the action was one for Declaratory Judgment nor support that the Lis Pendens was initiated without any good faith belief that his claims were valid, or that he tried to use the Lis Pendens to entice the buyers to back away from buying the 320 St. James property. To the contrary the greater weight and preponderance of the evidence for the reasons stated throughout this Motion the evidence indicates that the Declaratory Judgment action and Lis Pendens were brought in good faith and that Howard did not entice the buyers to back away from buying 320 St. James requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

51. The Court's conclusion in paragraph 110 that Howard's actions in filing the Lis Pendens and attempting to subvert a valid contract of sale through a Circuit Court proceedings were a perversion of that process were contrary to the greater weight and preponderance of the evidence as set forth throughout this Motion requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

52. The conclusion in paragraph 113 that circumstantial evidence establishes Howard had knowledge of the existence of the contract for the sale of 320 St. James property does

not support the necessary conclusion that Howard had knowledge of the contract of sale prior to August 19, when in fact all of the evidence, circumstantial and otherwise establishes that Howard only learned of the sale on August 19, nineteen (19) days after the filing of the Lis Pendens and in no way impacts circumstantially or otherwise of knowledge of the contract **at the time of filing of the Lis Pendens** which would be the relevant time regarding the question of ulterior motive. The mere fact that he happened to deliver a letter confirming a conversation with the purchaser's attorney that he would do everything in his power to resolve the matter of the Lis Pendens in no way indicates circumstantially or otherwise any knowledge of the existence of the contract for sale at the time of filing of the Lis Pendens. Further the only way Howard could have know about the contract of sale at the time of filing of the Lis Pendens would have been if he was so told by Shirley or one of her lawyers, which would defy logic and reasoning and for which there is no evidence. Accordingly this conclusion requires the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

53. It is respectfully submitted that the Court's statement that Howard did everything that he could to procure a breach of the contract is unsupported by the evidence contrary to the evidence, contrary to the greater weight and/or preponderance of the evidence and by the Court's own finding even if Howard had tried to procure a breach, the same did not occur and therefore his attempt would have been of no relevance or evidentiary value all requiring the granting of a new trial and/or reconsideration,

amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

54. The Court's conclusion in paragraph 117 that it is absolutely clear that Howard filed the Lis Pendens with malicious intent is contrary to the preponderance and/or greater weight of evidence and/or a basis for finding of a verdict on the abuse of process claims and accordingly requiring the granting of a new trial and/or reconsideration, amendment, alteration and/or modification of the Order of the Court of January 28, 2013, to reflect a verdict in Movant's favor.

55. The verdict in paragraph 120 for twenty thousand (\$20,000.00) dollars for frustration is error for the reasons regarding frustration and the withdrawal of claim for emotional damages as set forth hereinabove and is further error because it is based upon an abuse of the system in the filing of the Lis Pendens as opposed to the necessary finding of abuse of process in the filing of the Lis Pendens which is contrary to the privilege afforded to the filing of a Lis Pendens and to the evidence hereinabove set forth and discussed. The further verdict and finding of actual damages in paragraph 120 based upon what a reasonable person would experience in the way of frustration lacks any evidence in the record as to what a reasonable person would experience, moreover, there is no evidence of proximate cause that the frustration was produced or resulted from any action by Howard even assuming same to be improper. The Huggins case cited in paragraph 120 is distinguished from the present case in that in Huggins the prayer for damages was for mental pain and suffering which necessarily included injuries to feelings likewise in Swicegood the prayer for damages included a prayer for emotional injury, mental pain and suffering,

which are not only absent, but were withdrawn in the instant case. The Court's statement that in its view whatever one calls the assault on Shirley's feelings an award of damages has a basis in law in actuality, not only ignores the withdrawal of the claim for emotional damages but implicitly admits that the award based on frustration is a shot in the dark contrary to the law in this state.

56. Lastly, the award of punitive damages is contrary to the evidence for the reason that actual damages were not proper to be awarded and even if proper there is no clear and convincing supporting an award of punitive damages. Moreover, the Court has failed to conduct a hearing regarding the evaluation of relevant factors applied at the post judgment stage and even if such hearing had been conducted or is not required, there is no evidence to support all of the considerations deemed appropriate in law, particularly the conclusion that Shirley has undoubtedly been harmed in the form of incurring substantial fees and costs when the Court specifically found no evidence of attorney's fees and/or cost and only finding frustration and improper element of damage as a basis for its verdict on punitive damages. Accordingly the verdict for punitive damages is unjustified contrary to law, excessive and should therefore be set aside, reconsidered, altered, modified and/or amended.

MOVANT HEREBY ADOPTS all pertinent basis set forth in the Motions of any other attorneys for the relief requested.



Howard Hammer, *Pro Se*
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(803) 530-8517

Columbia, South Carolina
February 11, 2013

Susan Lipscomb

From: James, George C. <GJamesJ@sccourts.org>
Sent: Monday, December 17, 2012 12:22 PM
To: Howard Hammer (howham1945@gmail.com); art@aikenandhightower.com; Susan Lipscomb; desab@desaballard.com
Cc: James, George C. Law Clerk (Benjamin H. Joyce); James, George C. Secretary (Debra Flinchum)
Subject: RE: Hammer v. Hammer and 1634 v. Shirley Hammer v. Howard Hammer

Dear Everyone

I have changed my mind about the correct procedural way to handle the conclusion of this case. While I do not plan to change my overall decision, I have now decided not to issue an order until I have heard (1) the evidence and arguments pertaining to attorney's fees as actual damages, (2) any remaining issues regarding punitive damages, and (3) any arguments for recovery under the Frivolous Proceedings Sanctions Act. The reason I have decided to do it this way is that I believe this is the best way to avoid any uncertainty about deadlines for motions to reconsider and/or appeal. With two orders floating around (one setting my findings in general as to the trial itself, and the other addressing the attorney's fees and punitive damages issues), I believe the non-prevailing parties and their counsel would unnecessarily be faced with having to guess how to protect themselves as to these deadlines. Since we'll have another hearing anyway, I believe one order would be the most effective and fair use of your time.

As an aside, I try not to issue dispositive orders when Holidays are approaching, as no one can enjoy celebrating with family and friends with motion or appeal deadlines looming. We are all familiar with that pit in the stomach.

Here is what I propose: I will be available the afternoons of Wednesday, January 9 and Thursday January 10 for a hearing in Columbia. I will also have General Sessions in Camden the following week, but I do not know how busy they will be yet. I would prefer January 9 or 10. Please check your schedules and advise me as soon as you can of your availability for these three time frames. I am on vacation this week but will be checking my emails periodically.

GCJ

Hammer v. Hammer

I. Abuse of Process:

→ To establish an abuse of process claim one must assert (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the conduct of the proceeding.

→ Ulterior purpose is established by Howard Hammer's attempt to purposefully prevent closing the sale of the property to the purchasers and to avoid the family court agreement in the improper forum. The action was commenced to (1) subvert the transaction with the purchasers and prevent the sale or (2) to avoid the family court agreement or (3) to gain some leverage on Shirley Hammer in the family court matter, or all three. Howard filed this action on August 18, 2009 and either the next day or the day after tried to steer the purchasers toward purchasing his home instead. Even though Howard testified that he does not know if he brought that up or of Paul Degenhart brought it up, my conclusion is that Howard did. Knowingly filing this action in a forum that had no subject matter jurisdiction is a perversion of the process. There can be no legitimate contention that the circuit court had any jurisdiction over the agreement and any attempt to assert a claim over 320 St. James. Filing a *lis pendens* and an accompanying suit in the circuit court suit was an improper *albeit* failed attempt to obtain an advantage in the Family Court litigation, as well as an attempt to assert an invalid claim of an interest in real property that he had conveyed by general warranty deed pursuant to valid Family Court order in May 2008.

Typically, the focus of an abuse of process claim is upon the improper use of process after it has been issued. The improper purpose usually takes the form of coercion to obtain a collateral advantage. (citations numerous for these two points, but see *D. R. Horton v. Wescott Land Co.*, *Hainer*, *Swicegood*, etc.) However, our courts have also noted an abuse of process action may lie if a party prosecutes an entire cause of action for collateral purposes. See *Food Lion, Inc. v. United Food and Commercial Workers*). Here, Howard not only initiated and continued the process without any good faith belief that his claims were valid, but he also tried to use his baseless claims to entice the buyers to back away from buying Shirley's house. See further comments below.

→ Shirley's deed to her mother was an understandable attempt to get Howard to leave her alone and to distance Howard from the property at issue. I attach no weight adverse to Shirley as far as this conveyance to her mother is concerned. It was none of Howard's business what she did with this property.

→ Howard Hammer had deeded this property to Shirley Hammer more than a year before his attempts to prevent the sale. Though there may not have been proof of all of the elements of the tort of intentional interference of a contract (lack of proof of breach and damages) or slander of title, Howard's actions in filing the *lis pendens* and attempting to subvert a valid contract of sale through the circuit court action are a perversion of the process.

→Other thoughts: As fact finder, I found Howard to be an engaging and well-mannered fellow, but his answers to just about every question, including very simple ones, were characterized by obfuscation and degenerated into areas not having anything to do with the issues in the case. As fact finder, I can take into account the demeanor of the witness (including whether the witness is straightforward in answering questions) in determining the witness' credibility, and Howard's credibility was damaged by his own demeanor. His manner of answering questions also established to me that he is intent on using this process to unnecessarily and unfairly prolong any and all litigation involving Shirley.

→Damages—a reasonable person in the place of Shirley Hammer would be understandably frustrated about Howard's use of the judicial system in an attempt to subvert a valid court order in the improper forum, and would be frustrated over Howard's use of the *lis pendens* and resulting suit to sour the transaction between Shirley and the buyers of her home. In conclude actual damages for frustration in the amount of \$20,000.00 is appropriate for this frustration. This finding of actual damages is based upon what a reasonable person would experience in the way of frustration and is not based upon any pre-existing fragile mental state, as there is no evidence of such a pre-existing condition. Attorneys' fees have not been broken down between this litigation and 1634 litigation, but I do concluded attorneys' fees for this cause of action are warranted. The evidence establishes that Shirley incurred \$175,445.00 in fees for the circuit court litigation, but the court will undertake to examine the amount of fees properly awarded, as required by case law. I have no doubt that attorneys' fees are proper for the defense of Howard's claim before it was dismissed by Judge Manning, but I doubt Shirley will be entitled to an award of fees incurred in Hammer v. Hammer after Judge Manning dismissed Howard's claims for lack of jurisdiction, specifically those fees incurred in the pursuit of her counterclaims. If Judge Manning's ruling is affirmed, it would be up to the appellate court to determine whether Shirley is entitled to fees incurred combating that appeal.

Punitive damages: I conclude that Shirley has established that she is entitled to punitive damages against Howard, as she has established by clear and convincing evidence that Howard's actions were in willful, wanton, and reckless disregard of Shirley's rights. The test for determining whether a party's conduct was willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff's rights. It is that present consciousness of wrongdoing that justifies the award of punitive damages. Punitive damages are awarded to vindicate the rights of the plaintiff and to deter the defendant and other from committing the same or similar conduct in the future. Again, I find Shirley has established her entitlement to punitive damages by clear and convincing evidence.

Before awarding punitive damages, I am required to consider the relationship between any punitive damage award and the harm caused. I am to take into account the reprehensibility of Howard's

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conduct, the harm caused, Howard's awareness of the wrongfulness of the conduct, and any concealment. The award must bear a relationship to the nature and extent of the conduct and the harm caused, including the actual damage award made. I must also consider, as a mitigating factor, any other penalty that may have been imposed for the conduct involved. Third, I must consider whether the award of and the amount of punitive damages may deprive Howard of any profits derived from his improper conduct and whether any ill-gotten profits should be awarded to Shirley. Finally, I must note as fact finder that any punitive damage award must be limited to punishment and thus may not effect economic bankruptcy and to that end, must consider the defendant's ability to pay; however, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.

On these foregoing points, I find by clear and convincing evidence that that Howard's conduct was reprehensible in the sense that he, as an attorney, was aware that bringing the action in a forum that had no subject matter jurisdiction was totally improper, and that he was aware that filing the *lis pendens* on property he had deeded over a year prior was totally unfounded. His attempt at having the purchasers buy his house instead of Shirley's was a ridiculous solution to a problem he created by his own actions, and his suggestions that the pool leaked and that the back fence encroached on a neighbor's property were further calculated to subvert a legitimate closing of that sale. These actions were calculated to be taken just as Shirley's sale of the home was slated to close, and in that sense she was in a financially vulnerable position. I further find Howard was aware of the frivolity of his conduct, and while he did not try to conceal it in the traditional sense, he did cloak his conduct under the guise of trying to attack a Family Court order. The duration of Howard's conduct has been relatively long lasting, and specifically continued from the time he filed the *lis pendens* on July 31, 2009 and filed this action on August 18, 2009, up until Judge Manning dismissed his action in April 2010. Taking into account the harm caused to Shirley (the frustration as noted above and as yet undetermined attorneys' fees) is an unfinished proposition at this stage. I will consider as a mitigating factor that Howard has been disciplined by the Supreme Court for his conduct. I do not find that Howard has obtained any "ill-gotten profits" from his conduct. I conclude that an award of punitive damages will not effect economic bankruptcy, but even so, this factor is not an absolute bar to punitive damages.

II. Invasion of Privacy:

→ Shirley Hammer does not have valid claim for invasion of privacy. No evidence in the record supports a valid cause of action for invasion of privacy.

III. Intentional Interference with a Contract:

→ To establish intentional interference with a contract one must show (1) the existence of the contract; (2) the other party's knowledge of the existence; (3) the other party's intentional procurement of the breach of the contract; (4) the absence of justification; and (5) resulting damage.

→ Circumstantial evidence establishes Howard Hammer had knowledge of the existence of the contract (i.e. hand delivery of letter at exact time of closing and filing of the *lis pendens* when the closing was approaching and filing the lawsuit the day before closing). In my view, he did everything he could to procure a breach (including suggesting that the purchasers buy his house instead, commenting about a leak in the pool, and mentioning an insignificant fence encroachment), but the breach did not occur, as the parties proceeded to closing, albeit with modified terms (owner financing instead of bank financing). Even if there was a breach by virtue of the changed financing arrangement, resulting damages have not been proven by Shirley Hammer by the greater weight of the evidence; the CFP's testimony is speculative in my view, as there is no evidence that Shirley invested the proceeds she did receive at closing in a manner consistent with what the CFP based her opinions upon. As the damages claim was necessarily based upon her testimony, proof of damages fails.

IV. Slander of Title:

→ The filing of a *lis pendens* is absolutely privileged in South Carolina. Because the recording of a *lis pendens* is specifically authorized by statute and has no existence separate and apart from litigation of which it gives notice, the filing of a *lis pendens* **cannot** form the basis of an action for slander of title. (See *Pond Place*)

→ The filing of a *lis pendens* is absolutely privileged even "when a party files a *lis pendens* which is motivated by some malicious intent." (See *Pond Place*). I find Howard filed the *lis pendens* with malicious intent, which is pertinent to the abuse of process claim and may also be pertinent to any as yet unfiled motion under the South Carolina Frivolous Proceedings Sanctions Act.

→ Even if there were no privilege present here, Shirley Hammer has failed to prove slander of title by the greater weight of the evidence. According to *Huff*, to maintain an action for slander of title in South Carolina, one must establish: (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to the plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties. Here, Shirley Hammer has failed to establish elements (5) and (6). I find no evidence of special damages incurred as a result of diminished value of the property in the eyes of third parties, as Shirley has failed to prove by the greater weight of the evidence that she sustained any damages as a result of diminished value of the property in the eyes of any third party.

Miscellaneous—To the extent any discussion is warranted on this point, this court will not undertake to determine whether the Family Court agreement and the order approving it are void as against public policy. This issue must be determined by the Family Court and this court has no subject matter jurisdiction over that issue. Howard argues that the Court of Appeals' discussion of *Moseley v. Mosier* in *Hammer v. Hammer* is dicta. That argument is absolutely without merit, as the Court of Appeals clearly

noted the argument and ruled against Howard. Even if dicta, the dicta is extremely persuasive, and I would still conclude the Family Court has jurisdiction over the agreement. See also the clear provisions of SC Code sections 20-3-690 and 63-3-530, as discussed by the Court of Appeals.

1634 Main L.P. v. Shirley Hammer

I. Abuse of Process:

General Notes:

→ I find the 1634 suit was timed by Howard Hammer to extract money from Shirley Hammer or to harass her while a valid Family Court order was in place on the issue of her interest in the realty and in the LP. SH5, LLC was the GP in the LP. Howard was the sole member of the LLC. Tim Madden's testimony establishes basically the following: the agreement and order approving it were finalized and filed in May 2008. The parties continued to have issues pertaining to the children, etc. Through June 2009, Howard tried to get the agreement voided/vacated/rescinded. In May 2009, Judge Jones had a hearing on that issue and denied Howard relief from the bench, but no written order was issued. Hearings had been scheduled in other matters for June 2009. Custody was resolved after a June 23 hearing (August 19, 2009 order #1), and other issues were resolved after a hearing on June 24 (August 19, 2009 order #2). Howard then filed multiple motions to challenge the 8/19 orders, and a hearing was held on October 27, 2009. Judge Rucker issued his order from that hearing and confirmed the agreement. Mr. Madden testified that Shirley first tendered the 1634 deed and assignment to Howard on that date but that Howard refused the tender, and I so find. The evidence establishes that Howard again moved to reconsider. Howard and Shirley were in Family Court hearings again in January, May, August, and September. Finally, Judge Rucker, by order dated September 24, 2010 and filed September 30, 2010, order the parties to sign the documents and do the things necessary to comply with the May 2008 order and the August 19, 2009 orders regarding, among other things, "the transfer from [Shirley] to [Howard] of the interest in the law office building and related entity." Shirley, through Mr. Madden, again tendered the realty and the partnership interest to Howard in November 2010, but he refused to accept it. That order of Judge Rucker is evidently on appeal. This timeline provided by Mr. Madden is compelling evidence **not** of Howard's willful refusal to obey Family Court orders (the undersigned has no jurisdiction and no desire to address that issue), but rather of the timing of Shirley's first refused tender (October 2009) and what transpired from that point until her final refused tender of November 2010.

Judge Manning dismissed Howard's Common Pleas claim against Shirley by order filed April 10, 2010. The 1634 lawsuit was brought indisputably at Howard's behest (again, he was the sole member

11/14/12

of SH5, LLC, which is the general partner of 1634) later that same month. As noted above, the agreement is binding and only reviewable by the Family Court, but 1634 as an arm of Howard continues to advance the claim that Shirley owes maintenance money for real and/or personal property that she has tried to deed over and/or assign to Howard since October 2009. 1634, with Howard providing the impetus, tried to collect a debt from Shirley that she did not owe, as I conclude that 1634, i.e., Howard, knew fully well that Shirley had tendered the subject partnership interest to Howard in October 2009 pursuant to a Family Court order. He never informed Mr. Turbeville that she had made the tender and used Mr. Turbeville in an effort to collect the assessment. The letter (Shirley's exhibit #23) from 1634 from Marion Turbeville to Howard asking for the repair funds was dated November 10, 2009, just two weeks after the October 27 tender. Mr. Turbeville's letter is to Howard only, and Howard forwarded it two days later on a 1634 Main, LP letterhead to SH5, LLC; David Hammer, a minor; Shirley; and himself. I conclude Howard used this assessment notice as leverage to collect money from Shirley that she did not owe and in an effort to harass her and obtain an unfair financial advantage.

Howard's claim that Shirley was obligated to deed the real estate to 1634 in exchange for a larger partnership interest for tax reasons is not supported by any written instrument, and I give that claim no weight. It would appear that if there were such an agreement or obligation on Shirley's part, that would have been hashed out in Family Court and clearly referenced in at least one of the many court orders. It is troubling that Shirley would sign the IRS e-file forms without reading the documents attached to them (which show her purported 56.8% interest), but I conclude she had only the smaller percentage interest, and regardless of what her interest actually was, she had tried to tender it to Howard and he refused.

→ To repeat, Marion Turbeville and Danville Business Advisers acted in good faith when taking steps to sue Shirley Hammer for 1634. They had no knowledge of the attempt by Shirley to comply with the court order in transferring her partnership interest/interest in land. Mr. Turbeville only knew what Howard told him. 1634 sued Shirley Hammer at the direction of general partner SH5, LLC (i.e. Howard Hammer) to collect money to initiate repairs of the building as Mr. Turbeville was under the impression that she had the largest partnership interest. Howard's offer to confess judgment for his share of the repairs has never been acted upon by 1634 or by Howard, demonstrating further that the action against Shirley, again instigated solely by Howard, was a sham attempt to collect a debt Shirley did not owe and an attempt to harass Shirley.

Damages-- I conclude a reasonable person in the place of Shirley would be justifiably frustrated by Howard's and 1634's perversion of the process for illegitimate reasons and that she is entitled to actual damages for such frustration in the amount of \$25,000.00. As with the case of attorneys' fees in the Hammer v. Hammer litigation, I will convene a hearing to determine the appropriate amount, if any, to award.

11/14/12

As far as punitive damages are concerned, the same analysis as noted above leads me to conclude that Shirley has established by clear and convincing evidence that Howard's conduct and 1634's conduct (through Howard only) were willful, wanton, and in reckless disregard for Shirley's rights. I again note that Mr. Turbeville's conduct, and for that matter Ms. Lipscomb's conduct, was in no way objectionable in my view of the evidence, and any award of punitive damages should not reflect adversely upon their involvement. My analysis of all the requisite considerations establishes that Howard's and 1634's actions were reprehensible in the sense that the actions were calculated to begin when Judge Manning dismissed Howard's claim in the first litigation and were a continued effort to attack a Family Court decree in an obviously improper forum. The actions have been long lasting, i.e., from April 2010 to now, and both Howard and 1634 were aware of the wrongfulness of their conduct. Howard did conceal the wrongful nature of his conduct by not expressing to Mr. Turbeville that Shirley had tendered the land and her interest in 1634 more than once, and failed to advise Mr. Turbeville Shirley had not deeded the real property to 1634 in exchange for a larger partnership interest, and it was this larger interest that the suit was based upon. Howard did not tell Mr. Turbeville that Howard, by virtue of the tender, would own the vast majority (more than 90%) of the partnership and that pursuing Shirley would be an unavailing effort in comparison to what Howard would owe by virtue of his large share. The comparison of the actual damage award and a punitive award is an unfinished proposition, in that the amount of attorneys' fees to be awarded as actual damages has not been determined. I will again take into account Supreme Court disciplinary action as a mitigating factor as far as Howard is concerned. Ability to pay and economic bankruptcy are factors but not bars to recovery.

The South Carolina Frivolous Proceedings Sanctions Act is not a factor at this stage as the very terms of the Act do not apply until the post-trial stage.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No. 2010-CP-40-2889

1634 Main, L.P.

Plaintiff,

vs.

Shirley Hammer a/ka/

Shirley Grace Hightower,

Defendant

vs.

Howard Hammer,

Additional Defendant
on Counterclaim

CERTIFICATE OF SERVICE

The undersigned certifies that she has, this date, prior to 11:59 p.m., caused to be served a copy of the Defendant's **MOTIONS** upon the Honorable George C. James, Jr. and opposing counsel in this matter by depositing in the United States mail, with sufficient first class postage affixed, addressed as set forth below:

The Honorable George C. James, Jr.
Sumter County Courthouse
141 North Main Street
PO Box 1716
Sumter, South Carolina 29150

Attorney for Plaintiff, Shirley Hammer

Desa Ballard, Esquire
Ballard, Watson, Weissenstein
226 State Street
West Columbia, South Carolina 29169

February 11, 2013


Debra Covington

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No. 2010-CP-40-2889

1634 Main, L.P.,

Plaintiff,

vs.

MOTION

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,
Additional Defendant
on Counterclaim,

TO: DEFENDANT SHIRLEY HAMMER, A/K/A SHIRLEY GRACE HIGHTOWER, AND
HER ATTORNEY, DESA BALLARD, ESQ.

PLEASE TAKE NOTICE that third party Defendant, Howard Hammer, will move ten (10) days hereafter or as soon thereafter as the matter may be heard at the Richland County Courthouse at such time as may be set for an Order dismissing the Motion for Sanctions on the ground that the same was not timely filed. This Motion is based upon the evidence of record that the Order of the Court was as of January 29, 2013, and that the Motion for Sanctions was not made until February 13, 2013, after the time required for making and service of such Motion had ended and expired.



Howard Hammer, *Pro Se*
1609 Catawba Street
Columbia, South Carolina 29205
(803) 530-8517

Columbia, South Carolina
February 20, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.

Plaintiff,

vs.

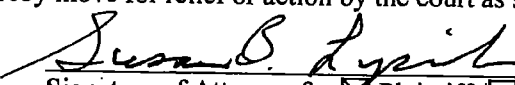
Shirley Hammer a/k/a Shirley Grace Hightower v.
Howard Hammer

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-2889

MOTION AND ORDER INFORMATION
FORM AND COVERSHEETRECEIVED
2013 FEB 25 PM 3:16
CLERK OF COURT
RICHLAND COUNTY

Plaintiff's Attorney: Susan Batten Lipscomb, Bar No. 03354 John Richard Lipscomb, Bar No. 77492 LIPSCOMB LAW FIRM, P.A. Address: 1634 Main St., Suite 200 Columbia, SC 29201 Phone #: (803) 233-6654 Fax #: (803) 233-6663 E-mail: SBL@LipscombLawFirmSC.com	Defendant's Attorney: Desa Ballard Stephanie Weissenstein Ballard Watson Weissenstein Address: 226 State Street West Columbia, SC 29169 Phone #: (803) 796-9299 Fax #: (803) 796-1066 E-mail: desab@desaballard.com																
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: Motion to Dismiss Estimated Time Needed: <u>15 min</u> Court Reporter Needed: ☒ YES / ☐ NO																	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant February 25, 2013 Date submitted																	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) <table border="0" style="width: 100%;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td></td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td></td> </tr> <tr> <td>☐ Motion for Publication</td> <td></td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Execution (Rule 69, SCRCP)	☐ Sexually Violent Predator Act		☐ Motion for Stay in Bankruptcy		☐ Motion for Publication		☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		☐ Other: _____	
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☐ Motion for Publication																	
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions																	
☐ Other: _____																	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____																
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																	

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Case No. 2010-CP-40-2889

1634 Main, L.P.,

Plaintiff,

vs.

MOTION TO DISMISS

Shirley Hammer, a/k/a
Shirley Grace Hightower,

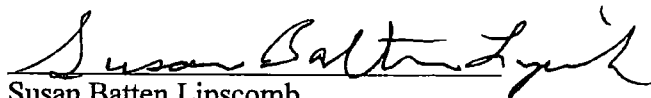
Defendant,

vs.

Howard Hammer,

Additional Defendant
on Counterclaim,RICHLAND COUNTY
FILED
2013 FEB 25 PM 3:47
CLERK OF COURT
CCH: JGSTO: DEFENDANT SHIRLEY HAMMER, A/K/A SHIRLEY GRACE HIGHTOWER, AND
HER ATTORNEY, DESA BALLARD, ESQ.

PLEASE TAKE NOTICE that Plaintiff, will move ten (10) days hereafter or as soon thereafter as the matter may be heard at the Richland County Courthouse at such time as may be set for an Order dismissing the Motion for Sanctions in the referenced matter on the ground that the same was not timely filed. This Motion is based upon the evidence of record that the Order of the Court was as of January 29, 2013, and that the Motion for Sanctions was not made until February 13, 2013, after the time required for making and service of such Motion had ended and expired.



Susan Batten Lipscomb
LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
Columbia, SC 29201
Telephone: (803) 233-6654
Facsimile Number: (803) 233-6663
Attorney for 1634 Main, L.P.

Columbia, SC
February 25, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main Street, L.P.

vs.

Shirley Hammer a/k/a
Shirley Grace Hightower

Defendant,

vs.

Howard Hammer

Third Party Defendant

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-2889

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Susan Batten Lipscomb, Bar No. 03354
John Richard Lipscomb, Bar No. 77492
LIPSCOMB LAW FIRM, P.A.
Address: 1634 Main St., Suite 200
Columbia, SC 29201
Phone #: (803) 233-6654 Fax #: (803) 233-6663
E-mail: LipscombLaw@Gmail.com

Defendant's Attorney: , Bar No. See List Attached
Address:
Phone #: Fax #:
E-mail:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to reconsider

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES/ ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

Date submitted

SECTION III: Motion Fee☒ PAID - AMOUNT: \$☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer, a/k/a Shirley Grace Hightower,

Defendant/Third-Party Plaintiff,

vs.

Howard Hammer,

Additional Defendant on Counterclaim.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2010-CP-40-2889

NOTICE OF MOTION AND
MOTION TO RECONSIDER,
ALTER, AMEND OR MODIFY

To: ALL COUNSEL OF RECORD:

Please take notice that 1634 Main, L.P., and, by and through its undersigned attorneys, will move, before the Circuit Court for the Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina on the tenth (10th) day after service hereof, or as soon as counsel may be heard, pursuant to the provisions of Rules 50, 52(b), 59(e), 60(a) and 62 SCRPC, and other applicable statutes and rules, for an Order reconsidering, amending, altering and modifying the June 3, 2013, Order of the Honorable George C. James, Jr. filed June 6, 2013. The undersigned received notice of entry of the judgment on July 9, 2013. A copy of the June 3, 2013, Order is attached hereto as "Exhibit A." The grounds for this Motion are as follows:

1. The court erred in the June 3, 2013, Order in awarding sanctions against 1634 Main, L.P. where there was no finding of misconduct alleged by 1634 Main, but only conduct of

SAD

Mr. Hammer. Mr. Hammer as manager or member is protected from liability pursuant to S. C. Codes Section 33-44-303 (1974, as amended).

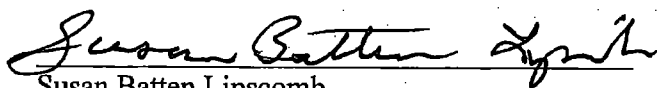
2. It was error to find that Ms. Hammer properly tendered her interest in 1634 Main, when it was not tendered in accordance with the bylaws of 1634 Main, L.P., and that any Order on this issue was contrary to the internal affairs doctrine.

3. There was no evidence that 1634 Main, L.P. had acted in a manner justifying sanctions against it under either Rule 11 or the Frivolous Sanctions Act.

4. The Order of the Supreme Court dated September 7, 2012, was contrary to the state and federal constitution and fair trial requirements and amounted to an unlawful command influence.

5. The only evidence presented was that a reasonable attorney in the same circumstances would have believed the conduct of 1634 Main, L.P. was not frivolous.

Respectfully Submitted,



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

Columbia, SC
July 15, 2013

FORM 4

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

PLAINTIFF(S)

Howard Hammer, Third Party Defendant
DEFENDANT(S)

Submitted by:

*The Court*Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ 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 (~~from 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

Date

6/3/15

SCANNED

For Clerk of Court Office Use Only

ment was entered on the 10 day of June, 2013 and a copy mailed first class or
n the appropriate attorney's box on this 10 day of June, 2013 to attorneys of record or
ties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Shanell W. Wade
 CLERK OF COURT

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2009-CP-40-05911
	)	2010-CP-40-2889
Howard Hammer,	)	
Plaintiff	)	
	)	
vs.	)	
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
Defendant	)	
	)	TRANSCRIPT OF RECORD
1634 Main, L.P.	)	
Plaintiff	)	
	)	
vs.	)	
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
Defendant/Third-party	)	
Plaintiff	)	
	)	
vs.	)	
Howard Hammer, Additional	)	
defendant on counterclaim	)	

October 29, 2012 through
November 1, 2012
Columbia, South Carolina

BEFORE:

The Honorable George James, Judge

APPEARANCES:

Desa Ballard, Esq.
Attorney for Defendant Shirley Hammer

Susan Lipscomb, Esq.
Attorney for Plaintiff 1634 Main L.P.

Art Aiken, Esq.
Attorney for Plaintiff Howard Hammer

Howard Hammer,
Appearing pro se

KAREN AMBROZIAK
Official Court Reporter

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MARY NELL DEGENHART

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HOWARD HAMMER

Direct Examination by Ms. Ballard	109

KATHERINE STOKES

Direct Examination by Ms. Ballard	134
Cross-examination by Mr. Aiken	139

HOWARD HAMMER

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HOWARD HAMMER

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WITNESSES (continued):

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Timothy Madden

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Recross-examination by Mr. Hammer	679

HOWARD HAMMER

Direct Examination by Mr. Hammer	740
Cross-examination by Ms. Ballard	781
Cross-examination by Ms. Lipscomb	806

EXHIBITS:PLAINTIFF'S EXHIBITS: (1634 Main L.P)

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Deed	188	191
2	Management Agreement	264	264
3	Income Statement (withdrawn)	411	
4	Letter	497	499

PLAINTIFF'S EXHIBITS: (Howard Hammer)

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Document	241	249
2	Letter	653	658
3	Letter (withdrawn)	755	

DEFENDANT'S EXHIBITS: (Shirley Hammer):

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Deed	7	66
2	Contract of Sale	7	66
3	Lis pendens	7	66
4	Letter	7	66
5	Final Title Report	7	66

EXHIBITS (continued):DEFENDANT'S EXHIBITS (continued):

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
6	Deed	7	66
7	Mortgage Document	7	66
8	Indemnification Affidavit	7	66
9	HUD Statements	7	66
10	Amortization Schedule	7	66
11	Partnership Agreement	7	66
12	(marked but not introduced)	7	
13	(marked but not introduced)	7	
14	Deed	7	66
15	Property Settlement	7	66
16	Deed	7	66
17	Letter	7	66
18	Court of Appeals Opinion	7	66
19	Tax Return	7	66
20	Tax Return	7	66
21	Tax Return	7	66
22	Tax Return	7	66
22-A	Tax Return	269	
23	Document	7	66
24	(marked but not introduced)	7	

EXHIBITS (continued):DEFENDANT'S EXHIBITS (continued):

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
25	Tax Return	7	66
26	Check Register	7	66
26-B	Income Statement (withdrawn)	372	
27	Copies of Checks	7	66
28	Promissory Notes	7	66
29	Letter	7	66
30	Document (withdrawn)	393	
31	Financial Records	553	555

COURT'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Dr. Adams' Resume	288	
2	Deposition	641	
2-A	Deposition Exhibits	641	

CERTIFICATE OF REPORTER

921

1 (WHEREUPON, Defendant's Exhibits 1-29 were
2 marked for identification only.)

3 THE COURT: All right. Is everybody present?

4 MS. BALLARD: Everybody for the defendant, Your
5 Honor.

6 MR. AIKEN: Yes, everyone for the plaintiff, Your
7 Honor.

8 THE COURT: How about the issue pertaining to
9 your involvement, Mr. Aiken?

10 MR. AIKEN: My involvement was as counsel for
11 Howard Hammer in the 1634 Main case. There are
12 actually two cases. There is 1634 Main vs. Shirley
13 Hammer vs. Howard Hammer, and there is a second case,
14 which is Howard Hammer vs. Shirley Hammer. Mr. Hammer
15 has terminated my representation of him in the 1634
16 case.

17 THE COURT: Where he is a defendant?

18 MR. AIKEN: Where he is an additional defendant
19 on the counterclaims, yes, sir.

20 THE COURT: Okay.

21 MR. AIKEN: He has asked me, and I agreed to
22 represent him and in Howard Hammer vs. Shirley Hammer.

23 THE COURT: So in which one were you terminated?

24 MR. AIKEN: I was terminated in the 1634 Main
25 Street vs. Shirley Hammer vs. Howard Hammer.

1 THE COURT: But he wants you to represent him in
2 his case against Mrs. Hammer?

3 MR. AIKEN: That's correct, that's correct.

4 THE COURT: All right.

5 MR. AIKEN: I previously was not his counsel in
6 Howard Hammer vs. Shirley Hammer, so I filed a notice
7 of appearance in the Howard Hammer vs. Shirley Hammer
8 case, and I have that notice of appearance right here
9 if you'd like me to bring it up to you.

10 THE COURT: Has it been filed?

11 MR. AIKEN: Yes, sir.

12 THE COURT: That's okay. If it's filed, it's
13 filed.

14 All right. So is Mr. Hammer ready to proceed?
15 Does he represent himself on anything?

16 MR. AIKEN: He represents himself on 1634 Main
17 vs. Shirley Hammer vs. Howard Hammer, the one that I
18 have ---

19 THE COURT: All right. Let me just ask the
20 question that begs to be asked.

21 He has seen fit to discharge you in one case, but
22 wants to hire you in another?

23 MR. AIKEN: Yes, sir.

24 THE COURT: All right, sir. What's the logic of
25 that? Without there being any attorney/client issues,

1 what's the logic of that?

2 MR. AIKEN: I think Mr. Hammer can address that
3 better than I can.

4 THE COURT: Go ahead, Mr. Hammer, address that,
5 please.

6 MR. HAMMER: Your Honor, the 1634 Main case was
7 brought as an action and still is pending as an action
8 by an L.P. against Mrs. Hammer, and Mrs. Hammer
9 brought me in as a third-party defendant.

10 The case has a history of having stagnated for
11 several --- for a long time, since 2009.

12 Initially, Mr. Aiken came in to help represent me
13 on that case, sometime I think in 2011 or thereabouts.
14 That gives you a little background. Last week or
15 during the course of the status conferences,
16 information had come back to me that we were going to
17 have a list of all the witnesses and get out subpoenas
18 and all of that.

19 We didn't get that list until last Friday.

20 Mr. Aiken started on Thursday of last week and
21 was involved in a criminal case. On Friday ---

22 MR. AIKEN: Hold on one second. Let me make sure
23 I'm clear about this. It was not an actual criminal
24 trial, but I'm appointed.

25 THE COURT: I get you.

1 MR. AIKEN: Yes, sir.

2 THE COURT: I guess I really don't need to hear
3 the how and why about it. It's just that a reasonable
4 person would be curious.

5 MR. HAMMER: I agree with you, and I want you to
6 understand. On Friday, he was involved in a --- in
7 another action. There was a trial. There was a
8 deposition on Friday afternoon, which was an important
9 deposition. There also was a potential for
10 depositions over the weekend.

11 I have a background as to knowledge and a lot
12 of --- with a lot of potential witnesses are going to
13 say.

14 I therefore went to Mr. Aiken and said,
15 Mr. Aiken, it doesn't seem to be fair to you, fair to
16 your character ---

17 THE COURT: I get you. I understand.

18 MR. HAMMER: --- so I asked him to withdraw.

19 THE COURT: Okay.

20 MR. HAMMER: And I'm here as pro se. I'm not
21 here as a lawyer.

22 THE COURT: In that case ---

23 MR. HAMMER: In that case. I'm pro se because he
24 had been involved, and because he could come back in,
25 since I couldn't represent myself in both cases, he

1 was kind enough to agree to represent me in the
2 counterclaim case.

3 THE COURT: Okay. I got you. Now, are you ready
4 to proceed Ms. Lipscomb?

5 MS. LIPSCOMB: Yes, Your Honor.

6 THE COURT: Ms. Ballard?

7 MS. BALLARD: Yes, sir, Your Honor. We have a
8 lot of preliminary matters, of course.

9 THE COURT: Such as what?

10 MS. BALLARD: There are outstanding motions that
11 have not been heard.

12 THE COURT: All right. Have a seat, Mr. Hammer.

13 MR. HAMMER: I have a matter if I may be heard.

14 THE COURT: Wait just a second. Have a seat.

15 MS. BALLARD: The outstanding motions that have
16 not been heard, I've attached copies for you, Your
17 Honor.

18 THE COURT: And these were filed as late as last
19 week?

20 MS. BALLARD: Yes, sir.

21 THE COURT: I'm going to try this case. I'm not
22 going to hear motions. I'm assigned to try this case,
23 because I can see with nine motions pending that that
24 will take two days to hear those.

25 MS. BALLARD: We feel ---

1 THE COURT: Because I know enough from the e-mail
2 exchange, and I hate to start off on this foot. I
3 know enough on the e-mail exchange that I know it will
4 take two days for me to hear these motions.

5 MS. BALLARD: There's only one that I request
6 Your Honor hear.

7 THE COURT: Which one is that?

8 MS. BALLARD: I wanted Your Honor to be aware,
9 the motion to compel as to file 10/1/2012.

10 THE COURT: Have you discussed that with Judge
11 Barber?

12 MS. BALLARD: Well, we had, and the pretrial
13 status report said the discovery responses were
14 coming, but they did not. That's why I have renewed
15 it.

16 THE COURT: All right. That's the only one I'm
17 going to deal with.

18 MS. BALLARD: Yes, sir.

19 THE COURT: The others, the motion for summary
20 judgment, note the 10-day time limit is up today. I'm
21 not hearing any dispositive motions.

22 MS. BALLARD: Yes, sir.

23 THE COURT: I'm not hearing any motions to quash
24 subpoenas. I'm hearing --- I'm not hearing a motion
25 to dissolve the lis pendens that was filed

1 two-and-a-half years ago. You could have gotten
2 somebody to hear it.

3 MS. BALLARD: Yes, sir. The one motion that I
4 would like, Your Honor, to hear is ---

5 THE COURT: Is it number two or three or four?

6 MS. BALLARD: Five.

7 THE COURT: The protective order?

8 MS. BALLARD: No, sir. I must have them numbered
9 differently. This is a 10/1/2012 motion to compel by
10 Shirley against Howard Hammer for the 2011 discovery.

11 THE COURT: All right. That was filed October 1.

12 MS. BALLARD: Yes, sir.

13 THE COURT: And I'll give you two minutes ---

14 MS. BALLARD: Yes, sir.

15 THE COURT: --- to tell me about it.

16 MS. BALLARD: We served standard discovery on
17 Mr. Hammer in his capacity as third-party defendant in
18 the 1634 case back in 2011. He objected to that
19 saying that he was not going to answer those discovery
20 responses until his motion to dismiss was heard. His
21 motion to dismiss was ruled on in 2011, and he never
22 filed his discovery responses.

23 THE COURT: And those --- that's all attached
24 here?

25 MS. BALLARD: Yes, sir. We subsequently served,

1 pursuant to Judge Barber's order, his pretrial order
2 on September 24th when we had our status conference,
3 Judge --- he ruled that any discovery that we had, we
4 had to file in sufficient time for it to be finished
5 before trial set today, so we served some additional
6 discovery on Mr. Hammer on September 26th. We have
7 not received responses to those.

8 I e-mailed Mr. Aiken and Ms. Lipscomb over the
9 weekend saying, asking if am I going to get responses
10 to those, and I received no response.

11 Now, my office tells me by text this morning that
12 Mr. Hammer himself e-mailed or faxed responses to the
13 second set of discovery last night about ten o'clock
14 after I had left the office, but where I find myself
15 on the morning of trial, Your Honor, is in the 1634
16 case as to our third party claim against Mr. Hammer,
17 he has never responded to any discovery, and we would
18 ask for that purpose to strike his answer to the
19 counterclaims, since he has knowingly and
20 intentionally not participated in discovery in the
21 1634 case. He filed ---

22 THE COURT: In which he formerly represented
23 himself or where Mr. Aiken represented him?

24 MS. BALLARD: He represented himself most of the
25 time.

1 THE COURT: Mr. Hammer, you may not have been a
2 party to my e-mail on Friday or maybe Thursday, but
3 one thing that I'm not going to tolerate is when I'm
4 talking to a lawyer and a lawyer is talking to me,
5 another lawyer is shaking their head and starting to
6 stand. You sit there and you do not say a word.

7 MR. HAMMER: Sorry. I didn't get that.

8 THE COURT: I know you disagree and Mr. Aiken
9 disagrees and Ms. Lipscomb disagrees with every single
10 word that Ms. Ballard says. Even if she says today is
11 Monday, I know there's going to be an objection. I
12 know that Ms. Ballard will disagree with every single
13 word coming out of your three mouths, but what I will
14 not tolerate is any head shaking, sighing, or partial
15 rising or complete rising from the chair. It will be
16 a fine the first couple of times, and then you're
17 going to jail.

18 MR. HAMMER: Thank you, Your Honor, I understand.
19 I appreciate that.

20 THE COURT: All right. Ms. Ballard, you can
21 continue.

22 MS. BALLARD: Yes, Your Honor. Our position is
23 that Mr. Hammer was pro se for most of that time.
24 Mr. Aiken did begin appearing for him as a defendant
25 in the 1634 case, earlier this year, probably four or

1 five months ago, but Mr. Hammer intentionally did not
2 respond to our initial discovery and he intentionally
3 did not respond to our last set of discovery, which
4 Judge Barber ordered be served in time for the
5 responses to be due before today.

6 THE COURT: So am I looking at tab four or tab
7 three of your motions packet?

8 MS. BALLARD: Your Honor, I'd have to look at
9 because I didn't number mine. I'm sorry.

10 (Pause.)

11 It's number three.

12 THE COURT: Number three?

13 MS. BALLARD: Yes, sir. I also have --- since
14 the ones that were due on the 26th were not answered,
15 we prepared and will file the motion to compel as to
16 those. I e-mailed those over on Friday, I guess, but
17 we've not filed those with the clerk's office yet.

18 THE COURT: You haven't filed those yet?

19 MS. BALLARD: No, sir. Here is the original, and
20 I'll give copies to them.

21 THE COURT: Mr. Hammer, have you ever responded
22 to the interrogatories and/or requests for production?

23 MR. HAMMER: I responded last night, and may I
24 respond?

25 THE COURT: First of all, will tell me why you

1 didn't respond in 2010 or 2011?

2 MR. HAMMER: Your Honor, I was not served to
3 begin with.

4 They moved for a default. Sometime in --- I
5 wasn't served with the pleadings. Sometime in 2010 or
6 2011, they had moved for a default. My attorney
7 can't --- I hired an attorney to come defend that
8 default action. The attorney came in and defended the
9 default action, and it was found I had never been
10 properly served.

11 THE COURT: Okay. Tell me why you didn't respond
12 to the discovery.

13 MR. HAMMER: The reason I --- they sent the
14 discovery during the time that I was not a defendant,
15 during the time that I had not --- there was no
16 jurisdiction over me in the case.

17 THE COURT: Because you hadn't been properly
18 served.

19 MR. HAMMER: Because I hadn't been properly
20 served. That was dismissed. Shortly after that was
21 dismissed, and I don't have the exact timeframe, but
22 shortly after that is when I hired Mr. Aiken and
23 Mr. Aiken has been working diligently on it, and I was
24 not a party to the pretrial, because I thought at that
25 time Mr. Aiken was going to be able to represent me.

1 When I found on Friday he was not going to be able to
2 represent me, I did file the answers to the
3 interrogatories. As she said, I sent those in.

4 THE COURT: So you're talking about the
5 interrogatories that were served in 2000 --- or in the
6 2010 action. You're saying that you didn't answer
7 those until Friday because of what? Because they were
8 served during a time when you were not a party?

9 MR. HAMMER: As I understand, I don't have the
10 exact date, but at some time about a year-and-a-half
11 after the initial pleadings were supposed to be
12 served, they came on for the court a motion for
13 default.

14 At that time, Mr. Pope Johnson appeared on my
15 behalf.

16 THE COURT: And you were held not to be in
17 default.

18 MR. HAMMER: I was held not to be in default
19 because I had not been properly served.

20 THE COURT: Okay. With the summons and complaint
21 or whatever the pleading was ---

22 MR. HAMMER: That was sometime, I think, in 2011.
23 I do not have a --- I will have to consult with
24 Mr. Aiken whether after that time there was anything
25 served properly. I do know that subsequently, there

1 was a pretrial conference and the judge, at least from
2 my understanding with Mr. Aiken, indicated that we
3 needed to get in the second --- it was a second
4 amended complaint, interrogatory to the second amended
5 complaint, and I served those yesterday. I got them
6 on Friday, and I served them on yesterday.

7 THE COURT: And you named witnesses?

8 MR. HAMMER: Let me find my answers to those.

9 THE COURT: Well ---

10 MR. HAMMER: I have adjusted ---

11 THE COURT: Did you name any witnesses?

12 MR. HAMMER: Defendant's answer to counter
13 claim's second interrogatories. Give me just a
14 moment, Your Honor.

15 THE COURT: Yes.

16 (Pause.)

17 MR. HAMMER: Your Honor, these cases were
18 consolidated, as you know. Ms. Lipscomb represented
19 me for a substantial amount of time in the second
20 case, the case of Howard versus Shirley, which is now
21 actually Shirley versus Howard is all that remains of
22 the counterclaim. I think Ms. Lipscomb could add to
23 that as to when the interrogatories were served.

24 THE COURT: What I want to know is did you name
25 any witnesses when you answered on Friday.

1 MR. HAMMER: I did not name any particular
2 witnesses for me, no, sir.

3 THE COURT: All right. So --- all right. You
4 can have a seat. All right.

5 Anything else, Ms. Ballard?

6 MS. BALLARD: Yes, Your Honor. Mr. Hammer's
7 response that he wasn't a legitimate defendant at the
8 time I served the first discovery is belied by the
9 fact he filed an objection to those interrogatories on
10 April 11th of 2011. It is, in fact, attached to the
11 motion that you have in front of you.

12 THE COURT: Well, let me ask you this. Why
13 didn't you file a motion to compel before October 1st
14 of 2012?

15 MS. BALLARD: The --- most of the discovery in
16 the --- well, all of the discovery in the 1634 case
17 was kind of held in identify abeyance by consent while
18 Mr. Hammer was appealing in the Hammer vs. Hammer
19 case. He appealed Judge Manning's order dismissing
20 his primary claims against us. So in the Hammer vs.
21 Hammer case, he's correct, the only claims that are
22 left are our claims against Mr. Hammer, so when the
23 case was affirmed by the Court of Appeals, and we had
24 petitioned the Supreme Court to ask to have a
25 particular Judge assigned for all of the cases, we had

1 our first status conference in front of Judge Barber
2 on --- I believe it was September 14th, the same week
3 that the Supreme Court assigned the case to him.

4 At that point, he ordered that we file
5 appropriate motions to conclude all outstanding
6 discovery motions. That's when I filed my motion to
7 compel.

8 THE COURT: But that was an agreement amongst the
9 parties to hold discovery in abeyance; it wasn't
10 pursuant to a court order?

11 MS. BALLARD: No, sir. It wasn't reduced to
12 writing, that's correct.

13 THE COURT: How are you prejudiced by these late
14 answers, because I don't know what they say and I
15 don't ---

16 MS. BALLARD: Well, first of all, he only
17 answered the second ones. He only answered the ones
18 that I filed in September 2012. He has yet to file
19 answers to the ones I served in 2011, which is this
20 basic interrogatories.

21 THE COURT: Which is number three?

22 MS. BALLARD: Yes, sir. He has yet to file
23 responses to those, and I think ---

24 THE COURT: Why didn't you answer those,
25 Mr. Hammer?

1 MR. HAMMER: I didn't --- as I related to Your
2 Honor, I didn't have the time on that. I don't know
3 the exact date. As Your Honor pointed out, there was
4 an objection. There was never a motion to compel her
5 until the 2000 --- until October.

6 Apparently, because the cases were consolidated
7 --- and this is why I asked Ms. Lipscomb to be able to
8 also speak to this because it does involve --- both
9 cases do involve the same set of witnesses. They
10 involve virtually the same identical set of claims.
11 Some of the claims have been dismissed by --- I have
12 been aggrieved to be dismissed by voluntary non-suit
13 as I understand it, and so I can only answer that
14 question in that fashion.

15 THE COURT: All right. Ms. Lipscomb.

16 MS. LIPSCOMB: Yes, Your Honor. The
17 counterclaims in the Howard versus Shirley case and
18 1634 versus Shirley versus Howard are almost
19 identical. There are two additional in 1634. Mr.
20 Hammer --- on behalf of Mr. Hammer, we served a very
21 full set when I was representing him in the complaint
22 and the counterclaim. We filed and served --- served
23 a very comprehensive set of responses to
24 interrogatories, and I submit that Ms. --- the ---
25 Mrs. Hammer is not prejudiced because there would be

1 the same counterclaims. There was a listing of
2 multiple witnesses in the Howard vs. Shirley and they
3 were consolidated, so there is no surprise and they
4 were answered a long time ago.

5 THE COURT: All right. Ms. Ballard, I'll give
6 you the last word. Anything else?

7 MS. BALLARD: Yes, Your Honor, thank you. The
8 cases were just consolidated about two weeks ago, so
9 the discovery that Mr. Hammer served in the 2009 case
10 doesn't address any of the counterclaims, which are
11 all different in the 1634 case. Where we are in the
12 1634 case is that Ms. Lipscomb has properly responded
13 to discovery in the 1634 case.

14 THE COURT: Did she give you the same information
15 to the same questions?

16 MS. BALLARD: She answered by discovery on behalf
17 of 1634 Main, which is her limited partnership client,
18 but when you look at the third party claim that we
19 brought, Mrs. Hammer brought, against Howard Hammer in
20 the 1634 case, Mr. Hammer has filed no responses to
21 any discovery in that case. I disagree ---

22 THE COURT: These are the interrogatories dated
23 March 9, 2011?

24 MS. BALLARD: That is correct, Your Honor. The
25 second set was served on September 26th, 2011. Those

1 are the ones he answered by fax at ten o'clock last
2 night. We believe that his answer in the 1634 case to
3 the third-party claim should be stricken, which is the
4 matter on which he is pro se.

5 If that answer is stricken, then obviously
6 Mr. Hammer would not participate in the trial because
7 he has counsel representing him in the Howard --- in
8 the Hammer vs. Hammer case, and 1634 Main L.P. is
9 represented by Ms. Lipscomb in that case.

10 THE COURT: All right. Let me --- have a seat.

11 MS. BALLARD: Thank you, Your Honor.

12 THE COURT: Let me --- I guess I'll have to draw
13 a little picture. 2009-CP-40-5911 was originally
14 Howard Hammer vs. Shirley Hammer. Is that still the
15 name of that case?

16 MS. BALLARD: Yes, sir, Your Honor.

17 THE COURT: All right. Does Mr. Hammer still
18 have any claims still pending against Mrs. Hammer?

19 MS. BALLARD: No, sir.

20 THE COURT: All right. So for my purposes,
21 Shirley Hammer is the plaintiff when I'm thinking
22 about this in my brain?

23 MS. BALLARD: Yes, sir.

24 THE COURT: All right. Mr. Aiken now represents
25 Howard Hammer in the Shirley Hammer vs. Howard Hammer

1 matter; is that right?

2 MS. BALLARD: As of this morning. I received ---

3 THE COURT: So that answer is yes?

4 MS. BALLARD: Yes.

5 THE COURT: Okay. In the 1634 suit by 1634 Main
6 L.P. vs. Shirley Hammer vs. Howard Hammer,
7 Ms. Lipscomb represents 1634 Main, formerly
8 represented Mr. Hammer, does not represent Mr. Hammer
9 anymore. He was pro se, and now Mr. Aiken
10 represents --- excuse me, Mr. Aiken represented him
11 and now he's not and now Mr. Hammer is representing
12 him? At least I got the last part right.

13 MS. BALLARD: Yes, sir, that's correct.

14 THE COURT: In the Shirley Hammer vs. Howard
15 Hammer, Mr. Hammer was formerly pro se and now
16 Mr. Aiken does represent him.

17 MS. BALLARD: That's correct.

18 MS. LIPSCOMB: He was pro se. Then I represented
19 him.

20 THE COURT: Look, all I really care about is what
21 it is now.

22 MS. LIPSCOMB: Yes, sir.

23 THE COURT: Okay. So Mr. Hammer is counsel for
24 himself only in the 1634 matter?

25 MS. BALLARD: In the third party claim in the

1 1634 matter, yes, sir.

2 THE COURT: And that is what you want stricken
3 because he didn't answer that.

4 MS. BALLARD: He didn't answer any discovery.

5 THE COURT: Who was his lawyer when all of that
6 was going on?

7 MS. BALLARD: He started out pro se in the 1634
8 case as a third party defendant.

9 I believe Ms. Lipscomb represented him for some
10 period of time and then Mr. Aiken came in representing
11 him. I requested, but never received an order of
12 substitution.

13 THE COURT: Okay. Mr. Aiken, why didn't you
14 answer those interrogatories in the 1634 matter?

15 MR. AIKEN: Your Honor, I'll have to --- what's
16 the date of those interrogatories?

17 THE COURT: According to tab three on her motion,
18 March 9, 2011.

19 MS. BALLARD: That's correct, Your Honor.

20 MR. AIKEN: All right.

21 THE COURT: And I really don't want to play any
22 word games with it. If you have the information in
23 some form --- in other words, if you have answers to
24 those questions and it just hasn't been given to you
25 under the right caption or docket number or whatever,

1 I really don't want to get involved in this business
2 about something not being provided within the proper
3 case name. Have you gotten the information?

4 MS. BALLARD: I received a list of witnesses from
5 1634 in the 1634 case, and I've received a list of
6 witnesses from Mr. Hammer in the Hammer vs. Hammer
7 case.

8 THE COURT: Okay.

9 MS. BALLARD: But the counterclaims --- or the
10 cross claims and counterclaims in the 1634 case are
11 different.

12 THE COURT: Is it the same subject matter?
13 Because this is one of the most unbelievable things
14 that I have ever read in my life as far as the going
15 back and forth.

16 MS. BALLARD: No, sir, the counterclaims by
17 Mrs. Hammer in the 1634 case are different. They
18 relate to different factual patterns.

19 THE COURT: All right.

20 MS. BALLARD: They don't address the same events.

21 THE COURT: Mr. Aiken, why did you not answer
22 those eight interrogatories in the 1634 matter?

23 MR. AIKEN: Your Honor, I first appeared on
24 behalf of Mr. Hammer. In other words, I --- I'm not
25 saying --- I'm using some technical idea of

1 appearance, but my first involvement in this case was
2 the day before a hearing on a motion to dismiss filed
3 by Mr. Hammer in the 1634 case. That hearing date,
4 according to the judge's order, was September 1st,
5 2011, so I would have been involved --- in other
6 words ---

7 THE COURT: Had that ---

8 MR. AIKEN: I had my first conversation with
9 Mr. Hammer the day before that.

10 THE COURT: Were you not aware? Were you not
11 aware of the interrogatories at any time?

12 MR. AIKEN: I was not. Not until the motion to
13 compel was filed October 1st.

14 THE COURT: Why didn't you answer them between
15 October 1st and Friday?

16 MR. AIKEN: In the crush of just trying to get
17 this case ready for trial...

18 THE COURT: All right. Will I be treading on
19 attorney/client matters if I were to ask Mr. Hammer
20 why he didn't tell you about it?

21 MR. AIKEN: I think you may, Judge.

22 THE COURT: All right. What I'm going to do is
23 I'm going to take the motion under advisement, and I
24 can decide as I go whether or not I'm going to
25 sanction him, if at all. It may be not letting him

1 call a witness, or it may be striking this pleading,
2 or it may be a monetary sanction, but Mr. Hammer, I'll
3 ask this final question.

4 Why did you not --- as you know, you're an
5 attorney. You get eight questions. Why did you not
6 tell your lawyer about the interrogatories or number
7 two, make sure they were answered under this case name
8 so that the record could be cleared from now to the
9 end of time?

10 MR. HAMMER: Your Honor, there are two answers to
11 that. Let me start with the second first, if you
12 don't mind, please, sir.

13 As to her assertion to you that ---

14 THE COURT: No. I want to know the answer to my
15 question. I don't want to hear you respond to her
16 assertion. I want to hear your answer to my question.

17 MR. HAMMER: The answer to your question, okay,
18 takes that into consideration, the claims in both
19 cases are virtually the same. I had understood that
20 they had been answered.

21 THE COURT: By whom?

22 MR. HAMMER: By Ms. Lipscomb.

23 THE COURT: You knew she was not representing
24 you.

25 MR. HAMMER: She represented me in the

1 declaratory judgment. She represented me in the
2 declaratory judgment action.

3 THE COURT: All right.

4 MR. HAMMER: And the answers that she would have
5 given for answering those dealt with the same matters,
6 the 1634, the same witnesses we would have had for the
7 1634 were virtually the same witnesses.

8 THE COURT: Who were the partners in 1634?

9 MR. HAMMER: Mrs. Hammer is a partner. She owns
10 56.8 percent. I own 37 percent. One of our sons owns
11 4 percent, and there is an LLC that owns some small
12 percentage, I believe ---

13 THE COURT: All right. Here is what we'll do
14 now. You are the plaintiff in Shirley Hammer vs.
15 Howard Hammer; is that correct?

16 MS. BALLARD: Yes. Yes.

17 THE COURT: You represent --- who represents
18 Mr. Hammer in Shirley Hammer vs. Howard Hammer?

19 MR. AIKEN: I do, Your Honor.

20 THE COURT: On that, you have five minutes to
21 tell me what your case is about. Mr. Aiken, you'll
22 have five minutes to tell me what your defenses are,
23 and not one time will I entertain any personal aside
24 whatsoever.

25 MS. BALLARD: I'm sorry?

1 THE COURT: No personal asides about somebody
2 being rude. I want to hear what your case is about
3 and what you think the evidence is going to establish.

4 MS. BALLARD: Yes, sir.

5 THE COURT: All right. Go ahead.

6 MS. BALLARD: On behalf of Shirley Hammer in the
7 2009 case, 5911, we have five counterclaims that we
8 have previously ---

9 THE COURT: Have a seat.

10 MR. AIKEN: Oh, I'm sorry, Your Honor.

11 MS. BALLARD: The pretrial brief indicates that
12 we have six, but we have since withdrawn our third
13 counterclaim. The first counterclaim relates to ---
14 Mrs. Hammer had a house up for sale. It was the
15 former marital home. It was awarded in the family
16 court matter. The location of that house is 320 St.
17 James in Columbia. Mrs. Hammer got a contract for
18 sale to sell that property on June 29th, 2009.

19 Between the time of the contract of sale and the
20 closing, which was supposed to occur on August 17th,
21 2009, Mr. Hammer filed a lis pendens against that
22 property.

23 THE COURT: So he had deeded his interest over.

24 MS. BALLARD: Yes, sir.

25 THE COURT: All right.

1 MS. BALLARD: As part of the domestic case, he
2 had deeded his interest in the property over and the
3 property was solely owned by Shirley Hammer. She had
4 a contract to sell that property. Mr. Hammer filed a
5 lis pendens, but did not serve a law suit on Mrs.
6 Hammer, so she, of course, did not know and went to
7 closing, attempted to sell the house. The title
8 company refused to issue title coverage and the lender
9 for the purchaser refused to lend money to the
10 purchaser because of the existing lis pendens.

11 Mr. Hammer subsequently filed a lawsuit, the
12 Hammer vs. Hammer lawsuit, subsequent to that, but he
13 did not claim any interest in the house at any time in
14 filing the Hammer vs. Hammer lawsuit.

15 THE COURT: So no foreclosure of the lis pendens,
16 so that's --- isn't that extinguished? Those only
17 last for so long.

18 MS. BALLARD: I believe so, yes. Your Honor, the
19 first counterclaim is for slander of title. The
20 second one is for tortious interference of contractual
21 relationship because she lost her sale.

22 THE COURT: All right.

23 MS. BALLARD: She was able to resurrect her sale
24 by being a seller financed. She was able to
25 personally finance the house herself, which, of

1 course, didn't --- it prevented her from getting a
2 lump sum, which is what she intended to get.

3 THE COURT: So that --- at least that property
4 has been deeded?

5 MS. BALLARD: Yes, sir.

6 THE COURT: She has a mortgage.

7 MS. BALLARD: She had a mortgage. It has since
8 been paid off, but for a period of about three years
9 she self-financed that property.

10 THE COURT: I see.

11 MS. BALLARD: The fourth cause of action is for
12 abuse of process relating to filing the lis pendens,
13 since Mr. Hammer did not have an interest in 320 St.
14 James and when he eventually did file the lawsuit, he
15 didn't assert any interest in 320 St. James, so the
16 lis pendens, of course, was an abuse of process, by
17 virtue of the fact that the case law is pretty clear
18 that the filing of a lis pendens is privileged in most
19 situations, but when the claim that is subsequently
20 filed that is supposed to support the lis pendens when
21 the filing party does not claim any interest in the
22 real property, then abuse of process claim and slander
23 of title claim can proceed.

24 THE COURT: All right.

25 MS. BALLARD: We have also claimed invasion of

1 privacy in connection with the same thing. All of our
2 counterclaims in the Hammer vs. Hammer case relate
3 primarily to Mr. Hammer's intentional interference
4 with a sale by Mrs. Hammer of her home, which she was
5 subsequently able to sell, but she had to self-finance
6 it. She, of course, sustained substantial damages as
7 a result of his malicious filing of the lis pendens.

8 THE COURT: All right.

9 MS. BALLARD: Thank you, Your Honor.

10 THE COURT: That's your case on the Hammer vs.
11 Hammer?

12 MS. BALLARD: Yes, sir.

13 THE COURT: All right. Mr. Aiken, the first
14 question and then I'll let you speak. Does Mr. Hammer
15 intend that that lis pendens have any viability today?

16 MR. AIKEN: May I have just one moment, Your
17 Honor.

18 (Pause.)

19 MR. AIKEN: Your Honor, I think when the lawsuit
20 was dismissed, the lis pendens went away.

21 THE COURT: All right. So you don't contest the
22 motion to dissolve the lis pendens?

23 MR. AIKEN: No, sir, no, sir.

24 THE COURT: All right, sir. I'll be glad to hear
25 from you.

1 MR. AIKEN: Just to go through essentially the
2 counterclaims and explain to you what our case is
3 about ---

4 THE COURT: No. I want to know about Hammer vs.
5 Hammer.

6 MR. AIKEN: That's what I am talking about.

7 THE COURT: All right.

8 MR. AIKEN: Well, they're maybe not now
9 counterclaims. Maybe they are claims.

10 THE COURT: Right.

11 MR. AIKEN: Since Mr. Hammer's lawsuit was
12 dismissed.

13 THE COURT: Yes, sir.

14 MR. AIKEN: The lawsuit was brought. Lis pendens
15 was filed. We drew counterclaims and a motion to
16 dismiss on the grounds of one subject matter
17 jurisdiction. The main claim by Mr. Hammer was
18 ultimately dismissed under that basis under rule 12
19 (B)(1) for lack of subject matter jurisdiction, so
20 what remains, obviously, is the counterclaims, which
21 if you like we can just call claims now.

22 THE COURT: That's fine.

23 MR. AIKEN: I think that may be easier. The
24 first claim is slander of title. Our position is that
25 the filing of the lis pendens was absolutely

1 privileged. It's absolutely privileged because the
2 lawsuit that was filed did, in fact, have to do with
3 the title to 320 St. James. It was a declaratory
4 judgment action concerning an agreement that was
5 purportedly reached in a divorce proceeding, and the
6 argument on the declaratory judgment action was that
7 that agreement was void against public policy. If
8 that agreement was found void against public policy,
9 then in fact, Mr. Hammer would have rights in 320 St.
10 James. That's what was alleged in the complaint in
11 the Howard Hammer vs. Shirley Hammer case.

12 So our position is that it was a proper use of
13 lis pendens and for that reason it's absolutely
14 privileged. The Palm Place Partners case says that
15 filing of the lis pendens in connection with a legal
16 action is absolutely privileged.

17 The next claim is on abuse of process.
18 Basically, on an abuse of process, you have to prove
19 that somebody perverted the --- misused the process.
20 In other words, used a process for a purpose that it
21 was not intended for and that was the driving force
22 behind the actual use of the process.

23 It's not enough to say, well, he doesn't like me
24 or something like that and that's why he brought the
25 lawsuit. So long as the lawsuit was brought, the

1 lawsuit or in this case the filing of the lis pendens
2 was done for purposes consistent with the course of a
3 legal proceeding. Here we have the filing of a lis
4 pendens and we have the filing of a lawsuit which
5 directly relates to an ownership interest or a legal
6 interest in the property.

7 So it was, in fact, a proper use of process.
8 Spite, ill will, hatred, whatever, even though that's
9 one motive behind the filing of a lis pendens, that's
10 not enough. You have to prove that he perverted the
11 process.

12 Now, as far as invasion of privacy is concerned,
13 Your Honor, according to Rycroft vs. Gaddy ---

14 THE COURT: I'm not looking for an argument. I
15 just want a summary of what you're ---

16 MR. AIKEN: Yes, sir.

17 THE COURT: --- of what you think the evidence
18 will or won't show.

19 MR. AIKEN: Basically, they have to show a
20 blatant and shocking disregard of Mrs. Hammer's rights
21 and they have to show serious physical or mental
22 injury or humiliation. They can't show that in this
23 case.

24 THE COURT: You say that's not going to support
25 that.

1 MR. AIKEN: It's not going to support that, Your
2 Honor. Just one more quick point, Your Honor, based
3 on the deposition of Mrs. Hammer, it appears that she
4 hasn't suffered damages as a result of any tortious
5 interference with contract, any invasion of privacy,
6 any abuse of process or slander of title. We took
7 Mrs. Hammer's deposition ---

8 THE COURT: You're getting into argument. I'm
9 looking for an opening statement, not a jury argument.

10 MR. AIKEN: Well, we believe that the evidence
11 will show that Mrs. Hammer did not, in fact, suffer an
12 actual loss.

13 THE COURT: You're saying the records will
14 support that cause of action?

15 MR. AIKEN: Correct, actually any cause of action
16 to the extent that it may be based on the lis pendens.

17 THE COURT: All right. Okay. Now, is there
18 going to be any issue about under Rule 3.7 of the
19 ethical rules about Mr. Hammer representing himself in
20 the matter in which he's going to be a witness? Rule
21 3.7 says that a lawyer shall not act as an advocate in
22 a matter in which the lawyer is likely to be a
23 necessary witness unless, (1) the testimony relates to
24 an uncontested issue. I seriously doubt that's the
25 case.

1 Number (2), the testimony relates to the nature
2 and value of legal services rendered in the case,
3 which will not apply, or disqualification of the
4 lawyer would work a substantial hardship on the
5 client.

6 Typically, I'm supposed to do a balancing test,
7 which balances the interest of the client, Mr. Hammer,
8 and those of the tribunal, which is me and the
9 opposing party. Is there going to be an with that?
10 Mr. Hammer, are you a licensed attorney in this state?

11 MR. HAMMER: Your Honor, my license is under
12 suspension.

13 THE COURT: But you still have a license?

14 MR. HAMMER: Yes, sir, except --- but the
15 definition of a lawyer is as follows.

16 THE COURT: Okay.

17 MR. HAMMER: 407, the preamble, I would not be
18 considered a lawyer. A lawyer being a member of the
19 legal profession. It's not a member of the legal
20 profession right now. I'm under suspension. A
21 representative of clients. I'm not a representative
22 of clients while I'm under suspension. An officer of
23 the legal system. I'm not an officer of the legal
24 system. I'm under suspension.

25 THE COURT: Well, you are an officer of the legal

1 system because the Supreme Court still has
2 jurisdiction over you and anything further and
3 anything it may do with regard to your license,
4 whether it be suspension or any other or lifting the
5 suspension or things like that.

6 MR. HAMMER: But it's all three, Your Honor, and
7 I'm not the first two.

8 It would require all three, so I am certainly not
9 a member of the legal profession right now. I'm not
10 representing clients.

11 THE COURT: All right.

12 MR. HAMMER: I'm a pro se litigant exercising my
13 constitutional right to have counsel of my choice.

14 THE COURT: All right, is there any --- you can
15 have a seat.

16 Ms. Ballard, on that point ---

17 MS. BALLARD: Yes, sir. We ---

18 THE COURT: Wait just a second.

19 MS. BALLARD: Oh, sorry, Your Honor.

20 THE COURT: Typically the problem arises where
21 there is a jury. The jury is confused. Is that
22 lawyer talking to me as an advocate telling me a
23 summary or is he testifying.

24 MS. BALLARD: Yes, sir.

25 THE COURT: I have can handle that, believe me.

1 MS. BALLARD: Yes, sir.

2 THE COURT: I'm not going to be concerned about
3 any hardship on me. What I --- Mr. Hammer, could you
4 please not talk while I'm talking.

5 MR. HAMMER: I'm sorry, sir.

6 THE COURT: What I'm concerned about, what I've
7 read in these files is this being done, this last
8 minute shifting of representation when it's just as
9 easy for Mr. Aiken to do it all, is to give Mr. Hammer
10 some crack at Mrs. Hammer when she is testifying. I
11 can handle that, too, because I don't care whatever he
12 thinks the status is. He's --- you're a lawyer under
13 the ethical rules. You are a lawyer. You have a
14 license that is suspended, so you're a lawyer.

15 Now, what I won't tolerate is any use of this
16 last minute shifting to prejudice Mrs. Hammer in the
17 legal sense, any psychological sense we'll deal with
18 under the Rules of Evidence and the rules of civility
19 of lawyers of which he is one, in the courtroom.

20 So what is the prejudice to your client?

21 MS. BALLARD: Your Honor, I think the answer to
22 that rests in the --- a combination of disciplinary
23 decisions that was issued against Mr. Hammer in
24 November of 2011, which I mentioned in my pretrial
25 brief.

1 Mr. Hammer was sanctioned for, among other
2 things, discovery abuse in questioning a witness who
3 used to be his best friend, and according to ---

4 THE COURT: Who was that?

5 MS. BALLARD: That was Howard Stravitz.

6 THE COURT: Okay.

7 MS. BALLARD: The way the Supreme Court's opinion
8 is written, it says that Mr. Hammer let his emotions
9 get the better of him, and he was unable to properly
10 behave during his examination of this person he used
11 to be close to.

12 THE COURT: In this case?

13 MS. BALLARD: It was in the case disciplining him
14 for six months.

15 THE COURT: Was the questioning in the deposition
16 in this case?

17 MS. BALLARD: No, sir. He had sued the City of
18 Columbia.

19 THE COURT: That's all right.

20 MS. BALLARD: He had deposed him in that case.

21 THE COURT: Okay. What is the prejudice to your
22 client?

23 MS. BALLARD: Your Honor, the prejudice to my
24 client is multiple. She has a restraining order that
25 prohibits him from harassing her in any way. She has

1 a restraining order that prohibits him from
2 communicating with her in any way, and you're right.
3 What this is, is a last minute opportunity for
4 Mr. Hammer to get Mrs. Hammer on the witness stand and
5 have a direct dialog with her, which is part of the
6 reason I raised my motion to strike his answer, so
7 that he would not be able to participate as a lawyer
8 and have an opportunity to cross Mrs. Hammer.

9 The other point I would make, Your Honor, is that
10 even though there is not a jury, as Your Honor can
11 already tell, it's difficult to tell when Mr. Hammer
12 is providing facts as a witness and difficult to tell
13 when he was making legal argument.

14 THE COURT: Well, I'll know because when he is
15 standing asking questions, I'm not going to accept a
16 word out of his mouth as a fact.

17 MS. BALLARD: That will be helpful for you and it
18 will be helpful to me and helpful to the case as it
19 moves forward.

20 THE COURT: Unless it's a properly framed
21 hypothetical.

22 MS. BALLARD: Yes, sir. My concern is for Mrs.
23 Hammer. Mrs. Hammer has been subjected to a great
24 deal of abuse through the years, and as Your Honor
25 knows, the domestic case was seven years ago and

1 they're still in family court fighting over it. I'm
2 just concerned about her being questioned by him
3 directly.

4 THE COURT: Do you have a claim presently, Ms.
5 Lipscomb, as far as 1634 is concerned?

6 MS. LIPSCOMB: No, Your Honor.

7 THE COURT: I assume not since you're sitting at
8 the same table. I'm going to allow him to represent
9 himself under that balancing test, but I will reserve
10 the right at any time to discontinue his
11 representation of himself if he begins to harass her
12 or in any way undertakes any action that would be of
13 prejudice.

14 Okay?

15 MS. BALLARD: Your Honor.

16 THE COURT: Mr. Hammer, you're warned. If you're
17 questioning a witness in a manner that gives me
18 concern about your ability to do both of these things
19 without prejudicing the court or Mrs. Hammer, if you
20 do anything, you will no longer be representing
21 yourself and you will be without a lawyer in the 1634
22 matter.

23 MR. HAMMER: Your Honor, I intended --- my
24 feelings are not, apparently not, the same on the
25 other side. I don't --- I don't hold any type of

1 grudges or harshness, and I had intended if I asked
2 questions, if I think there's a question that I think
3 is close, I've asked both counsel to let me know and I
4 ask the court ---

5 THE COURT: Do you understand my admonition?

6 MR. HAMMER: Yes, sir, if I ask a question that
7 you think is improper, before you mete out any type of
8 punishment, if you would please call me and tell me
9 that you don't think the question is proper, I will
10 come to the bar and discuss it with you and withdraw
11 question. Is that satisfactory?

12 THE COURT: Next, Ms. Lipscomb.

13 MS. LIPSCOMB: Yes, Your Honor.

14 THE COURT: You were very brief in your opening
15 statement and what you think evidence is going to show
16 in 1634.

17 MS. LIPSCOMB: Yes, Your Honor, may I address 3.7
18 as it regards to me, as well, at the same time?

19 THE COURT: Yes.

20 MS. LIPSCOMB: I have been listed as a witness by
21 Ms. Ballard, and it is substantive. It says, "Susan
22 Lipscomb will testify regarding her attempted
23 rejection of the tender of Mrs. Hammer's deed to
24 Mr. Hammer of Mrs. Hammer's interest of the real
25 property at 1634 and Mrs. Hammer's tender to

1 Mr. Hammer of her interest in the limited
2 partnership."

3 I am just concerned that that invokes 3.7 lawyer
4 as a witness.

5 I'm not trying to get out of being the lawyer for
6 1634 Main. I just don't want to unintentionally
7 violate 3.7.

8 THE COURT: All right. We'll address that when
9 it comes and also any attorney/client issues, which
10 may have or may not arise when that comes up.

11 MS. LIPSCOMB: Yes, Your Honor. 1634 Main, the
12 plaintiff, is a limited partnership in which Mrs.
13 Hammer has a 56.8 percent interest.

14 Mr. Danville, business advisor, is the managing
15 --- not partner, property manager for 1634 Main
16 Limited Partnership. Its primary asset is a building
17 that is actually located at 1634 Main Street,
18 Columbia, South Carolina.

19 The --- Mr. Turbeville conducted his --- in his
20 deposition, he called the building fatigued. It needs
21 some repairs. It needs a lot of upkeep and he got
22 certain proposals, got from various contractors and
23 submitted them to the general partner, and the general
24 partner, which is SH 5 LLC of which Mr. Hammer is the
25 sole member issued an assessment to all of the general

1 and limited partners, and the complaint in this case
2 is just to seek --- approximately \$88,000, which would
3 be her 56.8 percent interest in it.

4 THE COURT: All right. Towards the contribution
5 towards the repairs?

6 MS. LIPSCOMB: Yes, sir.

7 THE COURT: All right. Okay. Ms. Ballard.

8 MS. BALLARD: Yes, Your Honor. There is a
9 preliminary issue on the 1634 case. We believe
10 jurisdiction is exclusive in the family court for that
11 matter. We raises that in our answer.

12 THE COURT: Right.

13 MS. BALLARD: The evidence will show, Your Honor,
14 that Ms. Hammer does not own any interest in the
15 limited partnership or the dirt, the building that is
16 sitting on the dirt.

17 The records will reflect that Mrs. Hammer, as
18 part of the divorce, conveyed her 52.75 percent
19 interest in the dirt. She received the 52.75 percent
20 interest in the dirt, not the limited partnership but
21 the dirt, while she and Mr. Hammer were married. She
22 also received an 8 percent interest in the limited
23 partnership.

24 Some how in 1634's mind, the 8 percent in the
25 limited partnership and the 52.75 percent interest in

1 the dirt has some how been mashed to create a
2 56 percent interest in the limited partnership.

3 THE COURT: Has she deeded her interest in the
4 dirt to either the partnership or Mr. Hammer?

5 MS. BALLARD: She has deeded it to Mr. Hammer.
6 The reason that Ms. Lipscomb is a witness is because
7 she returned the deed Mrs. Hammer's domestic attorney
8 and said that Mr. Hammer would not accept it.

9 THE COURT: And that was after she filed this
10 litigation or before?

11 MS. BALLARD: It was before she filed this
12 litigation.

13 THE COURT: All right. You can continue.

14 MS. BALLARD: Yes, Your Honor. Part of the
15 domestic settlement, of course, was allocating the
16 property that the parties owned during the marriage.

17 Mrs. Hammer was required to transfer her
18 ownership interest in the dirt, the 52.75 percent
19 interest in the dirt and her 8 percent interest in the
20 limited partnership. She did through her lawyer, her
21 domestic lawyer, Tim Madden. One of our exhibits is a
22 cover letter transmitting the deed and the assignment
23 of the 8 percent property interest. Ms. Lipscomb,
24 acting at that point as Mr. Hammer's domestic lawyer,
25 sent those back and said we will not accept those.

1 Then subsequently this lawsuit was brought saying
2 you're a limited partner and you have to contribute
3 money to the partnership. Number one, we believe that
4 because the family court has addressed this in
5 multiple orders and specifically ordered Mr. Hammer to
6 accept the tender of the deed and the tender of ---

7 THE COURT: Who ordered him to do that?

8 MS. BALLARD: Judge Rucker.

9 THE COURT: In the family court?

10 MS. BALLARD: Yes, sir. Judge Rucker, in the
11 family court has ordered Mr. Hammer to accept the
12 tender of the 52.75 percent interest in the dirt and
13 the 8 percent in the limited partnership, but he has
14 refused to do that. Of course, our position is that
15 the reason he has refused to that is to bring this
16 lawsuit for contribution for repairs. The more
17 important issue, however, is Mrs. Hammer is a limited
18 partner and --- in whatever capacity. If it's a
19 56.8 percent limited partnership or an 8 percent
20 limited interest in the partnership, the partnership
21 agreement, which we've introduced into evidence
22 specifically says that limited partners are not
23 required to make additional contributions, so the
24 whole lawsuit is a farce. The only person required to
25 make additional contributions is the general partner,

1 which is Mr. Hammer, so the whole basis of the lawsuit
2 is kind of silly.

3 THE COURT: You brought in Mr. Hammer as a
4 third-party defendant?

5 MS. BALLARD: Yes, sir, I did.

6 THE COURT: And the basis for that is...

7 MS. BALLARD: The basis for that is, a conspiracy
8 with the limited partnership and with other people to
9 bring this action, a conspiracy to bring this action
10 as abuse of process against Mrs. Hammer.

11 THE COURT: With whom did he conspire?

12 MS. BALLARD: He conspired with 1634 Main Street
13 and the Danville Business Advisors, who is the
14 management company that Ms. Lipscomb made reference
15 to. Mr. Turbeville has been deposed and indicated
16 that Mr. Hammer instructed that the lawsuit be filed.

17 THE COURT: Okay.

18 MS. BALLARD: But I think before we begin hearing
19 anything on it, I think the fact that it's within the
20 jurisdiction of the family court has got to be
21 addressed.

22 THE COURT: Well, it may or may not be, or it may
23 be part of my ultimate decision if I hear the case on
24 the merits.

25 MS. BALLARD: Thank you, Your Honor.

1 THE COURT: All right. Mr. Hammer, your response
2 to the Hammer claim brought before the third party
3 action be brought against you by Shirley Hammer in the
4 1634 matter.

5 MR. HAMMER: Initially I would point out that,
6 Your Honor --- in their --- bringing me in as a
7 third-party defendant, they brought counterclaims
8 against me, and in those counterclaims, they listed
9 allegations common as to all of the claims made as to
10 all of the claims and counterclaims made.

11 They made a list of common allegations. One of
12 those common allegations had to do with a --- this
13 will get into settlement later on, had to do with
14 partial settlement.

15 There is a distinction we will show to create a
16 partial settlement agreement in a divorce case under
17 Mosier vs. Mosley. We will show, as part of our
18 defense, that there is a distinction in Mosier, and
19 our defense is that Mosier vs. Mosley speaks to a
20 partial --- speaks to a settlement in a divorce action
21 or a settlement in a separation agreement.

22 Mosier vs. Mosley --- I'm sorry, Your Honor,
23 Mosier vs. Mosley, and it's a very subtle distinction,
24 Mosier vs. Mosley in the last paragraph speaks to that
25 distinction. Mosier vs. Mosley says that we are doing

1 away with words of art. We no longer have words of
2 art in terms of family court, incorporating, merged
3 all of that is gone. We will look to the intent of
4 the parties.

5 In looking to the intent of the parties, they
6 talked about a settlement in a divorce action,
7 settlement in a divorce action, but the court has an
8 interest in the matter because marriage is a stated
9 interest, as a public interest, settlement in a
10 separation agreement, marriage has a public interest
11 --- there is a public interest.

12 A separate, which is what this is, stand alone
13 property agreement has no public interest, and so the
14 question then becomes --- and it would come in other
15 cases also but more so in this case, whether what the
16 intent of the parties was in connection with this
17 settlement agreement that they brought into issue.

18 We will show that in this settlement agreement,
19 there is a provision that says that the lawyers ---
20 the parties cannot bring grievances against the
21 lawyers. We will urge that that provision is against
22 public policy as a matter of common sense. We will
23 show that there is a provision in that policy that
24 says the parties released each other from all lawsuits
25 except as to the matters created under the obligations

1 in this agreement.

2 And we will contend that that, except that
3 release --- except as to the matters, you can't bring
4 lawsuits, except as to the matters under this
5 agreement is an intent of the parties to be able to
6 bring a lawsuit under the property settlement stand
7 alone agreement.

8 In a stand alone --- we will show that in a stand
9 alone agreement, the court has an obligation to see
10 that it's fair, to see that it's voluntary, and to see
11 that it's equitable.

12 THE COURT: All right.

13 MR. HAMMER: And we will show that in this case,
14 the court could not have found that an agreement
15 against public policy was equitable. Agreement
16 against public policy is by its nature not equitable.
17 So an agreement that carries with it a provision that
18 says you cannot bring lawsuits against the lawyers,
19 grievances against the lawyers, is not equitable.

20 We would say that the agreement is void. There
21 was nothing therefore for the court to make an order
22 on, and the order itself is meaningless. That's part
23 of what we will show ---

24 THE COURT: All right.

25 MR. HAMMER: And now as to the abuse of process

1 and the other actions, I believe Mr. Aiken has
2 addressed those. There is a bit of an issue. It was
3 my understanding, and I heard Ms. Ballard saying that
4 she was withdrawing some of the actions. As I
5 understand it, there is no procedure for withdrawal.

6 If she wants to enter into --- and I understood
7 that to mean a voluntary non-suit with prejudice.
8 There is no procedure in the code where you can stand
9 up and say I withdraw my action.

10 THE COURT: So she wants to withdraw, from what I
11 read before I cut off the e-mail frame, she wants to
12 withdraw her cause of action for intentional
13 infliction of emotional distress and malicious
14 prosecution.

15 MS. BALLARD: Yes, sir, and that part of the
16 abuse of process claim that seeks emotional distress.

17 THE COURT: So if she wants to withdraw those,
18 why in the world won't you say Thank You?

19 MR. HAMMER: That's what I'm saying. I'm saying
20 it has to be done in the proper matter, that is an
21 order of voluntary non-suit with prejudice.

22 THE COURT: Well, I'll enter it right now.

23 MR. HAMMER: Thank you, Your Honor.

24 THE COURT: Intentional infliction of emotional
25 distress, malicious prosecution, and any claims for

1 emotional damages in the abuse of process; that's what
2 you want to withdraw?

3 MS. BALLARD: Yes, sir, I filed appropriate
4 pleadings to that effect on Friday.

5 THE COURT: Do you object?

6 MR. HAMMER: As long as it's entered as a
7 voluntary non-suit with prejudice.

8 THE COURT: Is that your request?

9 MS. BALLARD: Yes, sir.

10 THE COURT: A voluntary non-suit with prejudice?

11 MS. BALLARD: Yes, sir.

12 THE COURT: All right. It's so ordered.

13 MR. HAMMER: May I make a note to draw the order
14 on that?

15 THE COURT: No, sir. It's on the record. It
16 will be part of the final order in this case, but it's
17 ordered as of this moment.

18 MR. HAMMER: Would you give me just one moment,
19 just a second to write that down in my notes?

20 THE COURT: I think you can remember that.

21 MR. HAMMER: All right.

22 THE COURT: Anything else you want to tell me as
23 part of your opening statement?

24 MR. HAMMER: Yes, sir, she raises another issue
25 that she is withdrawing her claim for emotional

1 distress in the ---

2 THE COURT: The abuse of process action.

3 MR. HAMMER: --- abuse of process action, yes.

4 THE COURT: In the 1634 matter, I assume.

5 MR. HAMMER: That's what's confusing to me, but
6 I'm assuming that's what it is.

7 THE COURT: That's what I just ordered.

8 MR. HAMMER: And again, I'm not sure from a legal
9 standpoint, having heard what Mr. Aiken had to say
10 about abuse of process to begin with, how you can
11 withdraw a portion of that --- first of all, a
12 withdrawal would require ---

13 THE COURT: Well ---

14 MR. HAMMER: I'm a little confused about that.

15 THE COURT: I want to hear your opening statement
16 on the claims against you, so what else do you have to
17 tell me as far as your opening statement, not a
18 closing argument, not a motion argument, what do you
19 think the evidence will or will not show as far as the
20 suit against you in the 1634 matter?

21 MR. HAMMER: I did ---

22 THE COURT: You've already explained it to me
23 it's against public policy and that it's not subject
24 to any family court involvement, so anything else you
25 want to tell me?

1 MR. HAMMER: Yes, sir, I do. As far as the
2 counterclaim, which she is also making against me as I
3 understand it, the testimony of the accountant for the
4 1634 Main, the testimony of me, Mrs. Hammer has
5 testified she doesn't know what happened. The
6 testimony will show this, that in 2001 or 2002, I
7 believe she brought this up and clarified it a little
8 bit, 1634 Main L.P. was --- owned all of the real
9 estate that the building sits on there on Main Street.

10 In that year, Shirley and I were happily married,
11 husband and wife. Shirley owned a piece of property
12 in Isle of Palms in her name. Shirley sold that piece
13 of property in Isle of Palms, had a profit, in order
14 not to pay taxes on that, she was looking for an
15 investment. 1634 Main at that time, the majority
16 interest, the majority L.P. member was my father and
17 my mother. They had since given that away, but it
18 really doesn't matter who the majority was.

19 At that time, 1634 Main owned all the of the real
20 estate. Shirley gave a deed, was given a deed ---
21 excuse me, took the money that she got from the sale
22 at the Isle of Palms, and the evidence will show she
23 invested it into and received 52.75 percent of the
24 dirt, of the real estate, so L.P. owned part and
25 Shirley owned part in 2001.

1 The evidence will show that there was a tax plan.
2 That the tax plan was that after --- that she would
3 invest in the real estate to get 1031 tax advantage.

4 THE COURT: Right.

5 MR. HAMMER: But the tax attorney had determined
6 that after a certain number of appropriate years, that
7 1634, that dirt, would be converted in this fashion:
8 Shirley would deed her interest in 1634 Main to the
9 L.P. That was the --- and the L.P. would transfer to
10 Shirley 48.8 percent, which she already had 8 percent
11 which would make the ---

12 THE COURT: Okay.

13 MR. HAMMER: The 56.8 percentage, whatever
14 percentage. I may be off, but whatever it is. So
15 when 2005 came around, and that was the year it was
16 supposed to happen, and Shirley and I were filing
17 joint tax returns. The evidence will show that we
18 filed a joint tax return which showed that Shirley
19 owned 56.8 percent interest in 2005.

20 Now, this is before any agreement whether or not
21 it's valid or not, but it's before any agreement in
22 2008, so in 2005 both of us were under the
23 understanding that she owned 56.8 percent. I'm not
24 sure ---

25 THE COURT: Of the partnership?

1 MR. HAMMER: In the L.P.

2 THE COURT: All right.

3 MR. HAMMER: The plan was that she was supposed
4 to have made a deed to the partnership. Mr. --- the
5 attorneys --- there was a tax attorney involved, and
6 there was a gentleman, Mr. Allen Medlin, who was in
7 here a few minutes ago who was involved. Mr. Medlin
8 is ---

9 THE COURT: I just want to know what the evidence
10 will show.

11 MR. HAMMER: The evidence will show that Mrs.
12 Hammer received her consideration for the agreement to
13 deed the portion of the 1634 L.P. The evidence will
14 show that Mrs. Hammer to this day --- and we just
15 learned this, I think last week, never deeded her
16 interest in the 1634 Main, her dirt, to the L.P. as it
17 should have been.

18 She received from the L.P. her 56 --- her
19 additional 48 percent interest, so she received the
20 consideration she was supposed to receive. For
21 whatever legal reason ---

22 THE COURT: What is your evidence going to be as
23 to why you just didn't accept the deed in the domestic
24 litigation?

25 MR. HAMMER: The evidence in the deed --- in the

1 domestic litigation ---

2 THE COURT: Why didn't you accept it?

3 MR. HAMMER: It was never tendered to 1634 Main
4 L.P.

5 THE COURT: It was tendered to you.

6 MR. HAMMER: It was tendered to me, and I am
7 acting --- we've sent it back --- we have explained.
8 They wouldn't tender it. They would never give a deed
9 to 1634 Main L.P.

10 THE COURT: All right, sir. I'm clear on what
11 your position is. Anything else you want to tell me
12 in your opening statement? It's ten after eleven and
13 I want to get moving.

14 MR. HAMMER: Yes, sir. I think --- give me
15 moment to gather just a thought or two if you don't
16 mind, please. May I do that?

17 THE COURT: Yes, sir. I know you've all been
18 around long enough to know opening statements are just
19 intended to give me an idea --- I don't want to hear
20 any evidence.

21 MR. HAMMER: Yes, sir.

22 THE COURT: Tell me what you want to tell me
23 about what your proof is going to be.

24 MR. HAMMER: Yes, I hope what I've told you has
25 clarified --- is going to be clear.

1 THE COURT: It's clear enough.

2 MR. HAMMER: I understand, I just want to be
3 sure. If you'll give me just one second to consult, I
4 would appreciate it. May I do that, sir?

5 THE COURT: Yes.

6 (Pause.)

7 MR. HAMMER: Thank you. Thank you for your
8 indulgence. Thank you for allowing me to act as pro
9 se.

10 THE COURT: All right. First witness in Shirley
11 Hammer vs. Howard Hammer.

12 MR. HAMMER: Your Honor, I'm sorry. There is one
13 more item.

14 THE COURT: All right.

15 MR. HAMMER: I apologize. I would ask that the
16 witnesses be sequestered.

17 THE COURT: Well, who is in here?

18 MR. HAMMER: Well, Mr. Medlin was in here. I
19 don't know whether he will ever be called as a reply
20 witness or not.

21 THE COURT: Who is the gentleman in the back?

22 MR. HAMMER: That is Mr. Turbeville, who will be
23 one of the first witnesses, I believe.

24 THE COURT: No. The first case I'm trying is
25 Shirley Hammer against Howard Hammer.

1 1634, we're not going to get to that --- I can
2 tell you we're not going to get to that this morning.

3 MS. BALLARD: Can we release Mr. Turbeville from
4 his subpoena until later this afternoon?

5 THE COURT: Absolutely.

6 MS. BALLARD: Mr. Turbeville, if you would give
7 me assistant your cell phone number, we'll call you
8 when it's time for you to come in, sir.

9 THE WITNESS: Yes.

10 THE COURT: The lady with you, Ms. Ballard, is
11 she a witness?

12 MS. BALLARD: This is Mrs. Hammer, Your Honor.
13 I'm sorry, I did not get around to introductions.

14 THE COURT: And the other lady?

15 MS. BALLARD: She is my assistant.

16 THE COURT: Well, then there is nobody in here to
17 sequester. If people start walking in, I'm sure
18 you'll let me know.

19 Do you object to sequester?

20 MS. BALLARD: No, sir.

21 THE COURT: Okay. All the witnesses except the
22 parties and any experts who will base any opinions on
23 other people's testimony, they can be in here.

24 MS. BALLARD: All right. Thank you.

25 THE COURT: All right. First witness.

1 MS. BALLARD: Yes, sir. We'd call Shirley
2 Hammer.

3 THE COURT: All right. Come on up please, ma'am.
4 Shirley Hammer,
5 after being duly sworn, testified as follows:

6 THE COURT: If anybody needs to take a break,
7 bring it to my attention.

8 THE WITNESS: Can I go to the restroom real
9 quick, sir?

10 THE COURT: We'll take --- you can step down.

11 THE WITNESS: Okay.

12 THE COURT: You have been sworn. Any restraining
13 order?

14 MS. BALLARD: I don't have an objection.

15 THE COURT: You can go. Any current restraining
16 order is in effect.

17 MS. BALLARD: Yes, sir.

18 THE COURT: Mr. Hammer is not to have any contact
19 with the witness at all.

20 MR. HAMMER: Your Honor, I'd like to see that
21 restraining order that you ---

22 THE COURT: That's my order right now. I don't
23 care whether it exists or not. You are not to have
24 any contact with her and you won't be questioning her
25 in Shirley Hammer vs. Howard Hammer.

1 MS. BALLARD: Thank you, Your Honor.

2 THE COURT: She will have to be separately called
3 in the 1634 matter.

4 MS. BALLARD: Thank you, Your Honor.

5 THE COURT: I'm consolidating those for trial,
6 but I don't see any common issues at all.

7 MR. HAMMER: May I, Your Honor, the abuse of
8 process appears in both cases.

9 THE COURT: Okay. Is the abuse of process theory
10 two separate abuses of process?

11 MS. BALLARD: Yes, sir.

12 THE COURT: Okay. Good enough.

13 (WHEREUPON, a short break was taken.)

14 (Pause.)

15 THE COURT: Ms. Ballard, are you ready to
16 proceed?

17 MS. BALLARD: Yes, sir.

18 THE COURT: Mr. Aiken, are you ready?

19 MR. AIKEN: Yes, sir.

20 DIRECT EXAMINATION:

21 BY MS. BALLARD:

22 Q I'm going to stand right here, so that you can
23 you look at the judge when you answer the questions,
24 if you don't mind.

25 Would you state your full name, please?

1 A Shirley Hightower Hammer.

2 Q And where do you live, Shirley?

3 A 421 River Club Road in Lexington.

4 Q How long have you lived there?

5 A Approximately three years.

6 Q And you are the former wife of Howard Hammer; is
7 that correct.

8 Q Do you and Mr. Hammer have any children?

9 A Yes, we do.

10 Q Who are the children --- what are their ages?

11 A David is 12 and Michael is 10.

12 Q Do you have primary custody of those children?

13 A Yes, I do.

14 Q Prior to --- well, when was your family court
15 case settled in terms of the property settlement?

16 A I believe 2008 and 2009.

17 Q Okay. Let me show you what's been marked without
18 objection as Defendant's Exhibit No. 1 and ask if you
19 can identify that, please.

20 MS. BALLARD: It's my understanding there are no
21 objections to my exhibits, Your Honor?

22 THE COURT: Is that correct, Mr. Aiken?

23 MR. AIKEN: That's correct.

24 THE COURT: Okay. One through...

25 MS. BALLARD: Twenty-six, I believe.

1 THE COURT: Twenty-nine.

2 MS. BALLARD: Okay, sorry. Yes, 1 through 29.

3 (WHEREUPON, Defendant's Exhibits 1-11, 14-23,
4 25-29 were admitted into evidence.)

5 BY MS. BALLARD:

6 Q Shirley, what is Exhibit No. 1?

7 A This is the title to real estate.

8 Q The title to which real estate? Is this the
9 title to ---

10 A Yes, to 320 St. James.

11 Q What property is 320 St. James?

12 A This was originally our marital home.

13 Q Where is St. James located?

14 A Wheeler Hill in Columbia, downtown Columbia.

15 Q As part of the divorce settlement, who became
16 owner of 320 St. James?

17 A I did.

18 Q Does Exhibit No. 1 reflect the transfer by
19 Mr. Hammer to you of his interest in 320 St. James?

20 A Yes, it does. His signature is here.

21 MS. BALLARD: And, Your Honor, those are all in
22 evidence?

23 THE COURT: All right.

24 MS. BALLARD: Thank you.

25 BY MS. BALLARD:

1 Q Shirley, after the divorce, what decision did you
2 make with reference to selling 320 St. James?

3 A I decided to sell it so the children and I could
4 move to a different location.

5 Q All right. And did you put the property on the
6 market?

7 A Yes, I did.

8 Q Who did you use as a realtor?

9 A Coldwell Banker.

10 Q Do you remember approximately how long the house
11 was on the market?

12 A I believe it was about three months. It was
13 listed for \$729,900, I believe.

14 Q Okay. Did you subsequently enter into a contract
15 to sell 320 St. James?

16 A I did.

17 Q Let me show you Exhibit No. 2, which has been
18 introduced into evidence without objection. I ask if
19 you can identify that please, Mrs. Hammer?

20 A This is a contract of sale between me and Hu Ye,
21 the owner of the house now.

22 MS. BALLARD: Your Honor, for the record, Hu Ye
23 is a Japanese national.

24 THE COURT: H-U and the next name is Y-E?

25 MS. BALLARD: Yes, sir.

1 THE COURT: All right.

2 BY MS. BALLARD:

3 Q What's the date of the contract that's been
4 introduced into evidence as Exhibit 2?

5 A June 29th of '09.

6 Q All right. What sales price, did you and Hu Ye
7 agree on?

8 THE COURT: Just a second, the lady who was in
9 here, was she a witness?

10 MS. BALLARD: No.

11 THE COURT: She is not a witness?

12 MS. BALLARD: I don't know what that is, Your
13 Honor.

14 THE WITNESS: Oh, that's Ms. Degenhart.

15 MS. BALLARD: Oh, she is a witness in this case,
16 Your Honor.

17 THE COURT: She needs to step out.

18 MS. BALLARD: Mary Nell, can you wait in the
19 hall?

20 THE COURT: Thank you.

21 BY MS. BALLARD:

22 Q And what was the agreed upon sales price?

23 A 650.

24 Q \$650,000?

25 A \$650,000, yes.

1 Q What --- after you entered into the contract of
2 sale on June 29th, 2009, was the closing scheduled for
3 some time in August?

4 A Yes, it was.

5 Q And who was the closing attorney for Hu Ye?

6 A That was Ms. Degenhart.

7 Q That's Mary Nell Degenhart that we just saw in
8 the courtroom?

9 A Correct.

10 Q Okay, did you have occasion to arrive at
11 Ms. Degenhart's office for a closing on August 17th,
12 2009?

13 A Yes.

14 Q When you arrived at the --- Ms. Degenhart's
15 office for a closing on August 17th, 2009, what if
16 anything occurred?

17 A We found out that there was a --- that Howard had
18 placed a lis pendens on the house, so it blew up the
19 closing.

20 THE COURT: And Ms. Degenhart was the Realtor?

21 THE WITNESS: Yes. No, no, no, I'm sorry,
22 Ms. Degenhart was the lawyer.

23 THE COURT: The lawyer.

24 MS. BALLARD: For the closing.

25 THE COURT: For the closing. Okay, I see.

Direct of S. Hammer by Ballard

1 BY MS. BALLARD:

2 Q Let me show you what's been marked into evidence
3 as Exhibit No. 3. Shirley, is that the lis pendens
4 that was filed against the property at 320?

5 A Yes, it is.

6 Q Now, the closing was supposed to take place on
7 August 17th. What were the terms of the sale? Were
8 you supposed to receive cash for the sale?

9 A Yes.

10 Q When the closing blew up, as you say, what
11 happened after that in the next couple of days after
12 that?

13 A Everybody panicked and, you know, we couldn't
14 figure out what to do, and then finally Ms. Degenhart
15 and I, we talked about things.

16 Then because Hu Ye couldn't get financing, I
17 financed the place so we could close. I had to get
18 title insurance to protect her home when she did sell
19 it, so it was quite --- it was quite exhausting and
20 scary and everything else, but we did get it
21 eventually closed.

22 Q Let me show you Exhibit No. 9, Shirley, which is
23 two HUD statements. The first one is the HUD
24 statement dated --- I'm sorry, the first one is the
25 HUD dated August 20th and the one behind it is a HUD

1 dated August 17th.

2 Are those both the HUD that was supposed to be
3 signed on the 17th --- I'm sorry, it was signed on the
4 17th and then the subsequent one that was signed on
5 the 20th?

6 A Correct, yes.

7 Q Okay, if you will, looking at that exhibit,
8 Shirley, how much cash --- if the closing had occurred
9 on August 17th as scheduled with Hu Ye receiving her
10 financing, how much cash would have been paid to you
11 at that time?

12 A \$618,922.95.

13 Q And once you were able --- once you were required
14 to do owner financing and you had the closing on
15 August 20th, 2009, how much cash did you receive at
16 the time of closing?

17 A \$277,272.79.

18 Q And Shirley, what was your plan for the \$600,000
19 and some odd cents that are shown in Exhibit No. 9?
20 What were you going to do with those funds had you
21 received them the closing?

22 A To invest them for me and my children.

23 Q Okay, and obviously you didn't receive the
24 \$600,000; is that correct?

25 A Correct.

1 Q And I understand that you self-financed the sale
2 to ---

3 A Hu Ye.

4 Q Hu Ye.

5 A Yes.

6 Q Let me just show you Exhibit No. 6 and ask if you
7 can identify that as the deed transferring title from
8 you to Hu Ye.

9 A Yes. It's a general ---

10 THE COURT: What number is that?

11 MS. BALLARD: That's number nine, Your Honor.

12 THE COURT: Nine?

13 MS. BALLARD: I'm sorry. Number six. I was
14 looking at it upside down.

15 THE COURT: All right.

16 MS. BALLARD: Thank you, Your Honor.

17 BY MS. BALLARD:

18 Q And the mortgage that you entered into, the note
19 and mortgage that you entered into with Hu Ye has been
20 introduced into evidence as Exhibit No. 7. I just
21 want you to identify that for the record, if you
22 would.

23 A Yes.

24 Q Okay. Now the mortgage that you entered into
25 with Hu Ye was a three year mortgage; is that correct?

1 A I don't really recall, but I think three years, I
2 believe.

3 Q Okay. Did you receive monthly payments for a
4 couple of years?

5 A I did.

6 Q And then what happened?

7 A She paid it off.

8 Q What year did she pay it off?

9 A Last year.

10 Q 2011?

11 A No. I think it was this year. Maybe January or
12 February of this year, sorry.

13 Q Okay. So when you eventually received the payoff
14 in 2012, how much did you receive?

15 A I think it was roughly 300.

16 Q And what did you do with that money, Shirley?

17 A I paid off loans and attorneys.

18 Q You didn't have any money for investment at that
19 time?

20 A No, I did not.

21 Q Now, Shirley, in order to get the closing to
22 occur, what if anything had to happen with the title
23 insurance?

24 A I had to purchase title insurance.

25 Q You had to purchase title insurance for who?

1 A For Hu Ye.

2 Q Okay. Let me show you Exhibit No. 8 and ask if
3 these are indemnification agreements and affidavits
4 that you signed guaranteeing to indemnify the title
5 company against the lis pendens that Howard filed?

6 A Yes, that's it.

7 Q And what is your understanding of the legal
8 significance of Exhibit No. 8, the indemnification
9 agreement affidavit regarding title if there turns out
10 to be a cloud of some sort on Hu Ye's property?

11 A Okay. For ---

12 MR. AIKEN: Your Honor, I object.

13 THE COURT: Hold on. What did you say?

14 MR. AIKEN: I object. That calls for a legal
15 conclusion.

16 THE COURT: What was your question again?

17 MS. BALLARD: I just asked what her understanding
18 was of whether there was continuing liability under
19 these documents that are marked Exhibit No. 8.

20 THE COURT: Overruled. You can answer.

21 BY MS. BALLARD:

22 Q Go ahead.

23 A Yes, I'm responsible.

24 Q Is that a result of you having signed these
25 documents for title insurance?

1 A Yes, it is.

2 Q Okay. To your knowledge, does Hu Ye still live
3 in the house?

4 A She does.

5 Q To your knowledge, has there been any attempted
6 sale?

7 A Not to my knowledge, no.

8 MS. BALLARD: Your Honor, may I ask you a
9 question? I assume you don't want me to question her
10 on the 1634 matter at this time.

11 THE COURT: No, ma'am.

12 MS. BALLARD: Okay. That's all I have at this
13 time. There will be some cross-examination and then
14 I'll have another witness.

15 THE COURT: Mr. Aiken?

16 MR. AIKEN: Thank you, Your Honor.

17 CROSS-EXAMINATION:

18 BY MR. AIKEN:

19 Q How are you, Mrs. Hammer?

20 A Good, considering.

21 Q Good. I'm glad to hear it.

22 Okay. Let me make sure I understand your
23 testimony. Before the filing of the lis pendens, you
24 had a \$650,000 contract for 320 St. James; is that
25 right?

1 A I'm not sure exactly --- yes, I believe that's
2 correct.

3 Q All right. And then at the first closing you
4 found out about the lis pendens, and that closing did
5 not go forward, correct?

6 A Correct.

7 Q But ultimately, there was a closing on the
8 property; is that correct?

9 A Correct.

10 Q And as I understand it, at that closing, there
11 was a --- an agreement that you were to be paid
12 \$272,272.79 cash at closing, correct?

13 A Correct.

14 Q All right. And you owner financed the purchase
15 of your home, right?

16 A For her to purchase it, yes.

17 Q Yeah, and this Ye Hu ---

18 A Hu Ye.

19 Q Oh, I'm sorry. It says Ye Hu right here, so....
20 And there was a note and mortgage in connection with
21 that, right?

22 A Correct.

23 Q Where you were owner financing Hu Ye's purchase?

24 A Yes.

25 Q And it looks like you financed \$340,000, right?

1 A I guess, yes. Around that.

2 Q If you look at Defendant's Exhibit No. 7, is that
3 the mortgage between you?

4 A Yes, it is.

5 Q Okay. And do you see where it indicates up here
6 mortgage in the principle amount of \$340,000, correct?

7 A Correct.

8 Q Okay. You're a former banker aren't you?

9 A Yes, I am.

10 Q You worked in the banking industry for a number
11 of years, right? How many years?

12 A Eighteen.

13 Q Eighteen. You did some work in connection with
14 home loans, didn't you?

15 A I did equity loans and second mortgages.

16 Q But those would have been mortgages on property
17 in exchange for the loan of money, right?

18 A Correct.

19 Q So you're familiar with mortgages and promissory
20 notes and that sort of thing?

21 A Yes.

22 I can't seem to find the promissory note.

23 THE COURT: Exhibit 10.

24 MR. AIKEN: Exhibit 10, okay.

25 THE COURT: That and the amortization schedule.

1 MR. AIKEN: I got it. Thank you, Judge.

2 BY MR. AIKEN:

3 Q Mrs. Hammer, I'm handing you what's been marked
4 as Defendant's Exhibit 10. Is that the amortization
5 schedule for the loan to Ye Hu --- Hu Ye?

6 A I believe so, yes.

7 Q Okay. Thanks.

8 And it appears that the interest rate was
9 5.25 percent, right?

10 A Right.

11 Q And the borrower --- did the borrower pay the
12 payments due up to the time she paid off the mortgage?

13 A Yes, she did.

14 Q Were there any problems with getting her to make
15 payments on the mortgage?

16 A No. The money came in. They had to be
17 transferred in. Occasionally there would be a
18 problem, but nothing significant, no.

19 Q And when did you say the mortgage was paid off?

20 A I believe it was like February of this year.

21 Q If it was paid off in February of this year,
22 doesn't this Exhibit 10 indicate that you would have
23 received \$327,526.89?

24 A Approximately, yes.

25 Q Is that what, in fact, you did receive?

1 A I don't recall exactly, but similar. You know,
2 close that.

3 Q But you were satisfied that the mortgage had been
4 paid off?

5 A Correct.

6 Q Now, the title insurance information, did you
7 have to pay premiums to the title insurance company?

8 A I don't recall.

9 Q Since you --- do you have any records whatsoever
10 as to what you may have paid the title insurance
11 company?

12 A I'm sure I do, but I don't recall right now.

13 Q You don't recall and you didn't bring those with
14 you today?

15 A No, I did not.

16 MR. AIKEN: May I have one moment, please, sir.

17 THE COURT: Yes, sir.

18 MR. AIKEN: Thank you.

19 (Pause.)

20 BY MR. AIKEN:

21 Q Mrs. Hammer, I think we established, did we not,
22 that you received 5.25 percent on the loan amount you
23 made between the time you made the loan at the closing
24 and the time it was paid off; is that right?

25 A Yes.

1 Q Did you have any other form of investments during
2 that time?

3 A I did.

4 Q How were those doing? Were those returning
5 5.25 percent?

6 A A little bit better than that.

7 Q How much better?

8 A I don't really recall, but better than 5 percent
9 at the time.

10 Q Better than 5 percent?

11 A Yes.

12 Q And that period would have been between the date
13 of the mortgage, which was the 20th of August of 2009,
14 correct?

15 A Yes.

16 Q And the date you were paid off, which you believe
17 was in February of 2011 --- or 2012, right?

18 A Yes.

19 MR. AIKEN: I'm sorry, Your Honor. May I take
20 just one more second?

21 THE COURT: Yes, sir.

22 (Pause.)

23 BY MR. AIKEN:

24 Q Mrs. Hammer, did you ever deed the 320 St. James
25 property to your mother?

1 A I did.

2 Q What was the purpose of that?

3 A Because if you knew Howard, I figured something
4 would probably come up with him. I just --- we
5 needed --- we needed a home. My children and I needed
6 a home.

7 THE COURT: Can you clarify, Mr. Aiken, the
8 timeframe of the deed?

9 MR. AIKEN: I believe it was August 2009; is that
10 right?

11 THE WITNESS: Right before the closing, I
12 believe.

13 BY MR. AIKEN:

14 Q So you deeded the property to your mother, right?

15 A Yes.

16 Q And then subsequently --- was there any
17 consideration for that transfer? In other words, did
18 she pay you any money for the transfer of the property
19 to her?

20 A No, not that I believe, no.

21 Q And then subsequently she deeded the property
22 back to you?

23 A I believe that's how it happened. I'm not sure
24 exactly how it worked, but yes.

25 Q Was there any consideration in that transaction?

1 A No, not that I can recall.

2 Q Okay. Mrs. Hammer, whose idea was it to transfer
3 the property like that?

4 A I'm not really sure whose idea it was.

5 Q Did it come from you or from somebody else?

6 A I'm sure it was me and everybody that has
7 anything to do with friends and family and attorneys.

8 Q You're just not sure who may have come up with
9 the idea?

10 A No, but I was suggested it.

11 MR. AIKEN: Thank you, Mrs. Hammer, I appreciate
12 it.

13 THE COURT: Redirect?

14 MS. BALLARD: Just a little bit, Your Honor.

15 REDIRECT EXAMINATION:

16 BY MS. BALLARD:

17 Q Shirley, the payments you received from Hu Ye
18 from 2009 to 2011, those were interest only payments,
19 weren't they?

20 A No, those ---

21 Q Those were principal and interest, as well?

22 A Yes, they were.

23 Q And the --- prior to the closing that eventually
24 occurred on 8/20/2009, were you served with a lawsuit
25 in this action?

1 A I know I was served with a lawsuit, but it
2 wasn't right then, no. I was unaware of the lis
3 pendens, if that's what you're asking me.

4 Q At the time of closing?

5 A Correct.

6 Q The lawsuit that was eventually filed in support
7 of the lis pendens was this lawsuit, was it not?

8 A Correct.

9 MS. BALLARD: That's all I've got.

10 THE COURT: Anything else? Only addressing what
11 she brought up.

12 MR. AIKEN: I understand.

13 THE COURT: Yes.

14 MR. AIKEN: I'm restricted to response to only
15 what's been brought up in reply.

16 THE COURT: Yes.

17 MR. AIKEN: I just need to look at something
18 before I stand down, Judge.

19 THE COURT: Okay.

20 (Pause.)

21 RECROSS EXAMINATION:

22 BY MR. AIKEN:

23 Q Just to clarify something, Mrs. Hammer, if you
24 would look at Defendant's Exhibit 10. Once again,
25 that's the amortization schedule, if I can say that,

1 for the loan that you gave to Hu Ye, right?

2 A Uh-huh.

3 Q You were asked a question about principal and
4 interest?

5 A Yes.

6 Q The actual payments that were being made was
7 principal and interest, not just interest, right?

8 A Correct.

9 Q And that's reflected on Exhibit 10?

10 A Correct.

11 Q As far as you know, the payments were made in
12 accordance with what is reflected on Exhibit 10,
13 right?

14 A I believe so.

15 MR. AIKEN: Thank you.

16 THE COURT: Is that it?

17 MR. AIKEN: Yes, sir, thank you.

18 MS. BALLARD: Can I call my next witness, Your
19 Honor?

20 THE COURT: Yes. You've may step down. Thank
21 you.

22 MS. BALLARD: We would call Mary Nell Degenhart.

23 MARY NELL DEGENHART,

24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION:

1 BY MS. BALLARD:

2 Q Would you please identify yourself for the
3 record?.

4 A Mary Nell Degenhart.

5 Q What is your profession?

6 A I'm an attorney.

7 Q What type of law do you practice, Mary Nell?

8 A Primarily real estate, residential and
9 commercial.

10 Q How long have you been a member of the South
11 Carolina Bar?

12 A Since 1996.

13 Q During that period of time, the primary focus of
14 your practice has been real estate?

15 A Yes.

16 Q Did you come to represent Hu Ye in the purchase
17 of a piece of property at 320 St. James?

18 A I did.

19 Q Who were you representing in connection with that
20 transaction?

21 A Hu Ye and her husband.

22 Q Whose name none of us can say?

23 A Yes, Mr. Hu Ye.

24 Q Mr. Hu Ye, okay. Let me show you what's already
25 been introduced into evidence as Exhibit No. 2. This

1 is the contract of sale that Mrs. Hammer has
2 identified as the contract of sale between Hu Ye and
3 herself. Do you recognize that?

4 A I do.

5 Q Is that the first document that you received
6 relative to this closing?

7 A Yes.

8 Q Tell the court, please, if you would, what you
9 did when you received the assignment for representing
10 Hu Ye and you undertook your work to prepare for this
11 closing?

12 A I spoke with Leslie Walker. She was the closing
13 real estate agent and we kind of went over logistics,
14 how this was going to take place, who the lender was
15 going to be. We exchanged some e-mails so that I
16 would know who the lender was. In fact, she put me in
17 direct contact with the lender, this one.

18 Q Who was the lender in this one, Ms. Degenhart?

19 A Metro Bank in Texas.

20 Q Okay.

21 A They were the lender. My contact person there
22 was Mrs. Li, L-i, and we exchanged e-mail, and I told
23 her I was working on the title work and I'd get back
24 with her once I received the title work and then it
25 would move to step two.

1 Q Okay. Did you do --- when did you first do
2 preliminary title work on this property?

3 A I did preliminary title work --- do you have a
4 copy of the ---

5 Q I have the final title.

6 A It would have been as soon as I received the
7 contract, so it would have been shortly --- I mean, I
8 would have ordered it, so I probably would have
9 reviewed it --- I would have probably received it
10 within a week.

11 Q And when you did the first --- the preliminary
12 title work, was there any lis pendens or anything that
13 was going to encumber the sale?

14 A No, nothing showed up that was going to encumber
15 the sale. I think there was an unsatisfied old
16 mortgage, but we were to take care of that. That
17 wasn't a problem.

18 Q All right. Now, you scheduled the closing, as I
19 understand it from the documentation, for August 17th,
20 2009; is that correct?

21 A We did.

22 Q What had to be done between the time you got the
23 preliminary title work and the closing that was
24 scheduled for August 17th, 2009?

25 A Well, we were in touch with the lender. We sent

1 our commitment to the lender for the closing.

2 Q And who was your commitment from?

3 A My commitment was from Lawyer's Title. I wrote
4 title insurance for Lawyer's Title.

5 Q You were the approved agent and closing attorney
6 for Lawyer's Title?

7 A Yes.

8 Q Was it your intent to use Lawyer's Title for the
9 closing of the property at 320 St. James?

10 A Yes.

11 Q Okay. Continue to tell me what you were doing up
12 until the 17th?

13 A We prepared title, handled all the paperwork for
14 closing, prepared the HUD. Basically, we were ready
15 to close and up until the day of closing, and I wanted
16 to make sure that --- I usually update the day of
17 closing to make sure there's not something that hasn't
18 been filed or some unpaid taxes, or anything that
19 could be filed.

20 Q So did you update on the 17th of August, 2009?

21 A I did. I updated and my abstracter sent over ---
22 actually, she contacted me because we talk on the
23 phone and then she sends me the document, which she
24 said there was a lis pendens that had been filed since
25 her title work, which her good-through date, which is

1 at the top of the abstract, but her good-through date
2 since then within two-and-a-half to three weeks before
3 closing, a lis pendens had been filed.

4 Q Did you subsequently examine the lis pendens?

5 A Yes, I did.

6 Q All right. Let me show you what's been
7 introduced into evidence as Exhibit No. 3 and ask if
8 you can identify that?

9 A That's the lis pendens that was filed on the
10 property.

11 Q Now, did you reach out or have any contact with
12 Howard Hammer when you determined that he was the one
13 who had filed the lis pendens on the property?

14 A No. I didn't have a conversation with him about
15 the lis pendens.

16 Q Okay. Did you observe any conversations that
17 Mr. Hammer had with anyone else that was supposed to
18 have --- that occurred on August 17th, 2009?

19 A For conversations that Mr. Howard had?

20 Q Yes.

21 A He contacted my office to get a message to me
22 that there was problems with the home.

23 Q What kind of problems did he report there were
24 with the home?

25 A He --- it was a leak in the pool was one of them,

1 and also that --- something about an easement. He
2 owned an easement on the back of the property that was
3 going to cause some sort of problem with the ownership
4 and enjoyment of the home.

5 Q Did you look into those matters?

6 A I did. I questioned, you know, was there a leak
7 in the pool that had not been disclosed, but there was
8 no leak.

9 Q All right. Now, on the 17th --- let me show you
10 exhibit No. 9 that has been introduced into evidence,
11 that is a --- excuse me. It's page two of that
12 document is a HUD dated August 17th, 2009, and it's
13 written "void" across it. Do you see that?

14 A Yes.

15 Q What is that document, Ms. Degenhart?

16 A That was the first HUD that we prepared for the
17 closing on the 17th with Metro Bank.

18 Q Is that HUD actually signed by Hu Ye and by Mrs.
19 Hammer?

20 A Yes.

21 Q So what occurred on the 17th when you determined
22 there was a lis pendens that prevented you from going
23 forward with the closing?

24 A Well, there was the lis pendens. Of course, I
25 was holding all the documents in trust, in escrow as

1 we say, until we determined what the lis pendens was.
2 It was a filed lis pendens, but there was not a
3 summons and complaint filed at the same time, so we
4 had no way of determining what the real issue was.

5 Q Okay. After the closing was canceled on the
6 17th, what did you all do to try to salvage the sale?

7 A Well, we spent hours and hours on the phone. Hu
8 Ye was speaking with her husband in China and just
9 trying to --- my title insurance company would not
10 write over it. They would not. Even with an
11 indemnification signed by Shirley, Lawyer's Title
12 wouldn't touch it.

13 Q Okay.

14 A We spent time on the phone, contacted another
15 attorney who thought he could, through some friends,
16 thought he might could --- which was Dave Whitener.

17 Q I was going to ask you who.

18 A He was able to talk investors --- it took him at
19 least another day to get investors comfortable for
20 them to write over it, but they would only do it with
21 an indemnification.

22 Q And when you say to write over it, what do you
23 mean?

24 A They would not take exception to it.

25 Q If they would write over the policy, what did

1 that mean?

2 A It meant that they would insure --- if anything
3 became of the matter, whatever the lis pendens was ---
4 whatever was at issue, they would write over it.

5 Q Okay.

6 A Which meant that they would do so because they
7 would be indemnified by Shirley.

8 Q Let me show you what's been introduced into
9 evidence as Exhibit No. 8 and ask if you can identify
10 those?

11 A That's the seller affidavit, the indemnification
12 that Shirley signed at closing regarding liens of any
13 type.

14 Q Ms. Degenhart, in your experience as a closing
15 attorney of residential real estate transactions, what
16 if anything is the significance of the affidavit and
17 indemnification agreements that Mrs. Hammer had to
18 sign in order to get the title insurance?

19 A Well, if it came to the fact that investors had
20 to come out of pocket any money, Shirley would have to
21 indemnify, reimburse investors for every dime,
22 including attorney's cost.

23 Q Is that indemnification agreement and affidavit
24 still in effect as far as you know?

25 A It is.

1 Q So is Mrs. Hammer still subject to liability
2 under that agreement?

3 A She is subject up to the amount of the title
4 insurance policy.

5 Q Which is how much?

6 A Let's see. It was issued for \$650,000.

7 Q Okay. Now, in terms of financing you indicated
8 the bank refused financing; is that correct?

9 A Yes, Metro Bank, even though investors would
10 produce a policy and insure over it, they wouldn't
11 have anything to do with it. They said no, and they
12 canceled and withdraw the documents.

13 Q All right. Did the purchaser --- did Hu Ye still
14 want to buy the home?

15 A She did. She was a little bit reluctant. She
16 spent a lot of time in my office. I had to hold her
17 hand and told her I didn't know what was going to
18 happen. It just depended on --- you know, she said
19 she wanted the house because she had made some plans
20 for her children to go to school. She kind of had her
21 heart set on living in that area, so she was trying to
22 work it out to get the financing. She didn't really
23 know what she was going to do at that point.

24 Q This was the end of summer; the school year was
25 about to begin, correct?

1 A I think it was going to begin in like two days.

2 Q Okay. What, if any, decisions did Shirley make
3 about how to allow the sale to continue once the
4 lender pulled its financing?

5 A Well, she was very distraught. I mean, she was
6 almost in a panic. She didn't know to do because she
7 had also made plans ---

8 Q Right.

9 A --- for the exchange of houses. At first, she
10 did not offer up seller financing. She was hoping
11 that maybe Hu Ye and her husband could come up with
12 another source, another lender, but after several
13 conversations back and forth, they couldn't come up
14 with one. Then they, I think, borrowed from a family
15 member or someone, but they were able to borrow part
16 of the money for the purchase of it. Then it was
17 proposed to Shirley, what about the seller financing
18 for a portion of it. She really didn't have a choice.

19 Q All right. So did the closing proceed with
20 seller financing made by Shirley?

21 A It did. It proceeded a few days later, I think
22 it was the 20th.

23 Q August 20th, 2009?

24 A Uh-huh.

25 Q Looking, if you would, at Exhibit No. 9, if you

1 compare the HUD that was prepared for the closing on
2 August 17th, 2009, to the HUD that was actually
3 executed on August 20th, 2009, what is the difference
4 in the cash that Shirley was supposed to receive under
5 the first closing and the amount that she actually
6 received as a result of the seller financing?

7 A Well, as a result of seller financing, she
8 incurred more costs because I had to, in turn, charge
9 more for the services. She would have been received
10 \$618,922.95, but she only got \$277,272.79.

11 Q What additional costs did she incur as a result
12 of the lis pendens?

13 A She had to pay for the preparation of the
14 documents and --- yeah, the preparation of the
15 documents for the promissory note and the mortgage
16 that took place.

17 Q What about the cost of the title insurance?

18 A The title insurance that was paid, she had to
19 pay. Well, she had to pay additional fees. The title
20 insurance was paid by the buyer. She had to sign the
21 indemnification for a total amount of \$650,000.

22 Q Okay. Let me show you Exhibit No. 7 that's
23 already been introduced into evidence. Is this the
24 mortgage that you prepared for Shirley's
25 self-financing of 320 St. James?

1 A It is.

2 Q Okay. \$340,000. Let me show you Exhibit No. 10,
3 which has also been introduced into evidence. Is this
4 an amortization schedule?

5 A This is an amortization schedule that I created
6 for Hu Ye.

7 Q Okay. Now, let me ask you, when you had the
8 closing on August 20th, 2009, did Mr. Hammer show up
9 at the office and attempt stop the closing?

10 A Yes, he did.

11 Q Tell the court, if you would, what happened when
12 Mr. Hammer arrived at your office on August 20th,
13 2009.

14 A Well, because of the lis pendens, my office was
15 well aware of what was going on with the chaos
16 surrounding this closing. When Mr. Howard arrived, my
17 assistant --- my conference room has a door. She
18 motioned for me to come, so I walked into her office
19 which was in the front office and Mr. Hammer was
20 speaking to the other attorney in my office, Paul
21 Degenhart, who is my husband.

22 Q What did you overhear Mr. Hammer and
23 Mr. Degenhart discussing at that time?

24 A Well, he was very anxious that the closing was
25 going on because he said he had information that

1 needed to be revealed and that he wanted Hu Ye to buy
2 his house and he wanted to buy Shirley's house or his
3 house back from Shirley, but he had the plan, and it
4 was --- he still was speaking about the leak in the
5 pool and about an easement, an easement that he owned.

6 Q Let me show you Exhibit No. 4, Ms. Degenhart, and
7 ask if you can identify that, please?

8 A That's the letter that Mr. Hammer brought on
9 August 20th, the day of closing. This is what he
10 delivered, hand delivered.

11 Q Now, the letter is typed. The typed date on it
12 is July 10th, 2009. When did you receive that letter?

13 A August 20th.

14 Q And it makes reference to a conversation the
15 previous day on August 19, does it not?

16 A It does.

17 Q Mr. Hammer delivered that letter at the same time
18 he was trying to stop the closing on 320?

19 A Yes.

20 Q What did you do with Mr. Hammer there trying to
21 stop the closing on the 20th?

22 A Well, Paul, he knew --- he knew to keep him in
23 the hallway because we were all in the conference
24 room, but he would have known that. I mean, all
25 cars were parked in front of the office. We're on the

Direct of Degenhart by Ballard

1 corner. It's easy to see who's there, so he knew the
2 closing was going on. I think he ---

3 THE COURT: Where is your office, please, ma'am?

4 THE WITNESS: It's on the corner of --- I mean,
5 it's 2131 Park Street, just across the street from
6 Park Street Baptist Church. You can park along the
7 street or in the church parking lot. It's very open.

8 BY MS. BALLARD:

9 Q So Mrs. Hammer's car was in the parking lot?

10 A Uh-huh.

11 Q Say yes for the record, please.

12 A Yes.

13 Q Okay. With Mr. Hammer present in the office
14 while you had the purchaser and Mrs. Hammer there,
15 what occurred?

16 A He was kept in the hallway. His letter was taken
17 from him, and we wrote at the bottom when it was
18 received. Because of all the issues that were
19 surrounding this closing, we wanted to make sure we
20 have wrote everything down, so Paul wrote the date and
21 time that it was put in his hand.

22 Q What was his proposal about your client
23 purchasing his house?

24 A Uh-huh. He have wanted Hu Ye to purchase his
25 house and that he would buy Shirley's house and that

1 they would work out whatever the difference in the
2 money was.

3 Q Did you relay that offer to Hu Ye?

4 A Well, I went back in there, and I explained what
5 was going on. I spoke with Shirley, and I said
6 Shirley, you know, and again I asked her about the
7 leak and the real estate agent said absolutely, there
8 wasn't a leak, but Hu Ye was not interested in
9 purchasing another house.

10 Q So were you all able to complete the closing on
11 August 20th despite Mr. Hammer's presence in your
12 office?

13 A Well, it was sometime after five we were still in
14 there, but we did.

15 Q Okay. So when you've recorded the deed and
16 mortgage, the lis pendens was still of record; is that
17 correct?

18 A It was.

19 Q Now, you updated your title work on the 21st, I
20 believe. Let me show you what's been introduced into
21 evidence as Exhibit No. 5 and ask if you can recognize
22 that?

23 A That's the final report on title that I did the
24 day after closing for Investor's Title.

25 Q And does that exhibit reflect the existence of

1 the lis pendens?

2 A Yes. In fact, the lis pendens was filed and
3 the --- I did an update the day of closing.

4 That afternoon, the summons and complaint was
5 filed that afternoon, which would have been the 19th,
6 but I couldn't get my hands on it to make a copy of it
7 because it was in the back room.

8 Q Of the clerk's office?

9 A Uh-huh.

10 Q But I didn't know what it said. It had been
11 filed at that point. So at that the point, I
12 contacted Investor's. I said a complaint has been
13 filed. Are you still willing to insure over it? She
14 said I would need to get a copy of it. I believe she
15 sent someone down there to see if they could back
16 there to get a copy.

17 Q You were able to get title insurance issued
18 though as a result of the indemnification agreement
19 that Mrs. Hammer had signed?

20 A Yes.

21 Q Okay. How long is Mrs. Hammer facing liability
22 under that indemnification agreement and affidavit
23 that we introduced into evidence as Exhibit No. 8?

24 A As long as Hu Ye owns the home.

25 Q And as far as you know, does Hu Ye still own the

1 home?

2 A She does.

3 Q Okay. Describe what those couple of days were
4 like?

5 A It was a lot of phone calls with the real estate
6 agent, with Shirley, with Hu Ye on the phone
7 communicating with her husband in China, who is on a
8 completely different time schedule, trying to pull it
9 together and Shirley was in such a panic. I mean, I
10 don't think she slept for three days and Hu Ye didn't
11 sleep because she was worried that school was starting
12 and she wasn't going to have time to get everyone in
13 place and get comfortable in the home.

14 Q But you were able to, on the 21st, record the
15 work and complete the closing; is that correct?

16 A Yes.

17 Q How much additional cost did Shirley incur as a
18 result of the filing of the lis pendens and the
19 additional fees that you had to charge?

20 A Well, normally I --- my check --- the amount I
21 made at closing, let's see.

22 Q I think you still have the HUD?

23 A Yes.

24 (Pause.)

25 Several hundred dollars. We went back --- yes, a

1 few more hundred dollars.

2 Q Several hundred dollars, you said?

3 A Yes.

4 Q Okay.

5 Q Did you remain involved for the seller financing
6 or did Shirley do that directly with the purchaser?

7 A I did that.

8 Q Okay.

9 A I did all of that.

10 Q So were you involved in the monthly payments?

11 A I wasn't involved in the monthly payments. Hu Ye
12 would call me --- I think when it was near the end,
13 before she paid it off, she called me and contacted me
14 to get a pay off for her so she could get the funds to
15 pay it in full before the balloon date.

16 Q And Shirley has estimated that it was finally
17 paid off in February of 2012. Does that sound about
18 right?

19 A That sounds about right. It's been within this
20 year.

21 MS. BALLARD: Please answer any questions
22 Mr. Aiken might have.

23 THE COURT: Mr. Aiken.

24 MR. AIKEN: Thank you, Your Honor.

25 CROSS-EXAMINATION:

1 BY MR. AIKEN:

2 Q Hello, Ms. Degenhart. I'm Art Aiken. I
3 represent Howard Hammer. You represented the buyer in
4 this transaction at 320 St. James, Hu Ye, I think, is
5 the name?

6 A Hu Ye, yes.

7 Q Okay. And before the closing, you did
8 preliminary title work; is that right?

9 A Correct.

10 Q How long have you been doing title searches?

11 A Many years, 15 years.

12 Q After 15 years, you're good at it, right?

13 A Well, I use an abstractor. I use a company now.

14 Q But you review their work, right?

15 A Oh yes.

16 Q And you're satisfied their work is accurate?

17 A (nods)

18 Q You have to say yes or no.

19 A Yes.

20 Q Otherwise you wouldn't use them, would you?

21 A Right.

22 Q And the preliminary title work, which came in
23 before the originally scheduled closing indicated that
24 there were no title defects, right?

25 A Right.

1 Q Okay. But then you had some title work done just
2 in advance of the first scheduled closing, which
3 showed one defect, right?

4 A It showed a lis pendens had been filed since my
5 last search.

6 Q And that was the one defect that was discovered,
7 right?

8 A Yes, uh-huh.

9 Q All right. So there was nothing else wrong with
10 that title, was there?

11 A I mean, there was an encroachment, but it wasn't
12 anything that wasn't --- the title insurance company
13 wouldn't insure over.

14 Q Now, Exhibit 8, which is ---

15 THE COURT: A. or H.?

16 MR. AIKEN: Eight.

17 THE COURT: Okay.

18 MR. AIKEN: I'm sorry. I got the wrong thing
19 here. I apologize, Judge. I'm having a hard time
20 finding what I need here.

21 (Pause.)

22 What I'm looking for is that indemnity.

23 THE WITNESS: You just had it.

24 MR. AIKEN: I had it?

25 THE WITNESS: Yes.

1 MR. AIKEN: All right, yes.

2 BY MR. AIKEN:

3 Q Now, the indemnity agreement is an indemnity
4 against liens, correct?

5 A Liens or anything against the property that ---

6 Q But creditor claims, right?

7 A Well, it was this indemnity was focused on the
8 lis pendens and the result of that lawsuit.

9 Q So what --- let me just make sure I understand.
10 What Mrs. Hammer agreed to was that if Investor's
11 Title had to pay a claim as a result of Mr. Hammer's
12 claim, then Mrs. Hammer would have to pay Investor's
13 Title, right?

14 A Yes.

15 Q Okay. So if Mr. Hammer didn't pursue his claim
16 on which he had the lis pendens, Shirley Hammer would
17 never owe any money to Investor's Title, would she?

18 A If nothing became of the lawsuit. I guess, if
19 there was no money.

20 Q But if Mr. Hammer didn't pursue that lawsuit,
21 then Mrs. Hammer would never have to pay Investor's
22 Title under the indemnity, right?

23 A I would have to go back and read the indemnity
24 sentence by sentence, because you have to read each
25 line to make that sure it pertains to any liens.

1 Q Well, you did the title work and you found there
2 were no other liens, right?

3 A There were some unsatisfied mortgages, but we
4 were able to satisfy them.

5 Q But once that was done, the only thing that was
6 out there was the lis pendens, right?

7 A As far as I know if everything was indexed
8 correctly.

9 Q But based on the title work done by your
10 abstractor, whom you trust obviously because you're
11 using them, there was no lien or no claim whatsoever
12 except for the claim of Mr. Hammer on the lis pendens
13 and the lawsuit, right?

14 A I just know there were some liens that were not
15 satisfied. There were claims --- as long as a lien is
16 unsatisfied, you have to account for it.

17 Q But the only one of those was Mr. Hammer's,
18 right?

19 A No. It was an unsatisfied mortgage. One of them
20 was B.B. & T.

21 Q But after the mortgage was satisfied, the only
22 lien that you found --- or the only claim against 320
23 St. James that you found, your abstractor found, was
24 the claim of Mr. Hammer right?

25 A Yes. And the mortgage that Shirley had, that Hu

1 Ye signed with Shirley.

2 Q I see. But I'm still not getting this clear in
3 my mind. Unless Mr. Hammer pursued that one claim
4 that was against 320 St. James, unless Mr. Hammer did
5 that, Mrs. Hammer would never have to pay anything on
6 the indemnity, right?

7 A I can't answer that without reading word for word
8 the indemnification that she signed, because she could
9 --- there could be another action brought.

10 Q Okay. Well, there were --- that was an
11 indemnification regarding liens, right?

12 A Liens, plural.

13 Q And based on the title work by your abstractor,
14 there were no liens except --- there were no liens
15 except for Mr. Hammerer's claim on the lis pendens,
16 right?

17 A Not that she found.

18 Q And as far as you know, Mr. Hammer has yet to
19 have to pay anything to Investor's Title Insurance on
20 the indemnity, right?

21 A I have no knowledge. I'm not an agent for
22 Investor's.

23 MR. AIKEN: May I have just one moment, please,
24 sir?

25 THE COURT: Yes, sir.

1 MR. AIKEN: Thank you.

2 (Pause.)

3 MR. AIKEN: Ms. Degenhart --- excuse me.

4 (Pause.)

5 Thank you, Ms. Degenhart. I appreciate it.

6 THE COURT: Redirect?

7 MS. BALLARD: None, Your Honor.

8 THE COURT: Thank you.

9 MS. BALLARD: Can she be released from her
10 subpoena?

11 THE COURT: Any objection?

12 MR. AIKEN: No objection, Your Honor.

13 THE COURT: Thank you, Ms. Degenhart. You can
14 stay or leave, whichever you like.

15 MS. BALLARD: Thank you.

16 THE COURT: Next witness.

17 MS. BALLARD: Your Honor, we'd call Howard
18 Hammer.

19 THE WITNESS: Your Honor, I was going to ask for
20 five minutes to be excused to talk to ---

21 THE COURT: You have to go through your lawyer.

22 MR. AIKEN: Sit down.

23 THE COURT: We'll take a five minutes recess.

24 MR. AIKEN: I'm sorry, Judge. I apologize.

25 THE COURT: Please make it five minutes.

1 MR. AIKEN: Yes, sir.

2 (WHEREUPON, a short break was taken.)

3 THE WITNESS: Thank you, Your Honor. I
4 appreciate your letting me take a break.

5 HOWARD HAMMER,

6 after being duly sworn, testified as follows:

7 THE WITNESS: I'm Howard Hammer.

8 MS. BALLARD: Your Honor, I'd request permission
9 to examine this witness pursuant to Rule 611 as a
10 hostile witness.

11 THE COURT: Any objection to that?

12 MR. AIKEN: None.

13 THE COURT: You can cross-examine.

14 DIRECT EXAMINATION:

15 BY MS. BALLARD:

16 Q Mr. Hammer, you filed the lis pendens in the 2009
17 action on July 31st, 2009, did you not?

18 A May I look at it please, ma'am?

19 Q You can answer my question first. Did you file a
20 lis pendens in the 2009 action?

21 THE COURT: He can look at the document.

22 BY MS. BALLARD:

23 Q I'll show you Exhibit 3.

24 A Is this the document you're asking me about?

25 THE COURT: Mr. Hammer --- Ms. Ballard, restate

1 the question and you don't ask the lawyer any
2 questions, Mr. Hammer.

3 THE WITNESS: All right. Thank you, Your Honor.

4 THE COURT: You can ask for clarification, but
5 you have to ask me to have the lawyer clarify.

6 THE WITNESS: Thank you, sir.

7 THE COURT: So the question is clear, is that the
8 document you filed on July 31st, 2009?

9 BY MS. BALLARD:

10 Q Go ahead.

11 A Yes, I see the second paragraph. It is a lis
12 pendens that I filed late in the afternoon on
13 July 31st.

14 Q And that lis pendens was filed to attach to the
15 property at 320 St. James, which was Shirley Hammer's
16 home, correct?

17 A It was filed for that reason and in contemplation
18 of a lawsuit that I was preparing or was hoping that I
19 was going to get someone to help me prepare. I
20 initially filed the lawsuit myself and very shortly
21 afterwards I was able to hire a lawyer so I didn't
22 have to represent myself pro se.

23 Ms. Lipscomb came in and took over that lawsuit
24 almost immediately, the 1634, so yes, this was filed
25 in contemplation of the 1634 lawsuit that was going to

1 be filed.

2 Q My question, Mr. Hammer, was, was that the lis
3 pendens filed to attach to the home at 320 St. James
4 that was owned by Shirley Hammer?

5 A And my answer was, yes it was, and the reason
6 that it was, was because ---

7 THE COURT: She didn't ask you the reason. She
8 asked you whether it was.

9 THE WITNESS: May I give the reason, Your Honor?

10 THE COURT: No, sir. You can --- Mr. Aiken can
11 deal with that on redirect.

12 MS. BALLARD: Thank you, Your Honor.

13 BY MS. BALLARD:

14 Q In fact, you learned --- the reason you filed
15 this lis pendens on July 31st, 2009, is because you
16 had learned that Shirley Hammer had a contract to sell
17 the property at 320 St. James; is that correct?

18 A No, that is incorrect. The reason that I filed
19 the lis pendens was because the --- nothing had
20 happened, and almost a year, I believe, in connection
21 with the --- in connection with our original partial
22 settlement agreement, and I felt as though there
23 needed to be a declaratory judgment action in
24 connection with that.

25 I felt as though --- I believe from the legal

1 research that I had done that a lis pendens was
2 justified and would be justified in connection with
3 the declaratory judgment action and that was the
4 reason it was filed.

5 Q All right. Now, when you filed it on July 31st,
6 2009, you knew, did you not, that Shirley Hammer had a
7 contract to sell the property at 320 St. James, did
8 you not?

9 A No, I did not. Mrs. Hammer was supposed to
10 explain --- to have given me 60 days notice of any
11 purchase that she was going to make with --- according
12 to a custody agreement, which is contested in that she
13 was supposed to give me 60 days notice of any move
14 that she was going to make out of the greater Columbia
15 area. She had not contacted me at all. She had not
16 told me she was going to make any type of sale. I
17 knew nothing of it.

18 Q So, I'm not sure I'm clear, Mr. Hammer. On
19 July 31st, 2009, when you've filed this lis pendens,
20 you did or did not know that she had entered into a
21 contract to sell the property located at 320 St.
22 James?

23 A No one had given me any official notice.
24 Mrs. Hammer had not spoken to me. There was no
25 contract as I recall filed in the office of the

1 clerk --- in the clerk's office. I don't know how I
2 would have known that.

3 Q My question was not whether you had any official
4 notice, Mr. Hammer. My question was you, in fact,
5 knew on July 31st, 2009, that Mrs. Hammer had a
6 contract to sell the property at 320 St. James, did
7 you not?

8 A I believe I answered that. I said that I don't
9 believe I knew it, and I gave you the reason that I
10 don't believe I knew it. No one had contact me.
11 There was nothing in the court. Mrs. Hammer hadn't
12 told me. I don't recall anyone else telling me. If
13 I'm incorrect, I stand to be corrected, but I don't
14 recall anyone telling me on July 31st, that she has to
15 any contract to sell the house.

16 Q I didn't ask if anyone told you on July 31st. I
17 asked you if at the time of the filing of lis pendens,
18 are you denying that you had knowledge that she had a
19 contract to sell 320 St. James?

20 A I don't recall having any knowledge that she had
21 any of that. No one had contacted me. No one had
22 given me that information. I cannot imagine any way I
23 would have known without having gotten that
24 information, so that's the reason for my answer to
25 you, ma'am.

1 Q All right, but you were aware on July 31st, 2009,
2 that if you did file a lis pendens on the property at
3 320 St. James and if there was a contract to sell it,
4 that the lis pendens would interfere with that
5 closing, correct?

6 A I guess that I was aware that a lis pendens would
7 operate to protect my rights in the action that was
8 contemplated. Now, if you want to put it in those
9 terms, I guess that would be one way to put it, but
10 that isn't the way I thought of it as.

11 Q So you were aware on July 31st, 2009, that if
12 Mrs. Hammer had a contract to sell 320 St. James that
13 your filing of the lis pendens would, in fact,
14 interfere with that closing, correct?

15 THE COURT: That's been asked and answered. He
16 has answered.

17 BY MS. BALLARD:

18 Q All right. And you subsequently found out that
19 Mary Nell Degenhart and Paul Degenhart were the
20 closing attorneys for the purchaser at 320 St. James;
21 is that correct?

22 A May I have the letter that you're holding and see
23 if it ---

24 Q I have not ask you about the letter.

25 A May I refer to it, please?

1 Q No, sir. My question is: you become aware, did
2 you not, that Mary Nell Degenhart and her husband,
3 Paul Degenhart, were the closing attorneys for the
4 purchaser at 320 St. James, correct?

5 THE WITNESS: Your Honor, the letter ---

6 THE COURT: Mr. Aiken, the witness is not a
7 lawyer in this case.

8 MR. AIKEN: I understand, Your Honor. What he's
9 referring to ---

10 THE COURT: If there is an issue pertaining to
11 him answering the question, you raise it.

12 MR. AIKEN: I understand, Judge.

13 THE COURT: The witness is not going to have a
14 part of this.

15 MR. AIKEN: I understand, Judge. I understand.

16 THE COURT: All right, sir.

17 MR. AIKEN: He is simply asking to review the
18 letter.

19 THE COURT: The question again, Ms. Ballard, and
20 I don't want to hear an argument in response to Mr.
21 Aiken. I want to hear your question.

22 MS. BALLARD: Yes, sir. My question was:
23 Mr. Hammer, you became aware after you filed the lis
24 pendens that the purchaser of 320 St. James had
25 retained Mary Nell Degenhart and Paul Degenhart to

1 represent her in the closing of that purchase,
2 correct?

3 THE COURT: You may answer that question.

4 THE WITNESS: May I look at the letter to refresh
5 my memory?

6 MR. AIKEN: Howard, you can't do that. I've got
7 do that.

8 THE COURT: You may answer the question.

9 THE WITNESS: I'm sorry, Your Honor. I thought
10 your had told me earlier that if I wanted to --- I
11 guess I misunderstood you, Your Honor.

12 THE COURT: Yes, sir, you did. You may answer
13 the question. If you cannot answer the question, say
14 you can't answer it. If you can answer the question,
15 you answer it.

16 THE WITNESS: May I ask her to repeat the
17 question just for a moment, please?

18 BY MS. BALLARD:

19 Q For the fourth time, Mr. Hammer, you became aware
20 after you filed the lis pendens on July 31st, 2009,
21 that Mrs. Hammer had a contract to sell 320 St. James
22 and that Mary Nell Degenhart and Paul Degenhart had
23 been hired by the purchaser to handle that closing,
24 did you not?

25 A Not quite. The answer is that on July the,