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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE 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 III**

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1 consolidation of which cases?

2 MS. BALLARD: Yes, sir.

3 BY MS. BALLARD:

4 Q Shirley, when you filed the Supreme Court
5 petition when Mr. Bachman was representing you, what
6 cases did you request that the Supreme Court direct
7 its attention to for purposes of consolidation?

8 A All of them.

9 Q Both in family court and circuit court?

10 A Yes.

11 Q So have you incurred fees in connection with
12 Mr. Bachman's representation of you to the Supreme
13 Court?

14 A I have, but I haven't gotten ---

15 MR. HAMMER: Objection, Your Honor.

16 THE COURT: Yes.

17 MR. HAMMER: Objection, Your Honor. That would
18 not be relevant to this unless she is able to break
19 out --- it includes a tremendous amount, as she says,
20 of family court litigation.

21 THE COURT: All right. I'll note your objection.
22 I'll wait to hear the question. How much has she
23 incurred of Mr. Bachman?

24 MS. BALLARD: Yes, sir, that's the question.

25 THE COURT: Do you know?

1 THE WITNESS: I really don't know at this point.

2 BY MS. BALLARD:

3 Q He has not sent you a bill at this point?

4 A No, he hasn't.

5 Q So the \$175,445 that you've incurred defending
6 Hammer vs. Hammer and 1634 Main is money that you
7 incurred to my law firm for our representation of you
8 in these two civil --- these circuit court matters,
9 correct?

10 A It is and it's a small amount compared to what
11 I've spent all together.

12 Q Okay.

13 A And I do feel that for the past seven years, I
14 been in and out of court so many times that I'm just
15 --- I'm just so overwhelmed. I can't --- it's amazing
16 to me that something that could have been fairly
17 simple end up like this.

18 Q Okay. Shirley, when the 1634 lawsuit was filed
19 against you, did you've believe you had any interest
20 in either the real estate located at 1634 Main Street
21 or the limited partnership?

22 A No, I did not.

23 Q And why was that?

24 A Because at the time of the partial settlement, it
25 was deeded over to Howard.

1 Q Okay. Since this action was filed, the 1634
2 action was filed, has Mr. Hammer made any threats to
3 you regarding your financial ruin?

4 MR. HAMMER: Objection, Your Honor.

5 THE WITNESS: Of course.

6 THE COURT: Just a second, Mrs. Hammer.

7 Yes, sir?

8 MR. HAMMER: I don't know what relevance that
9 would have, but it's going to, you know, he said, she
10 said sort of thing.

11 THE COURT: Well, that's what a trial is.

12 MR. HAMMER: All right.

13 THE COURT: What's the relevance, please?

14 MS. BALLARD: The relevance, Your Honor, is his
15 state of mind and abuse of process and harassment of
16 Mrs. Hammer.

17 THE COURT: All right. Go ahead. If you would
18 please clarify for me the timeframes that you're
19 talking about.

20 MS. BALLARD: Yes, sir.

21 BY MS. BALLARD:

22 Q After the filing of the 1634 lawsuit, which is
23 the case we're trying ---

24 THE COURT: Yes, sir, Mr. Hammer.

25 MR. HAMMER: I thought I heard her say harassment

1 and I thought that harassment action had been
2 withdrawn.

3 THE COURT: I didn't know there was a harassment
4 cause.

5 MS. BALLARD: There was not, Your Honor.

6 MR. HAMMER: Okay.

7 THE COURT: Please restate your question.

8 MS. BALLARD: Yes, sir. I'm happy to.

9 BY MS. BALLARD:

10 Q After this lawsuit was filed, this lawsuit being
11 1634 Main vs. Shirley Hammer, has Mr. Hammer, Howard
12 Hammer, had any occasion to make threats to you
13 disregard regarding your financial ruin?

14 A Yes. He has said that he is going to bankrupt
15 me. He said that he's going to keep me in court until
16 I'm old and ugly and nobody will want me.

17 Q Has he made any threats to you about your
18 personal safety?

19 A Of course.

20 Q And what has he said to you since this lawsuit
21 was filed about your personal safety?

22 A Many times he has told me that I need to be very,
23 very careful, even at a school function where I was
24 helping out with children, he came up to me and said
25 that he had someone hired and that I better be

1 careful.

2 Q And what did you interpret that to mean?

3 A That he wants me dead.

4 Q Okay. Mrs. Hammer, is it your intent that this
5 litigation finish at some point?

6 A Can you repeat the question? I'm sorry.

7 Q Yes, ma'am. Mrs. Hammer, is it your intent that
8 this litigation come to a conclusion?

9 A I think it would be great for the children that
10 it stop, yes.

11 Q Okay. Are you asking the court to award such
12 damages as may be necessary to impress upon Mr. Hammer
13 the significance of the abuse of process that you have
14 incurred?

15 A I think that's the only thing that's going to
16 make him stop. I swear. I just don't think --- I
17 don't think he'll stop.

18 MS. BALLARD: That's all I have. Please answer
19 any questions that these lawyers might have.

20 THE COURT: All right, sir. Who would like to go
21 first?

22 May I ask the witness one question to clarify
23 before you begin? Any objection?

24 MS. LIPSCOMB: No.

25 MR. HAMMER: No, none, none.

1 THE COURT: Mrs. Hammer, were you aware that Mr.
2 Hammer's parents had gifted a percentage interest to
3 you in the general partnership --- excuse me, the
4 limited partnership?

5 THE WITNESS: I really didn't know anything about
6 how all of that went.

7 THE COURT: Did you know that of those percentage
8 interests had been gifted to you by anybody?

9 THE WITNESS: Yes. I knew I had a 52 percent
10 interest because I did have a beach house that I sold
11 a made a profit in it. I knew I had a 52 percent
12 interest, yes.

13 THE COURT: In the real estate?

14 THE WITNESS: In the real estate.

15 THE COURT: Okay. How about the partnership
16 itself.

17 THE WITNESS: 8 percent is what I'm aware of.

18 THE COURT: Okay. That clarifies it. Go ahead
19 please Ms. Lipscomb or Mr. Hammer.

20 CROSS-EXAMINATION:

21 BY MR. HAMMER:

22 Q You don't mind if I call you Shirley, do you?

23 A No.

24 MS. BALLARD: The Your Honor going to permit
25 Mr. Hammer to actually personally cross-examine Mrs.

1 Hammer?

2 THE COURT: He's going to have to, but he is
3 going to have to really, really pay attention to what
4 I said at the beginning of the trial.

5 MS. BALLARD: Thank you, Your Honor.

6 THE COURT: This is to be a professional,
7 impersonal examination.

8 MR. HAMMER: Absolutely.

9 MS. BALLARD: Thank you.

10 THE COURT: In that regard, even if an attorney,
11 Ms. Lipscomb or Ms. Ballard does not object, I will,
12 --- because I have made a ruling to that effect, I
13 will step in.

14 MR. HAMMER: Thank you. I appreciate that, Your
15 Honor.

16 BY MR. HAMMER:

17 Q Shirley, one of the things I'd like to go over
18 with you, and I think I understood you correctly, you
19 had said that you didn't know anything about --- that
20 I had handled all the financial stuff and you didn't
21 know anything about how the 1634 Main transaction took
22 place, isn't that correct?

23 A That's correct.

24 Q And just to go over again, you had 18 years in
25 banking --- you were familiar with banking?

1 A (Nods in the affirmative.)

2 Q Procedures. You loaned money. You loaned money
3 for houses. You've borrowed money yourself. You're
4 pretty knowledgeable in business and in property
5 matters. Wouldn't you agree with that?

6 A I am, but this was not --- this was you. You
7 took care of those things.

8 Q And as far as the house is concerned, you took
9 care of at least one, two, three, four, five, six or
10 seven rental properties that you handled all the
11 business transactions on; is that correct?

12 A Except the taxes.

13 Q Except ---

14 A And the filing of taxes. I didn't have anything
15 to do with that.

16 Q But you would give me the information for that?

17 A Yes.

18 Q In order for me to get --- to handle it --- to
19 get it the tax attorney?

20 A I did.

21 Q All right. So didn't you --- and you're saying
22 now that you didn't know anything about the 1031 ---
23 you do know what a 1031 transaction is, don't you?

24 A No, I don't. I'm sorry.

25 Q You know ---

1 A A 1031, just tell me what ---

2 Q I'm sorry, it may be 1033 and I may be using the
3 wrong number. I apologize.

4 When you buy a piece of property --- when you
5 sell a piece of property, moving it into another piece
6 of property so that you don't have to pay taxes.
7 You're familiar with that?

8 A I've heard of it, but I'm not an expert on that
9 and I don't do that. That's ---

10 Q But you ---

11 A That's not something ---

12 MS. BALLARD: Could she finish her answer, Your
13 Honor?

14 THE COURT: She --- I think she finished. Did
15 you finish, ma'am?

16 THE WITNESS: I'm not --- that's not something I
17 know how to do.

18 THE COURT: Okay. Go ahead, Mr. Hammer.

19 BY MR. HAMMER:

20 Q But --- and most of it's --- I don't know how to
21 do it either, but you do know you take a deed, that
22 when you sell a piece of property, you can transfer it
23 to another piece of property and save yourself the
24 taxes, just that little simple portion of it you knew,
25 isn't that right?

1 A That portion of --- some time. I don't know what
2 the time span is and I don't what all the regulations
3 are, but yes, I know that you can or could, I'll put
4 it that way, could.

5 Q All right. So when you sold that property in
6 Isle of Palms, that was in your name, correct?

7 A Correct.

8 Q And when you sold that, you didn't pay any taxes
9 on you, did you?

10 A You know, I don't know because I didn't handle
11 the taxes, but I think I didn't.

12 Q All right. And that was --- you used that money
13 to buy the interest into the 1634 Main --- the ---

14 A Building.

15 Q Building. And then I think your testimony was
16 and, you correct me if I'm wrong, I'm going to try to
17 cross-examine you on it, and I'm going to read it to
18 you if ---

19 THE COURT: Yes, sir.

20 MR. HAMMER: Your Honor, with your permission,
21 rather than go through the usual --- I'm just going to
22 read from the cross-examination --- I believe that's
23 permissible.

24 THE COURT: Oh sure. You've can ask questions
25 any way you want.

1 MR. HAMMER: Yes, but some judges have just
2 stopped.

3 THE COURT: Go right ahead.

4 MR. HAMMER: I just wanted to make sure that
5 there's no --- no --- no ---

6 THE COURT: No admonition.

7 MR. HAMMER: Yes, no admonition. I was going to
8 say prohibition, but --- no admonition, right. I just
9 wanted to make sure, Your Honor.

10 THE COURT: That would be fine.

11 MR. HAMMER: In your deposition, Shirley, ---

12 MS. BALLARD: Which day?

13 THE COURT: She has given more than one?

14 MS. BALLARD: Yes, sir.

15 MR. HAMMER: The only one I have is September
16 28th, 2012.

17 MS. BALLARD: Let me give her that one.

18 THE COURT: All right. Give her a page and line
19 number if you have it, Mr. Hammer.

20 MR. HAMMER: All right.

21 THE WITNESS: What page?

22 BY MR. HAMMER:

23 Q If you look at page 93, Shirley, please?

24 THE COURT: Page 93?

25 MR. HAMMER: Yes, sir.

1 THE WITNESS: Okay.

2 THE COURT: All right. Go ahead.

3 BY MR. HAMMER:

4 Q Are you on 93, Shirley?

5 A I'm on 93.

6 Q All right. You'll see at line 20, "Now at one
7 time you owned a beach house; is that right?" and your
8 answer was, "Yes," "And you sold the beach house?" and
9 your answer was, "Correct" Do you see that?

10 A Stop one minute. I'm not on 93. 93 doesn't ---
11 this is about a nut allergy.

12 Q Okay. Well, then we must have the wrong
13 deposition.

14 THE COURT: Well, if you've got it, I guess it
15 would be up to you to present it to her. I certainly
16 don't have it.

17 (Loud buzzing noise in background.)

18 THE COURT: I don't know what that noise is.

19 THE WITNESS: This deposition doesn't have that.

20 THE COURT: Hand it to Mr. Hammer, and you can
21 hand it to me.

22 MS. LIPSCOMB: What is that noise?

23 MS. BALLARD: I have no idea.

24 THE COURT: Okay. Hand it to me, Mr. Hammer.

25 You said the September 28th, 2012 deposition?

1 MR. HAMMER: That's what I'm reading from, yes,
2 sir.

3 THE COURT: And page --- I see. The problem is
4 when the court reporter e-mails pages, the page
5 numbers are thrown off. In other words, if they send
6 you this transcript and then they e-mail you a copy,
7 all the page numbers are different.

8 MS. BALLARD: Your Honor, I would suggest that
9 perhaps we need the original in order to question her
10 about this.

11 THE COURT: Who has that? I don't doubt the
12 authenticity of this.

13 MS. BALLARD: I don't either.

14 THE COURT: If anybody else has a copy of the
15 September 28th deposition ---

16 MR. AIKEN: I do, right here.

17 THE COURT: And then Mr. Hammer might be able to
18 find what is page 93 on the copy --- what you can
19 probably do is go to the word index and look up Isle
20 of Palms. And "Isle" is first mentioned --- not at
21 all.

22 MR. HAMMER: I said beach house.

23 THE COURT: You said beach house?

24 MR. HAMMER: Yes, sir.

25 THE COURT: Okay. Beach is page 74.

1 MS. BALLARD: And I just want to make sure she
2 has it in front of her before she is questioned about
3 it.

4 THE COURT: I've got her copy.

5 MS. BALLARD: Okay.

6 MR. HAMMER: And I will make sure I have the
7 right page here, too.

8 THE COURT: Okay. "At one time, you owned a
9 beach house; is that right?" answer, "Yes."

10 THE WITNESS: Yes.

11 THE COURT: Is that what you were referring to,
12 Mr. Hammer?

13 MR. HAMMER: Yes.

14 THE COURT: Okay. I'm going to hand you ---

15 MR. HAMMER: I've got one for her. I've got one
16 for me and ---

17 THE COURT: Give that back. That was page 74
18 instead of page 93.

19 MR. HAMMER: All right. I apologize for that,
20 Your Honor.

21 THE COURT: That's all right, sir. That's the
22 problem with those e-mailed transcripts.

23 MR. HAMMER: And starting at where it said, "At
24 one time you owned a beach house; is that right?" and
25 your answer was, "Yes." "And you sold the beach

1 house?" and your answer was, "Correct." "And you had
2 some money from the beach house?" "Correct," and this
3 gets into what we were talking about the transfer.

4 A Uh-huh.

5 Q So you'll know why I'm asking the questions.
6 "And you used money with the beach house and got this
7 deed; is that correct?" "And that deed is the deed ---
8 the 1634 Main. Do you understand that? It's
9 Exhibit 47 if you want to look back at the exhibit."

10 MS. BALLARD: Your Honor, I object to this line
11 of questioning. He is using a deposition to impeach
12 her, but this is the same testimony she has just given
13 on the stand.

14 THE COURT: The deposition of a party can be used
15 for any purpose.

16 MS. BALLARD: Yes, sir.

17 THE COURT: And she is a party. It doesn't have
18 to be used just for impeaching.

19 MS. BALLARD: Thank you, Your Honor.

20 BY MR. HAMMER:

21 Q Am I correct so far?

22 A Repeat what you just asked me.

23 Q The deposition reads that --- at page 74 or
24 whatever it may be for you ---

25 A I'm up to 75.

1 Q "You used money with this beach house and got
2 this deed; is this right?" correct?

3 A Correct.

4 Q And the deed that we're talking about is the deed
5 for 1634 Main, the 52 percent deed. Isn't that the
6 one we're talking about or do you need to look at
7 Exhibit 47 to confirm that?

8 MS. BALLARD: There is no reference to Exhibit
9 47.

10 THE WITNESS: I don't see ---

11 BY MR. HAMMER:

12 Q Exhibit 4. I apologize.

13 A I'm not sure I --- I understand what you're
14 getting to, but I do know that I had a beach house. I
15 sold the beach house, and you and Bob Young got
16 together to figure out how to invest the beach house
17 monies into 1634. I do understand that.

18 Q All right. And that's what I wanted to get to
19 because earlier what you said is, "I don't believe ---
20 I didn't believe I had any interest in the --- in
21 1634" was your testimony. You said, "I didn't --- "

22 A I don't.

23 Q All right. I understand that. Now, I'm going
24 back over this, and so you agree that you used the
25 money from the beach house, and you got the 1634 deed,

1 correct?

2 A I don't know what I got, but I know you and Bob
3 Young handled it.

4 Q Well, you ---

5 A It's 52 percent, 52. --- whatever percent it was,
6 yes, for this 1634. Is that what you're asking?

7 A Okay.

8 Q I'm just saying this is what you testified to
9 earlier.

10 Q Okay. "You used the money with the beach house"
11 --- and I believe that should be from the beach house
12 --- "and got this deed; is that correct?" That deed,
13 Exhibit 4 is the deed to 1634 Main property and ---

14 MS. BALLARD: Is there a question, Your Honor?

15 THE COURT: Yes. I think that was a question.

16 MS. BALLARD: Okay.

17 THE WITNESS: So what's the ---

18 THE COURT: I think that's pretty much been
19 established. The witness has said that.

20 BY MR. HAMMER:

21 Q Do you --- we agree on that, right, ma'am?

22 A I agree to what I just said, yes.

23 Q And "I believe that's where all the funds came
24 from. It could have" --- this is your answer. "I
25 believe that's where all the funds came from. I could

1 have, yes, I believe so, yes."

2 Question: "And as I understand the transaction,
3 you were to get this deed okay, and then you were to
4 convey the property given to you in this deed back to
5 1634, and you were to get a 1634 limited partnership
6 interest in exchange for that, am I right?"

7 You answered: "I don't know." The question was:
8 "Who handled that for you?" and the answer was: "Well,
9 Howard handled all this with Bob Young, and I think
10 that's how it went. I don't really know." Then you
11 were asked, "Was Allen Medlin involved at all?" You
12 said, "I don't really know," is that correct?

13 A Yes.

14 Q And that's accurate testimony I just read?

15 A Yes.

16 Q So you --- you were asked the question about the
17 deed going back to 1634 Main for you to get the 1634
18 Main limited partnership in exchange for the deed.
19 You said Howard handled that and you said you think
20 that's how it went, correct?

21 A No. I don't know how it went. I just know that
22 you and Bob Young worked out all the paperwork to
23 purchase 1634.

24 MR. HAMMER: All right.

25 THE COURT: All right. Read that. Just for my

1 purposes, Mr. Hammer, read that entire answer.

2 THE WITNESS: Where is that?

3 THE COURT: Without any editing. I want it read
4 into the record since this transcript, under the
5 rules, is not a part of the record.

6 MR. HAMMER: I understand.

7 THE COURT: Go ahead.

8 MR. HAMMER: I'm going to read the question, too,
9 so it will make some sense for Your Honor.

10 MS. BALLARD: Can we have page and line for the
11 record?

12 THE COURT: Page 75 ---

13 MR. HAMMER: Starting with ---

14 THE COURT: --- beginning with line six.

15 BY MR. HAMMER:

16 Q And I believe --- and it begins as follows:

17 Question: "And as I understand the transaction,
18 you were to get this deed, okay, and then you were to
19 convey the property given to you in this deed back to
20 1634, and you were to get a 1634 limited partnership
21 interest in exchange for that, am I right?"

22 Your answer was, "I don't know."

23 Next question: "Who handled that for you?"

24 Answer: "Well, Howard handled all of this, I
25 think, with Bob Young. I" --- and there's a pause ---

1 "I think that's how it went. I don't really know,"
2 correct?

3 A Correct.

4 Q So you said in this record, at least partially,
5 when you were testifying before, you think that's how
6 it went. You had some idea that that's how it ---

7 A No. No. What I was saying is, I think you and
8 Bob Young got together and did all of it together, and
9 that's what I meant when I said, I think that's how it
10 went.

11 Q Well, when you said I don't really know, were you
12 referring that you don't really know whether Howard
13 and Bob Young got together?

14 A No. I didn't really know exactly how you and Bob
15 Young got --- ya'll met together to get it worked out.
16 I don't know how it got worked out.

17 Q All right. Now, later on you instituted an
18 action for --- you left on September 5th, 2005, didn't
19 you?

20 THE COURT: Could you clarify? Left what,
21 please.

22 BY MR. HAMMER:

23 Q You took the children, you had papers served on
24 me on September 5th. We were supposed to go to the
25 beach, supposed to go on a Labor Day holiday, correct?

1 MS. BALLARD: Your Honor, is this relevant?

2 THE COURT: Don't color it up with the holiday.

3 Just ask when you separated.

4 MS. BALLARD: Thank you, Your Honor.

5 THE COURT: Just ask that, please.

6 BY MR. HAMMER:

7 Q Did we separate on --- were the papers served on
8 me on September 5, 2005, and did you leave that day?
9 Did you leave the house that day?

10 A Around --- I'm not sure exactly what day, but
11 yes, 2005.

12 Q And you and I filed a joint tax return for 2005
13 after we separated; isn't that correct?

14 A Correct.

15 Q And we filed a joint tax return the very next
16 year, 2006, correct?

17 A I believe we did.

18 MR. HAMMER: All right. Your Honor, ---

19 (Pause.)

20 MR. HAMMER: Your Honor, this is what was given
21 to us earlier.

22 THE COURT: Who gave it to you?

23 MR. HAMMER: You handed it down to me.

24 MS. LIPSCOMB: It's Mr. Ackerman's deposition.

25 THE COURT: It's Mr. Ackerman's deposition. All

1 right. Go ahead.

2 MR. HAMMER: And I need to take a portion out.

3 MS. BALLARD: Your Honor, I'm handing the
4 original to Ms. Lipscomb. It's two volumes. She
5 asked me to have it brought over from my office.

6 THE COURT: That's Mr. Ackerman's?

7 MS. BALLARD: Yes.

8 THE COURT: I guess that's for me?

9 MS. BALLARD: I believe so. She had introduced
10 it. Are we finished with Mrs. Hammer's deposition?

11 MR. HAMMER: Well, I potentially --- we're
12 finished for the moment. There may be some more.
13 We're finished with this.

14 MS. BALLARD: I'll hand it back up if you need
15 it, Your Honor.

16 THE COURT: Okay.

17 MR. HAMMER: All the exhibits are not here
18 unfortunately, Your Honor.

19 THE COURT: All right, sir. I have the
20 exhibits --- I'll open the original exhibit envelope
21 and hand those to you.

22 MR. HAMMER: Thank you, Your Honor.

23 THE COURT: What Court's exhibit will this end up
24 being?

25 THE COURT REPORTER: Two.

1 THE COURT: So Court's 2 is the deposition and
2 2-A will be the exhibits, so I'll get those stickers
3 in just a few minutes.

4 MS. BALLARD: Thank you, Your Honor.

5 MR. HAMMER: Thank you, Your Honor.

6 (WHEREUPON, Court's Exhibit No.'s 2 and 2A were
7 marked for identification only.)

8 MR. HAMMER: I'm not going to take this out of
9 the package.

10 THE COURT: Okay. Call out the deposition
11 exhibit number just for this record.

12 MR. HAMMER: This is from the deposition of
13 Bernie Ackerman, Bernard N. Ackerman C.P.A., taken
14 October 26th, 2012, and I am looking at the exhibit
15 marked No. 8 in that deposition.

16 THE COURT: And the title of the document?

17 MR. HAMMER: I.R.S. e-file signature
18 authorization.

19 THE COURT: What year?

20 MR. HAMMER: 2005.

21 THE COURT: Okay.

22 BY MR. HAMMER:

23 Q Can you identify your signature? Is that your
24 signature.

25 A It is.

1 Q Can you identify that's the exhibit number?

2 A Yes.

3 MR. HAMMER: May I read this to her, Your Honor,
4 or should I have her read it back to me?

5 THE COURT: You can question the witness. I
6 believe it might be the same as number 19 of her
7 exhibits without a signature, so you go right ahead,
8 Mr. Hammer. You can handle it just as you see fit.

9 MR. HAMMER: All right, sir.

10 BY MR. HAMMER:

11 Q When is that dated that you signed that?

12 A October 13, 2006.

13 Q That would have been over a year after you filed
14 the separation papers and we had been separated; is
15 that correct.

16 Q Yes. Did you not state, as follows: "Taxpayers
17 declaration signature authorization. Under penalties
18 of perjury, I declare I have examined a copy of my
19 electronic individual income tax return" --- we filed
20 a joint tax return that year, did we not?

21 A Yes.

22 Q "And accompanying schedules and statements for
23 the tax year ending December 31, 2005, and to the best
24 of my knowledge and belief, it is true, correct, and
25 complete.

1 I further declare that the amounts in Part 1
2 above are the amounts from my electric (sic) income
3 tax return. I consent to allow my intermediate
4 service provider, transmitter or electric return
5 operator to send my return to the I.R.S.," et cetera.

6 You signed that document, didn't you?

7 THE COURT: You will have to hand it to her,
8 please.

9 BY MR. HAMMER:

10 Q You signed that document. That is the signature
11 of the document that you signed, correct?

12 A I signed the document, but ---

13 Q That was my only question.

14 MS. BALLARD: Could she explain her answer, Your
15 Honor?

16 MR. HAMMER: My only question was did you sign
17 the document.

18 THE COURT: Did you sign the document?

19 THE WITNESS: Yes, I did.

20 MR. HAMMER: Thank you, Your Honor.

21 THE COURT: All right. Now, you may explain.

22 THE WITNESS: Ignorant as it may be, Howard
23 called and asked me if we could file jointly because
24 it would save him a lot of money. I said sure because
25 at the time we were still trying to --- we were

1 working on our marriage, and he asked me to sign it.
2 I signed it. Ignorant as it may be, I just signed it
3 like I always did.

4 THE COURT: Okay. Go ahead.

5 BY MR. HAMMER:

6 Q So what you're telling this court is after being
7 away for a year, after asking for during that year
8 \$40,000 ---

9 MS. BALLARD: Objection, Your Honor. There is no
10 foundation for that.

11 THE COURT: Overruled. You can go ahead and ask
12 the question.

13 MR. HAMMER: Thank you, Your Honor.

14 BY MR. HAMMER:

15 Q After asking for \$40,000 a month in one of the
16 papers that you signed, I believe the initial one,
17 after all of that, after not receiving that \$40,000 a
18 month, after moving out of 320 St. James in June
19 of 2006, and moving into a house of your own,
20 completely separated from me, you're telling the court
21 that in October of 2006 you still signed it because we
22 were still married. Is that what I understand you to
23 say?

24 A I signed it because we were working on our
25 marriage, I thought.

1 Q All right.

2 A But you did leave us, the children and I, after
3 signing this, you took everything away from us and
4 left us with nothing.

5 Q So after 2006, after October ---

6 A After 2006.

7 Q --- you were through with me?

8 A No.

9 Q But ---

10 A I still ---

11 THE COURT: Now, that's not relevant.

12 MR. HAMMER: All right, but --- well ---

13 BY MR. HAMMER:

14 Q After 2006, if I understand you correctly, you're
15 saying that I took something away from you. I left
16 you and the children with nothing, and your trust in
17 me was no longer there; is that correct?

18 (Pause.)

19 A Your trust was gone long ago, but I did --- I was
20 trying to work. We had children, we have children,
21 and I tried and my family tried to get things worked
22 out where we could at least be somewhat a family.

23 Q All right. That is not my question.

24 A Sorry.

25 Q My question was, after all of this had happened,

1 and after you say that --- what you said about the
2 children --- about me leaving you abandoning with the
3 children ---

4 MS. BALLARD: I object to the relevance, Your
5 Honor.

6 THE COURT: She didn't use the word abandon,
7 Mr. Hammer.

8 MR. HAMMER: Whatever, whatever ---

9 THE COURT: This is your first warning, okay,
10 your first warning. I understand that you can
11 cross-examine the witness, and your objection to the
12 irrelevance is overruled, but ask the question without
13 it being compound and without it being more than an
14 impersonal inquiry by a cross-examining attorney.
15 That's all I'm going to let you do.

16 BY MR. HAMMER:

17 Q You made some statement a moment ago, and I can't
18 pull up the statement exactly, but my impression was
19 --- and you correct me if I'm wrong, but --- that
20 after the 2006 move out, you --- the children and
21 you --- and I could not exactly hear what you said,
22 but ---

23 THE COURT: She said you left them with nothing.

24 BY MR. HAMMER:

25 Q Left you with nothing, and after the --- sometime

1 in --- in 2006, correct?

2 A If the --- yes.

3 Q All right. And you signed this in 2006, because
4 you said you still trusted me, correct?

5 A Somewhat, yes.

6 Q Okay. Now, we continued on and things got worse;
7 is that correct?

8 A Things got worse. Things got better. I think
9 the years --- this becomes a blur at some time, but we
10 tried, I think for awhile, to make things work out.

11 Q All right. Now, in 2007, you brought some
12 warrants out against me, didn't you?

13 THE COURT: Relevance, Mr. Hammer?

14 MR. HAMMER: I'll tie it up in a moment.

15 THE COURT: No, you will tell me now.

16 MR. HAMMER: I'll withdraw the question.

17 THE COURT: All right, sir.

18 BY MR. HAMMER:

19 Q I'm handing you a document, which is Exhibit
20 No. 9 on the Ackerman deposition. Do you see that
21 document?

22 A Yes.

23 Q And it's IRS e-file signature authorization for
24 2006, correct?

25 A Correct.

1 Q Is that your signature on the document?

2 A It is.

3 Q What date is that signature given?

4 A October 13, 2007.

5 Q Now, on October 13, 2007, you no longer had any
6 trust at all in me, did you?

7 A Obviously I did, so it must have been 2007,
8 not 2006.

9 Q So you're saying that on October 7, 2013, if I
10 understand you ---

11 THE COURT: 2013? We haven't gotten there yet.

12 MR. HAMMER: October 7 --- October 13 ---

13 THE COURT: 2007.

14 BY MR. HAMMER:

15 Q October 13, 2007, you had trust in me; is that
16 correct.

17 A If I signed that, I guess I did.

18 Q All right. Do you deny that in July of 2007, you
19 took out a warrant against me for ---

20 MS. BALLARD: Objection, Your Honor.

21 THE COURT: Overruled.

22 MS. BALLARD: Thank you, Your Honor.

23 BY MR. HAMMER:

24 Q Do you deny in October of 2007, that you took out
25 a warrant against me for domestic abuse?

1 A If that was the date. I don't recall the date
2 but, yes, I did.

3 Q All right. And you deny that in September or
4 early November --- or early October also of 2007, two
5 months later, you claimed that I should not be at your
6 house, that we should not have any contacts, and that
7 you took out another warrant against me for trespass
8 after notice because you thought there was a no
9 contact order in existence, correct?

10 A I don't recall the date, but yes, there was one,
11 and there was a --- I'm not sure what you call it, but
12 there was no contact order, some kind of no contact
13 order, yes.

14 Q That's what you thought?

15 A That's what I believe, yes.

16 Q Okay. And notwithstanding that on --- after
17 those two warrants, if those dates are correct, after
18 those two warrants or those two instances, you still
19 signed a tax return that you --- a tax --- a tax e-
20 file signature authorization that again says the same
21 thing?

22 And to make sure, I'll read it to you again to
23 make sure it says the same thing: "Under penalties of
24 perjury, I declare I have examined a copy of my
25 electronic individual tax return and request for

1 refund an accompanying schedule and statement for tax
2 year ending December 31, 2006, and to the best of my
3 knowledge and belief, it is true, correct and
4 complete." That's what you signed, isn't it?

5 A Yes.

6 Q And that was again --- after --- if I'm correct
7 about the warrants, that was after the warrants were
8 taken out by you against me, and after you had the no
9 contact order after the first --- you believed you had
10 the no contact order after the first warrant that was
11 taken out in 2007, correct?

12 A I don't recall the dates or the --- whenever it
13 was, but I have taken out warrants against you, yes.

14 Q But if it does turn out that it is 2007 that you
15 took that warrant out, then what --- is my statement
16 is correct?

17 THE COURT: It would have to be.

18 MR. HAMMER: Okay. All right. And, Your Honor,
19 I'm going to ask this question and before she answers
20 it, I'd like for you to have a ruling.

21 THE COURT: All right. Go ahead and ask it.

22 BY MR. HAMMER:

23 Q You were aware that Barney Giese investigated
24 that warrant along with many other warrants and found
25 that there was no basis and he dismissed them ---

1 THE COURT: Okay, okay.

2 MS. BALLARD: Objection, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. BALLARD: I believe he's testifying using
5 hearsay.

6 THE COURT: All right, sir. Now, Mr. Hammer, I
7 allowed you to question the witness about the warrants
8 to cross-examine her on why, if she had done that, she
9 would have allowed you to present her with a document
10 to sign where she would be signing its under penalty
11 of perjury and that she had read everything
12 accompanying it.

13 What does this dismissal of the warrants have to
14 do with anything, because matters pertaining to an
15 executive branch officer's decision to prosecute,
16 first of all, those are hearsay. Second of all, the
17 standard for proceeding in a criminal case, once you
18 get past probable cause, is something different.

19 MR. HAMMER: Well, this letter is a little
20 different from that. Let me get the letter, and then
21 Your Honor can make a decision.

22 MS. BALLARD: Your Honor, if it's a letter from
23 Mr. Giese, I'm going to object to it on the basis of
24 hearsay.

25 THE COURT: Okay. I'd have to take a look at the

1 letter. I don't see at this point how it's relevant.

2 MS. BALLARD: Thank you, Your Honor.

3 THE COURT: At all.

4 MR. HAMMER: It goes to her credibility, Your
5 Honor.

6 THE COURT: Goes --- okay. All right. This is a
7 letter dated December 28, 2009, from W Barney Giese,
8 solicitor, to whom it may concern. Do you have that
9 letter?

10 MS. BALLARD: If it's the one that was attached
11 to his disciplinary agreement, I do.

12 THE COURT: Let me read it.

13 MS. BALLARD: If it's not, then I don't.

14 THE COURT: Is that the one attached to your
15 disciplinary?

16 MR. HAMMER: I think it was attached to one of
17 them. I don't know which one she was referring to.

18 MS. BALLARD: I'll find my copy.

19 THE COURT: Okay.

20 MR. HAMMER: But it was attached --- it's been
21 attached.

22 THE COURT: And this will be your exhibit for ID,
23 it will have to be so it can be in this record at
24 least as a proffered exhibit.

25 MR. HAMMER: All right, sir. Let me --- let me

1 --- well, go ahead.

2 THE COURT: Let me read it.

3 MR. HAMMER: Go ahead.

4 (Pause.)

5 THE COURT: Okay, what number will this be for
6 Mr. Hammer? Number 1 for ID or are we going to
7 continue on with the numbers from the earlier case?

8 This would be Defendant's No. 2, right?

9 THE COURT REPORTER: Plaintiff's 2.

10 THE COURT: Do you have that, Ms. Lipscomb, the
11 letter from Mr. Giese?

12 MR. AIKEN: We have a copy, sir.

13 MS. BALLARD: Can I have a copy?

14 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked
15 for identification only.)

16 THE COURT: All right. Mr. Hammer, you can make
17 your argument on this. I've read it.

18 MS. BALLARD: And it's marked what, Your Honor,
19 I'm sorry.

20 THE COURT: Mr. Aiken, are you co-counsel in this
21 case?

22 MR. HAMMER: No, sir. I'm just helping him with
23 a book.

24 THE COURT: We've marked it as Plaintiff's 2-A
25 and that would be plaintiff Howard Hammer. I don't

1 know what 1634 is going to be, but I think you just
2 called those 1634 exhibits.

3 MS. BALLARD: I believe we did.

4 MR. HAMMER: Your Honor, we move to introduce
5 this under the public records.

6 THE COURT: Okay. Let's assume that it's not
7 hearsay. How is it relevant to anything?

8 MR. HAMMER: Your Honor, Mrs. Hammer testified
9 that she had been harassed. She testified that she
10 didn't know anything about these --- about how
11 anything occurred. It goes to her credibility.

12 THE COURT: No, no, Mr. ---

13 MR. HAMMER: And let me say why it goes to her
14 credibility.

15 THE COURT: All right.

16 MR. HAMMER: She swore out warrants, numerous
17 warrants. She admitted to two of them, and she said
18 there were many more.

19 The solicitor made a thorough investigation, he
20 not only dismissed them, nolle-prossed them, he
21 dismissed them with prejudice, and he found that there
22 was no criminal conduct on my part, meaning that her
23 accusations of criminal conduct were false, were not
24 supported, and an inference can certainly be drawn
25 that those --- because she knew what happened. She

1 knew what the facts were and yet she made these
2 allegations that were false allegations, that were
3 untrue, that were sworn under oath in order to take
4 the warrants out, and now we have two items. One is
5 the e-filing where she says on the one hand in her
6 testimony ---

7 THE COURT: The e-filings do impact her
8 credibility, no doubt, but what ---

9 MR. HAMMER: This would impact her credibility
10 again on the fact that one, she took the warrants out,
11 and two, he found that they were false.

12 THE COURT: He did not say that, Mr. Hammer.

13 MR. HAMMER: Well ---

14 THE COURT: He said they did not rise to the
15 level of criminal wrongdoing. You're a lawyer. You
16 know how lawyers word things.

17 MR. HAMMER: I understand that, but if it didn't
18 rise to the level of criminal wrongdoing, that means
19 there was no criminal conduct.

20 THE COURT: And should have remained within the
21 family court venue.

22 MR. HAMMER: That's correct. In other words,
23 he's saying that there was no criminal conduct. It
24 found the elements of criminal conduct were not met.
25 And furthermore, he dismissed them with prejudice. it

1 wasn't just nolle-prossed. It was a dismissal with
2 prejudice.

3 THE COURT: All right.

4 MR. HAMMER: So I believe it does go to her
5 credibility, especially in view of the fact that she
6 has brought up all these other matters about
7 harassment, about hit men, about whatever else it was
8 that she brought up. I'm not sure of all those
9 things, but I think that opens the door and it is
10 certainly something that Your Honor needs to take into
11 consideration for whatever weight you put on it.

12 THE COURT: Ms. Ballard, you can sit down.

13 MS. BALLARD: Oh, sorry, Your Honor.

14 THE COURT: Are you finished?

15 MR. HAMMER: Yes, sir.

16 THE COURT: Now, you can stand up.

17 MS. BALLARD: Thank you, Your Honor. We can
18 probably --- it's hearsay, but let me suggest that we
19 have a published opinion in the matter of Howard
20 Hammer that quotes the letter and that might make it
21 more ---

22 THE COURT: If this is going to come in, then I'm
23 going to consider everything pertaining to those ---
24 and I'll use this word "charges" that she lodged
25 against Mr. Hammer. If this letter is going to come

1 in, I'm going to consider anything issued by any
2 public body on the matters pertaining to her
3 credibility. That's why he offered this, right?

4 MR. HAMMER: Yes.

5 MS. BALLARD: Well, I would continue my objection
6 as to hearsay, but I would ---

7 THE COURT: All right. You ---

8 MS. BALLARD: But I would point out to the court
9 there is a published opinion that ---

10 THE COURT: That's already in evidence, isn't it.

11 MS. BALLARD: I don't believe so.

12 MR. HAMMER: Yes, yes, it is.

13 THE COURT: If it's not, then I'll entertain an
14 offer of that on redirect or some other part of your
15 case.

16 MS. BALLARD: The only thing that's in evidence,
17 Your Honor, is my Exhibit No. 18, which is the
18 published Court of Appeals decision.

19 THE COURT: But she may offer that and I'll
20 consider that. If you want to offer that as an
21 additional item to consider on her credibility, but
22 I'll allow this letter in over her objection, but when
23 a layperson swears out a warrant, that does not mean
24 that person has done the research to determine what if
25 anything that person's conduct has done that would

1 rise to the level of being able to be proven beyond a
2 reasonable doubt.

3 MR. HAMMER: But again, Your Honor, if I may ---

4 THE COURT: Two is in unless you want to talk me
5 out of it.

6 MR. HAMMER: No, sir.

7 THE COURT: Okay. Two is in.

8 MR. HAMMER: You made a comment that ---

9 THE COURT: Okay, well ---

10 MR. HAMMER: I won't respond to it now. I'll do
11 it in argument if I may.

12 THE COURT: All right. Number 2 is in evidence
13 over Shirley Hammer's objection.

14 THE COURT: Ms. Lipscomb, do you have an
15 objection?

16 MS. LIPSCOMB: No, Your Honor.

17 MS. BALLARD: I'd like a copy of it, Your Honor.

18 Oh, I'm sorry, I do have it.

19 (WHEREUPON, Plaintiff's Exhibit No. 2 was
20 admitted into evidence.)

21 THE COURT: Okay. Two is in. Go ahead,
22 Mr. Hammer.

23 MR. HAMMER: If you would give me just a moment
24 to write down something that I want you to respond to.

25 THE COURT: Why don't you just tell me now?

1 MR. HAMMER: I don't want to talk you out of it,
2 if you don't mind.

3 THE COURT: All right.

4 MS. BALLARD: Can I inquire, it's introduced into
5 evidence for what purpose?

6 THE COURT: Plaintiff's Exhibit 2 for purposes of
7 impeaching her credibility.

8 MS. BALLARD: Okay, and it's 2-A?

9 THE COURT: No. 2. 2-A is a Court's Exhibit.

10 MS. BALLARD: Oh, I see. I'm sorry. That's why
11 I got confused.

12 MR. HAMMER: And I don't know whether this can be
13 done or not, and I don't mean to belabor the point
14 anymore, but I do want to respond to it in arguments.
15 Is there any way that what the judge said could be
16 marked so I won't be misquoting you and I won't have
17 it wrong and when I respond to it I can respond to
18 exactly what was said?

19 THE COURT: Mr. Hammer, No. 2 is in. I'm not
20 going to un-put it in. If you want to make it a
21 statement now, that's fine, I just ---

22 MR. HAMMER: That's all right. I just want to
23 respond to something else that you said.

24 BY MR. HAMMER:

25 Q Now, the --- you've talked about the abuse of

1 process. Am I to understand it correctly that the
2 reason you brought the abuse of process case, although
3 I know you talked about other things your lawyer said
4 didn't have to do with the abuse of process, but I
5 want to clear up the abuse of process, if I may, Your
6 Honor, that the reason that you brought the 1634 abuse
7 of process is because I brought a lawsuit against you?

8 A You have brought so many lawsuits against me and
9 appeals and repeals. I mean, it's gotten to where you
10 go into court --- even Judge Rucker was like what
11 could you be here for now ---

12 MR. HAMMER: Your Honor.

13 MS. BALLARD: Could she finish her answer?

14 THE COURT: Yes, Mr. Hammer.

15 MR. HAMMER: I didn't ask for hearsay, Your
16 Honor. I'm asking her ---

17 THE COURT: Overruled. You asked her why she
18 brought it.

19 MR. HAMMER: All right.

20 THE COURT: Or you asked her that's what she
21 said.

22 MR. HAMMER: And I guess ---

23 THE COURT: I guess what may want to do is just
24 let you all talk about anything you want to talk
25 about, so...

1 BY MR. HAMMER:

2 Q The abuse of process specifically --- and let me
3 go back. Without talking about the domestic case,
4 haven't you said that the 1634 case, that the reason
5 you brought the 1634 case --- because I brought this
6 lawsuit against you, the 1634 lawsuit against you?
7 You thought I brought it against you?

8 A Well, you wouldn't accept 1634 and...

9 MS. BALLARD: You can finish your answer,
10 Shirley.

11 THE WITNESS: We've been in court almost seven
12 years with everything involved, anything that you can
13 think of to sue me for or to complain about or to
14 appeal about, and 1634 you won't take, and I
15 personally believe the reason you won't take it is
16 just to harass me and keep me in court forever.

17 MR. HAMMER: All right. That wasn't my question.
18 May I ask it one more time, Your Honor?

19 THE COURT: You don't have to ask me. Go ahead.
20 Ma'am, answer his question.

21 THE WITNESS: Okay. Sorry.

22 THE COURT: Then if your lawyer thinks anything
23 needs to be explored, she can do it on redirect.

24 MR. HAMMER: Thank you.

25 BY MR. HAMMER:

1 Q Didn't you testify --- and let's me go back and
2 clear it up?

3 MS. BALLARD: Are we referring to her deposition?

4 MR. HAMMER: I'm referring to testimony right
5 now.

6 MS. BALLARD: Can we refer to the transcript?

7 MR. HAMMER: I will at the appropriate time.

8 THE COURT: All right, sir. Step down please,
9 ma'am. Let's take ten minutes. You may not discuss
10 your testimony with anyone. I want everybody to take
11 this break, have an opportunity to examine why we're
12 here, and that is a search for the truth and not a
13 bunch of nitpicking about what somebody is talking
14 about, why they're talking about it. We're going to
15 get this case, your case finished today.

16 MS. BALLARD: This is my last witness.

17 THE COURT: All right. And then --- so
18 Mr. Covington is not going to come?

19 MS. BALLARD: I can't track him down.

20 THE COURT: Who is he?

21 MS. BALLARD: He is Mr. Hammer's real estate
22 agent.

23 THE COURT: He is under subpoena and he is not
24 here?

25 MS. BALLARD: Yes, he is.

1 THE COURT: Then I'm going to get a deputy to
2 find him. If anybody knows where he is or knows why
3 he is not here --- now you can withdraw him as a
4 witness. I'm kind of curious as to why he's not here.

5 MS. BALLARD: He was here Monday and he gave us
6 his cell phone number.

7 THE COURT: If you want me to send a deputy after
8 him, I will do it.

9 MS. BALLARD: As soon as I find the green card, I
10 will, Your Honor. Thank you.

11 THE COURT: Mr. Hammer, Mrs. Hammer, you cannot
12 even look at each other for this rest of this trial
13 except while you're asking her questions.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: All right. We were discussing,
16 Mr. Hammer, that you were going to refer to testimony.
17 Under the rules, in order to use prior testimony
18 that's transcribed, you must refer, for the record and
19 for other counsel's benefit to the page and line
20 number and also for the witnesses.

21 MR. HAMMER: Yes, sir, and I intended to do that.

22 THE COURT: If you were referring about earlier
23 trial testimony, that's a different question.

24 MR. HAMMER: Yes, sir, and if Your Honor will
25 bear with me.

1 THE COURT: Yes, sir.

2 BY MR. HAMMER:

3 Q Shirley, what I'm trying to get at, so maybe I
4 haven't expressed it correctly and none of us have
5 understood it, I'm trying to get at the reason that
6 you brought the abuse of process, what is that based
7 on?

8 A Because you won't accept things and move on. You
9 keep refileing things and appealing things. Coming up
10 with --- I mean, it's just --- I don't quite
11 understand it, but...

12 Q Is that all the reason that it's based on?

13 A At the moment that's what I'm thinking of.

14 MR. HAMMER: So may I repeat it back, Your Honor,
15 so I'm clear on it?

16 THE COURT: Repeat it back from just now?

17 MR. HAMMER: What she said, so I'm clear and so I
18 have a clear understanding?

19 THE COURT: Why is --- sure.

20 BY MR. HAMMER:

21 Q You're saying that the abuse of process is filing
22 appeals, correct? That is one of the things that you
23 said?

24 A Correct.

25 Q And the other abuse of process is not accepting

1 the deed. Did I misunderstand that, or is that part
2 of it?

3 A It's, you know, I thought that when you accept an
4 agreement and you both agree on it, you move on. I
5 didn't realize it could be so complicated, and I've
6 never --- I couldn't believe that one person could
7 appeal an appeal of an appeal.

8 I mean, Judge Rucker used to just laugh at you.

9 Q Okay. So ---

10 A And say what's up next.

11 Q So ---

12 A Wasting a lot of people's time on things that
13 shouldn't be there.

14 Q Okay. And so far what I've heard is that the
15 abuse of process is the appeal. Is there anything
16 other than the appeal that you're claiming the abuse
17 of process on?

18 A I just believe it's a misuse of people's --- like
19 the judge's valuable time. I mean, I feel like
20 you are --- I feel like you're spending tax dollars.
21 I mean, things that are not necessary.

22 Q You understand what the meaning of process is?

23 A If I'm not answering it, I guess not.

24 Q But those are the only things that you --- that's
25 what you base your claim of abuse of process in this

1 case on, correct, what you just told us?

2 A At this moment, that's what I'm thinking.

3 Q And when we say at this moment, that's the only
4 moment we have. That's what we have in court, and
5 this is your opportunity to say it.

6 THE COURT: You don't make a statement. You ask
7 a question, Mr. Hammer.

8 BY MR. HAMMER:

9 Q This is your opportunity. That's all ---

10 THE COURT: You're making a statement. Excuse
11 me, you can't make a statement, Mr. Hammer. Ask a
12 question.

13 MR. HAMMER: All right.

14 BY MR. HAMMER:

15 Q Now, you testified today that your attorney's
16 fees were \$175,445 in this abuse of process claim,
17 correct?

18 A Part of it.

19 Q All right. Well, we kind of need to break it
20 down, if you don't mind, because the we need to
21 know what the ---

22 THE COURT: Mr. Hammer, you ask a question.

23 MR. HAMMER: All right. I'm sorry, Your Honor.
24 I thought it would be helpful to do that. I'll just
25 ask a question, I'm sorry.

1 THE COURT: Just ask the question.

2 MR. HAMMER: I will do so, Your Honor.

3 BY MR. HAMMER:

4 Q Specifically, what are your damages in the abuse
5 of process portion of the claim, the specific amount
6 of abuse of process claims?

7 A I don't know.

8 Q Okay.

9 A You'd have to ask my attorney.

10 Q Okay. Now, let me go on to the next thing you
11 have, and that was the conspiracy claim, and to make
12 things easy in this case, so that I don't have to ask
13 you a bunch of questions, I'm going to read this.

14 MR. HAMMER: I'll need to get the exact page
15 number. Co-counsel is going to help me with it.

16 THE COURT: Page number what?

17 MR. HAMMER: That I'm going to read.

18 THE COURT: In the deposition?

19 MR. HAMMER: Yes, sir.

20 THE COURT: Yes, sir.

21 MR. HAMMER: If Your Honor would bear with me.

22 THE COURT: Okay.

23 MS. BALLARD: Which deposition?

24 MR. HAMMER: September 28th deposition, 2012.

25 MS. BALLARD: That must be your copy.

1 THE COURT: Somebody gave it to me, but I don't
2 need it.

3 BY MR. HAMMER:

4 Q Shirley, on page 42 of your deposition --- do you
5 have a copy of that?

6 A I do.

7 Q All right. Now, I will refer you, please, to
8 line three on page 42, and I'm going to read that with
9 you, if you don't mind.

10 THE COURT: Read it slow enough for the court
11 reporter, all right?

12 MR. HAMMER: Yes, ma'am --- yes, sir.

13 BY MR. HAMMER:

14 Q Beginning at line three;

15 Question: "Now if you look at page seven of
16 eight of Exhibit 1, this is a civil conspiracy claim.
17 In paragraph 46 you say the plaintiff, and the
18 plaintiff meaning 1634 and Hammer, being Howard
19 Hammer, acting in concert with themselves and possibly
20 others conspired to injure defendant and cause special
21 damages by withholding any rental payments due to
22 defendant and in filing complaint causing the
23 defendant to incur special damages in defending the
24 frivolous complaint as read.

25 What evidence do you have that 1634 Main and

1 Howard Hammer acted in concert? In other words,
2 acted together, planned this thing out", and your
3 answer was, "Because Howard is 1634. I mean, he
4 controls everything."

5 And the question was, "So Howard Hammer was in
6 control of everything," and the answer was, "Right."

7 MR. HAMMER: Excuse me, I have to read that
8 question over again on line number 17. I misread it,
9 Your Honor.

10 THE COURT: All right.

11 BY MR. HAMMER:

12 Q "So Howard Hammer was in control of everything,
13 right?"

14 And your answer was, "I'm assuming so, yes."

15 And the question was, "Let's make sure I heard
16 you correctly. You said that Howard Hammer was 1634;
17 is that right?" and your answer was, "Well, he is,"
18 and the question was, "He is 1634?" and the answer
19 was, "I mean, he controls 1634."

20 MR. HAMMER: If Your Honor will bear with me for
21 just one moment?

22 THE COURT: Certainly.

23 (Pause.)

24 MR. HAMMER: Shirley, I believe that's all I have
25 to ask you right now. I'm sorry we have to be here

1 like this.

2 Thank you, Judge.

3 THE COURT: All right. Ms. Lipscomb.

4 CROSS-EXAMINATION:

5 BY MS. LIPSCOMB:

6 Q Mrs. Hammer, your claim against 1634 Main L.P.
7 for abuse of process, is that any different --- is it
8 anything other than the filing of this lawsuit?

9 A It's not just the filing of this lawsuit. It's
10 that we've been dealing with this for years now.

11 I'm not an attorney, and I don't understand, I'm
12 sure the process, but if you were to ask the normal
13 average person, it's --- it never stops.

14 Q I'm talking about 1634 because I don't represent
15 Mr. Hammer in this. My question is, is there anything
16 that 1634 Main L.P. did that would be the basis for
17 your abuse of process claim?

18 A And I'm talking about 1634 also.

19 Q Uh-huh.

20 A To not accept the building, and then to think
21 that I'm supposed to pay monies to do what --- I don't
22 even know about the building, as far as, if it even
23 needs repairs. I understand from what they said about
24 Danville, but this has been going on for a long time,
25 and I think that it's just to get back at me and to

1 harass me, along with everything else.

2 MR. HAMMER: Your Honor, if I may, she is
3 offering an opinion, and I ---

4 THE COURT: Well, you asked her several times
5 about abuse of process. She offered --- she is
6 answering the question, Mr. Hammer.

7 MR. HAMMER: All right. I ---

8 THE COURT: The question.

9 MR. HAMMER: All right. Thank you, Your Honor.

10 THE COURT: The objection is overruled.

11 BY MS. LIPSCOMB:

12 Q Mrs. Hammer, I'm going to show you what's been
13 marked as Shirley Hammer's Exhibits 23. Did you
14 receive this in November 2009?

15 A I don't recall receiving this in 2009. I know it
16 was --- I don't remember when, but I do recall the
17 \$88,000 I supposedly owe on this, as Howard would say,
18 on this building.

19 Q Okay.

20 Q But with regard to 1634 Main, your claim against
21 the plaintiff in this case was the filing of this
22 lawsuit, correct?

23 A Can you repeat the question?

24 Q Uh-huh. The complaint, your complaint against
25 plaintiff in this case for abuse of process is the

1 filing of this lawsuit, correct? The plaintiff is
2 1634 Main.

3 A I'm sorry. Repeat it just one more time. I
4 apologize. I'm a...

5 Q You have counterclaimed against 1634 Main L.P.?

6 A Correct.

7 Q And your complaint against the 1634 Main L.P. for
8 abuse of process, your counterclaim, is for filing
9 this lawsuit, correct?

10 A I guess. I'm not really sure. I'm not sure I
11 quite understand it, but I guess.

12 Q All right. And you don't think that 1634 Main
13 had any ulterior purpose in filing this lawsuit as
14 different and apart from Mr. Hammer, do you?

15 A Mr. Hammer controls 1634, so he is the one that
16 is suing me, if that's what you're asking.

17 Q All right. With regard to your trying to put it
18 in context so you understand what I'm saying, do you
19 believe that 1634 Main L.P., which is the limited
20 partnership, had any ulterior purpose for filing this
21 lawsuit as anything separate and apart from
22 Mr. Hammer?

23 A When I think of 1634, and I do understand that
24 there is a difference between ownership of the land
25 and ownership of the L.P. or a little bit about it,

1 especially after today, but Howard Hammer has control
2 of 1634, and so he is the one that is responsible for
3 the lawsuit.

4 Q Is it correct to say that you think of 1634 Main
5 L.P. and Howard Hammer as one?

6 A I do as of our agreement. It's Howard's, the
7 building is his ---

8 Q And he's ---

9 A --- along with the L.P. or whatever goes with it,
10 it's his.

11 Q All right. And if he's the general partner of
12 1634 Main L.P., that would also cause you to believe
13 he and the 1634 Main L.P., you would think of them as
14 one entity together? They're not separate in your
15 mind; is that right?

16 A I know there is a difference between a limited
17 partnership and a building, but Howard was given the
18 building, and he has control of the building and the
19 L.P. and like I said, whatever else goes with it.

20 Q If the --- you brought a claim for conversion,
21 and my understanding is what you allege is that in any
22 event you have an ownership interest of 1634, you've
23 received no distribution and so therefore, that's what
24 was converted; is that correct?

25 A I have not received anything, any monies from the

1 rents or any of that, no.

2 Q If there were no rentals or insufficient rentals
3 so there was no money to distribute, you would agree
4 that you would not be entitled to a distribution; is
5 that correct?

6 A Well, you can look at this it that way, but you
7 can also look at it as someone who doesn't want the
8 place rented and could care less and doesn't want to
9 make a profit, I guess I wouldn't get any money.

10 Q Do you have a copy of your deposition in front of
11 you?

12 MS. BALLARD: Which date?

13 MS. LIPSCOMB: The 28th.

14 MS. BALLARD: She does.

15 THE WITNESS: I do.

16 MS. LIPSCOMB: September 28.

17 THE WITNESS: Yes.

18 BY MS. LIPSCOMB:

19 Q Do you see on page 39, question on line 8. It
20 says, "If you would look again at plaintiff's ---
21 excuse me, we'll call it Exhibit one. That would
22 probably be easier. If you would look again on page
23 six, its got a claim for conversion. Now, if you look
24 at paragraph 40, it says you received no distribution
25 resulting from income, payables, relating to the

1 rental of 1634 Main, what evidence do you have that
2 you are entitled to distribution," and your response
3 was, "I don't own --- I should not have any because I
4 shouldn't be owning 6334 ---

5 THE COURT: 1634.

6 MS. LIPSCOMB: I'm sorry. This is pretty small,
7 1634.

8 BY MS. LIPSCOMB:

9 Q "--- the court approved Howard, if the property
10 would be his."

11 Question: "So you're not entitled to any
12 distribution; is that your position?"

13 Answer: "My position is that I'm not entitled if
14 he would take the property, but if he didn't take the
15 property, then I would be entitled."

16 My question to you now is, in the event there is
17 no money to distribute, would you agree distribution
18 would not be appropriate?

19 A In our agreement, Howard is supposed to have
20 1634, so I shouldn't receive anything. He should have
21 1634. I mean, that's what he wanted in the agreement.

22 Q But my question is from a business standpoint,
23 would you agree that if there was no money to
24 distribute, you would not be entitled to a
25 distribution?

1 A In general, that is true. Not in Howard's case.

2 Q All right. And if there is no money for --- in
3 the corporation, then there was nothing to convert,
4 correct?

5 A In general, that would be true, but I see how
6 Howard does his books and I know what he does, and
7 there were --- there could have been monies.

8 Q Do you have any evidence that there was any money
9 that 1634 had --- 1634 Main L.P. had that belonged to
10 you and was converted?

11 A When we signed the agreement in 2008 or 2009,
12 1634 was Howard's. I don't keep up with whatever has
13 happened with that building or what he does with it.

14 Q So the answer would be no?

15 A I just answered. Whatever. I'm not sure I ---
16 repeat the question.

17 Q Do you have any evidence that 1634 Main L.P.
18 converted any monies, do you?

19 A No.

20 (Pause.)

21 Q You alleged a conspiracy between --- against the
22 plaintiff and against Mr. Hammer. Do you allege there
23 was any conspiracy with anyone else?

24 A Well, I think Howard told Mr. Danville --- I
25 don't think it's actually his fault, but I think he

1 told Mr. Danville to sue me.

2 Q But you don't think Mr. Danville or Mr.
3 Turbeville conspired to sue you?

4 A I think Howard told him to do it.

5 Q Okay.

6 MR. HAMMER: That's all I have, Your Honor.
7 Thank you.

8 THE COURT: Any redirect?

9 MS. BALLARD: Just one topic, Your Honor. I
10 can't say one question.

11 THE COURT: Okay.

12 REDIRECT EXAMINATION:

13 BY MS. BALLARD:

14 Q You were asked on cross-examination by Mr. Hammer
15 about the e-filing authorizations that were attached
16 to Mr. Ackerman's deposition; do you recall those?

17 A I recall what he said, yes.

18 Q When you signed those, in addition to whatever
19 trust you might have had in Mr. Hammer, did you also
20 have trust in Mr. Ackerman to file those correctly and
21 with accurate information in them?

22 A Yes, I did.

23 MS. BALLARD: That's all I have, Your Honor.
24 Thank you.

25 THE COURT: All right. Any redirect on that

1 points, Mr. Hammer or Ms. Lipscomb?

2 MS. LIPSCOMB: I have just have one question.

3 THE COURT: Yes, ma'am.

4 RECROSS-EXAMINATION:

5 BY MS. LIPSCOMB:

6 Q And you are aware that Mr. Ackerman filed those
7 tax returns from 2005 to the present indicating and
8 reflecting that you had a 56.8 percent interest,
9 correct?

10 A No.

11 Q You don't deny that though?

12 A No, I don't. I just ---

13 MS. BALLARD: Your Honor, my question related to
14 the e-filing in 05, 06.

15 THE COURT: Overruled.

16 BY MS. LIPSCOMB:

17 Q So you ---

18 A I mean, you brought into my attention, but do I
19 remember ---

20 THE COURT: Ms. Lipscomb, the ones put in
21 evidence are the e-filing statements. We'll just call
22 it that, for those two years. There is nothing in
23 evidence about her signing any of those for any
24 subsequent years.

25 MS. LIPSCOMB: No. All I'm saying is ---

Recross of S. Hammer by H. Hammer

1 THE COURT: But you can ---

2 MS. LIPSCOMB: My question was directly
3 responsive, or an attempt to --- Ms. Ballard said you
4 trusted Mr. Ackerman for the correct proceedings, and
5 my question is: and you are aware that he filed tax
6 returns indicating that you owned 56.8 percent
7 interest.

8 THE COURT: And she doesn't know, but she doesn't
9 deny it. Okay. So you can continue.

10 MS. LIPSCOMB: That's all the questions I have.

11 THE COURT: Mr. Hammer, do you have any --- just
12 on the topic that Ms. Ballard raised.

13 MR. HAMMER: Follow up, yes, one question, on a
14 similar question that was asked.

15 RECROSS EXAMINATION:

16 BY MR. HAMMER:

17 Q Mr. Wally Moring is your accountant; isn't that
18 correct?

19 A Yes.

20 Q And if Mr. Wally Moring didn't have the proper
21 tax returns --- you would want him to have all the
22 proper tax returns; isn't that correct?

23 MS. BALLARD: Your Honor, I object. This is
24 beyond the scope of my redirect.

25 THE COURT: Mr. Hammer, the question was whether

1 or not she assumed Mr. Ackerman had --- was filing
2 correct tax returns. What does that have to do with
3 your question?

4 MR. HAMMER: If Mr. Ackerman was not filing
5 correct tax returns, she would want Mr. Moring to
6 correct those tax returns.

7 THE COURT: Okay. Ask the question.

8 MR. HAMMER: Thank you, Your Honor.

9 BY MR. HAMMER:

10 Q If --- you would want Mr. Moring to have the
11 correct information to file the correct tax returns,
12 wouldn't you?

13 THE COURT: You're talking about amended tax
14 returns.

15 MR. HAMMER: Yes.

16 THE COURT: Okay.

17 BY MR. HAMMER:

18 Q Isn't that correct?

19 A Of course I would want my accountant to report
20 what's accurate.

21 Q Okay. You do know that I spoke with Mr. Moring?

22 MS. BALLARD: Your Honor, this is again ---

23 THE COURT: It begs for hearsay, first of all.
24 Second of all, it's not responsive to what Ms. Ballard
25 raised. The objection is sustained.

1 BY MR. HAMMER:

2 Q You are --- are you aware in connection with
3 these --- these K-1 filings that Mr. Moring has had
4 them for some long period of time because they were
5 sent to him by Mr. Turbeville?

6 MS. BALLARD: Your Honor, I object.

7 THE COURT: November of 2011, the objection is
8 overruled.

9 MS. BALLARD: Thank you, Your Honor.

10 BY MR. HAMMER:

11 Q You're aware of that, aren't you?

12 A Since November of 2011.

13 Q All right. Now, with him having those tax
14 returns, have you requested that he make any
15 amendments to your filings?

16 A No, because in my mind, I deeded the property
17 over to you.

18 Q All right. Have you requested that he contact
19 Mr. Ackerman to straighten it without with him, with
20 Mr. Ackerman?

21 A No, because I believed I had deeded the property
22 over to you.

23 MR. HAMMER: I have no further questions.

24 MS. BALLARD: I have nothing further.

25 THE COURT: All right. You can step down. Thank

1 you, Mrs. Hammer.

2 Mr. Covington?

3 MS. BALLARD: Your Honor, I cannot find proof of
4 service in my record. In the absence of me being able
5 to lay my eyes on proof of service even though he was
6 here on Monday with subpoena in hand, I hesitate to
7 issue a bench warrant for that purpose, since I cannot
8 establish it.

9 THE COURT: Ms. Lipscomb, do you by chance know
10 his whereabouts?

11 MR. HAMMER: No, sir.

12 THE COURT: Or why he's not here?

13 MS. LIPSCOMB: No, sir, because my understanding
14 is that --- he called me and asked me what was going
15 to be asked, and fully indicated, I thought, that he
16 was going to be here. I think he thinks this is over
17 because it was only supposed to go Monday and Tuesday,
18 originally, I think. So I think that was his
19 impression.

20 THE COURT: But you haven't had any conversations
21 with him other than that that you mentioned?

22 MS. LIPSCOMB: No, and that was Sunday.

23 THE COURT: Have you had any conversations with
24 him Mr. Hammer or Mr. Aiken?

25 MR. AIKEN: No, sir.

1 THE COURT: Mr. Hammer?

2 MR. HAMMER: Yes, sir. I had a conversation with
3 him, and he told me that he was supposed to be here on
4 Monday, and then it changed to Tuesday. He told me
5 that he had a full schedule and ---

6 THE COURT: All right.

7 MR. HAMMER: I think he said that he might be
8 going out of town and that was it. I'm not sure
9 whether it was or not. That's really all I can tell
10 you.

11 THE COURT: Would you like to make one more
12 attempt or call him in the morning? What would you
13 like to do?

14 MS. BALLARD: We'll try again over the evening
15 to reach him. Short of Mr. Covington, the only ---
16 the last thing I have, Your Honor, is to ask you to
17 take judicial notice of the family court proceedings
18 in the case --- I had it in front of me. I'm sorry, I
19 turned the page. In case number 2005-DR-40-2871. I
20 would ask you to take judicial notice of those
21 judicial proceedings.

22 THE COURT: Any objection?

23 MR. HAMMER: Yes, Your Honor, I object.

24 MS. LIPSCOMB: Your Honor, I believe there's a
25 recent case that says it's improper for the court to

1 children. In any event, it was sealed for a proper
2 reason. Your Honor, is familiar with all the reasons.

3 THE COURT: All right.

4 MR. HAMMER: Our position would be not only does
5 the record have to be here for you to take judicial
6 notice and enter into this record, because otherwise
7 you're talking judicial notice of something, and
8 eventually there is the sealing order.

9 THE COURT: On the whole record?

10 MR. HAMMER: There is a sealing order on the
11 whole record.

12 THE COURT: So am I violating that by having all
13 of these things that I'm reading, the partial
14 settlement agreement or whatever it's called, the
15 orders of ---

16 MR. HAMMER: The orders ---

17 THE COURT: --- May and June and August and
18 September?

19 MR. HAMMER: That's something that ---

20 THE COURT: Are those sealed, too, Ms. Lipscomb?

21 MS. LIPSCOMB: Your Honor, some of these, if not
22 most of them, are parts of the notices of the orders
23 from which there was an appeal taken.

24 My recollection is Judge Cureton specifically
25 refused to seal the record in the Court of Appeals.

1 MS. BALLARD: That's correct.

2 THE COURT: All right. So is the record sealed?

3 MS. LIPSCOMB: The record in the family court is
4 sealed, and if you go there, you have to get special
5 permission to look at it, but...

6 THE COURT: Let's me ask you this. Mr. Hammer
7 wants me to rule, and maybe you do, too, that a
8 certain order or agreement is void as against public
9 policy, but now you and he are saying, even though you
10 want me to find that it is void, you don't want me to
11 read it?

12 MR. HAMMER: No, sir.

13 MS. LIPSCOMB: I'm not making that motion.

14 MR. HAMMER: I'm not saying that. They have put
15 that into evidence.

16 Now, what comes after that, I don't know.

17 THE COURT: You're talking about some hereafter
18 from the family court.

19 MR. HAMMER: Whatever the hereafter is, I don't
20 know.

21 THE COURT: What does the order say exactly that
22 seals something in the family court? Does somebody
23 have that, because I doubt that's sealed?

24 MR. HAMMER: No --- yes, that is the record.
25 Something specifically that this record in this case

1 is sealed; that in order for it to be unsealed, there
2 will have to be notice to each of the parties. I'm
3 not quoting exactly, but I think ---

4 THE COURT: Well, I need to know exactly.

5 MR. HAMMER: I'll fax you the sealing order.

6 THE COURT: I think I've seen it, because isn't
7 it stuck to an envelope that has a big piece of tape
8 on it?

9 MS. BALLARD: I don't have it, Your Honor. I
10 have never seen it.

11 THE COURT: I think somebody presented it to me.
12 I sure haven't gone looking for it in the family court
13 records. I can assure you of that.

14 All right. Now, what if, as far as her offer of,
15 I think this came up when you offered 30, but it was
16 the wrong order, 30 for ID which you withdrew.

17 MS. LIPSCOMB: That's correct.

18 THE COURT: That was an order regarding pro se
19 motion.

20 MS. BALLARD: No.

21 THE COURT: It was the wrong order.

22 MS. BALLARD: That's correct, Your Honor.

23 MS. LIPSCOMB: 30 was with regard to ---

24 THE COURT: I've got 30 for ID here. It's the
25 wrong order.

1 MS. BALLARD: I withdrew that because I didn't
2 have the right one.

3 THE COURT: That's why you want me to take
4 judicial notice of the family court record?

5 MS. BALLARD: Your Honor, I'd like you to take
6 judicial notice because of the chronology of events
7 that we discussed.

8 THE COURT: I have all that down from Mr. Madden
9 and Hammer so far.

10 MS. BALLARD: And Mrs. Hammer's testimony about
11 the continuing nature of the ongoing litigation.

12 THE COURT: Okay.

13 MS. BALLARD: Which is why I asked her about her
14 fees with Mr. Madden.

15 THE COURT: If you can find that case, let me
16 know, please.

17 MS. LIPSCOMB: I'll fax it ---

18 THE COURT: Otherwise, I'll take that request
19 under advisement. Of course, she hadn't rested yet,
20 if there are any other witnesses who will deal with
21 that.

22 I'm curious as to why it's in my brain that there
23 was an envelope, an 8½ x 11 envelope, the kind we all
24 use.

25 MR. HAMMER: Yes, sir.

1 THE COURT: One of those brown ones, and it had
2 an order stapled to it, and the envelope had a piece
3 of tape over it.

4 MS. LIPSCOMB: If you've ever seen the box that
5 the file is in, that is what is on the box.

6 THE COURT: No.

7 MR. HAMMER: Three boxes.

8 THE COURT: This would have been on something
9 that you folks have given me or was in the clerk of
10 court's file. It may be in the clerk of court's file
11 or it may be one of the pretrial briefs.

12 MR. HAMMER: Your Honor, may we see whether we
13 can stipulate to what she has planned for Mr.
14 Covington to say.

15 THE COURT: That will be fine. I'll let you do
16 that.

17 MR. HAMMER: And while that is being done, might
18 we now have take up the matter that I wanted to take
19 up, so it's possible we don't have to waste any more
20 time?

21 THE COURT: Yes, sir, since we're not going to
22 have any more witnesses, I'll be glad to hear from
23 you.

24 MR. HAMMER: Thank you, Your Honor. I appreciate
25 that.

1 I'll begin by discussing the law with you, if I
2 may.

3 THE COURT: Okay.

4 MR. HAMMER: This is the case of Mosier vs.
5 Mosier. This is the similar case which we've all
6 cited about when an order becomes an order and when a
7 contract ceases to become a contract.

8 I would call your attention particularly to the
9 last couple of paragraphs in that --- in that order.

10 THE COURT: You're talking about a majority
11 opinion?

12 MR. HAMMER: Yes, sir.

13 The party's intent is rarely revealed from the
14 agreement's words of art.

15 THE COURT: You're going to have to give me more.

16 MS. BALLARD: I can't find it either.

17 MR. HAMMER: I'm sorry, page 67, second
18 paragraph.

19 THE COURT: You mean 627?

20 MR. HAMMER: 627, I'm sorry.

21 MS. BALLARD: I have it.

22 THE COURT: All right. Go ahead.

23 MR. HAMMER: It says we ignore it. They talk
24 about the cases they ignored. They talk about merged
25 and all the words of art, and then they go on to say

1 we ignored the Brooks case, once again, and ---

2 THE COURT: The court reporter can't follow you.

3 THE COURT REPORTER: Thank you.

4 MR. HAMMER: And once again, followed Kelley and
5 held that the family court lacked subject matter
6 jurisdiction to be held appellate in contempt. Blah
7 blah blah blah.

8 THE COURT: I don't see ---

9 MR. HAMMER: 627, right in the middle of the
10 page.

11 THE COURT: Oh, you moved back up.

12 MR. HAMMER: Yes, sir. And then it says, we
13 attempted to determine the party's intent by looking
14 at the language of the agreement. The party's intent
15 is rarely revealed from the agreement's words of art.
16 Generally those terms are used without intending or
17 implying any particular legal consequences.

18 Later courts imposed the consequences upon the
19 unsuspecting parties. Today we overrule those cases
20 which hold that words of art make a major distinction
21 in the operation of divorce law.

22 Furthermore, jurisdiction for all domestic
23 matters, whether by decree or by agreement, will best
24 in the family court.

25 In all decrees entered after this decision, the

1 parties may contract concerning their property
2 settlement and alimony, but the submitted agreement
3 must be approved --- but the submitted agreement must
4 be approved by the family court.

5 The parties may specifically agree that the
6 amount of alimony may not be modified, and they go on
7 to talk about other things that they can agree.

8 It goes down four lines from the bottom. With
9 the Court's approval, the terms become a part of the
10 decree and are binding on the parties and the court.
11 However, unless the agreement unambiguously denies
12 the court jurisdiction, the term will be modifiable by
13 the court and enforceable by contempt.

14 Under our ruling today, family court will retain
15 their traditional powers of contempt and ability to
16 modify support orders. However, an approved agreement
17 unambiguously stipulating that the terms may not be
18 enforced by contempt and/or that they may not be
19 altered by the court, as well as the parties to those
20 terms.

21 Today we eliminate the words of arts from
22 domestic law.

23 THE COURT: We attempt to eliminate ---

24 MR. HAMMER: We attempt to eliminate the words of
25 art from domestic law. We assume that any settlement

1 in a divorce decree, and I emphasize that, any
2 settlement in a divorce decree is intended to be
3 judicially decreed unless there is some explicit,
4 clear and plain provision in the court approved, court
5 approved separation, separation agreement, or decree.

6 Family courts, of course, have continuing
7 jurisdiction to modify child support. We base our
8 reasoning on a West Virginia case --- I will again ---
9 again, my emphasis is on we assume any settlement in a
10 divorce decree ---

11 THE COURT: Is intended to be judicially decreed.

12 MR. HAMMER: Yes.

13 THE COURT: In other words, you have to get court
14 approval.

15 MR. HAMMER: Correct. Yes. Now, the distinction
16 I make is this. This court --- there is a difference
17 between --- and I then call Your Honor's attention to
18 the case of Gainey vs. Gainey, 675 SE 2nd 792. It's a
19 South Carolina appeals court case authored by Per
20 Curiam and it is of 382 SC 414.

21 The panel on that case consisted of Chief Justice
22 --- Chief Judge Hearn, Judge Huff, Judge Gaithers. Of
23 course, Judge Hearn is now a member of the Supreme
24 Court.

25 THE COURT: Okay. That's ---

1 MR. HAMMER: And that case ---

2 THE COURT: What does that --- what difference
3 does that make?

4 MR. HAMMER: That case --- that case ---

5 THE COURT: I know she is on the Supreme Court.

6 MR. HAMMER: Yeah, I understand.

7 THE COURT: Do you have a copy for me?

8 MR. HAMMER: Yes, sir. I call your attention to
9 five.

10 THE COURT: All right. Do you have a copy of
11 that, Ms. Ballard?

12 MS. BALLARD: No, sir. I haven't got an copy of
13 that.

14 MS. LIPSCOMB: Wait a minute. I brought four
15 copies of that.

16 MS. BALLARD: I have Mosley.

17 THE COURT: Okay. Gainey vs. Gainey. I thought
18 that was a Sumter case. Well, it is a Sumter case.

19 MS. LIPSCOMB: Who needs Gainey?

20 THE COURT: If you're going to refer to Gainey,
21 do you need this back?

22 MR. HAMMER: Just for a moment. There is only
23 one line that I'm referring to.

24 THE COURT: There you go.

25 MR. HAMMER: I'm fine for Your Honor to see it.

1 MS. LIPSCOMB: Do you need it?

2 MS. BALLARD: No, but I'm sure I can find it, if
3 so.

4 MR. HAMMER: The only line they referred to in
5 the footnote is they noted in South Carolina juris
6 prudence, marital settlement agreements as opposed to
7 marital settlement divorce decrees or agreements in
8 divorce decrees, are viewed as contracts and numerous
9 cases are cited there under. Enforcement of the terms
10 of a settlement agreement is a matter of contract law.

11 Now, the distinction that I am making is that the
12 word that --- in Mosier, they very specifically
13 referred to matters, terms of art, that at least ---
14 in the final analysis had to do with settlements in
15 divorce decrees.

16 There's a reason for a distinction between a
17 settlement in a divorce decree and as noted in Gainey,
18 a settlement agreement.

19 That reason I would urge is this, Your Honor, a
20 settlement in a divorce decree usually involves this
21 type of --- one or two types of situations: The court
22 hears the matter, and the court makes --- the court
23 hears the matter, and in connection with the divorce,
24 and they hear all of the evidence, the divorce
25 evidence, the property evidence, the equitable

1 division evidence.

2 They hear all of it at one time and, on some
3 occasions after that is --- after that has been heard,
4 the divorce together, the parties come in, and they
5 say Judge, you know, we've heard all of the evidence.
6 We want to enter into a settlement agreement in this
7 divorce --- in connection with this divorce decree, or
8 they come in beforehand, and they say, after
9 negotiation, they sit for a hearing, and they say,
10 Your Honor, in connection with this divorce decree
11 that you're about to enter, we also are taking care of
12 the settlement, and we want that tied into one
13 package.

14 Again, in either of those events, the State has
15 an interest, and that interest is the interest in
16 marriage. Our state has a long history of
17 preservation of marriage. Back in the 50's you
18 couldn't get divorced, I believe. There was a time
19 that divorce was not allowed in this state. I may be
20 wrong, but we have a long history of development, and
21 we have a long history that the State has an interest
22 in marriage. So the State would therefore have an
23 interest in the whole decree, the divorce decree along
24 with the settlement.

25 The State does not have that same interest where

1 the parties, separate and apart from any divorce
2 decree, separate and apart from anything having to do
3 with divorce, they come in and they say, Judge, we've
4 reached an agreement. We don't know whether we're
5 going to get divorced in the future or not. We're not
6 sure what we're going to do or whatever it is. They
7 say nothing. It doesn't really matter. They come in
8 and say we have an agreement, and we would like to get
9 that agreement on paper, so we have that solid, and we
10 don't have to fight about that right now. We'll
11 decide about divorce later on.

12 In that circumstance, and keeping in mind that
13 South Carolina has said that under South Carolina
14 jurisprudence, marital settlement agreements are
15 viewed as contracts, the court has a duty in
16 connection with the contract, and that duty is ---

17 THE COURT: You're talking about family court?

18 MR. HAMMER: Family court, and I don't have a
19 case for you. I'm sorry. I think it's Black Letter
20 law. I should have asked Mr. Madden, but I think Your
21 Honor will find this is Black Letter law. The duty is
22 to find that it's voluntary and to find that it's fair
23 and equitable. That's it. That's the only duty that
24 the court has in connection with a contract that's
25 been presented to them.

1 In this case, what was presented to them was a
2 contract. It was not --- it was not a part of a
3 divorce decree. It was a contract that was signed on
4 May 9th, 2008, and then it was presented to the court.

5 Subsequent to it being presented to the court,
6 there was a divorce decree that was issued, separate
7 and apart, a separate divorce decree. I don't have
8 that in front of me, but I don't think that anybody
9 will contest that.

10 So our position is that first of all there is a
11 difference, and that difference is an important
12 difference, and it's a very subtle difference.

13 It's one that a lot of --- that takes some
14 judicial inquiry, judicial study, putting some ---
15 some ---

16 THE COURT: Thought.

17 MR. HAMMER: Thought and the ability to think
18 through it and to it, and a lot of people just go on
19 and, you know, a word is a word without looking at a
20 separate word, and there are some judges who are more
21 specific, and then ultimately look at it more closely.

22 That is the distinction I'm making here and
23 without --- I certainly --- and flattery is, of
24 course --- what is the saying about --- I can't
25 remember what the saying is about flattery, but in any

1 event, that is --- I bring that to your attention
2 because I believe this is --- this is something that
3 Your Honor would understand. Not all judges would
4 understand it, but I know Your Honor would give close
5 attention to it, but there is an intellectual
6 difference and it takes an intellectual mindset to
7 look at it.

8 Some people look at it some way and some people
9 do not, but the intellectual difference is the
10 difference between the wording. The settlement in a
11 divorce decree as opposed to a settlement which our
12 State holds to be a contract.

13 The difference is the settlement in the divorce
14 decree, the State has an interest in it. It's
15 marriage. And so that has a --- that may --- that's
16 what they're talking about. It becomes incorporated,
17 and the family court, once it's in the divorce decree,
18 then the family court is the only one that has
19 jurisdiction, because it has to do with marriage.

20 The other is a contract. It has to do with
21 property matters. It just happens to be in the family
22 court. It could just as well be a contract that could
23 be taken over to the circuit court, but it's in the
24 family court.

25 And in the family court, there are certain rules

1 that are not in the circuit court. You don't have ---
2 you wouldn't have to bring a case in the circuit ---
3 you could bring a case in the circuit court asking, I
4 guess, for a declaration that this is a contract
5 between the parties or whatever, but in the family
6 court, you have certain rules, voluntary, fair and
7 equitable.

8 Now, there are two other prongs to this. It
9 would be our contention first that a divorce --- that
10 a settlement agreement that sets forth that --- I
11 don't know whether Your Honor has a copy of the
12 settlement agreement.

13 THE COURT: It's part of the exhibits that were
14 discussed with Mr. Madden and others?

15 MR. HAMMER: And I don't know whether Your Honor
16 has it in front of him, but I think ---

17 THE COURT: You're talking about the property ---
18 the one that was signed in May of 08?

19 MR. HAMMER: Yes, sir.

20 THE COURT: Yes, sir, I do have that.

21 MR. HAMMER: And I'm calling attention to Exhibit
22 A. It doesn't have a page number on it, but it's a
23 paragraph, release of claims and covenant not to sue,
24 Paragraph number 2.

25 THE COURT: Okay.

1 MR. HAMMER: Assuming that I am correct --- that
2 --- that just for the purposes of our discussion for a
3 moment, assuming that I am correct that there is a
4 difference and that it has to be voluntary, and it has
5 to be fair and equitable, let me move to another part
6 of the law.

7 It is the law of this State ---

8 THE COURT: So are you saying that there is
9 evidence in this case that you did not enter into this
10 agreement voluntarily?

11 MR. HAMMER: No, sir, I never ---

12 THE COURT: Is there any evidence in this case
13 that the agreement is not fair?

14 MR. HAMMER: Yes, sir, or equitable. If you will
15 give me one moment.

16 MS. LIPSCOMB: What are you looking for?

17 MR. HAMMER: The public policy.

18 (Pause.)

19 THE COURT: And Ms. Lipscomb, do you join in
20 this, too, or do you want to pick and choose what you
21 join in later on?

22 MS. LIPSCOMB: I'm going to let him finish.

23 THE COURT: And I assume --- well, go ahead.
24 I'll let you ---

25 MR. HAMMER: This --- what I'm getting to is the

1 public policy issue, Your Honor, and I'm trying to
2 find the exact statement in the case.

3 THE COURT: Well, one of the questions you're
4 going to have to answer at some point is the Court of
5 Appeals' opinion that references and rejects your
6 Mosley argument; number two, the fact that the order
7 does say that it's in full force and effect until
8 terminated by a subsequently issued order, or excuse
9 me, the order approving the agreement; and also the
10 fact that when the settlement is approved, it shall be
11 enforceable in the contempt powers of the family
12 court.

13 How that in any way contemplates jurisdiction
14 lying in any court other than the family court, but
15 you can continue with your public policy argument.

16 MR. HAMMER: All right. In our State, and I
17 apologize, I didn't know that I --- I had hoped that
18 we would get to it, and I didn't bring all of the
19 cases, but at least I'll give you a basic outline in
20 some of the cases.

21 I believe there is another one, and I would ---
22 I'll get you another one in a moment. Would Your
23 Honor bear with me just a moment?

24 THE COURT: All right, sir.

25 (Pause.)

1 THE COURT: All right. Mr. Hammer, anything
2 else?

3 MR. HAMMER: Yes, sir. I wanted to get the case
4 for you and read you the exact quote and answer your
5 questions.

6 The public policy argument is based upon the
7 public policy of this state. Basically, it is set
8 forth in a fairly long line of cases, one of which was
9 offered by Justice --- Judge Timmerman, who later
10 became District Judge Timmerman, and his quote is
11 probably the best quote.

12 THE COURT: Well, if you've got the case handy,
13 you can just ---

14 MR. HAMMER: Well, I don't have the case handy.
15 I wasn't sure whether we would get to it.

16 THE COURT: Can we just do this tomorrow?

17 MR. HAMMER: We could, but I would like --- but
18 we're in the middle of it. Beg the court's indulgence
19 for just a moment.

20 THE COURT: I know, but you've been looking for a
21 good many minutes. I want to give you an opportunity
22 to be heard, but by the same token make the best use
23 of our time.

24 Do you know the name of case, Ms. Lipscomb?

25 MS. LIPSCOMB: No, sir. I don't know what he's

1 talking about.

2 MR. HAMMER: Here it is.

3 THE COURT: Okay.

4 MR. HAMMER: As stated in Grant vs. Butt, and
5 I'll bring the cases tomorrow, but I just wanted you
6 to know the ---

7 THE COURT: Grant vs. Butt?

8 MS. LIPSCOMB: I have that case, Your Honor, I
9 think.

10 MR. HAMMER: 17 SE2nd 689. It's quoted with the
11 approval in Vascular vs. American Health Insurance 107
12 SE2nd 36.

13 THE COURT: Okay.

14 MR. HAMMER: The quote is from Judge Timmerman as
15 follows: It is well established that contracts having
16 for their object anything that is obnoxious to the
17 principles of common law are contrary to statutory
18 enactments or constitutional provisions are repugnant
19 to justice and morality are void and the courts of
20 this State will not lend aid to the enforcement of
21 contracts that are a violation of law or opposed to
22 sound public policy.

23 There are cases in this State which prohibit a
24 lawyer from obtaining a release from his client.

25 It certainly would be the policy --- the public

1 policy of this State, I don't believe I would need to
2 cite it, that if a lawyer did not have an agreement
3 with his client, that his client will not bring a
4 grievance against him.

5 I think that would be reasonable --- we would all
6 accept that as a reasonable proposition as being
7 against the public policy of the state. We would all
8 accept that as being obnoxious to ---

9 THE COURT: How about, could a party agree to not
10 bring a grievance against the other side's lawyer?

11 MR. HAMMER: I don't think that a party could
12 agree not to bring a grievance against any lawyer. I
13 think that ---

14 THE COURT: You might be right about that.

15 MR. HAMMER: I think that --- but that's not the
16 case here. The case here is that --- is that in this
17 agreement, it says the parties agree not to file any
18 lawsuits, complaints or grievances against the other
19 or any agents or assigns of the other.

20 Now, some of the agents or assigns as you've
21 heard are lawyers. I think eight lawyers acting as
22 agents for clients. I think this is a fair
23 interpretation that this is a provision that prevents
24 grievances against the lawyers involved in this case
25 on both sides and any agents who may have been

1 lawyers.

2 THE COURT: So that voids the whole agreement?

3 MR. HAMMER: That is against public policy.

4 His testimony was that it was one inseparable
5 agreement. There is nothing in the agreement as Your
6 Honor had pointed --- had asked the question before
7 about separations and separation clauses and that
8 sort. There is nothing in this agreement. For that
9 reason and that reason alone we would urge that it
10 could not, that it was impossible for the court to
11 find the agreement to be fair and equitable.

12 That was a --- that was --- that was trying to
13 make zero times ten equal to ten.

14 THE COURT: Did you raise that argument to the
15 Court of Appeals?

16 MR. HAMMER: Not --- not --- that argument was
17 not specifically, no, it was not raised. Ms.
18 Lipscomb ---

19 MS. LIPSCOMB: We didn't get beyond the subject
20 matter jurisdiction, Your Honor.

21 MR. HAMMER: So the subject matter ---

22 THE COURT: But it's been briefed as part of
23 domestic appeal?

24 MR. HAMMER: Yes, Your Honor.

25 MR. HAMMER: But the subject matter --- we would

1 urge, in answer to your question, that once the court
2 found that it's subject matter didn't --- that the
3 circuit court didn't have subject matter jurisdiction,
4 whether that was correct or not correct, that was the
5 law of that particular case.

6 Any other fact --- they didn't have to find
7 anything else. All they have to find ---

8 THE COURT: Well, all that agreement does ---
9 assume it's not void. All that agreement does is
10 order her, excuse me, evidence her agreement to give
11 you whatever she has got as far as interest in the
12 reality is concerned and whatever she may have as an
13 assignment of a partnership interest.

14 MR. HAMMER: That agreement goes much further
15 than that. That agreement would require her to give
16 me Rice Courts. I think if you asked her Rice Court
17 was behind.

18 THE COURT: Has she already done it? Hasn't she
19 deeded Rice Court?

20 MR. HAMMER: She deeded Rice Court, but she
21 hadn't fulfilled all the other obligations. The
22 agreement required that she give me my personal
23 property. That property, which I inherited, and which
24 I ---

25 THE COURT: Well, if I was a family court judge,

1 I hold her in contempt for not giving it to you.

2 MR. HAMMER: I don't know, Judge, but here is the
3 issue that's before you today. The issue before you
4 is not what she has done or whether she's done it, or
5 what I've done. The issue before you, the issue
6 before you, is that this contract has now been brought
7 before you, and the issue before you is the question:
8 is this contract void as against public policy and the
9 secondary issue, if it is void against public policy,
10 and we urge on its face it is.

11 There would be other reasons it would be void,
12 and we haven't given any testimony as to that. There
13 are allegations that part of the consideration for the
14 agreement was that Mrs. Hammer was going to ---

15 THE COURT: Can I ask you a question?

16 MR. HAMMER: Yes, sir.

17 THE COURT: Why didn't you ask Mr. Madden that
18 when he was sitting there? Why didn't you ask him?

19 MR. HAMMER: Because I didn't think it was
20 necessary to ask him why that was in there. It's in
21 there.

22 THE COURT: You've been arguing for three days
23 that this agreement is void as against public policy
24 and you want me to so find. Is that true?

25 MR. HAMMER: Based upon ---

1 THE COURT: Is that true?

2 MR. HAMMER: Yes, sir.

3 THE COURT: All right. And you had the man who
4 authored the agreement in some respects. Why didn't
5 you ask him that? Is that how you felt? In other
6 words, Mr. Madden, is that how you guys do business?
7 Is that really how you do it? Plus, who was your
8 lawyer when that agreement, that provision was
9 prepared?

10 MR. HAMMER: Mr. McLaren.

11 THE COURT: Well, somebody should call him and
12 say is that how you guys do business? Or ask
13 Ms. Lipscomb, when you do these things, do you put
14 these in your agreements? In other words, you had him
15 sitting right there.

16 MR. HAMMER: In all due respect, Your Honor, the
17 question is not the way he does business --- or not
18 the way someone else does business. The question is,
19 is it obnoxious to the public policy of this State,
20 not what Mr. Madden thinks, but what Your Honor
21 thinks. Does Your Honor think that a provision in an
22 agreement --- in a contract that says you can't give
23 grievances against any of the lawyers involved, does
24 Your Honor think that that is obnoxious to the public
25 policy and to the law of this state.

1 THE COURT: Does Shirley Hammer's claim or claims
2 against you rise and fall on whether or not that
3 agreement is --- was ever in existence?

4 MR. HAMMER: In this case they have brought that
5 --- yes, in this case, their allegations, Your Honor,
6 are that this agreement --- that this partial
7 settlement agreement is part of the reason that they
8 --- that she doesn't have --- that she's made the
9 correct --- the --- the correct transfers.

10 THE COURT: Why did you sign it? If you ---

11 MR. HAMMER: Do you want to know the truth?

12 THE COURT: If you ---

13 MR. HAMMER: Do you want to know the truth? The
14 truth is that --- and this was brought out and it's in
15 the record so I'm ---

16 THE COURT: Why did you sign it? Don't give me
17 preambles. Tell me why you signed it.

18 MR. HAMMER: I signed it because I was very
19 depressed. I had been arrested. I had been kicked
20 out of my --- she had taken over my house. I was
21 being treated for depression, and I shouldn't have
22 signed anything according to the doctor that I was
23 being treated for subsequently that didn't have
24 anything to do with Shirley, because I was not in an
25 emotional state to deal with her, but I was still very

1 much ---

2 THE COURT: All right. None of that was
3 presented to me as part of your case against her
4 counterclaims.

5 MR. HAMMER: But that's not part of it.

6 THE COURT: All right. Do ---

7 MR. HAMMER: The only thing that's presented is
8 the black and white four corners of the ---

9 THE COURT: Do you have any other points of law
10 to raise on the repugnant nature of the contract?

11 MR. HAMMER: Your Honor, no, sir, I have no other
12 on the --- not on the repugnant nature of the
13 contract. That was my first issue.

14 THE COURT: All right. We're about done because
15 it's been a long day.

16 MR. HAMMER: All right. May I continue with the
17 other portion of my argument in the morning?

18 THE COURT: And the purpose of this argument is
19 what --- what stage are we at now? The case is not
20 over yet.

21 MR. HAMMER: I understand, Your Honor. The
22 purpose is that I asked at the beginning of the case
23 to have this declared --- I said I had some motions
24 and you said you would take the motions and ---

25 THE COURT: But you didn't file any dispositive

1 motions. You didn't file any motions in limine. Oral
2 motions during the course of a trial aren't anything
3 but oratory.

4 MR. HAMMER: Except at the beginning of the
5 trial, I asked --- I do have a right to make a motion.
6 I made a motion and Your Honor said you would hear the
7 motions later on. You said --- you asked us to sit
8 down and I sat down. That was my understanding of
9 what Your Honor said. That was the --- what I
10 understood from you.

11 THE COURT: All right. What other topics do you
12 want to discuss?

13 MR. HAMMER: The other topic is that Mosier, even
14 if it's not against public policy and my position
15 there is that it is, and therefore it could not have
16 been found to be fair and equitable because something
17 against public policy ---

18 THE COURT: Okay. You said that.

19 MR. HAMMER: All right. My second position is
20 that if you look at the contract itself, it clearly,
21 it clearly --- there are numerous provisions that show
22 that the intent of the parties was that it could be
23 raised as a contract action.

24 THE COURT: The Court of Appeals said otherwise.

25 MR. HAMMER: No. The Court of Appeals --- I beg

1 to differ with you again. That --- the Court of
2 Appeals said that, but it said it in dicta because the
3 only thing that the Court of Appeals had before it was
4 the question of whether or not --- the only thing the
5 court ---

6 THE COURT: Do you agree with that, Ms. Lipscomb,
7 that that's dictum?

8 MS. LIPSCOMB: My understanding of the order of
9 the Court of Appeals was purely that it was denied.
10 It was in the wrong court, so no subject matter
11 jurisdiction.

12 MS. BALLARD: Your Honor, you have the decision
13 behind 18.

14 THE COURT: I have the decision.

15 MS. BALLARD: Yes, sir.

16 THE COURT: It says, appellate argues the circuit
17 court erred in dismissing its complaint because the
18 May 2008 contract clearly set forth the parties'
19 intent that the family court did not have jurisdiction
20 over the contract. We disagree.

21 MR. HAMMER: I think if you read the first --- is
22 that the first ---

23 THE COURT: Then it says in Mosley v. Mosier our
24 Supreme Court held --- so forth and so on.

25 MR. HAMMER: I understand. I think the first

1 paragraph --- I may be wrong. I think it says this is
2 a matter of --- the question is whether or not it's
3 subject matter jurisdiction. I believe that's the way
4 the order begins, unless I ---

5 THE COURT: And they incorporate the Mosley vs.
6 Mosier discussion as part of that exclusive
7 jurisdiction segment.

8 MR. HAMMER: But it wasn't necessary to do that
9 and for this reason: Their --- that their reasoning
10 was, if you look at the underlying case, their
11 reasoning was this was a family court order.
12 Therefore, since it's a family court order, it is
13 merged --- they use the words, merged, incorporated
14 whatever, which Mosier said you shouldn't use ---
15 since it's a family court order, merged and so and so
16 and so and so, the jurisdiction is with the family
17 court.

18 That --- the other --- they talk about a lot of
19 other things, but as far as the jurisdictional issue,
20 that was the basis for it. That it was a family court
21 order and that because it was the family court order,
22 it was in the family court, and what I am saying is
23 just because it's a family court order, now there is a
24 difference because they have raised it affirmatively
25 in this case.

1 So now Your Honor has to decide two issues, I
2 would submit to you. One, is it void against public
3 policy for all the reasons that I said, and if it is
4 void, can the court then make it not void by making it
5 an order, and does that violate if they do, the fair
6 and equitable division of what they should be doing.

7 Two, I get to argue in this case, which would not
8 --- which I urge is dicta in the other court. Your
9 Honor may see it differently.

10 THE COURT: I see it differently.

11 MR. HAMMER: May I make the argument anyway for
12 the record so you have it?

13 THE COURT: Yes, sir.

14 MR. HAMMER: I urge that --- I understand Your
15 Honor sees it differently. I understand that Your
16 Honor will give full thought to this and may change
17 his mind, and may not. I would urge that it is ---
18 that it is a contract for these reasons, very shortly,
19 very quickly.

20 THE COURT: That it is a contract?

21 MR. HAMMER: That it is a contract for these
22 reasons. Gainey vs. Gainey says that under South
23 Carolina law, marital settlement agreements, not
24 marital settlement ---

25 THE COURT: Just ---

1 MR. HAMMER: That would be reason number one.
2 Reason number two, number 16 of the final page of the
3 agreement.

4 THE COURT: Of the agreement?

5 MR. HAMMER: Of the partial settlement agreement,
6 yes, sir, it says...

7 (Pause.)

8 THE COURT: Page 16? I didn't know there was a
9 page 16.

10 MR. HAMMER: Page 9. Excuse me, I was looking up
11 at the top of the last page, the signature page.

12 THE COURT: Okay.

13 MR. HAMMER: It says, this agreement is a binding
14 contract and is --- as such --- and is enforceable as
15 such under the law. I would urge to you that the
16 intent of the meaning of the parties was twofold, that
17 the parties have a choice. They could go under the
18 contempt powers or they could bring a contract action
19 at law. They have brought --- they have chosen to
20 bring this in connection with an action of law. It's
21 now a contract and because it's a contract, Your Honor
22 now has to decide whether or not it's void for that
23 reason.

24 Because --- and the second reason it's a contract
25 --- the third reason it's a contract, on the same

1 paragraph that has the matter about the grievance, it
2 says the parties --- is Your Honor ---

3 THE COURT: Yes, sir.

4 MR. HAMMER: The parties agree not to file any
5 lawsuits, complaints, or grievances against the other
6 or any assigns or agents with respect to any claim one
7 might have against the other, comma, except they agree
8 not to file lawsuits, except for the obligations
9 created by the settlement agreement referenced herein.

10 That means you can't file lawsuits except as to
11 the obligations created by the settlement agreement
12 referenced herein. I think those are three reasons
13 that shows the intent of the parties that it could be
14 a contract.

15 It is before you now as a contract. Now, it
16 becomes a question of whether or not this contract is
17 void as being obnoxious against public policy.

18 THE COURT: You already said that.

19 MR. HAMMER: And the next issue, the next issue
20 contained in here is that there is an agreement that
21 the assigns, the heirs and assigns of the parties can
22 bring an action on this agreement. Well, the heirs
23 and assigns, particularly the assigns --- what if I
24 assign this to General Motors just to make a --- to
25 bring it to a --- to the absurd --- to make the point.

1 If I assign it to anybody, could they come in?

2 Wouldn't they have a right to come in? Are they
3 limited to the family court? They're not a part of
4 the family court. They may not even be amenable to
5 the jurisdiction of the family court. Wouldn't they
6 have a right? If I assign my rights to whatever
7 Shirley Hammer would have against me, if I sign that
8 --- this gives a provision to assign it. I can find
9 it for you if Your Honor needs it, but it does say
10 that it's in here. Wouldn't that give a right ---
11 doesn't that show intent upon the parties that this is
12 a contract that should be able to be enforced by
13 contract law, that you should --- that the intent of
14 the parties --- that the intent of the parties as set
15 forth in Mosley was unambiguous.

16 THE COURT: Well, the receipts and releases
17 attached were ones where you released Florence Medlin
18 and Allen Medlin and they released you. Are those the
19 receipts and releases from grievances from lawsuits
20 and complaints and so forth that were?

21 MR. HAMMER: No.

22 THE COURT: If you're talking about intent of the
23 parties, are those the people you're talking about and
24 Mr. Medlin coincidentally, because he is a lawyer,
25 that's what makes its void?

1 MR. HAMMER: No, sir. I'm talking about anybody
2 involved because it says any. It doesn't say
3 Mr. Medlin.

4 THE COURT: So you're saying any could include
5 Mr. Madden ---

6 MR. HAMMER: Could include ---

7 THE COURT: Wait a minute. Since it includes an
8 attorney of record, that that makes it void.

9 MR. HAMMER: Yes, sir. Essentially, I'm saying
10 if you put into a contract. If you put into a
11 contract in any situation, you have one client, and I
12 give my client a piece of paper, and I say, look, we
13 have an agreement, and I'll --- I will --- you and I
14 have whatever agreement we have as far as our fee is
15 concerned, but here a part of this agreement is that
16 you can't bring a grievance against me, that would
17 make that void.

18 THE COURT: All right. I understand what you're
19 saying.

20 MR. HAMMER: All right. And the last thing was
21 the heirs and assigns.

22 THE COURT: Okay.

23 MR. HAMMER: That goes to show the intent also.
24 I think you understand that. If you wants me to
25 expound on that, I will.

1 THE COURT: Was the Exhibit A ever signed by
2 everybody?

3 MR. HAMMER: Exhibits A was incorporated into the
4 agreement.

5 THE COURT: Was it signed?

6 MR. HAMMER: I believe it was, Your Honor. I
7 don't see how it could not have been and not been part
8 of the contract. I don't have the --- have it.

9 THE COURT: So what you want to do is divorce
10 litigation. If you get right down to it, you want to
11 start with square one. That's what you want to do?

12 MR. HAMMER: No, I ---

13 THE COURT: On the proffer, you want to start
14 from square one. You want this agreement voided and
15 go back and start, even if she gets more, that's what
16 you want? You want this agreement to go away; is that
17 correct?

18 MR. HAMMER: I believe that under the law ---

19 THE COURT: What you want is for this to be
20 voided and ---

21 MR. HAMMER: Yes, sir, I believe that ---

22 THE COURT: That's all I wanted you to answer.

23 MR. HAMMER: Yes, sir, I believe that the
24 agreement is void and that its should be held to be
25 void and ---

1 THE COURT: All right, Mr. Hammer, my question
2 was very simple.

3 MR. HAMMER: Yes.

4 THE COURT: You want the agreement to be voided
5 and then you all would march into a family court at
6 some point in the future and have your equitable
7 division tried? That's what you want.

8 MR. HAMMER: I want it to be held voided. What
9 would happen in the future, I don't know, but I do
10 want it to be void. Maybe we would have to march in.
11 Maybe we would be ---

12 THE COURT: So all of this property, Rice Court,
13 Hollywood Street, Woodrow Street, Chateaux deVille,
14 Seabrook, 57th Street property at the Isle of Palms,
15 all of that would be back in the hopper for equitable
16 division?

17 MR. HAMMER: No, sir, if you will read the
18 contract ---

19 THE COURT: The contract doesn't exist.

20 MR. HAMMER: If it doesn't exist, that's not back
21 into the hopper. Yeah, that may be back into the
22 hopper. The value of it may be back in the hopper.

23 THE COURT: Do you still have that?

24 MR. HAMMER: No, that property was property that
25 Howard owned and property that Shirley owned. If this

1 is void, Howard would have the right to do with
2 anything that he wanted to do --- if there was void,
3 there is no contract and if Howard wanted to sell it,
4 then ---

5 THE COURT: So all of that property, if
6 considered marital property, would be subject to
7 division.

8 MR. HAMMER: If it became considered to --- yes.

9 THE COURT: Okay.

10 MR. HAMMER: If it did.

11 THE COURT: So I would assume that you haven't
12 transferred or otherwise disposed of any of that
13 property?

14 MR. HAMMER: No, she has disposed of some of
15 hers, and I disposed of some of mine. That's still
16 doesn't change --- that's not the issue.

17 THE COURT: I've got the issue. I'm trying get
18 the logic.

19 MR. HAMMER: It doesn't change ---

20 THE COURT: Ms. Lipscomb, do you have any
21 arguments on this point or would you like to save them
22 for later?

23 MS. LIPSCOMB: Your Honor, you had asked me
24 yesterday about any kind of authority for the thing
25 about a grievance being a release --- a grievance

1 being repugnant to public policy.

2 THE COURT: Were you his attorney when this was
3 done?

4 MS. LIPSCOMB: No, sir.

5 THE COURT: Well, the intent of the parties, if
6 it's evidenced that the receipts were between the
7 Medlins and Mr. Hammer --- am I missing something?

8 MS. LIPSCOMB: No. I just wanted --- you had ---
9 I had mentioned that ---

10 THE COURT: You can sit down, Mr. Hammer.

11 MR. HAMMER: I wasn't talking intent. I had just
12 said --- you had asked me if I had any case law that
13 the release of a grievance was against public policy.

14 THE COURT: Against another person's attorney.

15 MS. LIPSCOMB: Yes, sir, and the only thing I had
16 was these two cases.

17 THE COURT: All right.

18 MS. LIPSCOMB: And I have just brought those ---

19 THE COURT: It doesn't look good. I agree with
20 you there, but to the extent that I have any authority
21 whatsoever to rule on that, I'll ---

22 MS. LIPSCOMB: And ---

23 THE COURT: In the matter of David Ross Clarke
24 with an E on the end and the matter of Hanna, spelled
25 H-A-N-N-A.

1 MS. LIPSCOMB: Yes, Your Honor. I did a multi
2 state search and that was the closest that I found.

3 THE COURT: And are these opposing parties
4 attorneys?

5 MS. BALLARD: No, sir.

6 THE COURT: These are your own attorneys?

7 MS. LIPSCOMB: No, sir. These are --- it is a
8 grievable offense to require a client to release and
9 get a release --- wait a minute. It was a grievable
10 offense for an attorney to get a release from his
11 clients.

12 THE COURT: But that's --- that's ---

13 MS. LIPSCOMB: That's even in the rules of
14 professional conduct.

15 THE COURT: Ms. Lipscomb, do you have any other
16 arguments you'd like to make in support of or contra
17 to Mr. Hammer's argument?

18 MR. HAMMER: No, sir.

19 THE COURT: All right. Ms. Ballard, what I'm
20 going to be asking you to do, and I won't do it today
21 because we're finished. Or do you want to make your
22 argument today?

23 Mr. Hammer said his was going to take ten minutes
24 and that was 45 minutes ago.

25 MS. BALLARD: Mine will take five.

1 THE COURT: All right. Question ---

2 MS. BALLARD: Yes, sir.

3 THE COURT: Let's just assume we ride along
4 merrily in this case and I make decision and
5 hypothetically it's that I'm not going to touch Judge
6 Rucker's or Judge Jones' orders and as far as I'm
7 concerned those agreements are laws of the case, and
8 then the agreement ends up getting reversed because of
9 this public policy argument, what does that do to the
10 result in this case?

11 MS. BALLARD: Nothing.

12 THE COURT: Why?

13 MS. BALLARD: Because our argument in our answer
14 and counterclaim and third-party claim was that we
15 conveyed our interest in the dirt and the interest in
16 the limited partnership as a result of the resolution
17 of the family court case. I believe if the question
18 would be asked, the Supreme Court would say you can't
19 undo on any grounds a contract that's been fully
20 executed by all parties.

21 Justice Littlejohn wrote an opinion one time
22 about a construction case down at the beach. He said
23 attempting to get to the bottom of these issues would
24 be like trying to unscramble an egg and I've never
25 forgotten that.

1 That is exactly what Mr. Hammer is trying to do.
2 He wants to undo transactions that have been done and
3 gone and are over with.

4 I've got a counter claim for money damages. He
5 has a claim for money damages. That's all this is.
6 That's all this is, and if, in fact, the underlying
7 agreement and order and anything else is determined to
8 be void, it doesn't change the outcome of this case
9 one bit.

10 THE COURT: Why in the world would it be
11 enforceable for it to be an agreement that you can't
12 --- as consideration of this I promise I'm not going
13 to grieve another person's attorney. That doesn't
14 sound very good, does it?

15 MS. BALLARD: No, sir, after that was done, the
16 ruled were amended. The rules of professional conduct
17 were amended. I'm sure not if it was specifically in
18 response to this, but that portion of the rules that I
19 was just trying to find and couldn't --- that portion
20 of the rules that says it's a grievable offense to
21 threaten criminal action in order to gain an advantage
22 in a civil case was amended to also include
23 threatening a grievance in order to gain an advantage
24 in a civil case is a grievable offense, and I think
25 the Supreme Court by amending the rule and including

1 that suggested that just those type of provisions
2 should not be included in settlement agreements, but
3 the rule had not been amended at the time of that
4 settlement agreement.

5 THE COURT: Okay. Anything else that you would
6 like to say in response to Mr. Hammer's argument?

7 MS. BALLARD: Yes, sir. I was answering your
8 question.

9 I have three points I want to make, just for the
10 record.

11 THE COURT: Okay.

12 MS. BALLARD: I would point out that Mr. Hammer's
13 response filed April 4, 2012 signed on his behalf at
14 the that time by Mr. Aiken does not plead for this
15 relief. It pleads solely for dismissal of my
16 counterclaims and judgment in his favor for whatever
17 further relief the court deems appropriate. He does
18 not pray for voiding of anything.

19 THE COURT: Okay.

20 MS. BALLARD: Secondly the case law is abundant
21 that says that you cannot attempt to invalidate a
22 consent order, one that you have entered into by
23 consent. On the face of these it indicates that they
24 were all done by consent.

25 Lastly --- well, two more things. The Court of

1 Appeals did, in fact, rule, as Your Honor pointed out
2 in the opinion in Hammer vs. Hammer, they addressed
3 the Mosley vs. Mosier argument and specifically said
4 that it was an argument raised by Mr. Hammer on
5 appeal, and we --- you and I are arguing now, you and
6 I are discussing an issue relate to the 1634 case, but
7 since the motion is made on Mr. Hammer in his
8 individual capacity, the doctrine of collateral
9 estoppel applies, and while that is the law on the
10 Hammer vs. Hammer case the doctrine of collateral
11 estoppel precludes him from raising the issue in the
12 case between second parties on the same issue, so
13 that's the end of that.

14 The last point I wanted to make was that this
15 exact question, whether this May 2008 agreement is
16 void as against public policy is currently being
17 considered by the Supreme Court when the Supreme Court
18 issued its order dated September 7th, 2012, assuming
19 jurisdiction over all the pending appeals from the
20 family court.

21 THE COURT: Did a family court judge rule on the
22 public policy issue?

23 MS. BALLARD: Yes, sir.

24 THE COURT: And who was that?

25 MS. BALLARD: Judge Rucker, I believe, and

1 Mr. Hammer --- his argument was not successful. He
2 has appealed that to the Supreme Court.

3 I am not counsel of record in the domestic case,
4 but I personally went and picked up copies of the
5 briefs that Mr. Hammer has filed, and as an officer of
6 the court I can tell you he has made that arguments
7 before the Supreme Court.

8 THE COURT: Is that right, Ms. Lipscomb?

9 MS. LIPSCOMB: I have ---

10 MS. BALLARD: They were pro se briefs.

11 MR. HAMMER: Your Honor, I ---

12 THE COURT: Did you've make the argument in the
13 Supreme Court or whatever is before the Supreme Court
14 now, yes or no?

15 MR. HAMMER: I made the argument in the ---
16 there's two orders. There's a custody order and in
17 the custody order ---

18 THE COURT: Did you make it ---

19 MR. HAMMER: I made it in the custody order.

20 THE COURT: Did you make Mosley ---

21 MR. HAMMER: I made it in ---

22 THE COURT: Stop it. Did you make your Mosley
23 vs. Mosier order --- excuse me, Mosley vs. Mosier
24 argument in the family court?

25 MS. LIPSCOMB: Howard, you made it in the family

1 court and the Supreme Court.

2 MR. HAMMER: In the family court? No, we made
3 the argument that the declaratory judgment be
4 dismissed, without hearing the argument on the Mosley
5 vs. Mosier.

6 MS. LIPSCOMB: Well, I don't remember.

7 THE COURT: Is there some uncertainty on that
8 then?

9 MR. HAMMER: There is some uncertainty, yes. My
10 recollection is that the family court's dismissal of
11 our action was jurisdictional and did not --- and that
12 was not made, but I can't say that with certainty.

13 THE COURT: All right, sir.

14 MR. HAMMER: And I believe that there was a
15 collateral argument in connection with this, but I
16 believe that it had to do more with a --- with a ---
17 it was a collateral issue, I think.

18 THE COURT: Okay.

19 MR. HAMMER: I'd have to look at this --- I'm
20 just not sure.

21 THE COURT: Ms. Ballard.

22 MR. HAMMER: I know that there were eight or ten
23 orders, but I really don't ---

24 THE COURT: I'll still hearing from her. Ms.
25 Ballard, go ahead.

1 MS. BALLARD: Thank you, Your Honor.

2 I picked up copies of the initial briefs that
3 were filed by Mr. Hammer pro se, and the reason they
4 were filed by him pro se is that Ms. Lipscomb was his
5 counsel. She had moved to be relieved. The Supreme
6 Court granted that relief.

7 THE COURT: Okay.

8 MS. BALLARD: Ordered Mr. Hammer to file the pro
9 se briefs. I picked them up myself so I could see
10 what issues he had raised. He has raised this issue
11 before the Supreme Court so it's pending before them.

12 THE COURT: Okay.

13 MS. BALLARD: So for those four reasons, we
14 would urge you to deny his motions.

15 THE COURT: Mr. Hammer, any response?

16 MR. HAMMER: Just one quick response. I would
17 urge, with all due respect, the question that is not
18 before you and something that you should not consider
19 is what will happen --- what may happen in the future
20 or what the result may be of your finding a contract
21 to be inequitable and void against public policy.

22 THE COURT: If I have jurisdiction.

23 MR. HAMMER: If you --- well, the ---

24 THE COURT: If I have jurisdiction.

25 MR. HAMMER: If the question is --- that's the

1 question, and it's our argument for the reasons I've
2 given to you that you do have jurisdiction, but the
3 other issues that you raised, in all due respect,
4 they --- they are not something that --- I would urge
5 that Your Honor not consider that ---

6 THE COURT: All right.

7 MR. HAMMER: --- in making this decision.

8 THE COURT: All right. Mrs. Lipscomb, can I keep
9 Gainey? Can I keep your copy?

10 MS. LIPSCOMB: Yes, Your Honor.

11 MR. HAMMER: Your Honor, if you would like, I'll
12 look in my brief and give you the answer to that
13 Mosley issue.

14 THE COURT: No, I think I've heard enough today.

15 MS. BALLARD: Your Honor, we rest our case.

16 THE COURT: You're not going to call
17 Mr. Covington?

18 MS. BALLARD: We're not going to call
19 Mr. Covington.

20 THE COURT: All right. We'll begin at 9:30
21 tomorrow.

22 MS. BALLARD: May I inquire who is testifying
23 tomorrow? The witness list ---

24 THE COURT: Mr. Hammer, it will be your next
25 case. Who will you be calling other than yourself?

1 MR. HAMMER: Your Honor, is there a reply in this
2 case?

3 THE COURT: Well, we are in the 1634 case.
4 Ms. Lipscomb has rested. Ms. Ballard has now rested.
5 As the third party defendant, you will be next.

6 MR. AIKEN: It's your defense case on the
7 counterclaim, Howard.

8 THE COURT: In other words, who are you going to
9 be --- you mentioned earlier that you would be taking
10 the stand again and perhaps call the domestic
11 attorney, Mr. Madden, back.

12 MR. HAMMER: And I'm not going to call Mr. Madden
13 back. After our decision today, I don't believe
14 there's any ---

15 THE COURT: Will somebody let him know that?

16 MS. BALLARD: I'll call him right now.

17 THE COURT: Okay.

18 MR. HAMMER: I'm a little brain dead right now.
19 I was somehow thinking that I would ---

20 THE COURT: Typically I don't make people tell
21 the other side who their witnesses are going to be,
22 but do know how many you're going to have, Mr. Aiken,
23 do you have any idea as an impartial observer?

24 MR. AIKEN: I would imagine that it's probably
25 going to be Mr. Hammer.

1 MR. HAMMER: I think so, Your Honor, and there
2 may be --- I believe there may be one other --- it ---
3 there may be one other witness. There may be some
4 deposition testimony that I want to ---

5 THE COURT: So what will happen in the morning,
6 Ms. Lipscomb, to make sure the record is clear is note
7 for the record any motions that you want to make for a
8 non-suit with regard to her claims.

9 MS. LIPSCOMB: Yes, Your Honor.

10 THE COURT: So we'll do that tomorrow. I will
11 note for the record at that time the motions are made
12 and also for you, Ms. Ballard, at the close of your
13 evidence.

14 MS. LIPSCOMB: We're going to ultimately make
15 them later or make them in the morning.

16 THE COURT: I will note now they have been made.

17 MS. LIPSCOMB: I see.

18 THE COURT: But I have learned a long time ago
19 not to try to figure out what that rule meant about
20 the close of all the evidence when you have
21 third-party defendants.

22 THE COURT: Okay. So it will be Mr. Hammer and
23 who else?

24 MR. HAMMER: There may be one --- I don't know
25 who the other witness will be right now, Your Honor.

1 I have to discuss it ---

2 THE COURT: Okay.

3 MR. HAMMER: --- and see what...

4 THE COURT: Okay. Thank you. I'll see you
5 tomorrow.

6 MS. BALLARD: What time tomorrow?

7 THE COURT: 9:30.

8 MS. BALLARD: Thank you, Your Honor.

9 MR. HAMMER: Your Honor, may I say one thing to
10 you? Trouble you?

11 THE COURT: With the other lawyers present.

12 MS. BALLARD: Is the court reporter supposed to
13 be taking this down?

14 THE COURT: No.

15 (WHEREUPON, court was adjourned for the day and
16 there was an overnight recess.)

17 THE COURT: All right. When we broke yesterday,
18 you had rested, correct?

19 MS. LIPSCOMB: Yes, sir.

20 THE COURT: Mr. Hammer?

21 MR. HAMMER: I believe Ms. Lipscomb had a matter.

22 MS. LIPSCOMB: I did decide after Mr. Hammer's
23 motion, to join in his motion on behalf of 1634 that
24 the agreement was void.

25 THE COURT: All right. Because of the ---

1 MS. LIPSCOMB: Grievances.

2 THE COURT: --- matter of releasing all
3 grievances?

4 MS. LIPSCOMB: Yes, Your Honor.

5 THE COURT: Okay.

6 MS. BALLARD: And I wanted to let the court know
7 we did receive a phone call from Mr. Covington last
8 night. He said he was so sorry that he wasn't here
9 yesterday, but could be here today, but I told him I
10 had already rested my case and released him from the
11 subpoena.

12 THE COURT: Okay. All right, Mr. Hammer, you can
13 call your first witness.

14 MR. HAMMER: Your Honor, in order to --- I want
15 to make sure, if I may, that I understand the ruling
16 that you made. I understood that you ruled the
17 matters in the family court were irrelevant to this
18 action.

19 THE COURT: I haven't made any ruling about
20 whether or not they're irrelevant. The family court
21 proceeding, if I conclude that it is the law of the
22 case, I'm not going to find that it's irrelevant.

23 MR. HAMMER: I'm sorry. The allegations made
24 that there was abuse because of the family court
25 proceedings.

1 THE COURT: Well, as I --- sometimes lay
2 witnesses don't --- like, for example, if a lay
3 witness doesn't understand what negligence, damages
4 and proximate cause means, that doesn't necessarily
5 defeat her claim, but as I interpret her testimony on
6 abuse of process, Mrs. Hammer said that it was
7 everything. She was tired of everything that you've
8 been doing with regard to the actual pleadings.

9 Absent any amendment, I'm governed by what the
10 pleadings say the abuse of process claim is as long as
11 there is evidence in support of those allegations. In
12 other words, if she had alleged in her abuse of
13 process claim that it is also the bringing of this
14 action, the 1634, or the bringing of the Howard Hammer
15 vs. Shirley Hammer action in that other case, the fact
16 that she testifies about whether it's everything
17 really doesn't make any difference to me. It's what
18 all of the evidence would tend to prove if anything.

19 Does that make any sense?

20 MR. AIKEN: Yes, sir.

21 THE COURT: And I certainly have been listening
22 very carefully, and I have some significant questions
23 about many of the claims as far as proof is concerned.
24 For example, it's going to be a fine line that all of
25 you are going to be dancing on this conversion. I

1 don't know if there is anything to convert.

2 I don't know if there has been a breach, excuse
3 me, an intentional interference with the contract, one
4 of the things she has to prove is breach. I don't
5 know whether --- unless there's a closing argument to
6 the contrary, I don't see where the underlying real
7 estate contract has been breached. Likewise, you, on
8 the conspiracy, have testified --- well, since all the
9 testimony on that is not in, I'm not going to comment,
10 but there are some interesting points for a fact
11 finder to consider on the conspiracy, and everybody is
12 going to be kind of tap dancing on that. It's will
13 be interesting for me to listen to.

14 All right. You can call your --- yes, sir.

15 MR. AIKEN: May I speak with Mr. Hammer for just
16 one moment?

17 THE COURT: Yes, sir.

18 MS. BALLARD: Your Honor, I would like to inquire
19 while they're speaking, are you going to want closing
20 arguments in lieu of --- what I was going to request
21 is the opportunity to submit proposed findings.

22 THE COURT: I think that would be the best use of
23 everybody's time because we've been here so long.

24 MS. BALLARD: I think so, too.

25 THE COURT: We'll deal with that.

1 MS. BALLARD: All right. Thank you, Your Honor.
2 I mean, I'm ready to make closing statements, but I
3 think it might be more useful to do it in the form of
4 a proposed order.

5 THE COURT: At this point, I tend to agree with
6 you, but we'll see what happens.

7 MS. BALLARD: Thank you, Your Honor.

8 THE COURT: Mr. Hammer, would you like to call
9 your first witness?

10 MR. HAMMER: I'm it, Your Honor.

11 THE COURT: Has he testified in the 1634 case
12 yet?

13 MS. BALLARD: Yes, sir.

14 THE COURT: You are under oath, Mr. Hammer, have
15 a seat.

16 HOWARD HAMMER,
17 having previously been sworn, testified as follows:

18 THE WITNESS: Just to clarify from my own
19 understanding, I've testified in the 1634 case on
20 behalf of 1634. I'm now testifying in 1634 on behalf
21 of the counterclaim or cross --- claim brought against
22 me personally.

23 THE COURT: Yes. Yes, sir, and I understand
24 there may be some overlaps, so I'm not worried about
25 that.

1 THE WITNESS: Do you want me to state my name
2 again for the record?

3 THE COURT: No, sir. That's okay.

4 THE WITNESS: Okay. Thank you.

5 DIRECT EXAMINATION:

6 MR. HAMMER: Would one of y'all hand me up the
7 pleadings for 1634 from my --- I'm sorry. I didn't
8 bring that up with me.

9 MS. LIPSCOMB: Do you want the summons and
10 complaint or the reply?

11 THE WITNESS: Yes, both if you don't mind so I
12 know exactly --- so I can try to limit my testimony.

13 (Pause.)

14 THE COURT: All right. Mr. Hammer, you can go
15 ahead.

16 THE WITNESS: Thank you, Your Honor.

17 Your Honor, as to the abuse of contract --- abuse
18 of process matters, may I reply as follows: That any
19 actions that were brought in this case were brought in
20 good faith.

21 They were brought by 1634 Main L.P. I was
22 brought in as a --- an additional defendant. I did
23 not bring the 1634 Main case. I realize that
24 Mr. Turbeville initially said that I had spoken to him
25 and asked him to bring in the case.

1 It's my recollection that upon cross-examination
2 of my --- by Ms. Lipscomb, he stated that I had told
3 him about the problem and had asked him to see a
4 lawyer. I may not be stating it right, but that I had
5 not officially asked him to bring the case, and that I
6 even got up and spoke --- and said, is it my
7 understanding that you misspoke. I think I used the
8 words misspoke when you said I asked you to bring the
9 case. It was my understanding that he said yes.

10 Regardless of what he said or didn't say whether
11 my understanding was correct or not, I did not ask him
12 to bring the case. I was informed of the situation,
13 and I asked him to speak with Ms. Lipscomb about
14 bringing the case because I felt as though it would be
15 a matter that may ultimately involve me, and I had
16 agreed to give --- I knew I was going to agree to give
17 a confession of judgment.

18 I thought it more appropriate for him to get
19 advice from Ms. Lipscomb and to decide whether or not
20 to bring the case.

21 Ms. Lipscomb is a lawyer of high regard in this
22 state. I don't think that she needs to get up here
23 and testify that she would not have brought an action
24 that she did not think had merit. I do not think that
25 she would --- that anybody would accuse her of

1 bringing on action that did not have merit. She is
2 listed as one of the top lawyers in the State.

3 She is well regarded. I don't know whether ---
4 don't know if you know her reputation, but I think you
5 would find among the judges and among her peers, there
6 is no question about her ethical standards. She
7 adheres to the highest ethical standards, and she
8 would not have brought a case unless she thought it
9 was well founded, so the case was not brought for any
10 malicious process --- purpose.

11 It was brought because the parties apparently had
12 a --- did not have a meeting of the minds, based on
13 all the testimony we've heard, because it was my
14 understanding that Shirley had, in 2005 and 2006,
15 confirmed by her own signatures on the e-file form
16 that she had read them.

17 I leave the credibility to whether or not she
18 read them and relied upon me in 2007, after she had
19 already brought two actions against me, two criminal
20 actions. Would you rely on someone that you had
21 brought two criminal actions against when you had
22 Mr. Medlin as your agent?

23 So I suggest that she wasn't relying on me. I
24 suggest that she did read them herself. I suggest
25 that she had them both --- or my testimony is that she

1 read them both, that the evidence shows that she read
2 them both.

3 I don't mean to be making argument, I'm sorry.
4 My testimony is that she read them both as proved by
5 her signatures.

6 That being the case, when 2008 came along --- and
7 she also stated that regardless that she had put it
8 into my hands to make that determination.

9 Now, even if she did not know and she had not
10 seen, she had --- she has testified to this court,
11 this is part of my reply, that she had wanted me to
12 work it out, made me her agent to work it out.

13 I would not have gone through and worked it out
14 without explaining it to her, and I explained it to
15 her and she read it. She knew that she had 52 percent
16 and she knew that she was supposed to transfer the
17 deed.

18 In 2008, at that point, I didn't go down to the
19 courthouse and check to see whether she had done the
20 deed because in 2005 is when it occurred, and in 2005,
21 we were still husband and wife.

22 She signed it a little after the separation, but
23 when it occurred, we were still husband and wife. I
24 didn't bother to go down to the courthouse and look at
25 the deed. I didn't ask her whether she filed the

1 deed. I didn't remind her.

2 I took it what our agreement was, was taken care
3 of. As it turned out, when we came to the agreement
4 in 2008, she was under --- as she has testified, a
5 mistake --- a mindset, that she only owned 8 percent,
6 that she only had 8 percent.

7 I was under the mindset that she owned 52 ---
8 that she had 52.8 percent. If, in fact, we were under
9 different mindsets and those different mindsets were
10 caused by a legal failing, then there would be a
11 mutual mistake of fact.

12 THE COURT: Well, this is a legal argument you're
13 making.

14 THE WITNESS: I'm saying this would be my ---
15 well, maybe it's --- I'm saying it's partially legal,
16 and I guess it is partially legal, but I would say
17 that I was under a mutual mistake of fact personally
18 in connection with the assigning of the agreement and
19 Your Honor would have to take that into consideration,
20 I would urge, in view of the --- it would be --- I
21 also argue that the agreement said that this is
22 enforceable by law.

23 I would argue --- I would testify that if the
24 agreement was enforceable by law, it was my
25 understanding that I would have the right to a

1 contract action.

2 Therefore, I would have the right of a contract
3 action and a mutual mistake of fact for the other ---
4 not only for that, but for the legal reasons I've
5 given you.

6 So, the whole body, the whole totality of
7 circumstances, I would testify, is that (A) there was
8 no --- there is no --- we did not bring --- we had no
9 intention of bringing an action against Mrs. Hammer
10 for any illegitimate, any illegal purposes.

11 I confirmed Mr. Turbeville's testimony that he
12 told me this needed to be done in order to rent it. I
13 confirmed that I felt as though I had an obligation to
14 get it rented, or try to get it rented, because we had
15 problems.

16 I confirmed that for that reason, I knew that
17 something had to be done. I confirmed that I did ask
18 him to speak with Ms. Lipscomb or some lawyer about
19 getting it done. I confirmed that he did do that.

20 I deny that I told him to bring the action. I
21 told him, as he later testified when he said that he
22 had misspoke, that I told him to see Ms. Lipscomb and
23 that a determination was made by Ms. Lipscomb.

24 THE COURT: So you suggested to him which lawyer
25 to go to?

1 THE WITNESS: I don't recall. I think that ---
2 no, I do recall. I asked him to get a lawyer, and I
3 think I asked him to get a lawyer in connection with
4 that and in connection with the lawsuit against --- he
5 pointed out that we didn't have some --- there was a
6 period of time where we didn't have some rentals. I
7 stick by my testimony that I finally gave the last
8 time about Mr. Hawkins, but initially, I told him to
9 please find a lawyer to bring all of this.

10 He had relayed to me after that that he could not
11 by himself find a lawyer. He tried one in Rock Hill.
12 I had suggested him going to Rock Hill, out of the
13 State.

14 MS. BALLARD: Your Honor, I object to the
15 hearsay.

16 THE COURT: He is just saying what he suggested.

17 MS. BALLARD: He said what Mr. Turbeville said.

18 THE COURT: Okay. Well, I don't think that's
19 offered to prove the truth of it.

20 Just go ahead and continue.

21 THE WITNESS: The bottom line, my state of mind
22 was that he could not find a lawyer. I think at that
23 point, I suggested --- my suggestion was why don't you
24 discuss it with Ms. Lipscomb. I knew that she was a
25 commercial lawyer among other.

1 THE COURT: Was she also your attorney at the
2 time in the domestic litigation?

3 THE WITNESS: Yes, she was my attorney at the
4 time in the domestic litigation. That is one of the
5 reasons I knew she was a good lawyer, that she would
6 be an ethical lawyer, that she would not take this on
7 unless she felt there was an ethical --- unless she
8 thought she could ethically do it, and I left it to
9 them to work it out.

10 The agreement, the representation agreement was
11 signed not by me, but by --- but between Mr.
12 Turbeville and Ms. Lipscomb.

13 When questions were asked about what had
14 happened, I gave answers, but I did not participate in
15 the --- whatever they may have done. I was not a full
16 participant, so as to the abuse of process, that was
17 not brought with any malicious motive --- it was
18 brought --- it was brought because of the need for the
19 building.

20 I do not understand the --- as I understand Your
21 Honor's rulings, and if I am correct then I don't need
22 to go into this --- if I understand Your Honor's
23 rulings, I don't need to speak to the actions in the
24 family court.

25 THE COURT: That's up to you. I want you to

1 testify completely, however you want to testify.

2 I haven't examined the pleadings in detail. I
3 haven't made any decision about whether or not all of
4 that is pertinent to the scope of what their claim is.

5 THE WITNESS: All right.

6 THE COURT: So you can talk about all of that.

7 THE WITNESS: As to that, I appeared in June ---
8 I was --- Mr. McLaren was my lawyer, and as far as
9 the --- and it's hard to keep it apart, so let me go
10 back.

11 There was a May 2008 settlement agreement. A
12 year later, in between that year's time, there was an
13 order that said that there had to be a new status
14 court order and said there had to be a new action
15 brought for custody. Notwithstanding that order,
16 Mr. --- in June of 2009, we had a hearing on the
17 custody matter, which is not an issue here but ---
18 which has gotten confused a little bit.

19 On the custody matter, the only thing I did ---
20 well, Mr. McLaren felt that his obligation, because he
21 had entered into the agreement, was to try to
22 straighten out the agreement.

23 I don't know how you straighten out an agreement
24 where there is a misunderstanding of terms and not a
25 meeting of the mind, and I said I don't think that's ...

1 the case, and he said, well, you will have to file a
2 pro se motion on that, and so I filed one pro se
3 motion, Howard Hammer, one pro se motion to rescind
4 the custody agreement, to rescind the custody
5 agreement, which is not before you, because it too had
6 a clause in it that was, on his face, against public
7 policy, and I moved to rescind that, and I moved to
8 rescind that on the meeting of the minds. That's all
9 that I ---

10 THE COURT: Just for that reason.

11 THE WITNESS: For those two reasons. The custody
12 agreement, not ---

13 THE COURT: What was the problem with the meeting
14 of the minds?

15 THE WITNESS: The problem with the meeting of the
16 minds was after we had the agreement --- it gave me a
17 certain number of --- it gave me my four weeks in
18 addition to my weekends. My weekend started on Friday
19 at ---

20 THE COURT: Okay. So there was some question of
21 computations on visitation.

22 THE WITNESS: A question of computation and how
23 it started.

24 THE COURT: Okay.

25 THE WITNESS: And it came up immediately. During

1 my first visitation, Mrs. Hammer refused to allow me
2 to have the children on Thursday when my weekend
3 started. She said I would have to wait until Sunday
4 even though it said my visitation was Sunday to Sunday
5 and keeping in mind that she had custody, I had
6 visitation, so my visitation was Sunday to Sunday, but
7 they were in addition to ---

8 THE COURT: Okay.

9 THE WITNESS: She said no, I'm not giving them to
10 you on Thursday. I already had plane tickets to go
11 out of town. I realized, well, she and I don't have a
12 meeting of the minds on this, and I filed the --- I
13 didn't have anybody in my office to help me. We
14 were --- I believe we went out of town anyway.
15 Mr. McLaren arranged it. I had to leave three days
16 late, two days late, whatever it was. I realized that
17 we did not have a meeting of the minds, and I moved to
18 rescind, because no order had been filed at that time.

19 THE COURT: All right.

20 THE WITNESS: It was my understanding of the law
21 of Ford vs. The Ethics Commission that a judge can
22 change his mind, that an order becomes an order when
23 entered. No order had been entered. I filed my
24 motion. That was the only matter that I appeared pro
25 se.

1 I thereafter filed a --- there was --- he denied
2 it.

3 THE COURT: Well, your status as pro se has
4 nothing to do with abuse of process. Abuse of process
5 can be committed by a party even they have counsel.

6 THE WITNESS: I understand that and that's what
7 I'm getting to next. All the rest of the matters were
8 filed by attorneys. They were filed by attorneys who,
9 I believe that Mr. McLaren run may have filed one, but
10 again, Ms. Lipscomb filed the rest. Ms. Lipscomb sat
11 in her office before she filed anything with me,
12 before she did anything. She took her computer and
13 she looked through the law and determined whether or
14 not this was a legitimate action.

15 She did not file anything until she had
16 researched the law and until she had looked at the
17 rulings and she had decided that the reasons the
18 rulings were improper. They had to do with
19 jurisdiction. They had to do with many other matters.
20 She filed all of those based on that, and I have --- I
21 can testify that there is no question that she filed
22 them according to the ethical rules, that she did not
23 file anything that she felt was unethical.

24 I asked her to file things, other things. She
25 said, no, I'm not filing these things. She made a

1 determination of things to file based upon study,
2 based upon a good faith belief that these matters were
3 appropriate for filing.

4 The matters of the filing amount to about five or
5 six when you pare them down, questions on appeals, and
6 these appeals magnified because there are 59(e) orders
7 which doubled the amount because I think there were
8 appeals on the bottom and appeals on the top on both
9 of them.

10 In any event without going through all of that,
11 there really are only about five or six issues that
12 Ms. Lipscomb had filed on and not one of those issues
13 is not a legitimate issue. They've been turned over
14 to me now. Ms. Lipscomb could not afford to be --- to
15 stay in the case, and some time around the middle of
16 September, she was relieved because I couldn't
17 continue to pay her for the appeal.

18 We had all of these appeals consolidated and I
19 had about --- I think I had 15 days to get a
20 voluminous record of two or three or four boxes from
21 Ms. Lipscomb after the first order from the Supreme
22 Court saying that I had abused the system. I don't
23 know how I could have abused the system because I
24 relied on my counsel, and I only appeared twice, so I
25 don't understand that. I don't think that I could

1 have done that.

2 THE COURT: All right. Let's move on from the
3 family court. I understand your --- well, let me back
4 up. Since this is not a legal argument, and it's
5 testimony --- well, I take back what I just said. You
6 can just continue.

7 THE WITNESS: All right. Anyway, I filed those
8 briefs, and I likewise looked into the questions that
9 Ms. Lipscomb had raised, and I'm convinced from a
10 personal standpoint, otherwise I would not have
11 followed through, I dropped some of them because I
12 thought that there's only so much you can present and
13 hope to make a presentation to the Supreme Court and
14 so some of those were not followed through.

15 In answer to your question yesterday about did I
16 raised Mosier vs. Mosley, I saw in my brief, and I
17 didn't read through it completely, I did speak to it.
18 I didn't get an opportunity because I was rushing
19 again this morning, but I didn't get an opportunity
20 in my brief.

21 I did speak to it, but as I said, it was my
22 recollection that it was a collateral matter on that.
23 So whether or not I spoke to it, it is still an issue
24 in this case, and whether it is an issue in this case
25 or not, it brings to the point of whether --- there is

1 at least a question, and that is another --- that it
2 shows good faith that these were not filed
3 maliciously. In connection with the actions that were
4 filed in family court, I don't have the exact listing,
5 but they're in Mrs. Hammer's deposition, and I believe
6 that she filed somewhere close to 12 to 18 motions
7 against me for all types of things, for bringing the
8 children back 15 minutes late, for spanking the boy
9 when --- spanking my oldest son one time because he
10 wouldn't respond to anything else, and he has a
11 defiant personality, and it worked. He stopped being
12 defiant, and when I spanked him, I spanked him with
13 his jeans on. I spanked him. It hit (indicating)
14 less than that, and she brought an action against
15 that.

16 There were all types of actions that she brought
17 that in, all due respect, I don't know --- I
18 understand she is not a lawyer, but her lawyers
19 brought, and I guess with her agent decided to bring
20 these myriad of actions.

21 The main action that she brought against me was a
22 huge rule to show cause, which went over all of these
23 things that she has complained about, making ---
24 harassing her and everything else and the judge found
25 that I was not in contempt, but yet held, but yet

1 assessed attorneys fees against me without determining
2 my financial status, and that is on appeal, just to
3 give you an example of matters that are on appeal.

4 So, as to the abuse of process, I hope I've
5 covered that. I don't know what any other abuse of
6 process that they are speaking to because those are
7 the only the ones that I've heard. I didn't hear
8 definitely what they're talking about. It was never
9 --- I never heard testimony that said the abuse of
10 process was this action brought at this time. It was
11 --- there was no specifics, so I'm trying to cover
12 whatever it may be. That's my reply to the abuse of
13 process action.

14 In connection with the matter of --- with the
15 matter that Ms. Ballard brought up and entered into
16 evidence concerning the --- my obsession with my wife,
17 I offer --- I identify this document and ---

18 THE COURT: It has to be marked.

19 THE WITNESS: Will you mark it, please.

20 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked
21 for identification only.)

22 THE COURT: All right. Would the lawyers like to
23 look at this?

24 MS. BALLARD: It's been marked as what?

25 THE COURT REPORTER: Plaintiff's No. 3.

1 THE COURT: Well, he's the third party defendant
2 now. Are you talking about in the original case?

3 THE COURT REPORTER: Honestly, I don't know how
4 else to do it. I mean, I only have plaintiff's and
5 defendant's, I think it's going to be more confusing
6 the way he is the plaintiff and defendant. I will
7 mark it any way you like.

8 MS. BALLARD: Your Honor, we have objections to
9 this.

10 THE COURT: You do?

11 MS. BALLARD: We do, yes.

12 THE COURT: All right. Would you like this
13 exhibit back to identify it?

14 THE WITNESS: Yes.

15 THE COURT: It is a letter to the commission on
16 lawyer conduct from University Specialty Clinics,
17 specifically Clyde H. Flanagan, Jr. MD.

18 All right. You can continue and then the lawyers
19 may have objections.

20 Hand that back, please.

21 Okay. Go ahead.

22 THE WITNESS: The court order that Ms. Ballard
23 referred to ---

24 THE COURT: You're talking about the Supreme
25 Court order?

1 THE WITNESS: The Supreme Court order, she
2 specifically brought out the fact of obsession with my
3 wife.

4 Dr. Flanagan is a professor of clinical
5 psychology at the University of South Carolina, has
6 been so for over 20 years. He is a member of the
7 North Carolina Psychoanalytic Society and Institute.

8 THE COURT: Are you offering that letter?

9 THE WITNESS: I'm talking about --- I want to
10 give an introduction to him, and then I will make an
11 offer, yes, sir.

12 THE COURT: Are you offering him as an expert?

13 THE WITNESS: No, sir. I'm offering the letter,
14 but I want to give --- I want to say what, who he is.

15 THE COURT: Okay. Go ahead.

16 THE WITNESS: He holds a --- he's board certified
17 in six areas.

18 THE COURT: Do you have that --- is that in the
19 letter or do you know it from some source?

20 THE WITNESS: I know it from some source, and I
21 know it from the letter.

22 THE COURT: Okay. Is that not hearsay, what his
23 expertise is?

24 MS. BALLARD: Your Honor, I think this whole
25 letter is ---

1 THE WITNESS: I don't think that if I know for a
2 fact that this is his expertise that it's my ---

3 THE COURT: How did you learn that?

4 THE WITNESS: There are plaques on his wall.

5 THE COURT: Is that not hearsay? Is that --- do
6 you have any objection to this?

7 MS. BALLARD: Your Honor, I do. I was trying not
8 to make the objection prematurely. I believe the
9 whole letter is hearsay, including the recitation of
10 the doctor's background.

11 Ms. Lipscomb and I discussed the question of
12 whether or not that's a public record, and it's not.
13 Monitoring files pursuant to Commission of Lawyer
14 Conduct are not public files. The letter itself is
15 hearsay.

16 Certainty Mr. Hammer had the opportunity to bring
17 this witness and chose not to do so, so we would
18 object to the introduction of the letter or to the
19 recitation of any of the information contained in it.

20 THE COURT: Ms. Lipscomb, do you have any
21 objection?

22 MS. LIPSCOMB: No, Your Honor.

23 THE COURT: Of course, I have to --- he has the
24 right to make an offer of proof.

25 MS. BALLARD: Yes, sir.

1 THE COURT: And I have to determine whether or
2 not I will consider in the end. With that caveat, you
3 can continue, Mr. Hammer.

4 THE WITNESS: May I just hand the letter to you
5 as the offer of proof.

6 THE COURT: Yes, sir.

7 THE WITNESS: Rather than go through what I've
8 gone through.

9 THE COURT: All right.

10 THE WITNESS: And I'll just let you read the
11 letter, Your Honor, and determine whether or not
12 you're going to...

13 MS. BALLARD: Madam Court Reporter, what was the
14 date of that letter?

15 THE COURT: It's March 21, 2012.

16 MS. BALLARD: Thank you.

17 (Pause.)

18 THE COURT: All right. Go ahead, Mr. Hammer.

19 THE WITNESS: Your Honor, it is my understanding
20 that it is a public record. I have ---

21 THE COURT: Well, that's a legal argument.

22 THE WITNESS: I understand.

23 THE COURT: If you want to respond as counsel to
24 her objection, that's one thing. If you're going to
25 testify, I need to know which one you're doing.

1 THE WITNESS: I guess I need to respond. Maybe I
2 should stand up.

3 THE COURT: No. That's fine. You can stay
4 seated, wherever you're more comfortable.

5 THE WITNESS: It is my understanding, and I'm not
6 an expert in the field, but I have consulted in order
7 to receive that information that this is a public
8 record. It's part of the requirements of the order.

9 It is filed publicly in the Office of
10 Disciplinary Counsel. I have received no notice that
11 it is --- that it is --- that it is confidential.

12 I have seen --- I'm not an expert in that field,
13 but I have seen nothing, and I have consulted with
14 someone who does work in that field, and I am told
15 that this is a public record.

16 THE COURT: So it's admissible for what purpose?

17 THE WITNESS: It's admissible as a public record.

18 THE COURT: For what purpose?

19 THE WITNESS: To refute ---

20 THE COURT: To prove or disprove what?

21 THE WITNESS: To refute the --- to refute the
22 allegation that was made by the --- I guess, the
23 plaintiff or the third --- or by Shirley Hammer on the
24 question of my obsession with Shirley Hammer and to
25 refute --- to show that even the Supreme Court

1 sometimes makes an error.

2 The Supreme Court, based upon --- based their
3 view on their view of whatever it was. This is a
4 doctor saying that my obsession --- that I have an
5 obsessive compulsive personality. That's different
6 than O.D.C. (sic), that's different than --- a
7 personality disorder --- a personality and obsessive
8 compulsive disease --- a person who has obsessive
9 compulsive disease is one who turns on and turns off
10 the water who can't ---

11 THE COURT: Well, you're not an expert in that.

12 THE WITNESS: Well, I've read --- I'm --- this is
13 a legal argument and I think that .

14 THE COURT: So this is a legal argument?

15 THE WITNESS: This is a legal argument; that
16 there are differences in O.D.C. ---

17 THE COURT: It's O.C.D.

18 THE WITNESS: --- in O.C.D and O.C.D personality.
19 Everybody has a personality. Generally people who are
20 heads of companies, who are in positions of high
21 power, who are judges, who are lawyers, who are
22 accountants, they want things in an orderly fashion,
23 and that is an O.C.D personality, obsessive compulsive
24 personality.

25 Mine relates to my desire to see that my work

1 habits ---

2 THE COURT: So are you testifying now? And I
3 need to know because I want to make sure the record is
4 protected.

5 THE WITNESS: Well, I am repeating what's in
6 there.

7 MS. BALLARD: And I need to reply to his legal
8 argument.

9 THE COURT: Sure.

10 THE WITNESS: No, this is the legal argument.
11 The --- the --- the document shows that a highly
12 qualified, if not one of the most qualified doctors in
13 this area in all fields has said and determined in
14 reply to the Supreme Court that my O. --- that my
15 personality, my obsessive personality is limited ---

16 THE COURT: To your work habits.

17 THE WITNESS: Yes, to my work habits and has
18 nothing to do with my wife.

19 THE COURT: All right.

20 MS. BALLARD: May I reply, Your Honor?

21 THE WITNESS: So that's the purpose of that. The
22 purpose of that is because there was some under
23 current or implication that I assumed that this ---
24 that the allegation of an obsession with my wife
25 somehow related to the abuse of process.

1 THE COURT: All right. Go ahead, Ms. ---

2 THE WITNESS: And so it's for that reason.

3 MS. BALLARD: Thank you, Your Honor. As we
4 discussed on Monday, Mr. Hammer has not responded in
5 any way to discovery and has produced no documents
6 whatsoever, so this is the first time I've seen this
7 document.

8 It is not a matter of public record. It is
9 classic hearsay, and we object to its introduction for
10 all those reasons.

11 THE COURT: All right. Anything, Ms. Lipscomb?

12 MS. LIPSCOMB: Nothing, Your Honor.

13 THE COURT: Is this letter not hearsay,
14 Ms. Lipscomb?

15 MS. LIPSCOMB: Your Honor, I think it ---

16 THE COURT: It's offered to prove --- it's an
17 out-of-court statement offered to prove the truth of
18 the matter asserted.

19 MS. LIPSCOMB: I did not realize that --- I defer
20 to whatever the rule is or the law is. I did think it
21 was a public record. I did think it was something
22 that was sent to the --- I thought he was required by
23 the court to send periodic status reports, and I don't
24 know whether they are supposed to be confidential or
25 not, but if it's a public record, I think it's

1 admissible.

2 THE COURT: If it's a public record, is not
3 everything else in that file a public record and
4 something that I should see if a party offers it even
5 on rely?

6 MS. LIPSCOMB: If you should see the whole
7 record?

8 THE COURT: Right.

9 MS. LIPSCOMB: I don't know. I've never seen the
10 whole record.

11 THE COURT: In other words, if he wants this in,
12 he better be prepared for everything else to come in,
13 because I don't know what else there is out there.
14 Ms. Ballard may want to offer the whole O.D.C. file.
15 That's not the O.C.D. file, it's the O.D.C. file.
16 I'll reserve judgment on that, but I haven't seen any
17 evidence --- excuse me, I haven't seen any authority
18 for the proposition that this document is a public
19 record that would fall within an exception of the
20 hearsay rule.

21 You can tell me what your problems are.

22 THE WITNESS: Okay.

23 THE COURT: But this having --- frankly, as far
24 as any persuasion, I don't know whether this helps you
25 or not because whether or not someone has obsessive

1 compulsive personality trait that affects only work
2 habits and details involved in your work, the fact
3 that the Supreme Court used the words "obsessed with
4 his ex-wife" does not denote to me that they are
5 giving it any medical diagnosis. They're just making
6 an observation and a finding that you are obsessed
7 with her. I would assume --- to me that would be in
8 layman's terms. I don't know.

9 THE WITNESS: I assumed that it was in --- in ---
10 in --- in ---

11 THE COURT: A medical sense?

12 THE WITNESS: A medical sense.

13 THE COURT: Well, the Supreme Court is --- they
14 are pretty wise people, and they did not say that
15 Mr. Hammer has been diagnosed as being obsessed. It
16 didn't say that.

17 What I read was that they made a finding that you
18 are obsessed with your ex-wife.

19 THE WITNESS: Well, then let me speak to that.

20 THE COURT: All right.

21 MS. BALLARD: Is this testimony now, Your Honor?

22 THE COURT: This is testimony now and right now
23 Mr. Hammer, I'm going to sustain the objection to
24 hearsay. I've written a note on there that that's for
25 ID.

1 THE WITNESS: I ---

2 THE COURT: I don't doubt and certainty applaud
3 any assistance that you may have received from mental
4 health professionals, but that letter is hearsay.

5 THE WITNESS: I'll withdraw the letter then in
6 order to avoid any confusion on it and any further
7 problems with it.

8 THE COURT: All right.

9 MS. BALLARD: Your Honor, I have just sent for
10 the chairman from the Commission of Lawyer Conduct to
11 authenticate the letter, but since he has withdrawn
12 it, let me tell her I don't need him.

13 THE COURT: Okay. Go ahead, Mr. Hammer.

14 THE WITNESS: Your Honor, I am not obsessed with
15 my former wife. I have not spoken to my former wife
16 except casually, I think, at one ball game about a
17 problem with my son, in maybe over a year. When I
18 call my sons, which I have a right to do over my ---
19 on the custody agreement --- I call, the number goes
20 to her number, and I usually don't get an answer. I
21 have a file this thick, why didn't you answer, but I
22 don't think --- I didn't bring that in. I've called,
23 and I've called, and I've called, and I don't get an
24 answer. That's a matter that will be taken up in the
25 family court.

1 I'm unable to speak to them. I haven't spoken to
2 them in two or three weeks. Now, they don't call me.
3 I've asked them to call me. They are children, and
4 the agreement says that I have should have --- the
5 agreement from the very first day, and I found this to
6 be a problem from the first --- from September 5th,
7 2005. I'm not able to speak to them on the telephone.

8 When they were younger, it didn't make any
9 difference, but now that they're older, I'd like to
10 know what they're doing in school. I'd like to know
11 what's happening. I don't get to speak to them.
12 Shirley doesn't answer the phone.

13 And this is to my state of mind. The boys say
14 that she is not answering the telephone calls from me.
15 She won't answer any telephone calls from me. She
16 doesn't want to speak to you.

17 I think that you'll see in that letter that was
18 introduced that I have offered to go to counseling,
19 that I think the only way to get --- the only way ---
20 when you have children, regardless of whatever else
21 your problems may be, you put those problems aside,
22 and you put the children in the forefront.

23 You don't say I'm not going to speak to you
24 because you brought me lawsuits --- because you
25 brought lawsuits against me. That's put aside.

1 Whatever those feelings are, you go in and you say
2 those lawsuits are one matter, but our children are
3 another matter, and we need to speak about their
4 education. We need to speak that the problem that the
5 child has with the foot, we need to speak about ---
6 which I didn't know about. I learned about it from
7 the child. He ---

8 THE COURT: Okay. Okay.

9 THE WITNESS: Things of that sort.

10 THE COURT: Is child custody an issue here?

11 THE WITNESS: Sir?

12 THE COURT: Is child custody an issue in this
13 case?

14 THE WITNESS: No, sir, but I'm saying is that I
15 am not obsessed with her. My calls are for my
16 children. I haven't --- I've hardly spoken to her
17 except about the children. I have --- she is a very
18 nice person, I'm sure, but I have some questions about
19 her handling of my --- the best interests of the
20 children. I tried to discuss that in a way by sending
21 her something that would have to do with feeding
22 habits or with health habits or things like that.

23 I don't speak to her. I mention to her, has this
24 and this happened, and she doesn't want to respond.
25 So my obsession is not with her.

1 I don't want to have to put her back on the
2 stand, but to go through some of the things that might
3 lead up to that, but she has testified to things that
4 I would call your attention to and that I'll call your
5 attention to in argument, which would raise questions
6 as to her perceptions, as to the accuracy of her
7 perceptions about obsession.

8 There was --- I have --- I have the record from
9 the argument in the Supreme Court, a tape of it. I
10 don't believe that that --- I believe that tape is
11 public record. That tape mentions nothing about
12 obsession with my ---

13 MS. BALLARD: Your Honor, I would object to that.
14 That again has not been introduced into evidence.
15 Nothing has been produced into evidence.

16 THE COURT: Overruled, but I'm not going to
17 consider the tape.

18 MS. BALLARD: Thank you, Your Honor.

19 THE WITNESS: Okay. Well, anyway, there is
20 nothing ---

21 THE COURT: You can talk about ---

22 THE WITNESS: There is nothing to show that ---
23 I'm not obsessed with her. There is nothing to show
24 that I am obsessed with her, to the extent there is an
25 implication that I am obsessed because of some

1 disorder. I am not obsessed because of any disorder
2 that has anything to do with her, and that's the full
3 of my testimony. I don't want to belabor it. I think
4 you understand what I'm saying.

5 THE COURT: Yes, sir.

6 THE WITNESS: I believe that Your Honor has
7 already spoken to the conversion portion.

8 THE COURT: Well, I have just raised a point in
9 my mind factually, but you can cover that if you like,
10 as testimony, not as argument.

11 THE WITNESS: There has been no conversion. I
12 have not been --- I have not instructed Mr. Turbeville
13 or anyone else not to give her anything that was due
14 her. I believe it's already in evidence. I'm
15 repeating it, but that shows there were no profits, so
16 there was nothing to give to her during the period of
17 time that she is talking about starting in, I think,
18 about 2008 or 2009. I don't recall.

19 So that's all I can say to that.

20 THE COURT: Is there a conversion claim against
21 Mr. Hammer?

22 MS. BALLARD: Yes, sir.

23 THE COURT: And that's conversion of what you
24 referred to as rentals, Ms. Ballard?

25 MS. BALLARD: Your Honor, that's conversion of

1 funds from the limited partnership. It is a claim
2 in ---

3 THE COURT: All right, sir. So there is a
4 conversion claim?

5 MS. BALLARD: Yes, sir. It's a claim in the
6 alternative.

7 THE WITNESS: The claim in the complaint was
8 rentals. I haven't heard any change. I heard the
9 testimony of Shirley to be rentals, also, so I'm
10 speaking to rentals, and I'll speak to all of them.

11 I haven't heard any motions or anything to change
12 it, nor have I have heard any testimony that would
13 allow it, but I'll speak to all of it. There's been
14 no conversion of rentals because she is not due
15 rentals, (A). (B), there has been no conversion at
16 all of any monies that would be due to her. I have
17 not knowingly made any conversion. I have relied
18 exactly upon what was received by me on the K-1 forms
19 and there's been no money to convert to her.

20 As to the question of the sending of the notices,
21 whether she got them or not, I cannot testify to that.
22 I thought she had got them. The reason that their
23 pleadings and their depositions and, I finally came to
24 learn sometime in whatever, I spoke to Wally Moring
25 that maybe she had not gotten or had not given him

1 those K-1s.

2 I know that they were mailed to her whether she
3 forgot them, ignored them, I don't know, but I know
4 that I mailed them to her. I can testify to that.
5 That's my obligation to mail them. I can't follow out
6 there to see whether she got them, nor did I call her
7 on the telephone to see if she got them, because as I
8 say, it's been maybe two years since she has --- she
9 just won't spoke to speak to me.

10 Rarely will she speak to me about something about
11 the children. She'll call me and say that so and so
12 has this --- it's your weekend, but the child has ---
13 just to give you an example of the type of
14 conversation we have, but here, I am sending the child
15 to you be by the way, he has a birthday party. Please
16 take him to it. Well, I may have other plans, but the
17 child has the birthday party, I'll take him to the
18 birthday party.

19 Those are the type of conversations we have and
20 they are last minute types of thing. Subsequent
21 conversations about the children request that I --- we
22 go see a counselor together. Refusal to talk to me
23 about it. Refusal to do agree to do anything in that
24 regard except the most minimal --- one agreement, I
25 think, you had in the letter that they would see a

1 counselor one time.

2 There's just been no contact and nobody called me
3 and said where are my K-1 forms --- nobody --- for the
4 8 percent --- nobody called me and said where are my
5 K-1s for the 8 percent, which she said she does have,
6 which hadn't been sent over.

7 I would also point out that, as part of my
8 testimony, that the agreements that she has that the
9 two percent gifts that she has, there is in the
10 contract, in the articles of incorporation or the
11 bylaws or whatever it's called, the limited
12 partnership agreement, there is a provision that the
13 general partner can waive the 30-day requirement of
14 notice.

15 That 30-day notice goes to everybody if you read
16 it closely. If you read what --- notwithstanding what
17 Mr. Adam's opinion was, and I'll argue this later on,
18 but it goes for everybody. At least in my mind it
19 goes for everybody.

20 When the agreement --- when the transfers were
21 made to Shirley early, I gladly signed a note waiving
22 that. When the agreements were sent over to me saying
23 here, we give all of your 8 percent interest, they
24 didn't ask me to sign that. My attorneys had some
25 discussion with them about that is needed, nothing

1 more.

2 THE COURT: A 30-day notice?

3 THE WITNESS: Sir?

4 THE COURT: A 30-day notice for that?

5 THE WITNESS: There is a 30-day notice in the
6 contract if you want to sell, assign or give away any
7 of your --- your ---

8 THE COURT: All right.

9 THE WITNESS: Transfer any of your rights.

10 THE COURT: Okay.

11 THE WITNESS: And if they had asked me --- in
12 fact, we offered at some point to waive that. They
13 never followed through on it. They never sent
14 anything with a signature for me to sign that, so that
15 wasn't done.

16 THE COURT: How about the family court order?
17 Would that not have been notice?

18 THE WITNESS: No, sir. The family court order, I
19 would respectfully say to you that it's my testimony
20 that the 1634 Main was not a part of the family court;
21 that when I signed, family court --- 1634 Main and the
22 agreement was not a part.

23 When I signed an agreement for the family court,
24 I didn't sign this agreement Howard Hammer SH-5, by
25 its member. I signed it personally.

Direct of H. Hammer by H. Hammer

1 Now, did they ask --- if they had asked me to
2 bind SH-5, my lawyers could have had a discussion
3 about that, but I had no authority, by signing
4 personally, to bind SH-5 in the family court order,
5 and I had to a fiduciary duty in the family court ---
6 a fiduciary duty to SH-5 to carry out what had to be
7 carried out, and what had to be carried out was a
8 30-day notice if you wanted to make a transfer.

9 I agreed to take the transfer. I had no
10 authority to agree on behalf of SH-5 to say that I'm
11 waiving that at the time.

12 As a matter of fact, if they had asked for it,
13 which they never did, but if they had sent it over on
14 their --- on their --- on their purported assignments,
15 if they had sent that over, I would have gladly signed
16 it. We have told them that. They have never sent
17 that over.

18 THE COURT: Okay.

19 THE WITNESS: So I relate that to you as far as
20 it goes to the conversion factors and as to her
21 alternate counterclaim, which I would testify is an
22 inconsistent --- I know you can make inconsistent
23 pleadings, but there is a limit to the degree of
24 inconsistency so my testimony is that her
25 inconsistency is totally confusing.

1 It was my understanding, based on the pleadings
2 that she had --- it was my understanding that as far
3 as I was concerned and as far as SH-5 was concerned
4 --- excuse me, as far as 1634 L.P. was concerned, only
5 as to the degree of --- that I had to have some small
6 involvement in 1634 L.P. It was my understanding that
7 they had brought into issue not only for me, but the
8 1634 contract, that that was in issue. That was my
9 understanding from the pleadings. That was my
10 understanding from everything that went on, and that's
11 my testimony as to that.

12 I believe the infliction of emotional harm has
13 been voluntarily --- there has been a voluntary non-
14 suit ---

15 THE COURT: Right.

16 THE WITNESS: --- on that.

17 THE COURT: That's right. You can move to the
18 next one.

19 THE WITNESS: And I have related to the ---
20 talked about the conversion, and the abuse of process.
21 Those are the only three that I'm aware of that are at
22 issue.

23 If there are any others, if the court would be
24 kind enough to tell me, I can address those.

25 THE COURT: I can't educate you on that, so I

1 don't --- I don't --- I'm not going to get involved in
2 initiating any testimony about a cause of action that
3 may or may not have been covered.

4 THE WITNESS: Well, ---

5 THE COURT: What we will do now --- are you
6 concluded as far as your testimony?

7 THE WITNESS: I would ask that my --- that the
8 other attorneys --- they're not my attorneys --- be
9 allowed to cross-examine me to remind me in case there
10 are any other causes of action of action I haven't
11 spoken to.

12 THE COURT: But as far as your direct testimony,
13 have you concluded?

14 THE WITNESS: As far as my direct testimony, I
15 believe that I have --- I believe that I've concluded,
16 yes, sir.

17 THE COURT: Okay. All right. We'll take a brief
18 recess at this time. Of course, Mr. Hammer, you may
19 not discuss your testimony with anyone during the
20 break, and we'll be back on the record in about ten
21 minutes.

22 MS. BALLARD: Thank you, Your Honor.

23 THE WITNESS: Thank you, Your Honor.

24 Your Honor, may I ask --- I know I can't discuss
25 my testimony, but can I ask both of those counsel

1 whether there's any ---

2 THE COURT: No, sir. You can't discuss it with
3 anyone.

4 THE WITNESS: All right. Thank you very much.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: Okay. After you testify, who is your
7 next witness?

8 THE WITNESS: Your Honor, I have one more matter.

9 THE COURT: Who is your next witness?

10 THE WITNESS: I don't believe I have another
11 witness. I'd like to consult with other counsel as to
12 whether they ---

13 THE COURT: Well, you will have about a minute to
14 that.

15 MS. BALLARD: I want to cross.

16 THE COURT: I know you do. You can do that in a
17 second. He's testifying as far as the counterclaim is
18 concerned. He is not technically a party in your
19 action, but I will allow you to cross-examine him.

20 MS. LIPSCOMB: Thank you, Your Honor.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: All right. Talking about your
23 direct.

24 Wait a minute, are you going to have any reply?

25 MS. BALLARD: As a result of his testimony, I

1 called Mr. Covington and asked him to call back up.

2 THE COURT: We will be finished with this case by
3 noon.

4 MS. BALLARD: Okay.

5 THE COURT: Okay. Period.

6 MS. BALLARD: That's fine. Thank you, Your
7 Honor.

8 THE COURT: I mean, this is...all right. You can
9 cross examine the witness.

10 THE WITNESS: Your Honor, if I may ---

11 THE COURT: If you have another thing to say, you
12 can say it quickly. Did you have any discussions with
13 anyone on this earth during the break about your
14 testimony?

15 THE WITNESS: Nothing about my testimony.
16 Quickly, something that I forgot to mention, I do
17 recall the exact dates that I --- and it does play
18 into what was signed. The first warrant was taken
19 against me in July of 2007, three months before the
20 signature by Shirley that she was still relying on me.
21 Shirley took a warrant out on me and then three months
22 later she had signed that.

23 THE COURT: All right.

24 THE WITNESS: In connection with that, Shirley
25 talked about a no contact order.

1 What had occurred was that the judge had said at
2 the hearing that there was going to be a no contact
3 order.

4 As I'm sure that Your Honor is aware ---

5 THE COURT: Was there ever a no contact order
6 issued?

7 THE WITNESS: No.

8 THE COURT: Okay.

9 THE WITNESS: The judge did not issue it. She
10 said it, but she did not issue it.

11 THE COURT: Okay.

12 THE WITNESS: I understand it, the Ford case,
13 that what the judge writes is what it is. Shirley
14 thought there was a no contact order. There was not
15 one in play. She took out a second warrant against
16 me, and I believe it was prior to October 13th that
17 she made that warrant. It wasn't served until later,
18 but there was a second warrant because I had come up
19 to her steps during our holiday of Rosh Hashanah,
20 you're supposed to make amends with someone that you
21 may have offended.

22 I came up to her steps simply to make amends with
23 her. She didn't come to the door, and so I left. She
24 took out a warrant on me based on the no contact
25 matter, and ---

1 THE COURT: Okay.

2 THE WITNESS: That was all --- those are two of
3 the seven warrants that were dropped. The other
4 warrants were taken out afterwards, and Your Honor
5 brought up the question of the --- of the letter from
6 the solicitor.

7 In my experience as a former solicitor and as a
8 former special prosecutor for the Attorney General,
9 there is a difference between a nolle-pross and a
10 dismissal with prejudice.

11 THE COURT: You argued that as a legal point
12 yesterday.

13 THE WITNESS: Okay.

14 THE COURT: All right.

15 THE WITNESS: That's it then.

16 THE COURT: Cross-examination.

17 MS. BALLARD: Thank you, Your Honor.

18 CROSS-EXAMINATION:

19 BY MS. BALLARD:

20 Q Mr. Hammer, the majority of the income that comes
21 into 1634 Limited Partnership is rental income, is it
22 not?

23 A I would have to say, I think, that the majority
24 without looking at it is rental income. I believe
25 there was some investment income at one point. I

1 don't know exactly how much. There are two accounts
2 for 1634 Main. You only have one of the accounts as
3 you will note from Mr. Ackerman's deposition.

4 THE COURT: She asked you the majority. A
5 majority means more than 50 percent.

6 BY MS. BALLARD:

7 Q You agree with that, correct?

8 A I think, I do I think so.

9 Q Referring to Shirley Hammer's Exhibit 31, which
10 are the financial records provided by Mr. Turbeville,
11 in the year 2005, the vast majority of the income, in
12 fact, all of the income except the transfer from the
13 money market account, was from rental income; is that
14 correct?

15 A Well, \$157,000 of it was from rental income. Is
16 that what you're referring to?

17 Q And the rest of it was from a money market
18 account into the limited partnership, correct?

19 A I'm trying to see where the money market account
20 is. Can you help me with that?

21 Q Item number 2.

22 A Item two, \$80,000?

23 Q Yes.

24 A So about half of it came from --- yes, two to
25 one.

1 Q Okay. And in subsequent years, the majority of
2 the income into the limited partnership is rental
3 income, is it not?

4 A Do you want to help me with the pages so I don't
5 have to...

6 Q No, sir. I assumed as general partner you might
7 know.

8 A I don't. I'll have to go through it and see.

9 A 2006, there was \$86,000 from the --- according to
10 this operating statement, from the --- from the ---

11 Q Rental income.

12 A From the rental income. There was a transfer of
13 \$10,036.

14 THE COURT: What was the question, please,
15 Ms. Ballard?

16 MS. BALLARD: The question was: in 2006 the
17 majority of income was rental, was it not?

18 THE WITNESS: According to this, that's correct,
19 but with the caveat that I'm unfamiliar with, in
20 Mr. Ackerman's deposition, he said that there were two
21 accounts. There was a --- and he says it wasn't
22 unusual. He said there was one account with a
23 significant amount of money. I do not think --- it
24 was my understanding from his testimony that this
25 statement did not reflect in full the other account

1 that they had, the reserve account or whatever it was
2 with the \$600,000 or the \$400,000 or whatever that had
3 in it.

4 He explained that in his deposition.

5 THE COURT: The question is revenue. The
6 question is revenue, not assets. The question is
7 revenue.

8 BY MS. BALLARD:

9 Q In 2007 the majority of the income from the
10 limited partnership was, in fact, rental income, was
11 it not?

12 A In 2007, it was \$112 to 12, yes.

13 Q And in 2008, all of the income with the exception
14 of interest earned on checking in the amount of \$290
15 was rental income, was it not?

16 A Yes.

17 Q And in 2009, with the exception of \$110 earned in
18 interest, all of the income from the limited
19 partnership was rental income, was it's not?

20 THE COURT: You said 2009?

21 MS. BALLARD: Yes, sir, with the exception of
22 \$110 in interest.

23 BY MS. BALLARD:

24 Q Is ---

25 A That appears to be what's on this document.

1 Q And in 2010, the vast majority of the income of
2 the limited partnership was rental income, was it not?

3 A That's what appears to be on this document.

4 Q Do you dispute what's on this document?

5 A I'm sorry, I did the not handle this. I defer to
6 Mr. Ackerman's testimony as to how this turned out as
7 to what the meaning of it was.

8 Q You mean Mr. Turbeville?

9 A No, I mean Mr. Ackerman. He is the accountant.
10 He gave testimony about this, and he explained it, I
11 think, because I think there were questions about
12 this, so I defer to what he had to say. If you're
13 asking me if this is what is on these papers, I'm
14 saying yes. If you're asking me what the meaning of
15 it is, I can't tell you the meaning of it.

16 Q And in ---

17 A I can tell you that it does show, as you said,
18 that it is rental income. I have no reason to believe
19 that it is incorrect, but I have no basis for
20 authenticating that it is exactly that.

21 THE COURT: All right. Move on. Next
22 question, 2011 would be next?

23 MS. BALLARD: Yes, sir, Your Honor.

24 BY MS. BALLARD:

25 Q If the majority of income for 2011 was rental

1 income, was it's not? There was a loan from your
2 brother, but other than that you have \$103,000 of the
3 gross receipts of \$120,000 for the limited
4 partnership, correct?

5 A Have we gone over 2010?

6 Q I'm asking you now about 2011?

7 A Yes, according to this document, which I cannot
8 verify, that's what it says.

9 Q Okay. Let's look, if we could, at Exhibit No.
10 19.

11 A Are you through with this?

12 Q I am. Exhibit No. 19, which is the tax return
13 for 2005 for 1634 Main L.P., and I believe we've had
14 some previous testimony. You're familiar with that
15 document, correct?

16 A This is the 2005, 1634 L.P. tax return, yes.

17 Q Yes. And 2005 was, in fact, the year that Mrs.
18 Hammer left you, correct?

19 A She left in September of 2005.

20 Q And in 2005, the tax return shows that the
21 beginning cash balance for 1634 Main was \$599,662,
22 correct?

23 THE COURT: What exhibit are you looking at,
24 please?

25 MS. BALLARD: Exhibit 19, Your Honor, page four.

1 THE COURT: Page four.

2 THE WITNESS: I'm not sure where you're talking
3 about.

4 THE COURT: Show him.

5 MS. BALLARD: I'll be happy to.

6 BY MS. BALLARD:

7 Q On page four of Exhibits No. 19, cash at the
8 beginning of the year, which is line 1, subsection (b)
9 \$599,662. Do you see that?

10 A I see that, but I would like to explain my answer
11 and make an objection.

12 THE COURT: Yes, sir.

13 THE WITNESS: Yes, that's what it says.

14 Mr. Ackerman explained that.

15 THE COURT: Your objection, please?

16 THE WITNESS: The objection is that I am not
17 competent to --- all I'm competent to do is say that
18 this is what's here. In explanation, I object to ---

19 MS. BALLARD: Your Honor, that's all I'm asking.

20 THE WITNESS: No, I have --- Your Honor, I
21 believe I have a --- I'm objecting that ---

22 THE COURT: All right. I don't want either one
23 of you to interrupt the other when the other is
24 talking to me again.

25 MS. BALLARD: Okay.

1 THE COURT: Not one more time.

2 MS. BALLARD: Yes, sir.

3 THE COURT: Is that clear, Mr. Hammer?

4 THE WITNESS: Yes, sir.

5 THE COURT: Ms. Ballard?

6 MS. BALLARD: Yes, sir.

7 THE COURT: All right. Explain.

8 THE WITNESS: Mr. Ackerman explained this in
9 terms that I didn't quite understand that I hope are
10 more ---

11 THE COURT: No. You explain. I don't want you
12 to ---

13 THE WITNESS: I defer --- I defer to
14 Mr. Ackerman's explanation.

15 THE COURT: All right.

16 THE WITNESS: I do not understand this. It was
17 my understanding that this had something to do with
18 capital accounts, with reserves.

19 THE COURT: All right.

20 THE WITNESS: With various things that I don't
21 understand about accounting.

22 THE COURT: All right.

23 THE WITNESS: So I cannot --- I don't know the
24 meaning of this.

25 THE COURT: That's what the number says.

1 THE WITNESS: I know that the number, but I don't
2 know that it means anything.

3 THE COURT: Next question.

4 BY MS. BALLARD:

5 Q At the end of the year, looking at the same page,
6 Mr. Hammer, the cash left in 1634 Main L.P. was
7 \$25,359, correct?

8 A That's what this shows.

9 THE WITNESS: May I explain, Your Honor?

10 THE COURT: If it's the same explanation, you
11 need not do it, but if there's a different
12 explanation, then ---

13 THE WITNESS: No, sir, same explanation.

14 THE COURT: All right. Continue.

15 BY MS. BALLARD:

16 Q So the amount of cash taken out of the limited
17 partnership in 2005, the year Shirley Hammer left you
18 was \$574,303; is that correct?

19 A No, that's not what I understood from
20 Mr. Ackerman's testimony.

21 Q I'm asking you from Exhibit 19?

22 A Exhibit 19 does not accurately reflect --- you
23 asked me the cash taken out. I'm answering your
24 question, ma'am. My understanding from Mr. Ackerman's
25 testimony that that is not the cash taken out, that

1 that includes some sort of --- I can't remember what
2 he said, a balance or realignment or balances or
3 something of that sort. That's what I understood.

4 Q All right. Well, let's ---

5 A So I don't know that that was the cash left.

6 Q Well, let's go back to the actual cash
7 disbursements for 2005 and look ---

8 THE COURT: On what exhibit?

9 MS. BALLARD: That is exhibit 31, Your Honor.

10 It starts on page three of that exhibit.

11 BY MS. BALLARD:

12 Q According to Exhibit 31 at the beginning of the
13 year, there were significant contributions made to
14 members of your family; is that correct?

15 A No, that's not correct.

16 Q Judith Hammer is not a member of your family?

17 A Yes, but you said significant contributions.

18 Q All right. Well, let me just be specific. On
19 January 3rd of 2005, the amount of \$71,423 was paid to
20 Stanley Hammer as a distribution, correct?

21 A Correct. I'd like to explain, please. It was my
22 understanding from the testimony of the accountant and
23 from the testimony from Mr. Turbeville that this was
24 in connection with a buyout of their interest.

25 Q I understand. January 3rd, check 1419 to Judith

1 Hammer in the amount of \$35,709. Same explanation, I
2 assume?

3 A I understand there was a buyout. Let me --- let
4 me just rephrase that. I understand there was a
5 buyout, but there was some mention about realignment,
6 so I don't know what realignment means as opposed to
7 buyout.

8 Q Okay. Check number 1420 also January 3rd to
9 Alvin Hammer, that's your brother, in the amount of
10 \$71,421. That I assume is also a buyout, correct?

11 A Realignment or buyout, that's what I understood.
12 I can't testify under oath with the knowledge that
13 that's what that was about.

14 Q And, in fact, in March of 2005, even though those
15 folks were supposedly bought out, all of them were
16 continuing to get distributions, in addition to
17 yourself in the amount of \$33,000 on March 9th. Do
18 you see that?

19 A Yes, I see that.

20 Q Okay.

21 A As far as I know, that would have the same amount
22 --- that would have the same --- that would be the
23 same --- that as far as I know, that was the remainder
24 of the buyout, or that was the remainder of the
25 interest they had or that was the realignment. I

1 defer to what the accountant explained on that.

2 Q Well, Mr. Hammer, that's your handwriting on the
3 document; is it not?

4 A No, it's not.

5 Q You deny that's your handwriting?

6 A Yes. That's not my handwriting. I've never ---
7 the first time I saw this document was at
8 Mr. Ackerman's deposition. It had been sent to me,
9 but the first time I saw it with any handwriting on it
10 was at Mr. Ackerman's deposition last Friday.

11 Q Okay. And in fact, in June of 2005, there were
12 additional distributions, perhaps additional buyouts,
13 we're not sure, to Shirley Hightower, David Hammer,
14 Shirley Hammer, Judith Hammer, do you see that at the
15 top of the page?

16 A June --- I see April at the top of the page. I
17 see June at the bottom of the page, June 13th.

18 Q Turn the page. June 22nd, check number 1495,
19 Shirley Hightower, \$4,962, correct?

20 A That's correct. That's what it shows.

21 Q And subsequent distributions to members of the
22 Hammer family and to SH-5 and then a payment to
23 Mr. Ackerman and another distribution to Alvin Hammer
24 all in June, correct?

25 A Yes, let me explain it. Again, my explanation is

1 the same. I do not know the meaning of this. I do
2 not know the accounting basis for this. I do not know
3 why it was done. I do know that Mr. --- Mr. ---
4 Mr. Turbeville, as he has related in his testimony
5 handled this with Mr. Ackerman. I don't know how they
6 decided to do it. I defer to Mr. Ackerman's
7 explanations.

8 Q And, in fact, on the last page of the check
9 register for 2005, the next to the last check written
10 out that year was on December 29th to you for
11 \$59,062.50; is that correct?

12 A It shows that amount being written out. Again, I
13 defer to Mr. Ackerman, and Mr. --- I don't know why I
14 want to call him Danville, but Mr. Turbeville's
15 explanation on that, and I cannot tell you. I cannot
16 explain it and would not attempt to.

17 Q On page two of that document, as a result of all
18 of those distributions and/or buyouts that we've just
19 been discussing, 1634 Main L.P. was in the red at the
20 end of the year in the amount of the \$154,541.34; is
21 that correct?

22 A I don't know that it was the result of that.
23 Again, Mr. Ackerman explained that. I don't know
24 whether it was realignments, distributions, I have no
25 idea how he calculated it, when he calculated it, when

1 the checks were made, whether the amount that
2 Shirley --- whether the \$395,000 amount that Shirley's
3 value of her --- of her supposed deed, which everyone
4 thought that she had made was calculated into it or
5 not. You'd have to ask Mr. Ackerman in consultation
6 with Mr. Turbeville.

7 Q Neither of whom are the general partner of 1634
8 Main L.P., correct?

9 A Neither of whom are the general partners but to
10 whom I have assigned, as the general partner, the ---
11 in the contract, the matter of taking care of
12 preparing these tax documents, and then I get them and
13 I look at them, and if I trust the --- I've known
14 Mr. Ackerman since 1982. Mr. Ackerman has a stellar
15 reputation, as you heard from his deposition. I won't
16 go into that.

17 He is one of the --- probably one of the top
18 accountants in the state as far as I'm concerned, and
19 when he says this is the way it's done, I try to get
20 an explanation from him sometimes, I never understand
21 it. I've come to learn to accept his numbers, and
22 that is end of it.

23 Q So it's permissible then for someone in filing
24 tax returns to rely on the numbers of Mr. Ackerman and
25 to sign whatever is put in front of them from Mr.

1 Ackerman before it's filed with the I.R.S., correct?

2 A No, it's not.

3 Q It's okay for you, but not for Shirley?

4 A It's okay for me because I had a 20 year
5 experience with him. I meet with him and I ask him
6 questions. He explains the questions to me, he gives
7 me the answers and I don't understand them, but I've
8 come to learn that he will explain anything that I ask
9 him. And I've come to learn that no matter how much
10 his explanation is, I end up leaving the office and
11 not understanding it.

12 If I have don't understand it and think I do need
13 to understand it, I will call him back. If I don't
14 understand it and I call him back, and he says,
15 Howard, I've explained it to you. It is absolutely
16 correct, and then I accept it. That's usually what
17 happens with something like this. As for Shirley, I
18 don't whether she ever called ---

19 THE COURT: The question is not about Shirley.

20 THE WITNESS: I believe she asked was it okay for
21 me and not for Shirley. May I answer to that and
22 explain ---

23 THE COURT: No, sir. Move on.

24 MS. BALLARD: I'll move on, as well, Your Honor.

25 BY MS. BALLARD:

1 Q You made reference to criminal charges being
2 dismissed against you by Barney Giese. Those criminal
3 charges brought against you in 2008 and 2009 were, in
4 fact, brought by assistant solicitors in Mr. Giese's
5 office, were they not?

6 A No, Mrs. Hammer signed every one of the warrants.

7 Q And the solicitors open files under their
8 discretion, did they not?

9 A I don't know whether they opened it under their
10 discretion. My understanding is when a warrant is
11 filed, they have no choice but to proceed. Their
12 obligation is to make an investigation.

13 Initially some of the charges were either reduced
14 or thrown out at the preliminary hearing. The charges
15 then went up. They were never indicted because
16 Mr. Giese felt that a thorough and complete
17 investigation was needed.

18 He learned as a part of that investigation that
19 in one of those occasions which involved some of the
20 more serious charges that Mrs. Hammer and her sister
21 had taken a tape, which they had failed to turn over
22 to the solicitor's office.

23 He learned that two or three months afterwards.
24 That tape was investigated. That tape was apparently
25 --- the tape was --- I think there were two tapes as a

1 matter of fact. That tape and statements were
2 inconsistent and ultimately, after a year of assigning
3 a special investigator, he had an former FBI agent in
4 the office, as I understand it, who was assigned to
5 investigate all aspects of this. He wrote the letter
6 that he wrote.

7 It wasn't just an over the top smooth
8 investigation. It was a thorough and complete
9 investigation of everything that went on, and I might
10 add that ---

11 THE COURT: The question was whether or not the
12 assistant solicitors open files in their discretion.

13 MS. BALLARD: Thank you, Your Honor.

14 THE COURT: And that's what I want answered.

15 THE WITNESS: No.

16 THE COURT: And then we're going to go to the
17 next question.

18 THE WITNESS: No, I do not think --- the answer
19 is no for the reasons that I've given you.

20 THE COURT: All right. This next question.

21 BY MS. BALLARD:

22 Q The 2012 criminal charges that were brought
23 against you were brought by the solicitor's office,
24 too, weren't they?

25 THE COURT: The 2000 what?

1 MS. BALLARD: 2012 criminal charges.

2 THE WITNESS: 2012? Your Honor, I'd object to
3 any 2012 charges. They don't have anything to do with
4 this lawsuit. They were filed well after this lawsuit
5 and they don't have any ---

6 THE COURT: Well, you know what, I don't think
7 any of these criminal charges have anything to do with
8 anything.

9 MS. BALLARD: I didn't bring them ---

10 THE COURT: But I'm going to allow the proffer to
11 be made over your objection, so please ask the
12 questions.

13 MS. BALLARD: Thank you, Your Honor.

14 THE COURT: We are beginning to have a
15 personality battle again between you and Mr. Hammer.

16 MS. BALLARD: I'm just trying to get these issues
17 on the record, Your Honor.

18 THE COURT: Please do so, and you answer the
19 questions, sir.

20 THE WITNESS: Yes, sir.

21 BY MS. BALLARD:

22 Q The 2012 criminal charges that were brought
23 against you were, in fact, brought by the solicitor's
24 office, were they not?

25 A I don't recall who signed the warrants.

1 THE COURT: Ms. Ballard, please clarify what
2 charges.

3 MS. BALLARD: The charge for assault and battery
4 of a high and aggravated nature against a process
5 server who was attempting to serve you with pleadings
6 in which you ran your car into her three times.

7 THE COURT: You have the right to remain silent.
8 Anything you say can be used against you if you
9 comment on the facts. The question, however, is not
10 whether or not that occurred, but whether or not the
11 solicitor commenced charges.

12 THE WITNESS: I ---

13 THE COURT: So you may answer that question only.

14 MS. LIPSCOMB: Your Honor.

15 THE COURT: If you have an objection, you can
16 object.

17 THE WITNESS: I object, Your Honor. It is a
18 total mischaracterization.

19 THE COURT: Okay.

20 All right. Go to the office to call the lawyers
21 for the two o'clock case and tell them that it's
22 continued.

23 All right. Go ahead. Yes, ma'am, Ms. Lipscomb.

24 MS. LIPSCOMB: I just wanted to object on the
25 grounds of relevance. It has nothing to do with this

1 case.

2 THE COURT: All right. I tend to agree with you,
3 but this is a proffer, so your objection, sir?

4 THE WITNESS: My objection is it's a total
5 mischaracterization of ---

6 THE COURT: All right. That's not an objection.
7 What is your legal objection under the Rules of
8 Evidence? If you feel it's a mischaracterization, you
9 can cure with your own examination of yourself as part
10 of the proffer, so what is your objection under the
11 Rules of Evidence? Relevance?

12 THE WITNESS: Relevance at this time.

13 THE COURT: All right. I'll consider that, but
14 you must answer the question. If you would please
15 restate it, Ms. Ballard.

16 MS. BALLARD: All right.

17 BY MS. BALLARD:

18 Q The question was, the assistant solicitors
19 brought the charges against you in 2012. The first
20 one was assault and battery of a high and aggravated
21 nature; is that correct.

22 A There is a charge pending for assault and battery
23 of a high and aggravated nature, which I'd like to
24 explain.

25 Q And there also is a charge against you for

1 criminal endangerment of children, correct?

2 MS. LIPSCOMB: Same objection.

3 THE COURT: Okay.

4 MS. LIPSCOMB: Or do I need to object?

5 THE COURT: Well, I would think you probably
6 would be well-served to do it.

7 MS. LIPSCOMB: Thank you, Your Honor.

8 THE COURT: You object also?

9 THE WITNESS: I object also.

10 MS. LIPSCOMB: Objection to relevance.

11 THE COURT: Objection to relevance. I'll note
12 that. Is there a charge for endangerment of children
13 against you, sir?

14 THE WITNESS: Yes.

15 THE COURT: All right. Next question.

16 BY MS. BALLARD:

17 Q And the last charge that I believe is pending
18 against you is malicious injury to personal property;
19 is that correct?

20 MS. LIPSCOMB: Same objection.

21 THE WITNESS: Same objection.

22 THE COURT: All right. Is there a charge for
23 that?

24 THE WITNESS: Yes.

25 THE COURT: All right.

1 BY MS. BALLARD:

2 Q And those have nothing to do with Shirley Hammer,
3 do they?

4 A No, they don't.

5 Q When you were testifying about ---

6 THE COURT: All right. The objection to
7 relevance is sustained.

8 MS. LIPSCOMB: Thank you, Your Honor.

9 BY MS. BALLARD:

10 Q You testified that you conferred with
11 Mr. Turbeville, and he had difficulty finding a lawyer
12 to bring the case of 1634, so you referred him or
13 suggested Ms. Lipscomb to him; is that correct?

14 A I think the --- if I didn't give the timeline
15 correctly, I think it began with the question of the
16 --- of a potential lawsuit against Mr. Hawkins that I
17 was hesitant to bring but thought I might have an
18 obligation to bring.

19 It began with that and he could not find a lawyer
20 for that and I think it transgressed or transpired ---
21 or --- I don't know the exact word, continued, moved
22 in to the other question of the other matters. What
23 should I do about this, or you know, you have this
24 matter against Hawkins. I can't find a lawsuit --- I
25 mean, a lawyer. What should I do about this other?

1 My idea was to have one lawyer to handle everything.
2 What can I do about this other thing? Again, please
3 try to find some lawyers. I can't find some lawyers.
4 Ms. Lipscomb is a good lawyer, you might want to
5 discuss it with her. I believe that is --- I can't
6 give you that that's the exact wording, but I believe
7 that's the approximate timeline, gives you the
8 timeline and whatever ---

9 THE COURT: Okay. He has answered the question.

10 MS. BALLARD: Yes, sir, he has.

11 BY MS. BALLARD:

12 Q And you realized at the time you brought up
13 Ms. Lipscomb's name to Mr. Turbeville, you knew she
14 was also representing you in your domestic case; did
15 you not?

16 A Certainly.

17 Q So you knew if Mr. Turbeville, on behalf of 1634,
18 hired her to look into the issues of 1634,
19 Ms. Lipscomb was ethically prohibited from bringing
20 suit against you, did you not?

21 A I left that for Mr. Turbeville and Ms. Lipscomb
22 to determine. You know, as I understand it, a lawyer
23 can waive things of that sort, and I found --- I did
24 not want to put anybody in a position of conflict or
25 any potential position of conflict, nor any need to

1 have any waivers, so I offered to have a judgment
2 taking --- a confession of judgment. I thought that
3 was a resolution of the problem. Therefore Ms.
4 Lipscomb would have no --- no conflict, and apparently
5 Ms. Lipscomb felt the same way because she took on the
6 case.

7 THE COURT: All right. You've answered.

8 MS. BALLARD: Thank you, Your Honor.

9 BY MS. BALLARD:

10 Q And you also testified that you thought Mrs.
11 Hammer had received the K-1s for 1634 until you spoke
12 to Wally Moring and found out that she had not,
13 correct?

14 A Until I spoke to Wally Moring and found out that
15 she had not --- that he had not --- I still don't know
16 whether she received them. I spoke to Wally Moring
17 and Wally Moring told me he had not received them. So
18 I knew that either Mrs. Hammer had received them or
19 she had received them and not bothered to give them to
20 Mr. Moring. Mr. Moring told me that he had an
21 obligation to have them because there's an obligation
22 for an accountant to put everything on the tax return,
23 so I asked Mr. --- Mr. ---

24 Q Moring?

25 A Turbeville to send them to him.

1 Q And did you file as a single or married taxpayer
2 in 2009?

3 A I don't think I was married in 2009.

4 Q So did you file as a single or a married person
5 when you filed your taxes in 2009?

6 A I don't recall but I can't imagine that ---

7 THE COURT: Okay. He does not recall.

8 BY MS. BALLARD:

9 Q Did you file as a single or married taxpayer
10 in 2010?

11 A I wasn't married. I don't know how he filed it.
12 If it was not filed as an single, then it was an error
13 and needs to be amended. I would appreciate your
14 calling that to my attention, so I can call it to my
15 accountant's attention.

16 Q And did you file as a single or a married
17 taxpayer in 2011?

18 A Again, I don't recall, but if it was filed as a
19 married, then that he was an error, and I would
20 appreciate your calling that to my attention so that I
21 can call that to the intention of my accountant.

22 Q Because the divorce is final and you are, in
23 fact, divorced?

24 A You don't have to be divorced to file as a single
25 taxpayer.

Cross of H. Hammer by Lipscomb

1 MS. BALLARD: That's all I have, Your Honor.

2 THE COURT: Ms. Lipscomb.

3 MS. LIPSCOMB: One question, Your Honor.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION:

6 BY MS. LIPSCOMB:

7 Q Mr. Hammer, you mentioned earlier that it was
8 your understanding there was not a meeting of the
9 minds with regard to the agreement between you and
10 Mrs. Hammer, correct?

11 A Yes.

12 Q Isn't it a fact then even the guardian ad litem
13 filed a motion for clarification because of the
14 confusion in the order?

15 A Not only did the guardian ad litem file a --- not
16 only is the answer to that question yes, but I expound
17 by telling you the court said that it is confused and
18 y'all work it out.

19 MS. LIPSCOMB: That is all, Your Honor.

20 THE COURT: All right. Any redirect testimony
21 that you'd like to give, Mr. Hammer?

22 (There was no response.)

23 THE COURT: That would be in response to any
24 testimony elicited by either Ms. Lipscomb or
25 Ms. Ballard's questions.

1 THE WITNESS: And you've ruled that all of
2 Ms. Ballard's questions concerning the 2012 were
3 irrelevant, so there would be no cause to give any ---

4 THE COURT: That's correct unless you want to
5 raise it yourself, then I'll have to make a
6 determination if anybody objects to that testimony, so
7 that is --- that was my ruling, yes, sir.

8 THE WITNESS: If it's irrelevant, I'm taking it
9 that Your Honor is not considering I was, and so I
10 don't think I should give any testimony to that. I
11 don't see any need to develop that.

12 THE COURT: Well, that's your decision. I've
13 made my ruling, and you can give any direct testimony
14 you'd like to give. That is ---

15 THE WITNESS: My understanding of irrelevancy is
16 that it's not to be considered, so I won't ---

17 THE COURT: I won't consider it unless you'd like
18 to expound on it further.

19 THE WITNESS: If you're not considering it, there
20 is no need for me waste the court's time with that any
21 further.

22 THE COURT: Any other direct testimony you'd like
23 to give?

24 THE WITNESS: I cannot think of any other direct
25 testimony. I thank you for your patience with me

1 today.

2 THE COURT: Okay. You can step down. Thank you.

3 All right. Your next witness, Mr. Hammer, will
4 be whom?

5 THE WITNESS: Would Your Honor give me just a
6 moment?

7 THE COURT: Yes, sir.

8 (Pause.)

9 THE COURT: All right. Mr. Hammer.

10 MR. HAMMER: Thank you for indulging us a moment,
11 Your Honor. That would be all that I would have at
12 the moment.

13 THE COURT: All right. Ms. Lipscomb, I'll ask
14 you, do you have any reply?

15 MR. HAMMER: Nothing, Your Honor.

16 THE COURT: Ms. Ballard?

17 MS. BALLARD: Ms. Covington is supposed to be in
18 the hallway. I'd like to check and see.

19 THE COURT: All right. If he's not here in a few
20 minutes, we'll break for lunch and then start back at
21 1:30 or 2:00.

22 MS. BALLARD: Yes, sir. Thank you, Your Honor.

23 THE COURT: I do see now that we will not finish
24 this case by noon. I put other lawyers off for two
25 days in another case because of all of your assurances

1 this case would take no more than a day and a half or
2 two days.

3 MS. LIPSCOMB: What's left?

4 THE COURT: Her reply.

5 MS. BALLARD: It will be brief.

6 THE COURT: Nothing has been brief.

7 MS. LIPSCOMB: We're going to make motions at the
8 end.

9 THE COURT: I mentioned earlier when Ms. Ballard
10 asked me, and I don't know whether you and Mr. Hammer
11 were talking at the time, which is fine, about closing
12 arguments, and I think I'm going to have to hear some.

13 MS. LIPSCOMB: All right.

14 THE COURT: And I don't know if I'm going to ask
15 for proposed orders. I may just make my ruling and
16 direct whichever party or parties prevails to prepare
17 those. The only thing that I may ask for is a brief
18 summary of what you think the evidence has or has not
19 shown from a factual standpoint and not in the context
20 of a non-suit, even though as you know, this gets
21 blurred in a nonjury setting.

22 So what is --- where is Mr. Covington?

23 MS. BALLARD: He is not here as a witness. I'll
24 withdraw him as a witness from my case.

25 THE COURT: All right. Do you have anything

1 else, Ms. Lipscomb?

2 MS. LIPSCOMB: Nothing, Your Honor.

3 THE COURT: We'll take 15 minutes. I'll tell you
4 what we're going to do. We're going to get back
5 together at 1:30.

6 MS. BALLARD: Yes, sir.

7 THE COURT: I'll hear everything else there is
8 for you to tell me as far as non-suit or closing
9 arguments. I'm going to restrict each side to ---
10 let's see. The non-suit motions, I know we may have
11 to go back to Hammer vs. Hammer. Frankly, I can't
12 remember what we did.

13 I know Ms. Lipscomb, excuse me, Ms. Ballard has a
14 non-suit motion that she has the right to make.

15 Now, Mr. Medlin was sequestered for three days.
16 You're not going to call him? I guess not, since you
17 rested.

18 MR. HAMMER: As it --- I determined --- I
19 determined that it would just prolong the trial.

20 THE COURT: No, you have the right to prolong the
21 trial, but you've already rested.

22 MR. HAMMER: Yes, sir, the agency matter I gave
23 strong consideration to. It was dependent upon some
24 matters.

25 THE COURT: All right.

1 MR. HAMMER: But I decided not to call him.

2 THE COURT: Well, I'll leave it up to you to
3 ya'll to determine after we finish what motions you
4 think need to make as far as Rule 41 is concerned in
5 order to protect the record.

6 MS. BALLARD: Yes, sir.

7 THE COURT: Even though I can tell you that
8 except for some --- well, what I want to hear about
9 from you is how you're going to get to the jury on a
10 couple of your claims for relief against Mr. Hammer.

11 MS. BALLARD: Okay.

12 THE COURT: In her suit, for breach of --- for
13 intentional interference of a contract. I've heard no
14 evidence that the contract was breached by the third
15 party. I've heard evidence that certainly interfered
16 with it. Now whether or not I agree with all the
17 things you mentioned, burden on that is a different
18 matter, but there is evidence of that. The question
19 is whether or not all the elements have been met
20 including, but not limited to whether or not it was
21 breached by the third party because Mr. Hammer would
22 have had to procure a breach; is that right?

23 MS. BALLARD: Yes, sir.

24 THE COURT: And also whether or not you have any
25 damages.

1 MS. BALLARD: Yes, sir.

2 THE COURT: Conversion is another one where I
3 have questions about this it, even though Mr. Hammer
4 himself has blurred the lines by his own testimony
5 about who 1634 is or was, vis-à-vis him, and/or as the
6 managing member of SH-5 LLC. He has blurred that line
7 himself.

8 Conspiracy. Who did he conspire with? Was it
9 himself and himself as managing member or himself as
10 the limited partner and himself as managing member of
11 SH-5?

12 I think we all know that what this boils down to
13 is the thrust of your case is the abuse of process.

14 MS. BALLARD: Yes, sir.

15 THE COURT: But I'm going to leave it up to all
16 of you. Ya'll are a lot smarter than me. I'm trying
17 to wade through this as best I can.

18 We'll get back together at 1:30 and begin with
19 any motions we have not heard and then a concise
20 statement of what you all believe the evidence has or
21 has not shown.

22 MS. BALLARD: Thank you, Your Honor.

23 THE COURT: Okay. See you at 1:30.

24 MR. AIKEN: Thank you, Judge.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: Is Mr. Hammer here?

2 MS. LIPSCOMB: No, sir.

3 THE COURT: What time is it?

4 THE CLERK: 1:35.

5 THE COURT: Anybody seen him? Is it possible
6 he's in the building?

7 MS. LIPSCOMB: I saw him right afterwards. He
8 came to my office for a few minutes, and then I asked
9 him to leave so I could get ready. My understanding
10 --- his car was there and he was in the office, I
11 think.

12 Do you want me to make a call?

13 THE COURT: No. I'll give him -- I'll give him
14 three more minutes and then we're going to just go
15 ahead and get started.

16 MR. AIKEN: Yes, sir.

17 THE COURT: I thought we had this issue come up
18 Tuesday, and I thought it might have been resolved as
19 far as timeliness.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Okay. Does Shirley Hammer have any
22 objection to going forward?

23 MS. BALLARD: No, sir.

24 THE COURT: Does 1634?

25 MS. LIPSCOMB: No, sir.

1 THE COURT: Mr. Aiken?

2 MR. AIKEN: I object since Mr. Hammer is my
3 client.

4 THE COURT: Well, could you tell me where he is?

5 MR. AIKEN: I do not know, Judge.

6 THE COURT: All right, sir. Well, he's not going
7 to be prejudiced from any arguments that he might miss
8 in the case in which you represent him, so after I
9 have --- and Ms. Lipscomb, that will let you off the
10 hook a few minutes.

11 MS. LIPSCOMB: I'll try to call him.

12 THE COURT: You may want to tell him that when he
13 comes, I don't need an explanation.

14 MS. LIPSCOMB: Yes, sir.

15 THE COURT: I just want him to come.

16 All right. Do you think, Ms. Lipscomb ---

17 MS. LIPSCOMB: He is on his way. He apparently
18 went to my office and said that he thought we're
19 supposed to be here at 2:30 and she said huh-uh, she
20 has already left; it's 1:30.

21 THE COURT: All right. Mr. Aiken, do you object to
22 us going forward with the argument, the Howard Hammer vs.
23 Shirley Hammer case?

24 MR. AIKEN: No, Your Honor.

25 THE COURT: What I will do now and you can help

1 me, please.

2 MS. LIPSCOMB: Yes, sir.

3 THE COURT: You presented your counterclaim
4 against Howard Hammer.

5 MS. BALLARD: Yes, sir, and 320.

6 THE COURT: In the first litigation were you ---
7 did you ever put on the record your motions for
8 non-suit?

9 MR. AIKEN: I did. I did, Your Honor.

10 THE COURT: That was that was at the close of
11 Ms. Ballard case.

12 MR. AIKEN: Correct.

13 THE COURT: And Ms. Ballard, did you ever put on
14 the record your motions in that particular case at the
15 close of all the evidence?

16 MS. BALLARD: Yes, I did.

17 THE COURT: At this time I'll be glad to hear
18 from you, Mr. Aiken, on any non-suit motions that I
19 may have noted for the record, but did not hear in the
20 Hammer vs. Hammer matter.

21 MR. AIKEN: Your Honor, for the record, we renew
22 our motion for non-suit that was made at the
23 conclusion of the --- what we're calling the plaintiff
24 Shirley Hammer's case in that first case that we
25 tried, Howard Hammer vs. Shirley Hammer.

1 THE COURT: And the claims in that case ---

2 MR. AIKEN: Are slander of title.

3 THE COURT: Intentional interference with a
4 contract.

5 MR. AIKEN: Invasion of privacy.

6 THE COURT: All right.

7 MR. AIKEN: And abuse of process.

8 THE COURT: And, of course, your argument does
9 incorporate your previous arguments. Do you have
10 anything additional that you'd like to tell me?

11 MR. AIKEN: Yes, Your Honor. As to the slander
12 of title cause of action, I'd like to flesh that out a
13 little bit.

14 THE COURT: All right.

15 MR. AIKEN: I argued the Pond Place partnership
16 case, Pond Place Partners, Inc. vs. Poole and
17 Ms. Ballard's response had to do with the fact whether
18 this was even a valid lis pendens and what I went ---
19 what I did, Judge, was I went back to the statute
20 which provides for the filing of the lis pendens,
21 which says in an action affecting the title to real
22 property, the plaintiff, not more than 20 days before
23 filing the complaint or any time afterwards may file a
24 lis pendens. That's what the statute says.

25 The Pond Place case says you've got to comply.

1 First of all, you have to comply with the statute.
2 Here we have a lis pendens that was filed July 31,
3 2009. and then on August 18th, 2009 the lawsuit was
4 filed. So we have a lis pendens filed and within 20
5 days the lawsuit was filed. So facially we have
6 compliance with the statute. And I think, and as I
7 understood Ms. Ballard's argument, her argument was
8 that Mr. Hammer's claim did not affect, as it says in
9 the statute, title to real property.

10 I think it's important to note, Your Honor, that
11 affect title to real property doesn't mean necessarily
12 that land that you claim you own, I claim I own.

13 If it has some impact on title, then the lis
14 pendens is proper.

15 As a matter of fact, the Pond Place Partner's
16 case involved restricted covenants, and the lawsuit
17 was originally brought as a declaratory judgment
18 action contesting the validity of amendments to
19 restrict covenants, so they didn't claim that land
20 belongs to me. They had a claim that had some effect
21 on title to the property.

22 THE COURT: What was the claim in this case that
23 had any effect on the title? In other words, why did
24 he file it?

25 MR. AIKEN: Well, here is why, Your Honor. We've

1 talked a lot about this partial settlement of
2 outstanding issues. As part of that partial
3 settlement of the outstanding issues, Mr. Hammer
4 deeded a one half interest in 320 St. James to Mrs.
5 Hammer.

6 THE COURT: His own divided one half interest.

7 MR. AIKEN: That's correct, that's correct. And
8 his lawsuit in this case, which the lis pendens was
9 filed on claimed that this partial settlement of
10 outstanding issues was void.

11 Now it's ---

12 THE COURT: As to St. James.

13 MR. AIKEN: As to everything in ---

14 THE COURT: As to St. James.

15 MR. AIKEN: As to St. James, Your Honor. It's
16 Black Letter law that if you have a contract that's
17 partially performed, and it's found to be void ab
18 initio from the start, then what the court is supposed
19 to do is try to put the parties back to status quo.

20 THE COURT: And it's void ab initio because of
21 that grievance?

22 MR. AIKEN: That's correct. That's the argument.

23 THE COURT: Can I ask just a practical question?
24 If that's so objectionable, why doesn't everybody get
25 together and say let's just cross that one provision

1 out and live with what we really agreed to? Is that a
2 fair question for somebody sitting on the side lines
3 to ask?

4 MR. AIKEN: I don't know, Your Honor, because I'm
5 not familiar with all the arguments having to do with
6 public policy.

7 THE COURT: These folks evidently reached an
8 agreement after a lot of heart ache and heart rending
9 and hair pulling, their own and others'. If that was
10 the objectionable thing and if both sides agree that
11 well, yeah, that's probably not a very good provision,
12 let's just yank it out because it doesn't have
13 anything to do with Shirley or Howard. It has to do
14 with these other people who can't quarrel if we pull
15 that out or not, and then the agreement just survives,
16 doesn't it? Or is that just too easy?

17 MR. AIKEN: I don't know, Your Honor. I'm not
18 familiar with the public policy argument..

19 THE COURT: Okay. Why don't we get into whether
20 or not I can consider voiding that agreement or seeing
21 it as void for the purposes of me making a decision in
22 this case?

23 MR. AIKEN: Well, no, actually to decide the
24 slander of title cause of action in our favor, all
25 you've got to find is that the lawsuit in this case

1 since it alleged voidness of the partial settlement of
2 outstanding issues, it affected title to 320
3 St. James, because if you found it was void, 320 St.
4 James, the one-half interest would have to be deeded
5 back to Howard Hammer because the agreement is void.
6 The Black Letter law is you send the parties back to
7 where they were before the agreement was signed.

8 THE COURT: But going back to that, isn't the
9 proper vehicle to go through the family court to
10 resolve that?

11 MR. AIKEN: Judge, I'm not familiar with those
12 jurisdictional issues either. I've not addressed
13 those, and you know, I'm sorry. I'm not trying to
14 avoid your question. That's just not something that
15 I've I been tasked to do in this case.

16 THE COURT: All right. Okay. Now, what are the
17 elements of the slander of title action in general?

18 MR. AIKEN: The elements of the slander and title
19 action are a false statement about somebody's title to
20 property that ends up causing that person damages.
21 Basically what's that it is.

22 THE COURT: In this case they allege the
23 publication was the lis pendens and that he did that
24 with malice. It was false statement of any claim he
25 might have and has derogated her title.

1 MR. AIKEN: That's what they claim. Our position
2 is the lis pendens was absolutely privileged under the
3 Pond Place case.

4 THE COURT: Now, moving aside from that, what are
5 your comments about damages, special or otherwise in
6 the slander entitlement.

7 MR. AIKEN: Well, you're not entitled to general
8 damages unlike defamation having to do with somebody's
9 reputation. You are not entitled to general damages,
10 so they have to be special damages.

11 THE COURT: Okay.

12 MR. AIKEN: The only testimony that was given
13 that had anything remotely to do with any kind of
14 damage to Shirley Hammer was the certified financial
15 planner.

16 THE COURT: What she could have done with the
17 money had she gotten all of it.

18 MR. AIKEN: That's correct.

19 THE COURT: As opposed to some of it.

20 MR. AIKEN: That's correct, and that's the only
21 evidence on ---

22 THE COURT: Is that special damages?

23 MR. AIKEN: I believe that would be special
24 damages, yes, sir.

25 THE COURT: If I accept those.

1 MR. AIKEN: That's correct.

2 THE COURT: If I conclude that she has met her
3 burden.

4 MR. AIKEN: That's correct.

5 THE COURT: Okay. Anything else on slander of
6 title?

7 MR. AIKEN: Nothing else, Your Honor, on slander
8 of title. The invasion of privacy claim, I think
9 earlier I cited Rycroft against Gaddy.

10 THE COURT: Right.

11 MR. AIKEN: When a plaintiff bases an action for
12 invasion of privacy on intrusion alone, and this is
13 what they claim, is wrongful intrusion into a private
14 matter, it is incumbent upon them to show a blatant
15 and shocking disregard of his rights and serious
16 mental or physical injury or humiliation to himself
17 resulting there from.

18 There has been no evidence of that, Your Honor,
19 and as I understand it, all emotional distress type
20 damages, those claims have been withdrawn, so I think
21 if those claims have been forsworn, I don't think
22 there's any damages that can be recovered.

23 THE COURT: So the only thing for an intrusion
24 action under invasion of privacy, or wrongful
25 intrusion action under invasion of privacy is

1 emotional distress. Is that the only damage you can
2 get?

3 MR. AIKEN: That's correct. That's correct.
4 That's my reading of Rycroft against Gaddy.

5 THE COURT: Well, I think you also mentioned
6 earlier that this was not sufficiently private.

7 MR. AIKEN: That's correct. That was also my
8 argument and then on the abuse of process claim, Your
9 Honor, there were two elements to that, an ulterior
10 purpose and a willful act in the use of the process,
11 not proper in the conduct of the proceedings.

12 What we have here, Your Honor, is we have the lis
13 pendens filed. We have a lawsuit filed. You know,
14 that --- those two things are within the regular
15 conduct of proceedings.

16 You know, there are cases that say the mere
17 filing of a lawsuit, the summons and complaint and
18 service on the defendant is not sufficient to support
19 an abuse of process claim, and I think the most
20 important thing to realize is this willful act in the
21 abuse of process, it has to be something independent
22 of the actual regular process of filing documents
23 having to do with a claim in court.

24 You know, typically in the abuse of process
25 claim, what you've got is you've got somebody, who for

1 example, let's say I own a store, and somebody comes
2 in my store and I think they've stolen something, so I
3 swear out a warrant on them for stealing something
4 from me and while that case is pending, I go to the
5 defendant on that warrant, and I say I will dismiss
6 this warrant if you give me \$2,000.

7 That's the extortion type, willful act,
8 perverting the process itself, misusing the process to
9 essentially as a club to make somebody give me \$2,000.
10 That's a willful act that's totally outside the
11 regular process of the way things are handled in
12 court, and, you know, the willful act requirement ---
13 according to the Food Lion case against the United
14 Food Workers Union, the willful act part has three
15 component parts. One is a willful ---

16 THE COURT: That's a South Carolina case?

17 MR. AIKEN: That's a South Carolina case.

18 THE COURT: Food Lion vs. who?

19 MR. AIKEN: Versus the United Food Worker's
20 Union.

21 THE COURT: Okay.

22 MR. AIKEN: I have a copy of that case.

23 In that case, Your Honor, the --- there was a
24 class action that was brought against Food Lion. Food
25 Lion alleged that the union was really behind this

1 lawsuit, and Food Lion sued the union and said okay
2 union, this was for an ulterior purpose. All you were
3 really trying to do was advance your unionization
4 campaign, advance your campaign to have the union
5 recognized as the representative of the workers at
6 Food Lion. That's what the purpose of the lawsuit
7 was, they weren't really trying to collect anything.

8 THE COURT: What did her complaint, Mrs. Hammers'
9 complaint or counterclaim, allege was the factual
10 background in the abuse of process? Is it in her
11 testimony or words everything or is it something more
12 narrow for her pleading?

13 MR. AIKEN: Let me get the pleadings, Your Honor,
14 and I was about to get to that.

15 MS. BALLARD: In which cause of action are you
16 asking about, Your Honor?

17 THE COURT: Abuse of process in Hammer vs.
18 Hammer.

19 MS. BALLARD: Thank you, Your Honor.

20 (Pause.)

21 THE COURT: Well, you can --- the willful
22 element --- it has to be a willful or overt act in the
23 abuse of process ---

24 MR. AIKEN: Correct.

25 THE COURT: --- improper because it is either

1 unauthorized or aimed at an illegitimate collateral
2 objective.

3 What process is she complaining about? The
4 lawsuit that Mr. Hammer filed in 2009 or that and
5 other things?

6 MR. AIKEN: As I understand it from having read
7 the pretrial brief that was filed by Mrs. Hammer, the
8 willful act their claiming is the filing of the lis
9 pendens.

10 THE COURT: And not this action?

11 MR. AIKEN: And not this action, as I understood
12 their pretrial brief. Their complaint just says upon
13 information and belief plaintiff had an ulterior
14 purpose in bringing this action, to harass the
15 defendant and to prevent the defendant from selling
16 320 St. James and prevent her from purchasing 421
17 River Club. Plaintiff's willful actions and abuse of
18 process was not proper in the regular conduct of
19 proceedings and was intended to gain an objective and
20 not legitimate use of process.

21 THE COURT: That means not only the lis pendens,
22 but the action we're here about now.

23 MR. AIKEN: All right, but I think since the
24 filing of these pleadings, that has been limited to
25 the filing of the lis pendens.

1 THE COURT: So you think as far as abuse of
2 process is concerned, if I think Mr. Hammer's theories
3 and strategy in bringing this lawsuit were completely
4 and utterly ridiculous, that there is still not abuse
5 of process?

6 MR. AIKEN: Yes, I do say that, because he didn't
7 use it for purposes of coercion or extortion or
8 anything like that.

9 THE COURT: How about aimed at an illegitimate
10 collateral objective? Those are fancy words.

11 MR. AIKEN: Right. But what they have to show is
12 that --- they've got to show that willful or overt act
13 which is outside of the actual filing of the lis
14 pendens and filing of the lawsuit, because that's what
15 ordinary litigants do every day. There's got to be
16 something outside of that process, like him
17 communicating with her about, you know, I'll get rid
18 of all this lawsuit if you give me this or give me
19 that. In other words, using the process for, by way
20 of a willful act outside of the actual filing and
21 service of the process, to get that collateral
22 advantage.

23 THE COURT: All right. And what am I to make
24 of --- if I take the evidence in the light most
25 favorable to Mrs. Hammer at this stage, what am I to

1 make of --- is it just pure coincidence that all of
2 this happened right about the time she was getting
3 ready to close, and he just happened to walk in the
4 day of the closing and that everything just happened
5 to occur at that time?

6 MR. AIKEN: Well ---

7 THE COURT: As a matter of granting a non-suit
8 motion, am I supposed to just ignore all of that?

9 MR. AIKEN: Well, I think that the only testimony
10 about that, Your Honor, is this.

11 THE COURT: That he didn't know.

12 MR. AIKEN: He didn't know.

13 THE COURT: And I don't have to believe him.

14 MR. AIKEN: Well, there is.

15 THE COURT: Circumstantial evidence is proof of a
16 chain of facts that indicate the existence of a fact.

17 MR. AIKEN: Yes, sir, but his testimony was that
18 he didn't know until he received a call from
19 Mr. Degenhart until the 19th and the closing ended up
20 being on the 20th. He said that he prepared a letter
21 that memorialized his conversation with Mr. Degenhart
22 from the 19th, and he went to deliver that to
23 Mr. Degenhart and he says I found out about the sale
24 contract on the 19th when Mr. Degenhart called him.

25 THE COURT: He says he did.

1 MR. AIKEN: Yes, yes.

2 THE COURT: For the purposes of this motion,
3 would I not have to accept the circumstantial
4 inference that this is all just really too
5 inconvenient?

6 MR. AIKEN: I don't think that --- I don't think
7 the fact that he was --- that he happened to be there
8 on the day of the closing is sufficient to give rise
9 to an inference that one, he knew there was a sale
10 pending before he received his call from Mr. Degenhart
11 on the 19th and that he engaged in this activity
12 solely for purposes of stopping the closing. I don't
13 think you can make that jump, Judge.

14 THE COURT: All right, sir.

15 MR. AIKEN: I really, honestly don't.

16 THE COURT: All right.

17 MR. AIKEN: I understand your question, but ---
18 and then on intentional interference with contract,
19 they have a proof of contract, and they submitted
20 proof of a contract. They have to prove that
21 Mr. Hammer knew of the existence of the contract.

22 THE COURT: We just went over that.

23 MR. AIKEN: That's correct. We just went over
24 that point. Intentional procurement of its breach.
25 All right. So they've got to prove there was a

1 breached contract, but this sale ultimately went
2 through. There was ultimately a sale of this
3 property.

4 THE COURT: All be it in a different form, but it
5 wasn't breached.

6 MR. AIKEN: But it wasn't breached. There was no
7 breach of contract. Then it mentions absence of
8 justification and ---

9 THE COURT: Well, at least you have to give him
10 that there was no justification. At least there was
11 evidence that there was no justification.

12 MR. AIKEN: Well, I think you may be right about
13 that, Your Honor, but I think to the extent that what
14 I'm arguing about slander of title has a tendency to
15 show that there was some justification or as a matter
16 of law, there was justification for doing what he did,
17 which was filing the lis pendens and then according to
18 the statute within 20 days, filing the lawsuit.

19 I mean, I think that goes to the issue of
20 justification, so, you know, I would submit that if,
21 in fact, this filing of the lis pendens is absolutely
22 privileged as a matter of law under these
23 circumstances, and we submit it is, then there is
24 justification under this element of intentional
25 interference with contract.

1 THE COURT: And damages?

2 MR. AIKEN: And that's another serious issue in
3 this case as far as damages are concerned. I mean,
4 what are the damages as a result of whatever
5 intentional interference there may have been here.

6 THE COURT: Over 30 months she made about \$1,450
7 a month in interest, which is about \$42,000, \$43,000
8 in interest.

9 MR. AIKEN: Right.

10 THE COURT: And I know your argument was earlier
11 that the lady who was the financial planner, all of
12 that was pie in the sky, and I hope that we could all
13 do that well. It's purely speculative for me to
14 consider that.

15 MR. AIKEN: Yes, sir.

16 THE COURT: But the evidence is there if I don't
17 strike it as one of you asked me to do.

18 MR. AIKEN: Yes, sir.

19 THE COURT: So at least \$110,000 minus \$42,000,
20 there is evidence there of some damage.

21 MR. AIKEN: I would say there probably is. You
22 know, leaving aside the arguments concerning striking
23 the testimony and all that sort of stuff, if you
24 conclude that it is not so speculative that it
25 shouldn't be considered, if you conclude that you

1 should consider it, then I would concede there is
2 evidence of damages on interference.

3 THE COURT: And that amortization schedule will
4 bear out whether or not I'm right about the average of
5 \$1,450 a month in interest.

6 MR. AIKEN: Yes, sir.

7 THE COURT: Okay. So that takes care of that
8 one. How about ---

9 MR. AIKEN: And I believe that's all of them.

10 THE COURT: That was it on Mr. Hammer?

11 MR. AIKEN: I believe that's correct.

12 THE COURT: Okay.

13 MR. AIKEN: Because ---

14 THE COURT: All right. Ms. Ballard, first of
15 all, do you have any response to his arguments? I do
16 have a few questions, and then after that would you
17 like to make motions of your own in this particular
18 case?

19 MS. BALLARD: This particular case being ---

20 THE COURT: Hammer vs. Hammer.

21 MS. BALLARD: Yes, sir, I want to renew the
22 motions that I had previously made, but it's kind of
23 an overlap, my response, to his ---

24 THE COURT: Yes, I think it has to.

25 MS. BALLARD: Yes, sir, it has to. When we're

1 looking at the claims that Mrs. Hammer brought against
2 Mr. Hammer in the 2009 case, I think the place we have
3 to start is with Exhibit 1, which we did not spend a
4 lot of time with, Exhibit 1 of Shirley Hammer's
5 exhibits. That is the title to real estate that was
6 executed by Howard Hammer to Shirley Hammer on
7 May 20th, 2008, as part of the settlement in the
8 family court action.

9 The first paragraph of that, Your Honor, the
10 third line, Howard Hammer not only deeds his interest
11 in the property to Shirley Hammer, he also, and I'm
12 quoting "fully releases and discharges and/or all
13 rights I might have or hereafter acquire," so he
14 didn't just deed it, he waived any interest he might
15 have in it.

16 THE COURT: Where does it say that in the deed?

17 MS. BALLARD: The very first paragraph third line
18 down.

19 THE COURT: That's kind of unusual for a deed.

20 MS. BALLARD: Yes, sir, I thought so, too. Right
21 after it says on May 12, 2008, it says fully releasing
22 and discharging any and all rights I might --- that I
23 may have or hereafter acquire. I think that is
24 important for purposes of looking at the subsequent
25 events.

1 The other part of this deed that is important for
2 looking at the subsequent events is on the next page.
3 It's the second paragraph down where Howard Hammer
4 does bind to forever defend all and singular the said
5 premises unto the said Shirley Hammer against every
6 person whosoever lawfully claiming or to claim the
7 same or any part thereof.

8 THE COURT: So he has given her a warranty
9 against himself?

10 MS. BALLARD: Yes, sir, he did. So in looking at
11 the slander of title action, in addition to the things
12 that I have already discussed, it is clear that at the
13 time he filed the lis pendens, and at the time we
14 pleaded, it's not just the lis pendens, it's the
15 action itself ---

16 THE COURT: Do you do domestic work?

17 MS. BALLARD: No, sir.

18 THE COURT: Ms. Lipscomb, is it normal to do a
19 general warranty deed that conveys interest in land as
20 part of a divorce decree is or is it usually a limited
21 warranty deed? I'm just curious.

22 MS. LIPSCOMB: I've seen it both ways. It
23 depends on whether or not there is some concern about
24 some outstanding liens or ---

25 THE COURT: All right. Go ahead, Ms. Ballard.

1 MS. BALLARD: You'll notice in the deed that Mrs.
2 Hammer executed to Mr. Hammer, that was transmitted by
3 Mr. Madden, I believe in Exhibit 16, that was a
4 quitclaim deed, so there was no general warranty in
5 that transmission, but when Mr. Hammer transferred his
6 interest pursuant to the court order, he agreed to ---
7 he executed a general warranty deed, and he released
8 any claim that he had or might thereafter have in the
9 property at 320 St. James.

10 With that background, we have to look at the
11 filing of the lis pendens. Mr. Hammer testified he
12 lived a block away. Clearly, he knew the house was
13 for sale.

14 At the time he filed the lis pendens, he was just
15 finishing up in the family court his arguments about
16 the public policy arguments. He was losing those
17 arguments in the family court, so he was attempting to
18 find another venue within which to litigate the same
19 issues that he had --- that he was losing in the
20 family court about the public policy arguments.

21 THE COURT: And that was in the July --- excuse
22 me, June 2009 timeframe?

23 MS. BALLARD: Yes, sir.

24 THE COURT: Is that when Judge Rucker had his ---
25 did he have two hearings in June or was that a

1 different one?

2 MS. BALLARD: I believe he had --- I know the
3 second hearing was in June. I believe the first one
4 was in May, but I'm not certain, but the lis pendens
5 was filed on seven --- excuse me. It was filed on
6 7/31 and that's when everything was kind of going to
7 hell in the family court.

8 Excuse me, it was falling apart in family court
9 on the various issues that he is now attempting to
10 argue again on the public policy issue, so clearly,
11 what he was trying to do is he was losing in the
12 family court. Despite the fact that he has waived any
13 claim he might thereafter acquire, might presently
14 have or thereafter acquire, he files a lis pendens and
15 subsequently files this action. Even if he didn't
16 know about the contract of sale when he filed the lis
17 pendens, he certainly knew about the contract of sale
18 when he filed the lawsuit itself 20 days later.

19 THE COURT: What are your damages?

20 MS. BALLARD: On the slander of title, Your
21 Honor, my damages are the interruption of the sale,
22 and I want to make --- I want to be sure that we're
23 clear about this. There was a breach. The testimony
24 is that the purchasers lost their funding and lost
25 their title insurance, so the closing that was

1 scheduled and actually the documents had already been
2 executed according to Mrs. Degenhart on the 17th,
3 August 17th, 2009, all of that had been executed.
4 That sale was lost.

5 Only because Mrs. Hammer and people who were
6 assisting her managed to put it back together again,
7 there was then another closing on the 20th.
8 Mr. Hammer also attempted to interfere with that one
9 when he showed up on the 20th talking about the
10 leaking swimming pool and Exhibit No. 4 his suggestion
11 that we swap houses and all this stuff. He interfered
12 with both closings.

13 The first one was in fact breached. The first
14 closing was supposed to be one that netted her
15 \$650,000 in cash. That one never came back. That was
16 gone.

17 THE COURT: So what are your special damages in
18 the slander of title action?

19 MS. BALLARD: The special damages in the slander
20 of title action, Your Honor, if you take the most
21 conservative investment that Ms. Stokes testified to,
22 she said it was about 8 percent per annum, and the
23 amortization schedule that is introduced into evidence
24 as Exhibit 10 indicates that Mrs. Hammer received five
25 and a quarter interest for the period of time. It was

1 about three years that she had to finance it. There
2 was clearly the three percent that she lost, if she
3 could have invested the difference.

4 THE COURT: The 3041.

5 MS. BALLARD: Yes, sir. If you subtract what
6 Ms. Stokes said, the most conservative calculation
7 that she would have had if she invested that money.
8 She had several numbers, but I'm using the most
9 conservative one, was \$86,355. If you look at the
10 amortization schedule that Your Honor referred to that
11 was introduced into evidence, Mrs. Hammer testified
12 that she received payments through February of 2012,
13 and those total interest payments in the amount of
14 \$43,862, so clearly the difference in what she could
15 have earned and what she did earn is \$42,493.

16 THE COURT: Well, what I have a problem is could
17 have. What did she do with the \$277,000 that she did
18 get?

19 MS. BALLARD: Well, it doesn't matter what she
20 did with that. The question is what would she have
21 done with the difference?

22 THE COURT: Well, it matters to me what she did
23 with that because that's indicative of what she might
24 have done with the rest of it.

25 MS. BALLARD: Her testimony was that she invested

1 it.

2 THE COURT: Well, how did she do?

3 MS. BALLARD: We didn't put up any testimony to
4 that effect, Your Honor.

5 THE COURT: What if she only made two percent.
6 What if she lost money? Isn't what she made with what
7 she did get at least an indication to me --- I might
8 be going outside the non-suit motion --- but isn't
9 that an indication to me what she likely would have
10 done with the \$341,000.

11 MS. BALLARD: I think that's one way you could
12 view it, but the better testimony would be what the
13 certified financial planner indicated that the market
14 would have returned based on actual experience that
15 they have had.

16 THE COURT: I guess we should all get her phone
17 number.

18 MS. BALLARD: She did an amazing job. The
19 numbers were all very impressive, but when you look at
20 the difference in the interest that she would have
21 earned alone, just because the first sale was lost,
22 breached ---

23 THE COURT: Right.

24 MS. BALLARD: And then Mrs. Hammer mitigated her
25 damages by putting the sale back together, doing owner

1 financing making the sale happen. Mr. Hammer
2 attempted to interfere with the second sale as well,
3 by the leak in the swimming pool and the property in
4 the back that there was an unclear easement, by
5 showing up delivering this letter during the closing
6 trying to buy the property himself and suggesting that
7 the purchasers buy his house instead.

8 Clearly the evidence was that he had an ulterior
9 purpose in filing the lis pendens. He wanted 320
10 St. James back. That's clearly not a legitimate use
11 of process, particularly when he has waived any claim
12 in this special warranty deed and agreed to warrant
13 and indemnify Ms. Hammer against any claims that are
14 filed on it.

15 THE COURT: What if somebody passes title? Let's
16 just assume Mr. Hammer is correct that Mrs. Hammer was
17 supposed to do X,Y and Z after he did A,B and C. He
18 did his ABC, and she did not nor did she ever have any
19 intention to do what she is required to do, is he
20 stuck with that general warranty deed from now to the
21 end of the world?

22 MS. BALLARD: My understanding of a general
23 warranty deed is you read it from four corners of it.

24 THE COURT: But not if it's void.

25 MS. BALLARD: Well, there has been no action to

1 void it, there's been no action for quiet title, there
2 has been no efforts to set this deed aside in any way.
3 This is a general warranty deed that exists today in
4 which Mr. Hammer waives any interest he has in 320
5 St. James, yet he turns around and files the lis
6 pendens and the lawsuit clearly for the purpose of
7 interfering with the sale by virtue of Exhibit No. 4,
8 which is a letter he delivered on August 20th, during
9 the second closing, the one that did actually occur.
10 That's the letter --- it's dated --- unfortunately,
11 Your Honor, he dated it wrong. If you remember, he
12 said he didn't have a secretary.

13 THE COURT: It's really typed on 8/20/09.

14 MS. BALLARD: Correct, but he refers to a
15 telephone conversation on the 19th, so it was
16 delivered on the 20th, so it was sometime prior to the
17 20th that the telephone conversation occurred. He is
18 clearly at that point, 4:10 in the afternoon when he
19 is delivering this letter to the Degenhart law firm
20 trying to stop the closing because he is reiterating
21 the terms that had been discussed in the conversation
22 previously that had with Mr. Degenhart.

23 We know from Mrs. Degenhart's testimony that even
24 though he was attempting to interfere with the sale by
25 virtue of all these new issues he raised, because Mrs.

1 Hammer executed the indemnification and affidavit in
2 favor of the title company, for which by the way she
3 remains liable in the event there is some claim made
4 against the title coverage. Only because she was
5 willing to subject herself to personal risk did the
6 closing take place. The first closing did fail.

7 THE COURT: That's enough of a breach if you go
8 with intentional interference of a contract?

9 MR. HAMMER: Absolutely. She had a contract for
10 a cash sale. She lost it. She then negotiated a
11 second contract for self-financing and that one she
12 managed to get through despite intentional
13 interference to --- intentional interference with that
14 contract. She just managed to get past it. She
15 didn't get past the first one. He destroyed that one.
16 I mean, there's no question about it. The numbers are
17 obvious. The HUD statement that was introduced into
18 evidence shows the difference in what the terms of the
19 two transactions were.

20 THE COURT: I've closed a lot of loans in my day.
21 I just don't understand why her seller's affidavit and
22 indemnity form that the title company makes a lot of
23 people sign --- that's there for as long as Hu Ye owns
24 that house.

25 MS. BALLARD: Well, actually it is. As a matter

1 of fact we were talking ---

2 THE COURT: I signed one of those when I sold a
3 house.

4 MS. BALLARD: What we know --- Your Honor brought
5 this up earlier, and I did not know the answer to the
6 question when you brought it up. How long is a lis
7 pendens in effect? According to the statutes it's in
8 effect for five years or until the person who filed it
9 withdraws it. I'm referring to section 15-11-50 so
10 the lis pendens is in effect even today, so if the
11 buyers go to sell the property today, Mrs. Hammer is
12 on the hook.

13 THE COURT: Well, it's not going to be in effect
14 anymore because, at least in its current form because
15 his action --- well, I'll ask Mr. Aiken about that
16 later on.

17 MS. BALLARD: Yes, sir. The statutes say it does
18 not automatically cancel until five years has passed.
19 It can be withdrawn prior to that time only if the
20 person filed it withdraws it. At the commencement of
21 the trial I had motion to withdraw the lis pendens,
22 but we didn't hear any of those preliminary motions so
23 as we stand here ---

24 THE COURT: Okay. How about --- have you covered
25 abuse of process?

1 MS. BALLARD: No, sir, not yet, not yet. As far
2 as the slander of title and the intentional
3 interference with contract, Mrs. Hammer testified that
4 her attorney's fees in this matter are \$64,402 and
5 even Mr. Aiken has acknowledged that those are special
6 damages.

7 THE COURT: I thought she said they were
8 \$175,000?

9 MS. BALLARD: That's the total for both actions.

10 THE COURT: Where is the evidence of how they're
11 split out?

12 MS. BALLARD: She testified to that.

13 MS. LIPSCOMB: No, she didn't. She did not.

14 THE COURT: I think I missed that. I would ---
15 if that's in there somewhere, I thought I took pretty
16 good notes, but her --- her testimony the.

17 MS. BALLARD: If she didn't break it out, then
18 I'm mistaken, but I thought she had broken it out and
19 came up with her total. She had \$175,000 total
20 between the two actions. We had given her those
21 numbers, but I guess she may not have testified to
22 that.

23 THE COURT: Okay.

24 MS. BALLARD: But the total damages, cash
25 out-of-pocket damages as a results of the lis pendens

1 which is the slander of title, and the intentional
2 interference with contract are about \$106,000. Now,
3 the abuse of process claim in the 2009 Hammer vs.
4 Hammer claim is limited to the filing of this lawsuit.

5 The abuse of process claim in the 1641 is the one
6 that involves the domestic action and all those other
7 filings, as well.

8 THE COURT: And I will note that I don't --- I
9 don't note that a lay witness's interpretation of what
10 her abuse of process claim is based on, I don't really
11 give that any weight. In other words, if she says
12 it's everything that he has done to me as a matter of
13 proof, that really doesn't say much, but I'm taking
14 her abuse of process in Hammer vs. Hammer to be the
15 bringing of the Hammer vs. Hammer case.

16 MS. BALLARD: That's exactly correct.

17 THE COURT: And that is what you're saying?

18 MS. BALLARD: The lis pendens, the filing of the
19 complaint, and I believe there was an amended
20 complaint, but as a practical matter from the slander
21 of title allegation, I don't think that makes that
22 much of a difference. It makes a difference as to the
23 abuse of process because even after she completed the
24 sale, he has continued to file pleadings against her
25 in this matter.

1 THE COURT: Okay.

2 MS. BALLARD: Knowing --- well, I don't know if
3 he knew her indemnification claim was in place, but
4 any lawyer that has ever done real estate would have
5 known that she would have to sign indemnification to
6 get title insurance.

7 On the abuse of process claim, Your Honor, you
8 have to again look at it in the backdrop of how it
9 happened juxtaposed against the family court matter.
10 He brought this action in the circuit court because he
11 was losing in the family court on all the same issues
12 he was trying to litigate over there.

13 He brought this action under the subterfuge that
14 it was a certain contract. He wouldn't even disclose
15 in his pleading that it was a family court pleading.
16 He just said there was a certain contract. It was
17 only when we were able to bring in the certain
18 contract and he admitted that, yeah, that's the
19 contract that I'm talking about did the circuit court
20 then know, oh, okay, this is a family court matter.
21 That's when the court heard my motion for summary
22 judgment --- my motion to dismiss on subject matter
23 jurisdiction grounds, but he tailored the complaint in
24 such a way, while not alleging any interest in 320
25 St. James, which is key in slander of title, but he

1 kind of --- he drafted it in such a way to try to slip
2 it in and look like a real lawsuit when, in fact, it
3 was the same argument he was making and losing in
4 family court.

5 He slandered the title to --- excuse me, he
6 abused the process to stop the sale. He abused the
7 process to continue to harass Mrs. Hammer.

8 He attempted --- he filed this claim and
9 continued this claim for abusing process because he is
10 not satisfied with any of the results.

11 You heard the testimony. He won't even admit
12 that he is divorced. He is using all of this
13 litigation to harass Mrs. Hammer.

14 When you look at when he filed the 1634 case, it
15 too ties directly to the occurrences in the family
16 court case.

17 THE COURT: Well, I don't know if I agree with
18 you that he is doing it all to harass Mrs. Hammer.
19 There is evidence that he is doing it all because he
20 doesn't want this to be over with.

21 MS. BALLARD: Yes, sir, you are exactly right.

22 THE COURT: There is evidence of that.

23 MS. BALLARD: Yes, sir, and that too is not
24 legitimate use of ---

25 THE COURT: But harassment is not an element of

1 abuse of process.

2 MS. BALLARD: It is ---

3 THE COURT: I think the ulterior purpose and the
4 other things can be different things.

5 MS. BALLARD: The ulterior purpose in abuse of
6 process, Your Honor --- let me find it.

7 It's to obtain an objective not legitimate in the
8 use of the process. As Your Honor noted, he doesn't
9 want this to end.

10 THE COURT: There's evidence to that effect.

11 MS. BALLARD: Right. That's not legitimate.

12 These people were divorced in 2009. A divorce decree,
13 yet here we are in October, now November of 2012, and
14 he still refuses to recognize and, in fact, said if
15 Mrs. Hammer predeceased him, he's going to challenge
16 the fact they're divorced.

17 THE COURT: He said he could. He didn't say he
18 would.

19 MS. BALLARD: Right. He has thought it through.
20 I don't know how much more evidence you could need of
21 abuse of process. He is thinking every moment of what
22 kind of lawsuit he can bring against her next. You
23 can tell that from his own testimony.

24 When I asked him in whose capacity he was
25 testifying, when he was answering Ms. Lipscomb's

1 questions, he wouldn't give me an answer because he
2 doesn't want to box in his position that he might be
3 able to bring some other lawsuit in some other
4 capacity that he hadn't yet bought.

5 It's clear that he is going to use this process
6 to abuse Mrs. Hammer as much as he can. The most
7 important thing that Your Honor needs to be aware of
8 on the abuse of process claim is the fact that the
9 Supreme Court has already said that he has been
10 abusing the judicial system.

11 In it's order dated September 7th, 2012, it said,
12 and I quote ---

13 THE COURT: September 7?

14 MS. BALLARD: September 7, 2012. There was copy
15 of that attached to my pretrial brief. It says we can
16 take other measures in an effort to curtail Howard
17 Hammer's abuse of the judicial system. It exists.
18 It's happened already. His abuse of the system has
19 occurred. The Supreme Court has noted it. That's why
20 we finally got to trial. That's why the Supreme Court
21 sent it down here to Judge Barber to expedite this
22 matter and to make sure the case got tried. Judge
23 Barber set the case for this week. The Supreme Court
24 has said he has abused it.

25 It's almost a collateral estoppel argument on the

1 abuse of the judicial process. The second point that
2 I think that walks into --- that has to be considered
3 with that is the opinion that Mr. Hammer brought up
4 while he was testifying this morning disputing the
5 Supreme Court's finding that he is obsessed with Mrs.
6 Hammer.

7 It goes on to say that he initially refused to
8 accept any responsibility with regard to the instances
9 which led to his several arrests and instead
10 characterized himself as the victim in each of the
11 situations.

12 We heard exactly the same thing today. The
13 Supreme Court disciplined him for taking that position
14 in November 2011.

15 They refer to his agreement, saying he admits he
16 could have used better judgment. I'm quoting from the
17 opinion, but the court said he committed misconduct by
18 refusing to accept responsibility for the criminal
19 actions, for the matters that led to the arrests and
20 the Supreme Court obviously knows about the Barney
21 Giese letter. The Supreme Court knows about that, but
22 they also know the circumstances underlying it, as
23 Mr. Giese said in his letter, should have been in
24 family court.

25 THE COURT: Okay.

1 MS. BALLARD: Not that it didn't go away
2 completely, just that it shouldn't have been in the
3 solicitor's office.

4 Your Honor, in terms of the abuse of process, I
5 mean, there is just no question. If it were a jury
6 trial, it would be a jury verdict in Mrs. Hammer's
7 favor.

8 He has abused the process from the moment they
9 entered the settlement in 2005 and in the 2009 case of
10 Hammer vs. Hammer, the abuse of filing the lis pendens
11 and the complaint have generated the damages that Mrs.
12 Hammer testified to and the loss of the interest that
13 she would have earned based on Ms. Stoke's testimony.

14 Did Your Honor want me to go beyond those causes
15 of action.

16 THE COURT: Invasion of privacy.

17 MS. BALLARD: Invasion of privacy, Your Honor, I
18 probably have to agree with you there is not
19 sufficient evidence to allow that to go forward.

20 THE COURT: I tend to agree.

21 All right. Intentional interference with
22 existing --- let me go back to the slander of title
23 action. I have one question about that.

24 MS. BALLARD: Yes, sir; yes, sir.

25 THE COURT: I was has to be a publication with

1 malice of a false statement, derogatory to the
2 plaintiff's title causing special damages as a result
3 of diminished value of the property.

4 MS. BALLARD: Yes, sir.

5 THE COURT: That last part --- where is proof of
6 that last part?

7 MS. BALLARD: The diminished value of the
8 property ---

9 THE COURT: In the eyes of third parties.

10 MS. BALLARD: That's the sale that failed, the
11 sale that failed, the bank would not lend the money.

12 THE COURT: But the value wasn't diminished
13 because it still sold at the same price.

14 MS. BALLARD: Only because Mrs. Hammer was
15 willing to self-finance it. The sale was lost
16 entirely.

17 The bank was not willing to lend the money
18 according to the testimony from Ms. Degenhart.

19 The bank pulled out. The title company pulled
20 out. They would not lend any money on it, so Mrs.
21 Hammer had to self-finance the entire matter.

22 THE COURT: All right. I appreciate your
23 argument.

24 Mr. Aiken, do you have any response?

25 MR. AIKEN: I do.

1 THE COURT: And please be brief. I think I've
2 heard about everything I needed to hear.

3 MR. AIKEN: Judge, I'm going to be extremely
4 brief. The thing about the deed and the language in
5 the deed, the allegation was that the agreement that
6 led to that deed was void ab initio. In other words,
7 it was void at the time it was entered. I don't think
8 that's something he could give away or compromise in
9 the deed language.

10 You mentioned diminished value of the property.
11 The value of the property itself wasn't diminished in
12 value. What tells you that is the sale price was the
13 same. It was just a situation where it was all funded
14 by lending and then the second time around, it was
15 partially funded by lending and partially owner
16 financed by Mrs. Hammer, but it was the same sales
17 price. The sales price was exactly the same. Mrs.
18 Hammer testified to that on cross-examination.

19 THE COURT: Okay.

20 MR. AIKEN: That's all I have judge, thank you.

21 THE COURT: Ms. Lipscomb, it will be Mrs. Ballard
22 first on 1634 on the non-suit.

23 MS. BALLARD: Yes, sir.

24 THE COURT: Since you had made your argument at
25 the close of her case.

1 MS. BALLARD: Yes, sir, reserved those for us.

2 THE COURT: Ms. Lipscomb, is that correct?

3 MS. LIPSCOMB: That's my understanding, correct,
4 and then I would make the non-suit as to her
5 counterclaims.

6 THE COURT: Okay. Mr. Hammer and then probably
7 Ms. Ballard again. Well, no, he doesn't have any
8 claims back against her. I'll figure out the order.

9 MS. LIPSCOMB: Then I think it would be our
10 closing argument. It would go me, Ms. Ballard and
11 then allow for closing arguments.

12 THE COURT: So we're going to do closing
13 arguments by Mr. Aiken and Ms. Ballard again or would
14 that be your closing arguments?

15 MS. LIPSCOMB: That's what I understood. I defer
16 to whatever you all want to do.

17 MR. AIKEN: Your Honor, I don't need to make a
18 closing argument. I've made all the points I need to
19 make in my arguments.

20 MS. BALLARD: I have not addressed the 1634
21 counterclaims.

22 THE COURT: Yes, I understand that.

23 MS. BALLARD: Yes, sir.

24 THE COURT: You go right ahead.

25 MS. BALLARD: Should I address the non-suit on

1 the primary claim first?

2 THE COURT: Yes, ma'am.

3 MS. BALLARD: This was a lot of evidence
4 introduced about a lots of different things in this,
5 but what it really boils down to is the limited
6 partnership agreement prohibits additional limited
7 partners from having to contribute. There is there
8 provision for assessments, there is no provision to
9 require a limited partner to pay any additional money
10 in whatsoever.

11 THE COURT: Where is it in the law that says they
12 don't have to?

13 MS. BALLARD: It's statutory, Your Honor.

14 THE COURT: I looked for it, but --- where is it?
15 I may have missed it.

16 MS. BALLARD: I'll have to get you the exact
17 statutes. I don't have it at my finger tips.

18 THE COURT: Okay.

19 MS. BALLARD: Actually Professor Adams stated
20 what it was, but ---

21 THE COURT: He said what it was, but I looked and
22 didn't find it.

23 MS. BALLARD: I didn't --- I don't have that at
24 my finger tips.

25 THE COURT: 33-42-420, 820 and 830.

1 MS. BALLARD: I don't have those. It's really
2 quite a simple matter. As a matter of law, limited
3 partners have limited liabilities. That's why limited
4 liability partnerships exist. Even under the terms of
5 this agreement, her entire liability, if any, is
6 limited to her capital account in the limited
7 partnership. There is no provision whatsoever under
8 the terms of this partnership agreement, even if there
9 is a statute to the contrary, there is no provision in
10 this limited partnership agreement to require a
11 limited partner to transfer --- to pay additional
12 funds for any purpose, capital contribution, repairs,
13 anything.

14 The tax provisions that are set forth in the
15 limited partnership agreement clearly indicate that
16 any losses that are sustained have to be claimed for
17 tax purposes by the general partner. The limited
18 partners don't have to bear that loss.

19 The reason we have introduced all this evidence,
20 Your Honor, about the transfer of the dirt and the
21 transfer of Mrs. Hammer's 8 percent interest is
22 because even at the time the lawsuit was brought, the
23 1634 lawsuit was brought, if she had some interest in
24 it, she doesn't anymore.

25 1634 is now suing Howard Hammer because he is the

1 recipient of both the deed and the assignment of
2 interest.

3 THE COURT: Is there not? You're saying there
4 should be?

5 MS. BALLARD: As a matter of law, Your Honor, and
6 I've lost it again. Here it is.

7 A deed is legally effective once it is delivered,
8 and it is undisputed that it was delivered. It was
9 delivered the first time according to Mr. Madden in
10 2009 when they were at the courthouse. It was given
11 back to him --- it was delivered again according to
12 Exhibits 16 and 17 in 2010, and it was sent back by
13 Ms. Lipscomb, but the law is very clear that delivery
14 is not essential to make it effective. Neither is
15 recording.

16 The same thing would apply with the tender of the
17 partnership interest. Again it was done pursuant to
18 court order, so your hypothetical about just handing a
19 business over to someone on the street really doesn't
20 apply. Mrs. Hammer was complying with the court order
21 when she executed the document and Your Honor read it,
22 which said any and all interest she has, if any, to
23 Mr. Hammer. She had to do that pursuant to the court
24 order and she did that. It happened, it occurred.

25 So now, today, back then, 2010, 2009, she doesn't

1 own anything, nothing. Mr. Hammer owns it all. So
2 the lawsuit for whatever interest it might have been
3 that used to belong to her now is now a suit against
4 Mr. Hammer, not against Mrs. Hammer. She was no
5 longer a limited partnership. She no longer has the
6 dirt in her name.

7 There is no basis upon which to attach any
8 assessment, even if it were proper, to her because she
9 doesn't own the limited partnership. She doesn't own
10 the dirt.

11 The only reason, we would submit, Your Honor,
12 that they've not been accepting this stuff is so this
13 lawsuit could be furthered.

14 If you look at again, the date of filing in this
15 matter, Judge Manning dismissed Mr. Hammer's primary
16 claims in Hammer vs. Hammer in April of 2010,
17 April 13, 2010, I believe it was.

18 1634 filed this lawsuit on April 30th, 2010, so
19 as soon as Judge Manning said Mr. Hammer, you don't
20 have an individual claim against Mrs. Hammer anymore,
21 he said, okay, fine. Mr. Turbeville file suit against
22 Mrs. Hammer under the 1634 lawsuit. That's, in fact
23 --- when Mr. Turbeville said he was directed to file
24 the lawsuit by Mr. Hammer. It found its way to
25 Ms. Lipscomb for whatever reason or by whatever

1 process.

2 You cannot escape the significance of the fact
3 this lawsuit did not get brought until his other
4 lawsuit against Mrs. Hammer had died.

5 We introduced as Exhibit 18, Judge Manning's
6 order dismissing the 320 action based on lack of
7 jurisdiction, we included the Court of Appeals
8 decision which affirmed and went into the public
9 policy discussion which we discussed ad nauseam, and a
10 copy of remittitur which transmitted the closure of
11 that action that Mr. Hammer brought against Mrs.
12 Hammer.

13 The timing is not a coincidence. He was unable
14 to continue to harass her in Hammer vs. Hammer, so he
15 started harassing her in 1634 L.P. under some
16 imaginary theory that she remained a limited partner,
17 and he is trying to convince you that because Bernie
18 Ackerman's K-1s say --- the ones that are attached to
19 the 1634 Main L.P. partnership returns, say that she
20 has a 56.8 percent interest in the limited
21 partnership.

22 Mr. Ackerman testified in his deposition very
23 clearly that he had no documents. He put those
24 numbers in those K-1s based strictly on what Howard
25 Hammer told him to put in there. He had never seen

1 any documents, so their reliance on Mr. Ackerman's
2 finding that Mrs. Hammer continued to own the
3 56.8 percent interest is simply more of Mr. Hammer's
4 continued ---

5 THE COURT: Why did she sign those documents
6 under penalty of perjury that she had read everything?

7 MS. BALLARD: Same reason Mr. Hammer signed it.
8 He testified that he trusted Mr. Ackerman.

9 THE COURT: Is there anything that Mr. Hammer
10 signed that was incorrect?

11 MS. BALLARD: Yes, sir, all of it was incorrect.

12 THE COURT: Like what?

13 MS. BALLARD: All of the tax returns we
14 introduced into evidence.

15 THE COURT: His tax returns?

16 MS. BALLARD: No, sir, the 1634 tax returns.

17 THE COURT: Oh, you asked him a bunch of
18 questions about whether he filed married or ---

19 MS. BALLARD: Yes, sir, that was later.

20 THE COURT: Did he file the wrong way after he
21 was divorced?

22 MS. BALLARD: I don't know, that's why I was
23 asking.

24 THE COURT: You were asking.

25 MS. BALLARD: I didn't know. I asked because I

1 didn't know --- for purposes of trying to determine,
2 you know, whether he filed as married or divorced, I
3 don't know because he won't admit one way or the
4 other. All the tax returns that we introduced into
5 evidence for 1634 from 2005 to 2011, Mr. Hammer is the
6 one who authorized the filing under penalty of perjury
7 indicating that Mrs. Hammer has a 56.8 percent
8 interest.

9 THE COURT: Are you saying he knew she didn't?

10 MS. BALLARD: Of course, he knew she didn't. He
11 is the one who refused the deed. He is the one who
12 refused the tender of the partnership interest. He is
13 the one who was challenging the order that required
14 her to give it to him. Yes, the deeds had already
15 been executed. Of course, he knew that.

16 Mrs. Hammer testified that she trusted Mr. Hammer
17 and Mr. Ackerman and Mr. Hammer's own testimony was we
18 all trusted Mr. Ackerman.

19 THE COURT: So you're saying the abuse of process
20 continued. What's your other cause of action --- your
21 other counterclaim?

22 MS. BALLARD: In 1634?

23 THE COURT: Against 1634.

24 MS. BALLARD: Yes, sir.

25 THE COURT: Conspiracy?

1 MS. BALLARD: No, sir. My claim in 1634 is abuse
2 of process and by way of alternative, I pleaded civil
3 conspiracy and conversion. Here is why I pleaded it
4 in the alternative. I contend that Mrs. Hammer has no
5 continuing interest in either 1634 Main L.P. or the
6 dirt. If Your Honor disagrees and finds that she does
7 have a continuing interest in 1634 Main and the dirt,
8 then Mr. Hammer raided all the cash out of the limited
9 partnership in 2005 after they separated.

10 We've introduced the documents indicating the
11 hundreds of thousand of dollars that were taken out of
12 what was a profit making corporation until Mrs. Hammer
13 left him. Funny how those coincidences happen. It
14 suddenly became a non income producing property. He
15 has not paid rent for, I believe, it was three out of
16 a number of years. He's not paid any rent, but Mr.
17 Turbeville indicated that he has continued to occupy
18 the building. Mr. Hammer is arguing he didn't occupy
19 as much of the building, but he's not paying any rent.

20 What we've got under the alternative causes of
21 action, if Mrs. Hammer does, in fact, continue to own
22 an interest in the limited partnership, which we
23 dispute, we think the abuse of process ends there, but
24 if you find that she continues to own some interest in
25 it, then the conversion action starts in 2005 when

1 Mr. Hammer took all the cash out of the limited
2 partnership because Mrs. Hammer had left him. They
3 had \$600,000 in the bank, all rental income, or the
4 majority of which was rental income, at the beginning
5 of 2005 and they had --- I think it was 20 something
6 thousand at the end of the year because he pulled all
7 the money out. Mrs. Hammer clearly would have been
8 receiving distributions.

9 Mr. Turbeville said if Mr. Hammer had been paying
10 rental all this time after the repairs had been made,
11 there would have been money to distribute, so my
12 conversion claim and my civil conspiracy claim are
13 both in the alternative.

14 If you find that Mrs. Hammer continues to own
15 some interest in the limited partnership and continues
16 to own the dirt, then she is entitled to some of the
17 benefit from that and Mr. Hammer and the limited
18 partnership have converted the money, either by not
19 paying it --- Mr. Hammer didn't pay rentals, and by
20 taking it all out in 2005. He told you that those
21 early 2005 distributions were buyouts, but I have
22 demonstrated through the check register that
23 throughout the year 2005, he continued to pay
24 distributions to people who supposedly had been bought
25 out.

1 What he did when they separated is he had this
2 partnership that had cash of \$600,000 in it and
3 according to the documentation, a building worth \$1
4 million, and he pulled all the cash out. So the
5 conversion, it wasn't just for the years 2006 and
6 2007, but he took a very strong profit making limited
7 partnership and because Mrs. Hammer had left him, he
8 squeezed all the money out of it and Mr. Turbeville
9 has introduced into evidence all the documents that
10 show they are barely collecting rents and they're in
11 the red every year. That wouldn't have happened if
12 they hadn't raided all the money out of it. It just
13 would not have happened.

14 THE COURT: Okay. Are you've asking for punitive
15 damages on the abuse of process and intentional
16 interference against Mr. Hammer ---

17 MS. BALLARD: Yes, sir.

18 THE COURT: --- in the other case?

19 MS. BALLARD: Yes, sir, I would request that if
20 Your Honor finds that there is sufficient evidence to
21 award punitive damages that we have a subsequent
22 Gamble hearing on Mr. Hammer's assets so a proper
23 amount could be determined.

24 Let me just address the civil conspiracy claim.

25 THE COURT: If you would, please.

1 MS. BALLARD: Yes, sir. Again, that's in the
2 alternative, but the testimony was that Mr. Hammer
3 instructed Mr. Turbeville to make these disbursements.
4 Mr. Turbeville said he wrote the checks. He testified
5 that he talked to Mr. Turbeville and had
6 Mr. Turbeville decide who to bring the lawsuits
7 against and amazingly the only lawsuit that was
8 brought was the one against Shirley Hammer. This was
9 a conspiracy among Howard Hammer in his individual
10 capacity, Howard Hammer in his capacity as the sole
11 owner of SH-5, the general partner of 1634 Main L.P.,
12 and Danville Business Advisors through Mr. Turbeville.
13 You don't have to commit an illegal act to have a
14 civil conspiracy. The purpose of a civil conspiracy
15 is to ---

16 THE COURT: Well, I don't know, of course, I
17 don't think Mr. Turbeville engaged in any willful
18 conduct.

19 MS. BALLARD: I don't think he did either, Your
20 Honor.

21 THE COURT: I think he deserves a metal.

22 MS. BALLARD: I agree with you, but that doesn't
23 mean Mr. Hammer didn't use him in the conspiracy.

24 THE COURT: So somebody can conspire with
25 somebody even if they don't know they're conspiring?

1 MS. BALLARD: He can have him write the checks,
2 he can have him --- he acted as his agent. He flushed
3 the money out of the there. He filed the lawsuit. He
4 hired Ms. Lipscomb, all at Mr. Hammer's suggestion.

5 THE COURT: So a co-conspirator can be a co-
6 conspirator and not be liable for conspiracy?

7 MS. BALLARD: Yes, sir, absolutely or I can
8 choose not to sue him, which I didn't at this point.

9 THE COURT: Well, I don't see any evidence of
10 Mr. Turbeville engaging in any intentional wrongful
11 conduct. He engaged in intentional conduct because,
12 you know, he wrote checks.

13 MS. BALLARD: Correct.

14 THE COURT: But I don't think it was with the
15 knowledge that it was improper.

16 MS. BALLARD: I hadn't thought about that
17 evidence one way or the other, Your Honor.

18 THE COURT: Because if that were the case, you
19 probably would have brought Danville Business Advisors
20 in, or at least Mr. Turbeville also, and that would
21 have been a mess.

22 MS. BALLARD: Mr. Hammer, in his individual
23 capacity ---

24 THE COURT: Conspired with himself.

25 MS. BALLARD: Conspired with himself as a limited

1 partner and also conspired with SH-5 LLC, of which he
2 is the general partner, of which he was the sole owner
3 and general partner of 1634 L.P. He testified under
4 my cross that he wore lots of different hats, and he
5 was answering questions in lots of his different
6 roles.

7 He created multiple personalities for himself.
8 And, Your Honor, I think it's pretty clear that he
9 organized the bringing of this lawsuit. He
10 accomplished it by bringing in Mr. Turbeville, who he
11 kept in the dark about most of this, who wrote the
12 checks and provided the information to Mr. Ackerman.

13 Yes, it's a civil conspiracy.

14 THE COURT: Okay. All right. Yes, ma'am, I've
15 got a criminal matter that I have had scheduled. How
16 long do you think yours will take, Ms. Lipscomb, 20 or
17 30 minutes?

18 MS. LIPSCOMB: At least because I've got to
19 answer hers, and then I've got to do my closing ---
20 put in why I think we stated a cause of action.

21 THE COURT: All right. We'll talk a recess for
22 about ten minutes. I have the criminal matter which
23 is not going to take very long at all. Perhaps that
24 will let you and Mr. Hammer get your thoughts together
25 and go from there.

1 MS. BALLARD: We can make the table available and
2 clean things off.

3 THE COURT: No. The defendant will be standing
4 up here and the attorneys will not need a table; is
5 that right? You make them clean it off, that will be
6 another hour.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: Okay. Thank you for your patience.
9 All right.

10 Ms. Lipscomb, I thwarted your efforts to speak at
11 every turn, so I'll turn the floor over to you.

12 MS. LIPSCOMB: Thank you, Your Honor. I just
13 wanted to make sure where we are in the proceedings.
14 I had thought Ms. Ballard was just going to address my
15 non-suit as to my case, but she apparently went ahead
16 and argued the counterclaims, as well, which is great,
17 which is fine to make it go quicker. I just wanted to
18 make sure where I'm supposed to start.

19 THE COURT: You can cover it all, but you can
20 start, I think the best place for you to start would
21 be to tell me why you think you're entitled to a
22 non-suit on your claims against her and then why
23 you're entitled to a non-suit on her counter claim.

24 MS. LIPSCOMB: All right.

25 THE COURT: That may, as she said, all overlap.

1 MS. LIPSCOMB: Yes, Your Honor. The --- first,
2 1634 Main only has one claim, and that is an
3 assessment and I'm looking for my --- that is the
4 assessment of a limited partnership --- the collection
5 of an assessment of a limited partnership, that her
6 interest in the limited partnership for an amount that
7 is necessary for repairs and maintenance as determined
8 by the property management company, which was Danville
9 Business Advisors.

10 The evidence is --- when I looked at this
11 originally to bring this suit, the evidence is that
12 Mrs. Hammer has a 56.8 percent interest in the limited
13 partnership.

14 Mr. Turbeville testified that it was his
15 understanding that she had 56.8 percent interest in
16 it. Mr. Ackerman testified that Mrs. Hammer had a
17 56.8 percent interest in the limited partnership and
18 Mrs. Hammer executed an 89/79 I.R.S. e-file signature
19 authorization in 2006 and in 2007 stating under
20 perjury that she had examined the electronic
21 individual income tax return and the accompanying
22 schedules and to her knowledge, it was true and
23 correct.

24 The actual testimony in Mr. Ackerman's testimony
25 in his deposition and in --- alluded to by

1 Mr. Turbeville but also testified to by Mr. Hammer was
2 that Mrs. Hammer had a piece of property in 2001, 2002
3 at Isle of Palms. It was sold. She would have had a
4 taxable capital gains, but for some tax planning that
5 was done on her behalf, the plan was that she would
6 buy a 52.75 interest in the building at 1634 Main,
7 that the partnership would use those funds to buyout
8 Judith Hammer, Alvin Hammer and Stanley Hammer, and it
9 would give her, at some point in the future,
10 preferably at least two years out, an interest in the
11 limited partnership. That was, in fact, done. The
12 deed was executed, and if you look at ---

13 THE COURT: When was that deed executed to her?

14 MS. LIPSCOMB: The deed was --- hold on, I'll
15 tell you. The deed from --- it's Exhibit 14.

16 MS. BALLARD: I got it.

17 THE COURT: I have 14.

18 MS. BALLARD: February 11, 2002.

19 MS. LIPSCOMB: Do you have it, Your Honor?

20 THE COURT: Yes, ma'am.

21 MS. LIPSCOMB: Okay. The deed was given to her.
22 The consideration for the deed is shown on the
23 affidavit of true consideration as \$395,531.10.

24 Thereafter, if you look at Exhibit 31, you will
25 see on page two, it has the partnership buyout, and

1 these are documents that were as testified, prepared
2 by Mr. Turbeville, and page two shows a partnership
3 buyout in the amount of \$178,563. That's page two.
4 If you look at page three, which is the checkbook,
5 you'll see that the first three figures to Stanley
6 Hammer, Judith Hammer and Alvin Hammer, they're
7 referred to as distributions, but, in fact, they total
8 that buyout figure.

9 Mr. Hammer and Mrs. Hammer ---

10 THE COURT: Why did they continue to get
11 distributions that year?

12 MS. LIPSCOMB: Your Honor, I don't know except
13 that Mr. Ackerman kept referring to this as a
14 realignment, and so my thought is --- my thinking is
15 that --- and this may be completely off the wall, but
16 my thinking is that they were bought out in pieces and
17 parts over the year for some particular individual tax
18 purposes, because I would be willing to say without
19 question that their interests were worth more than
20 \$71,423 at that time, so the total distribution, the
21 other distributions may have gone toward their buyout,
22 as well. I wouldn't know without talking to the
23 individuals, but Mr. Ackerman insisted on calling it,
24 instead of a buyout of ownership interest, he called
25 it a realignment of partnership interest.

1 The tax returns show in 2005 that their
2 interest --- that those three individual's interest
3 was reduced from whatever percent they had to zero
4 percent.

5 Where is that? The tax return I'm referring to
6 is Exhibit 19. Here it is. Over in their K-1s
7 towards the back, and you may recall I very tediously,
8 I'm afraid, went through this with Mr. Howard Hammer
9 as to the K-1s, and it shows a reduction in the SH-5
10 and in Mr. Hammer's percent interest, the substantial
11 increase in Mrs. Hammer's, a reduction in David
12 Hammer's, and a completes going to zero as to Judith,
13 Alvin and indicating, in fact, that at least by the
14 end of the year, the end of 2005, the buyout had been
15 completed.

16 THE COURT: And the evidence that she knew about
17 that was her signature on the e-file authorization
18 document?

19 MS. LIPSCOMB: Yes, sir, in two years, 2006
20 and 2007.

21 THE COURT: When was your demand made of her to
22 pay?

23 MS. LIPSCOMB: The demand that I made --- well,
24 let's see. The first tender was November. I just
25 wrote this down. Hold on just a second.

1 MS. BALLARD: You're talking about the letter
2 from Marion Turbeville?

3 THE COURT: Yes.

4 MS. LIPSCOMB: November of 2000 ---

5 THE COURT: Nine.

6 MS. BALLARD: 2009.

7 MS. LIPSCOMB: November of 2009 was his letter,
8 and that's Exhibit 29 --- actually it's 23, Your
9 Honor, I'm sorry.

10 THE COURT: Okay.

11 MS. LIPSCOMB: His letter of assessing what the
12 damages were dated November 12, 2009, was actually
13 send to --- according to Mr. Hammer, sent to the
14 limited partnership --- partners and the general
15 partner, SH-5 LLC, by letter dated November 12th,
16 2009, so that would be the date of assessment.

17 The parties had reached an agreement on May 8th,
18 2008.

19 The tender was made in --- I mean, the demand for
20 assessment was November 12, 2009, and then Mr. Madden
21 tendered a deed on 1/5/2010 is the date of the deed
22 and the assignment, but his letter is somewhat later
23 than that.

24 In any event, the ---

25 THE COURT: Can I ask you something about

1 general --- limited partnerships?

2 MS. LIPSCOMB: Yes, sir. I might know.

3 THE COURT: What's the advantage of being a
4 limited partner if you've got 56.8 percent and a
5 general partner is sitting there at some percent?
6 What's the advantage of being a limited partner?

7 MS. LIPSCOMB: Your Honor, my understanding is
8 that the limited partner is protected against outside
9 claims to the extent of the partnership interest.

10 They have the protection, total protection
11 against the outside third-party claims as to --- but
12 --- however, especially if you've got one asset and it
13 is a building, and you have to be able to make
14 assessments to be able to keep the building in repair
15 and maintained. Otherwise your asset is going to fall
16 apart essentially.

17 So you are --- the general partner is entitled to
18 determine that they can make an assessment up to ---
19 not in excess of, up to the percentage that you own
20 the building.

21 THE COURT: So if you owned an interest in real
22 estate of 52.75 percent, what could possibly motivate
23 you to deed that back to the limited partnership in
24 exchange for a higher percentage interest in the
25 partnership if it was going to put you on the hook for

1 56.8 percent of the repairs?

2 MS. LIPSCOMB: Well, the ---

3 THE COURT: What's the motivation?

4 MS. LIPSCOMB: She deferred taxes on whatever her
5 gain was, the \$200,000 or whatever that was ---

6 THE COURT: She could have left that as an
7 interest in real estate.

8 MS. LIPSCOMB: Sir?

9 THE COURT: She could have left that as an
10 interest in real estate.

11 MS. LIPSCOMB: Yes, sir, but the ultimately plan
12 was that the building and her interest would be ---
13 her interest in the partnership would be equal to the
14 property that she would transfer back into the
15 partnership.

16 THE COURT: Why would she agree to that? Why
17 wouldn't she just want to keep her interest in the
18 building? Is there evidence of a tax advantage for
19 disadvantage to keeping it in interest in the real
20 estate in perpetuity?

21 MS. LIPSCOMB: I'm not a tax attorney, but my
22 understanding was that that was the plan, that the
23 ultimate goal ---

24 THE COURT: It was in writing?

25 MS. LIPSCOMB: No, sir, except the way it's

1 evidenced is primarily the tax returns and what
2 Mr. Turbeville understood to be the situation and
3 Mr. Ackerman understood to be the situation.

4 In any event, with the understanding and belief
5 that Mr. --- that the limited partnership allowed
6 assessments to be made with the --- Mr. Turbeville
7 substantiated what the amounts of the improvements,
8 the cost of repairs needed to be made, and determined
9 what the individual assessments were to be.

10 The demand was made. Mr. Hammer, having no
11 money, offered Mr. Turbeville a confession of
12 judgment, and the --- I don't know what as to David or
13 SH-5. I guess SH-5 would have also done a confession
14 of judgment.

15 They asked me to bring a suit to do --- for the
16 assessment. I did. I looked at it. I did the, you
17 know, I filed this in good faith with the
18 understanding that all, that the partners and
19 everybody who was supposed to be onboard was onboard.

20 THE COURT: Well, is it for me to take into
21 account, at least far as a non-suit motion is
22 concerned that, at least it's really interesting to
23 note that even though Mr. Hammer offered a confession
24 of judgment, he never really signed one and he never
25 really delivered it, it was never really filed and all

1 this business against Shirley is just kind of a sham?

2 MS. LIPSCOMB: Your Honor, he's been after me to
3 draft that confession of judgment, and I just haven't
4 done it.

5 THE COURT: Well, he's a lawyer.

6 MS. LIPSCOMB: I know.

7 THE COURT: Even though he's not a practicing
8 lawyer, he knows how to do it, even though he is not a
9 practicing lawyer.

10 MS. LIPSCOMB: Yes, sir.

11 THE COURT: You don't represent him in this
12 litigation.

13 MS. LIPSCOMB: No, sir.

14 THE COURT: I don't fault you all, but what I'm
15 saying is that he claims he was willing to do that.
16 He has a typewriter. Type it on out.

17 MS. LIPSCOMB: I'm sure if I handed him one today
18 he would sign it, and then we could file it. I don't
19 have any doubt about that, but the ---

20 THE COURT: I guess the next thing is would 1634
21 take steps to foreclose on the judgment, because he's
22 evidently got a lot of other real property.

23 MS. LIPSCOMB: And I'm ---

24 THE COURT: Or had, anyway.

25 MS. LIPSCOMB: Yes, Your Honor.

1 THE COURT: Okay. And I've interrupted you
2 several times. I apologize.

3 MS. LIPSCOMB: No, that's all right. Your Honor,
4 also I'd like to point out, Ms. Ballard mentioned
5 something about \$419,000 in her closing or whatever in
6 her statements earlier, and she had said that during
7 trial. I asked her what she meant by that, and she
8 --- the \$19,000 in the context of raiding the company
9 or something. In trial she said that she had
10 withdrawn that. I still don't know to what she is
11 referring. I would like to point out that the
12 handwriting on Exhibit 31, Mr. Hammer said was not
13 his.

14 He did --- I don't know if he testified he didn't
15 know what did it. I assume it was Mr. Turbeville, but
16 I don't know that either. But whatever the
17 handwriting is on Exhibit 1 cannot be attributed to
18 Mr. Hammer because he didn't really put it there and
19 didn't know who put it there.

20 Mr. Turbeville testified that assessments are
21 normal, that he makes --- that they are made in the
22 course and scope of his business. Mr. Ackerman
23 testified that reserves as to maintenance and
24 assessments are normal. Mr. Ackerman also testified
25 he had no reason to doubt that Mrs. Hammer knew that

1 she had --- if nothing else, was the equitable owner
2 of 56.8 interest in 1634 Main.

3 The --- Ms. Ballard said a deed does not have to
4 be accepted to be delivered. Well ---

5 THE COURT: To be ---

6 MS. LIPSCOMB: Does not have to be accepted.

7 THE COURT: To be binding.

8 MS. LIPSCOMB: To be binding and, Your Honor, I
9 submit that's not correct, because if I were to
10 inherit a piece of property that were very tax laden
11 or very tax burdened, I have the right clearly not to
12 --- to reject that bequeath or that inheritance. I
13 don't have to accept a piece of property that is
14 either deeded to me either incorrectly or in an
15 inaccurate amount, or there are certain kinds and
16 terms and conditions that are required in deeds, and
17 my understanding is that she was to deed her interest
18 in the 52.75 interest in the real property and to
19 assign her 8 percent ultimately to get it all right.
20 In any event, it was not done.

21 THE COURT: Well, didn't the family court order
22 require all of you to do that by a certain date?

23 MS. LIPSCOMB: If ---

24 THE COURT: That if it wasn't done, the clerk of
25 court was going to do it?

1 MS. LIPSCOMB: Yes, Your Honor.

2 THE COURT: And she did do it on October 27th,
3 according to Mr. Madden's testimony. He said the
4 tender was initially made that day.

5 MS. LIPSCOMB: What day?

6 THE COURT: The initial tender of the quitclaim
7 deed and the ---

8 MS. LIPSCOMB: Assignment.

9 THE COURT: --- assignment was made October 27th
10 and Mr. Hammer refused it.

11 MS. LIPSCOMB: My understanding, and I wasn't the
12 attorney at that time. My understanding was ---

13 THE COURT: That's what Mr. Madden said.

14 MS. LIPSCOMB: I understand. What I'm saying is
15 I don't know why it was refused. Mr. McLaren would
16 know that. I think, my recollection is, that
17 Mr. McLaren was under the impression it was not in the
18 right form.

19 I've seen some correspondence along that way, way
20 back. My correspond doesn't go that far back, but in
21 any event, at least as of the time the lawsuit was
22 brought, legally Mrs. --- at least it is our position,
23 that legally Mrs. Hammer had a 56.8 percent interest
24 in it and the assessment was properly brought.

25 The --- do you have any questions about our

1 claim, Your Honor, and then I'll go into ---

2 THE COURT: Your claim is based on --- your claim
3 is probably the simplest to interpret and that is she
4 had 56.8 percent interest in the partnership and she
5 was liable for 56.8 percent of the repairs and that
6 56.8 percent of the total was the \$88,000 figure,
7 right?

8 MS. LIPSCOMB: Yes, Your Honor. Actually the
9 \$88,000 was rounded off and if you do the actual
10 calculation it's real close to it, like \$87,900.

11 THE COURT: Okay.

12 MS. LIPSCOMB: Actually, it's \$87,969.

13 THE COURT: If the tender was made in October,
14 and I'm talking about non-suit purposes, if there is
15 evidence that tender was made pursuant to Judge
16 Rucker's order saying you guys are ordered to do this
17 by October "X" or the clerk of court is going to do
18 it. The tender was made on October 27th. That's what
19 the evidence is.

20 MS. LIPSCOMB: What year are we talking
21 about, 2009?

22 THE COURT: 2009.

23 MS. LIPSCOMB: Okay.

24 THE COURT: The tender was refused and then low
25 and behold, 12, 16 days later on November 12th, here

1 comes this letter from Mr. Turbeville saying, all
2 right, Mr. Hammer, here is what it's going to cost.
3 Drum up the money for me. Isn't that kind of --- for
4 non-suit purposes, isn't that enough to say, you know,
5 something is going on here or there's evidence of it?

6 MS. LIPSCOMB: No, Your Honor. I don't think so
7 because at the time, the order --- I think, ultimately
8 that order was on appeal, and prior to that, the
9 agreement dealing with it was --- had been appealed.
10 The hearing on October 12th, 2009, which I was not
11 there, but I think it ultimately resulted in a
12 January 27th, 2010 order dealing with denying motions
13 to reconsider, and then that order was appealed.

14 THE COURT: But ---

15 MS. LIPSCOMB: So she was still ---

16 THE COURT: Mrs. Hammer --- at least the evidence
17 is, she complied with Judge Rucker's order to do this.

18 MS. LIPSCOMB: As far as why any 2009 tender was
19 rejected, I don't know.

20 THE COURT: Okay.

21 MS. LIPSCOMB: And I did not know of the 2009
22 tender and rejection. I think Mr. Madden testified
23 that it was done in the courthouse.

24 THE COURT: Yes.

25 MS. LIPSCOMB: Okay, so I don't know of any

1 correspondence. There may very well be some. I don't
2 know of any ---

3 THE COURT: Okay.

4 MS. LIPSCOMB: But the first tender to me was the
5 one in December, the one that I returned in December,
6 and the reason I returned it is that a lawsuit had
7 already been filed.

8 THE COURT: Right.

9 MS. LIPSCOMB: The --- and I believe the D.J.
10 action at the time was still pending.

11 THE COURT: Mr. Hammer's?

12 MS. LIPSCOMB: Yes, sir.

13 THE COURT: Okay.

14 MS. LIPSCOMB: With regard to the first
15 counterclaim for abuse of process, as Mr. Aiken has
16 already argued, under the Food Lion case, and I handed
17 up a copy, I believe, the elements of abuse of process
18 are an ulterior purpose, a willful act in the use of
19 the process not proper in the regular conduct of the
20 proceeding.

21 The --- an ulterior purpose exists if the process
22 is used to gain an objective that is not legitimate in
23 the use of the process, and that's the Food Lion case.
24 To be willful ---

25 THE COURT: What's that cite?

1 MS. LIPSCOMB: It is 567, 251.

2 THE COURT: SE or SE 2nd?

3 MS. LIPSCOMB: SC 2nd.

4 THE COURT: All right. That's all I need.

5 MS. LIPSCOMB: At 251, and the page, if you want
6 it.

7 THE COURT: Okay.

8 MS. LIPSCOMB: Sir?

9 THE COURT: Go ahead.

10 MS. LIPSCOMB: The page is 254.

11 THE COURT: Okay.

12 MS. LIPSCOMB: It's further discussed a little
13 bit on 255. To be willful, the party must prove there
14 is some definite act not authorized by the process or
15 aimed at an object not legitimate in the use of the
16 process as required.

17 So there's three elements, it's got to be a
18 willful or overt act, used in a use of process, some
19 legal process that is improper because it is either
20 unauthorized or aimed at an illegitimate collateral.

21 In this --- in the Food Lion case, they denied
22 their --- they overruled their abuse claim, and they
23 said in a footnote, contrary to Food Lion's argument,
24 the improper act must relate to the judicial process.
25 It is the malicious misuse or perversion of the

1 process for an end that is not lawfully warranted by
2 it, and that is what constitutes the abuse of process.

3 In this case, 1634 brought a suit against a
4 limited partner to collect an assessment it thought it
5 was entitled to do, to bring in the first place, and
6 1634 Main did nothing more than file the lawsuit and
7 proceed with that lawsuit.

8 THE COURT: Who is your attorney client
9 relationship with when you represent an L.P.?

10 MS. LIPSCOMB: Mine has been because --- normally
11 it would have been with a general partner, because
12 there was a conflict in this case, it has been totally
13 with Marion Turbeville. He was ---

14 THE COURT: Well, I think I've already indicated,
15 I've shown my cards, on the fact that I don't think
16 Mr. Turbeville did anything independently tortious.

17 MS. LIPSCOMB: No, sir. He ---

18 THE COURT: Anything that 1634 did that would be
19 tortious conduct would have been through Mr. Hammer as
20 the sole member as the general partner.

21 MS. LIPSCOMB: I would like to call attention to
22 1634 Exhibit 2. It spells out what Mr. --- what
23 Danville Business Advisor's rights and obligations
24 are, and you will see under section 3-C that it is
25 permitted to institute legal actions or proceedings

1 required in the best judgment of the agent and with
2 the owner's consent.

3 THE COURT: I know that gets Danville Business
4 Advisors off the hook if it were a party, conceivably.

5 MR. HAMMER: Yes, sir.

6 THE COURT: But I'm talking about --- and your
7 relationship may have been with Mr. Turbeville, but as
8 far as the impetus for bringing this suit, it was
9 certainly not Mr. Turbeville.

10 MS. LIPSCOMB: Well ---

11 THE COURT: It was Mr. Hammer. He's the one that
12 got this ball rolling for legitimate or illegitimate
13 purposes.

14 MS. LIPSCOMB: Well, I do know that it arouse in
15 the context --- I think he testified to this. It
16 arouse in the context of getting the eaves power
17 washed ---

18 THE COURT: Couldn't do it.

19 MS. LIPSCOMB: No, they couldn't do it because it
20 would tear up the --- and ruin the under structure.
21 That's what got them looking into these other things.
22 I have not heard the term before, but he said the
23 building was fatigued and needed those repairs ---

24 THE COURT: Right.

25 MS. LIPSCOMB: --- so he could do those repairs

1 and get in more tenants.

2 Going back to --- the sole complaint or
3 counterclaim against 1634 Main is in paragraph 27 of
4 the second amendment to amended answer to complaint,
5 counterclaims and third party complaints. It says ---

6 MS. BALLARD: Which paragraph?

7 MS. LIPSCOMB: Twenty-seven. It says the
8 ulterior purpose was, in bringing this action, this
9 one action, was to harass Mr. Hammer.

10 THE COURT: Mrs. Hammer.

11 MS. LIPSCOMB: Mrs. Hammer, I'm sorry. Well,
12 they said defendant, so I'm confused.

13 So it is the law as set forth in Pond Place ---
14 I'd like to hand that up. It's the law in Pond Place
15 v. Poole that the filing of a lawsuit --- the main
16 thrust of it is whether filing a lis pendens was an
17 abuse of process and they said the filing of the lis
18 pendens is absolutely privileged, but it also
19 discussed that just filing the lawsuit in and of
20 itself is not abuse of process.

21 It cited an older New York Supreme Court case,
22 and it says the interest --- this case says, the
23 interest of society requires that whenever men seek
24 the aid of courts of justice, either to assert or
25 defend rights of person, property or liberty, speech

1 and writing therein must be untrammelled and free. The
2 good of all must prevail over the incidental harm to
3 the individual, so the law offers a shield to the one
4 who in a legal proceeding publishes a libel, not
5 because of its wishes to encourage libel, but because
6 if men were afraid to set forth their rights in legal
7 proceedings for fear of liability to libel suits,
8 greater harm would result in the suppression of the
9 truth.

10 The law against all who takes part in judicial
11 proceedings, judge, attorney, counsel, printer,
12 witness letting in a right to speak and to write
13 subject only to one limitation that what is said or
14 written bears upon the subject of litigation, that is
15 pertinent, relevant and germane thereto.

16 I realize that's dealing with the privilege as to
17 a defamation or slander, but it also --- the court
18 goes on to find that the filing of a lis pendens is
19 absolutely privileged, and I submit that the mere sole
20 filing of a lawsuit does not constitute the perversion
21 of justice that is required to meet the elements of an
22 abuse of process claim, and, Your Honor, I'd like to
23 hand up Pond Place.

24 THE COURT: Okay.

25 MS. BALLARD: I've got a copy. Thank you.

1 MS. LIPSCOMB: Your Honor, I'd also like to point
2 your attention to D.R. Horton, which is another abuse
3 of contract case, and in D R Horton, it's interesting
4 because the lis pendens filed in that case was
5 admittedly filed to prevent the sale to a third party.

6 THE COURT: Y'all didn't file a lis pendens ---

7 MS. LIPSCOMB: No, sir. This is all just going
8 into the law of abuse of process, and it shows what it
9 --- this case just shows that it is --- it requires an
10 extreme ulterior purpose or perversion of the process
11 to constitute an abuse of process.

12 On page --- do you want the cites for the record?

13 THE COURT: No, ma'am, I've got them.

14 MS. LIPSCOMB: Okay.

15 THE COURT: I've got the cases. That's good
16 enough.

17 MR. HAMMER: All right. This said, even
18 assuming --- the court said even assuming for the sake
19 of argument that appellant's allegation might satisfy
20 as an ulterior motive --- let me back up. It says,
21 they allege that it filed a lis pendens to prevent the
22 sale of property to a third party and misused the lis
23 pendens to tie up the property in an attempt to
24 browbeat this other man into accepting this other
25 man's new terms of the contract.

1 The court said, even assuming for the sake of
2 argument that appellant's obligation might qualify as
3 an ulterior motive, we find such an allegation is
4 insufficient to overcome the other man's summary
5 judgment motion as appellants have presented no
6 evidence of any willful acts not authorized in the use
7 of process.

8 And, Your Honor, there has been no evidence that
9 1634 did anything --- any act, willful or otherwise,
10 that was not authorized in the use of process.

11 THE COURT: Well, who is 1634?

12 MS. LIPSCOMB: 1634 Main is a limited
13 partnership.

14 THE COURT: When a limited partnership sues, who
15 is doing the suing? In other words, are you telling
16 me that she is suing herself if she owns any interest
17 in this thing when she sues the L.P. for abuse of
18 process? In other words, there has to be some ---

19 MS. LIPSCOMB: Entity.

20 THE COURT: --- some human being who is acting.
21 Based on what you're saying, there is really no way a
22 limited partnership could ever be liable for abuse of
23 process because it's just an it. Who is it acting
24 through?

25 MS. LIPSCOMB: It was acting ---

1 THE COURT: It was acting at the behest of
2 Mr. Hammer.

3 MS. LIPSCOMB: SH-5 is the general partner.

4 THE COURT: Of which Mr. Hammer is the sole
5 member.

6 MS. LIPSCOMB: Yes, Your Honor.

7 THE COURT: And if he has --- arguably has an
8 ulterior purpose in messing with Mrs. Hammer ---

9 MS. LIPSCOMB: Even if he had an ulterior
10 purpose, Your Honor, that has to be --- there has to
11 also be a willful act that is in the perversion of the
12 process.

13 THE COURT: I guess what I'd like to find out is
14 if somebody at some point can give me a citation to a
15 case where they said this is abuse of process. Like
16 here is the case where abuse of process is an issue
17 and here is one that yes, sir, it's present. All I've
18 seen is ones where it's not.

19 MS. LIPSCOMB: Yes, Your Honor. I think
20 Mr. Aiken gave a pretty good example. An abuse of
21 process would be like if you were to bring suit and
22 then say, I will dismiss this suit if you pay me X
23 amount of money and nothing is owed, almost like
24 extortion.

25 THE COURT: Isn't that what she is saying here?

1 MS. LIPSCOMB: I don't think there is any
2 accusation or evidence or even allegation that this
3 was extortion.

4 THE COURT: Okay. The improper purpose usually
5 takes the form of coercion to obtain a collateral
6 advantage not properly involved in the proceeding
7 itself. Okay. I'm just reading from the case.

8 MS. LIPSCOMB: Yes, sir.

9 THE COURT: All right. Anything else?

10 MS. LIPSCOMB: Another case that I'd cite in
11 support of their being no abuse of process here is
12 Lamotte, L-A-M-O-T-T-E.

13 THE COURT: The punch line case?

14 MS. LIPSCOMB: Yes, sir. Do you want a copy of
15 it?

16 THE COURT: Yes, ma'am. I'm familiar with it.
17 It's the one in Five Points, right?

18 MS. LIPSCOMB: I believe I'm a little too old for
19 it, to know where it is. Then, Your Honor, I'd move
20 on unless you want my to address something else as to
21 abuse of process, I'll move on to the conversion.

22 THE COURT: Okay.

23 MS. LIPSCOMB: Oh, just one more thing. Mrs.
24 Hammer did not prove any damages with regard to the
25 abuse of process claim. She presented no damages that

1 would arise out of the abuse of process. She alleged
2 no damages and asserted no damages in the Howard
3 Hammer vs. Shirley Hammer case, and there was some
4 testimony in one of the cases of a total amount, which
5 was not split out, so there are no damages.

6 THE COURT: It was \$175,445 in attorneys fees.

7 MS. LIPSCOMB: And she said as to --- that was
8 the total. She did not break it down.

9 I wrote down \$175,445, yes.

10 THE COURT: I remembered the \$445.

11 MS. LIPSCOMB: Anyway, she did not break it down
12 for purposes of even being able to analyze damages in
13 either case. She didn't assert damages in the Howard
14 vs. Shirley case.

15 As to conversion, I understand that that is pled
16 in the alternative in the event she is determined ---
17 that it is determined that she has some interest in
18 the limited partnership that it would be a conversion.
19 She claimed a conversion of rental income. Your
20 Honor, I submit that there was no evidence that she
21 would have been entitled to rental income, only a
22 distribution if the entity had made a profit.

23 THE COURT: If we stick with distributions, how
24 do we deal with miraculously there being no
25 distributions after they separated? How do we --- how

1 about just take that with a raised eyebrow and leave
2 it at that?

3 MS. LIPSCOMB: There wasn't any ---

4 THE COURT: There were no distribution made
5 after 2005.

6 MS. LIPSCOMB: My understanding from Mr.
7 Turbeville ---

8 THE COURT: Because Mr. Hammer quit paying rent.

9 MR. HAMMER: No, he paid rent. The only years he
10 didn't pay rent was 2008, 2010 and 2012, I think.

11 THE COURT: Well, the other times he paid rent,
12 it was dwarfed by what he had paid in other years.

13 MS. LIPSCOMB: By what he paid in other news?

14 THE COURT: Year, in other years.

15 MS. LIPSCOMB: Oh. Yes, Your Honor. It's
16 important to point out that Mr. Hammer's ability to
17 practice law in 2008 was suspended.

18 THE COURT: How about 2006, 2007?

19 MS. LIPSCOMB: In --- I think ---

20 THE COURT: There's no evidence of it.

21 MS. LIPSCOMB: No.

22 THE COURT: It's just evidence that, you know, he
23 said something to the effect that he had a smaller
24 space. Well, that's --- I'm going on non-suit things
25 here. I've got to take the evidence in the light most

1 favorable to Mrs. Hammer at this point.

2 MS. LIPSCOMB: Yes, sir.

3 In 2007, the Hammer law firm paid \$60,492.

4 THE COURT: Okay.

5 MS. LIPSCOMB: In 2006, \$60,492.

6 THE COURT: But there weren't any distributions
7 made to Mrs. Hammer in either one of those two years,
8 '06 or '07. As a matter of fact, none from 2006 to
9 now. If a jury is sitting over there, which I'm doing
10 sitting right here, is the jury supposed to think that as
11 just some coincidence?

12 MS. LIPSCOMB: Well, if you look at the tax
13 returns.

14 (Pause.)

15 If you look --- well, let me show you on
16 December 31st --- I'm sorry, if you look at the
17 December 31st, 2005 check register.

18 THE COURT: Yes, ma'am.

19 MS. LIPSCOMB: There were distributions made to
20 Mr. Hammer and Mrs. Hammer and David Hammer and the
21 others. And as I said, I don't know why the others
22 were ---

23 THE COURT: Any after December 5, 2005? Wasn't
24 the date they separated on Labor Day weekend? There
25 aren't any.

1 MS. LIPSCOMB: Well, there is one in December of
2 2005.

3 THE COURT: To ---

4 MS. LIPSCOMB: To Mrs. Shirley Hammer.

5 THE COURT: There is?

6 MS. LIPSCOMB: Yes, sir.

7 THE COURT: For how much?

8 MS. LIPSCOMB: \$7,500. There is another one to
9 David Hammer \$7,000 --- I'm sorry, \$7,500.

10 THE COURT: Well, if that transfer was supposed
11 to have taken place in 2005, why didn't she get her
12 56.8 percent?

13 MR. HAMMER: I don't know what time of the year
14 it was made. I don't know.

15 THE COURT: When was that \$7,500 distribution
16 made?

17 MS. LIPSCOMB: December 6th.

18 THE COURT: At the end of the year?

19 MS. LIPSCOMB: Yes, sir.

20 THE COURT: So when in 2005 --- there's been no
21 testimony in the record when in 2005 that transfer
22 took place?

23 MS. LIPSCOMB: Your Honor, I don't know. I think
24 Mr. Ackerman's testimony was that he talked --- that
25 they usually prepared the tax returns around October

1 so, you know, I don't even know.

2 THE COURT: Why did Mr. Hammer get 30 --- excuse
3 me, \$59,000 on December 29, with 37 percent or
4 whatever he had and she with a 56 percent interest
5 gets \$7,500?

6 MS. LIPSCOMB: That was explained by Mr. Ackerman
7 as a realignment, and I don't know.

8 THE COURT: Okay.

9 MS. LIPSCOMB: Part of Mr. Hammer's interest was
10 substantially reduced in 2005 --- so it may be --- the
11 realignment may have included some kind of purchase of
12 his interest that would be payable for him. For
13 example, if it went from 57 --- 60 something percent
14 to 37 percent, then he might have been entitled to
15 some funds to make up for giving up that percentage
16 interest.

17 THE COURT: It seemed to me that a limited
18 partnership doing business in accordance with the
19 generally accepted way of doing business would
20 document it, the minutes of a meeting, here is what we
21 did and here is why we did it.

22 MS. LIPSCOMB: Your Honor, shoemaker's sons go
23 without shoes. I don't disagree.

24 THE COURT: Okay.

25 MS. LIPSCOMB: And with regard to the Lipscomb

1 law firm, my son is a businessman, a major, and he
2 practices with me, and he's a stickler about all of
3 that.

4 THE COURT: Doctors and lawyers make the worst
5 businessmen.

6 MS. LIPSCOMB: Well, you haven't met my son. He
7 is obnoxious.

8 Okay. Sorry.

9 THE COURT: Okay.

10 MS. LIPSCOMB: I guess I put that on the record.
11 I didn't mean to.

12 In 2006 ---

13 THE COURT: Nobody got any distribution and
14 nobody has received one since.

15 MS. LIPSCOMB: And in 2006, Exhibit 20, it shows
16 that, I believe there was a loss, and, in fact,
17 Mr. Ackerman was incredulous that if it was a fact
18 that Mrs. Hammer did not take advantage of her
19 percentage of the loss of the business, but in any
20 event ---

21 THE COURT: You said she should have.

22 MS. LIPSCOMB: Should have.

23 THE COURT: Should have taken advantage of it?

24 MS. LIPSCOMB: Of the losses on her personal ---

25 THE COURT: Wouldn't that be an indication that

1 she didn't know?

2 MS. LIPSCOMB: I don't know, Your Honor.

3 THE COURT: We're in the non-suit stage.

4 MS. LIPSCOMB: Yes, sir. She testified that she
5 thought that when she did her tender that that was
6 done and apparently there was --- it was done and
7 apparently there were miscommunications between the
8 parties, but in any event, as to the conversion, and
9 it's in the alternative ---

10 THE COURT: She said ---

11 MS. LIPSCOMB: She said that there was conversion
12 of rental income. The only evidence was there was no
13 distributable --- she would only be entitled to
14 distributions. There was no money to distribute and
15 therefore no monies were converted.

16 In addition, her allegations of there being money
17 converted is --- typically money, unless it is
18 identifiable as a fund, specific fund, cannot be
19 converted. It generally creates a debtor/creditor
20 relationship, and I point to Austin, the independent
21 life and accident insurance company. They said money
22 may be the subject of conversion when it's capable of
23 being identified. It is the --- conversion is defined
24 as the unauthorized assumption and exercise over right
25 of ownership over goods or personal chattels belonging

1 to another.

2 Money may be the subject of conversion when it is
3 capable of being identified and there may be a
4 conversion of determinate funds. The Austin --- there
5 is another case that basically, if money is --- for
6 example in a recent case, if money is in a trust
7 account specifically earmarked for perhaps co-counsel,
8 there can be conversion of that money, but if you
9 incorrectly pay --- if the bank incorrectly puts money
10 in the wrong account ---

11 THE COURT: That's the Williamsburg County case
12 and Bank of America.

13 MS. LIPSCOMB: Yes, sir. Then it is --- and it's
14 not subject to claim and delivery, basically what you
15 said up is a debtor/creditor relationship.

16 THE COURT: Went, her biggest problem with
17 conspiracy is identifying ---

18 MS. LIPSCOMB: Conversion.

19 THE COURT: Conversion --- is identifying what
20 was converted. She is saying, well, how am I supposed
21 to do that if you suck everything out of us and I
22 can't figure everything out. You are saying that she
23 still has to prove it.

24 MS. LIPSCOMB: Yes, Your Honor, and I think that
25 an accounting would have been the proper cause of

1 action if she truly believes there was conversion.

2 I'd just like to hand up the Austin case.

3 THE COURT: Okay. And I think the one that goes
4 on about Austin is, if you're talking about conversion
5 is --- I think it's Powell vs. Bank of America is the
6 most recent case on it, on conversion of money.

7 MS. LIPSCOMB: All right. Powell vs. Bank of
8 America?

9 THE COURT: I think. A kid named Cody Powell,
10 and I may have that last name wrong, but I know the
11 boy's name is Cody because my old law firm was
12 involved in that.

13 MS. LIPSCOMB: Oh, okay.

14 So the reasons that --- just to summarize the
15 reasons as to why the conversion cause of action
16 should not stand is, number one, there is no evidence
17 that there was any money to convert, there was no
18 evidence that distribution should have been made, and
19 there was no evidence that it could have been made,
20 and lastly, it's just a debtor/creditor relationship.
21 If it was money, that was brought pursuant to an
22 accounting or an ex-contractu --- the extent of my
23 Latin --- cause of action.

24 THE COURT: Okay. How about conspiracy?

25 MR. HAMMER: Your Honor, conspiracy is the

1 combination of two or more people for the purpose of
2 injuring the plaintiff and that is also the Lamotte
3 case, the punch line case that I previously handed
4 that up.

5 The --- I thought I did.

6 MS. BALLARD: You did.

7 MS. LIPSCOMB: In this case --- well, in McMillan
8 v. Oconee Memorial Hospital, it also --- the court
9 addressed an issue whether or not a corporation or
10 entity can conspire with itself, and it held a civil
11 conspiracy is a combination of two or more persons
12 joining for the purpose of injuring and causing
13 special damage to the other.

14 It is well settled, and I'm actually citing
15 Pridgen v. Ward, which is citing and quoting McMillan
16 v. Oconee, just to clear that up. It is well settled
17 in South Carolina that the tort of civil conspiracy
18 contains three elements. A combination of two or more
19 persons for the purpose of injuring the plaintiff
20 causing plaintiff special damages.

21 A civil conspiracy cannot be found to exist when
22 the acts alleged are those of employees or directors
23 in their official capacity conspiring with the
24 corporation.

25 As a result, no conspiracy can exist if the

1 conduct challenged is a single act by a single
2 corporation acting exclusively through its own
3 directors, officers, and employees each acting within
4 the scope of his employment.

5 Mr. Hammer as general --- as single member of the
6 SH-5 LLC was acting in the course and scope of its ---
7 of the business of 1634 when it --- when he took
8 Mr. Turbeville's analysis of what needed to be
9 assessed and made the assessment and then ultimately
10 the suit was brought, so I submit there can be no
11 conspiracy under this sets of facts.

12 Your Honor, I'd like to hand up McMillan and the
13 Pridgen case.

14 THE COURT: Okay.

15 MS. BALLARD: That's one I don't have.

16 THE COURT: Pridgen was --- Ward and Ms. Hair,
17 they were all affiliated with the prison system?
18 That's the most recent case, I believe, Pridgen
19 against Ward.

20 MS. BALLARD: Yes, Your Honor, that's what it is.

21 MS. LIPSCOMB: Your Honor, as to the civil
22 conspiracy, I submit there can be no conspiracy in
23 this case because Mr. Hammer, as I said, acting as a
24 single member of SH-5, which was the general partner,
25 could not have conspired with itself because it is ---

1 he was the --- it would be like a corporation
2 conspiring with itself.

3 THE COURT: All right. Anything else?

4 MS. LIPSCOMB: No, Your Honor. Thank you.

5 THE COURT: All right.

6 Let me get this order straight in my mind. Who
7 goes next?

8 MR. HAMMER: Your Honor, I think I have to make a
9 motion for non-suit, don't I?

10 THE COURT: Yes, sir, and if you would ---

11 MR. HAMMER: Yes, sir.

12 THE COURT: Please stick to legal argument
13 without adding any other factual observations. You
14 can argue the facts and the law, but do not argue any
15 facts that are not in evidence.

16 MR. HAMMER: I would like to adopt the arguments
17 of co-counsel --- of both --- not co-counsel, of
18 Ms. Lipscomb and Mr. Aiken in connection with the
19 abuse of process actions and the abuse with conspiracy
20 action and the abuse with --- and in connection with
21 --- in connection with the abuse of process action, in
22 connection with the conspiracy action and in
23 connection with the conversion action.

24 THE COURT: All right.

25 MR. HAMMER: Adopt all of their arguments as it

1 relates to me.

2 THE COURT: Yes, sir.

3 MR. HAMMER: I would also like to point out, as I
4 understand the law, at the non-suit stage, the
5 inferences are to be taken in the light most favorable
6 to ---

7 THE COURT: To the nonmoving party.

8 MR. HAMMER: To the nonmoving party. Taking
9 that, and I'm having to take everything that you said
10 because, as I understood it, it's all piled into one
11 and --- I would urge that there is a failure of
12 evidence, one, as to my case, there is a failure of
13 evidence.

14 THE COURT: You're talking about your case ---

15 MR. HAMMER: The case against me as far as
16 damages are concerned.

17 THE COURT: 1634 is concerned.

18 MR. HAMMER: As 1634 ---

19 THE COURT: Hammer vs. Hammer has already been
20 argued ---

21 MR. HAMMER: Right. As 1634, there is no --- I
22 think I have to put this on the record myself.

23 THE COURT: I just didn't want you to reargue
24 what Mr. Aiken already argued.

25 MR. HAMMER: I didn't hear it, but I just adopted

1 his legal arguments, but as to damages, there is no
2 evidence of damages. They have the burden of coming
3 forth and specifically proving exactly what the exact
4 total amount of damages are that I caused, not that we
5 spent \$174,000 on all of these lawsuits that have been
6 going on for five years in the family court or
7 wherever and therefore, Judge, you figure out how much
8 of it should be attributable to this.

9 It's we spent "x" amount of dollars, this amount
10 of money on this action against Howard Hammer. The
11 question was specifically asked when she had given 175
12 for whatever it was, or 454 or whatever the number
13 was, this question was specifically asked of her, and
14 I asked it, can you tell me how much was spent on the
15 abuse of process against me? No, I cannot. No more
16 questions on that.

17 As to the --- and I think this plays in to the
18 abuse of process, it's not what the evidence --- what
19 Ms. --- what the other side would like the evidence to
20 be. It's what the evidence is, and I heard --- and
21 maybe I'm wrong, but I heard a lot of what they would
22 like it to be and not what was presented to you.

23 For instance, the deed, they claimed that on the
24 deed that for some reason the deed gave some strength
25 and underpinning to their abuse of process claim.

1 Well, the deed was presented --- I think that --- I
2 haven't reread it, but I think I remembered that the
3 deed was presented pursuant to a court order, so if
4 the deed were presented pursuant to a court order, you
5 can't take coverage of that and say well, he presented
6 the deed and therefore when he came back later on and
7 said the deed was no good, you can't take coverage in
8 the fact that he's now coming back later on and saying
9 that the deed is no good. He is doing it out of a
10 requirement on the court order that doesn't prevent
11 him from saying later on that the court order is no
12 good and therefore that the deed is no good. That is
13 not abuse of process under what we have.

14 They've tried to take cover on a --- I think a
15 misunderstanding of the facts. The argument was made
16 that the --- that the --- that the question of public
17 policy was being litigated in July of 2009. Yes, the
18 question of public policy was being litigated, but it
19 was being litigated in the custody matter. There was
20 the custody on it.

21 THE COURT: Okay. I remember that.

22 MR. HAMMER: So I --- that's --- that's --- I
23 don't think they can get any comfort from that, and it
24 doesn't add to the factual requirements of their case.
25 They --- Your Honor asked a question, which I think

1 relates to what they were saying and that was, what is
2 the advantage of an ownership in an L.P. Well, there
3 are two advantages. First of all, the L.P. gets any
4 income. In 2001, in 2002, the land, the owner --- if
5 you own the land, you don't have any income, but the
6 L.P. was getting all the income. So 2001, 2002 when
7 all of this was planned, it was planned so Shirley
8 could get some income.

9 THE COURT: So she wasn't getting any income even
10 though she owned half of the building?

11 MR. HAMMER: The building as it was set up, did
12 not get any income. The building received none of the
13 income. All of the income went to the L.P. That's
14 the way it was set up. Now that's one advantage. The
15 second advantage was, as Ms. Lipscomb said, that she
16 doesn't have any outside liability. The third and the
17 most prominent example --- advantage is that when she
18 made a deposit of some \$200,000 or \$300,000 on the
19 sale of the property in the Isle of Palms, she didn't
20 have to pay taxes on that.

21 THE COURT: She could have invested the gain in
22 another piece of real estate.

23 MR. HAMMER: But she didn't. She invested it in
24 this piece of real estate and we have the facts of
25 what happened.

1 THE COURT: At whose behest?

2 MR. HAMMER: I don't know whose behest, but she
3 decided ---

4 THE COURT: Do you think she picked it?

5 MR. HAMMER: I think we all discussed it and we
6 all thought it was a good idea and a good investment.

7 THE COURT: All right.

8 MR. HAMMER: And at the time, it was a good
9 investment.

10 THE COURT: Where did the money go when she put
11 it in; did it go into the operating account of the
12 limited partnership?

13 MR. HAMMER: No, Mr. Ackerman explained that.

14 There were two different accounts. It went into ---

15 THE COURT: It went into the limited partnership.

16 MR. HAMMER: It went into --- she sold --- the
17 limited partnership sold the property --- and there
18 are two separate accounts and it went into one of the
19 accounts of the limited partnership, but here is the
20 point: that if she kept the land, and this was what
21 the tax lawyer had determined, that if she kept the
22 land when the building was sold and back in 2001,
23 2002, and 2003.

24 THE COURT: You're getting into additional facts.
25 I'm not going to hear additional facts. If it's not

1 in the record, I'm not going to hear it.

2 MR. HAMMER: All right. Well, when the land was
3 sold --- when the land was sold, the expectation was
4 that she would have --- that --- what the expectation
5 was, she would have had to have paid taxes when it was
6 sold.

7 THE COURT: Unless she deferred the gain again.

8 MR. HAMMER: Unless she deferred the gain again,
9 but it wasn't --- and I don't know what ---

10 THE COURT: There was no evidence of what would
11 have happened --- there was no talk about what would
12 happen if the building were sold.

13 MR. HAMMER: But what you asked is what would the
14 advantage be. The advantage would be that she would
15 be able to avoid --- to not have to pay under any
16 circumstances if she owned the L.P. If it was
17 converted in --- if her interest was converted from an
18 interest in the dirt.

19 THE COURT: But instead she gets stuck with an
20 \$88,000 ticket to pay repairs.

21 MR. HAMMER: No. She didn't choose that. She
22 chose --- when she made the choice in 2001 when she
23 first made that choice, she chose --- at that time the
24 building is making money. She chose to get herself
25 into an L.P., which would protect her no matter when

1 the building was sold or how much the building was
2 sold for and obviously the contemplation that the only
3 implication was for her doing that was the obvious
4 implication that the building --- that the land was
5 going up, and I think Your Honor will take judicial
6 notice that in 2001, 2002 ---

7 THE COURT: I have no clue. I can't take
8 judicial notice of that.

9 MR. HAMMER: All right. Well, in any event ---

10 THE COURT: If I can take judicial notice of
11 that, I can take judicial notice of a certified
12 financial planner being able to make her 110 grand.

13 MR. HAMMER: All right. I understand what Your
14 Honor is saying and I don't disagree with you.

15 THE COURT: I'll ---

16 MR. HAMMER: But simply to answer your question,
17 for whatever reason, it was changed into the --- it
18 was changed into an L.P. for two reasons. One, it was
19 --- there was the probability or possibility either
20 way that she would not have to pay taxes later on she
21 sold it or at some time she wouldn't have to pay taxes
22 because it now an L.P., that's (A). And (B) she was
23 going to get income that she would not have otherwise
24 gotten.

25 Now, at that time, she didn't know, I didn't

1 know, no one knew that in 2006 or 2007 or whenever it
2 was, that the building was going to need these repairs
3 and may have just a moment, because I think there's
4 something of interest in the repair --- in that letter
5 in the repair sheet? I don't have that.

6 THE COURT: You can argue an exhibit, yes, sir.

7 MR. HAMMER: Sir?

8 THE COURT: You can argue an exhibit.

9 MR. HAMMER: Do you have it, Ms. Lipscomb?

10 (Pause.)

11 If Your Honor will look on this, some of these
12 bid proposals.

13 MS. BALLARD: Exhibit number, what?

14 MR. HAMMER: I'm sorry. I don't have any exhibit
15 numbers. It was the letter of ---

16 THE COURT: Everybody knows what it is. It's
17 letter from Mr. Hammer to --- excuse me,
18 Mr. Turbeville and Mr. Hammer where all those bids
19 were attached.

20 MR. HAMMER: If Your Honor will look on this,
21 Your Honor had made some --- Your Honor said that
22 doesn't it seem curious that all of sudden the timing
23 is --- the timing seems ---

24 THE COURT: I know the bids were different dates,
25 but the demand is what I was talking about.

1 MR. HAMMER: We feel ---

2 THE COURT: It ranges all the way from February
3 all the way up through the month before.

4 MR. HAMMER: I would say that negates the
5 implication that the demand was made because of the
6 other --- the --- it started way back ---

7 THE COURT: Okay.

8 MR. HAMMER: --- to find out about this. That
9 negates that implication, so there's a --- one final
10 thing that Your Honor had mentioned and that was,
11 well, it seems odd that the --- that the letter came
12 out after the order.

13 Those orders, I believe --- if I'm incorrect,
14 those orders that Judge Rucker made, those were
15 secondary orders to the original order of --- to the
16 original September 2008 order and those secondary
17 orders, I believe there was some appeal made on those;
18 am I correct?

19 MS. LIPSCOMB: Yes.

20 MR. HAMMER: So those orders were under appeal at
21 the time, and also more importantly, never did Mrs.
22 Hammer --- never did she say when she got this that,
23 no, I don't own it. Never did her attorney say she
24 didn't own it. Never did anybody say that. Never did
25 her accountant say when he got these did he return ---

1 did he give a return, no, I don't own it, and keeping
2 this in mind that the burden of proof is upon the
3 plaintiff. In this case they are the plaintiff. The
4 burden of proof is on the plaintiff to prove the
5 necessary elements of the abuse of process and they
6 have not brought forth the necessary elements to prove
7 that by their evidence.

8 THE COURT: All right.

9 MR. HAMMER: Anything else? I believe I've
10 covered all of the ---

11 THE COURT: That's not for me to say.

12 MR. HAMMER: I believe I've covered abuse. I
13 have doubts there on conversion.

14 THE COURT: Conspiracy.

15 MR. HAMMER: And conspiracy. I think that's all
16 there is to it.

17 THE COURT: Okay. All right.

18 MR. HAMMER: And I'd like for you to note, Your
19 Honor, that I only took about five minutes.

20 THE COURT: Well, 15.

21 MR. HAMMER: To me that's five.

22 THE COURT: I'm timing everybody.

23 Ms. Ballard, do you have any brief concise reply
24 to either Mrs. Lipscomb or Mr. Hammer or both?

25 MS. BALLARD: One point I think is important, and

1 just one.

2 In response to Mr. Hammer's argument about the
3 deed that conveyed his interest in the 320 property to
4 Mrs. Hammer, he said that that was done pursuant to
5 court order, and it was done pursuant to court order,
6 but the court order, which is in the record, does not
7 prescribe the form that that deed must take. Mr.
8 Hammer elected voluntarily to issue a general warranty
9 deed, including a release. None of that was required
10 by the court order.

11 It's clear when Mr. Madden, representing Mrs.
12 Hammer, conveyed a deed, they did a quitclaim deed,
13 which has no warranties and has no guarantees, so the
14 family court never required Mr. Hammer to
15 affirmatively release any claims and it never required
16 in that deed to Shirley Hammer, which is Exhibit No. 1
17 to warranty and release any future or existing claims
18 he have might have to the property. He chose to do
19 that, so his argument that his hand was forced by the
20 court order simply doesn't hold water because he chose
21 that form, the court did not.

22 Thank you, Your Honor.

23 THE COURT: How about Ms. Lipscomb's argument?
24 How am I supposed to figure out what damages the abuse
25 of process are against 1634 L.P., because what I was

1 envisioning during the whole thing when I was trying
2 to figure out what the presentation of damages would
3 be, this is not a contractual or statutory thing where
4 you do a post-trial affidavit on attorneys fees.
5 Nobody has argued that Ms. Ballard's fees aren't
6 reasonable in amount. They just can't figure out and
7 they're telling me there is no way I can figure out to
8 which defendant, third-party defendant or plaintiff
9 they are attributable.

10 MS. BALLARD: And if Mrs. Hammer did not break
11 those numbers down in her testimony, which I obviously
12 missed, I don't know the answer to that question, Your
13 Honor. I think the fact that she incurred \$175,445 in
14 attorney's fees between two cases that have lasted
15 approximately the same period of time is the only
16 standard you can go with, if she didn't testify to
17 that.

18 MR. AIKEN: Judge, Judge, may I make just one
19 quick point?

20 THE COURT: What is your definition of quick?

21 MR. AIKEN: It will take me 30 seconds, Judge.
22 There was no evidence entered in my case of attorney's
23 fees of Mrs. Hammer as a result of Hammer vs. Hammer
24 lawsuit.

25 THE COURT: Okay. All right. You were going to

1 stand and say something, Ms. Lipscomb?

2 MS. LIPSCOMB: With regard to the general
3 warranty deed and whether or not it was required, the
4 agreement provided at the very back that there were
5 releases that were required between the parties, and I
6 would submit that's why the general warranty deed was
7 submitted.

8 THE COURT: Okay.

9 MS. LIPSCOMB: Not just any overabundance of
10 willing to indemnify the property.

11 THE COURT: All right. We are concluded then.
12 All right.

13 What I will do is --- I'm not going to have any
14 closing argument, because I think that's pretty much
15 what you all have given me today.

16 What I will do is review my notes, and there are
17 many, and I'll review the exhibits. I still --- I've
18 got about 20 more pages of Mr. Ackerman's deposition,
19 and I will be in touch with the four of you by e-mail.

20 I will affirmatively tell you this. I know last
21 week you might have thought I was picking on you
22 because I was talking about the e-mail battles, but
23 it's not because of this case. It's because
24 everywhere you go now, lawyers wants to snipe in
25 e-mails, and they think it's a bright idea to copy the

1 judge.

2 If you want to have an e-mail fight, just don't
3 copy me and don't copy my law clerk. In other words,
4 if I send something and I say this is my observation,
5 this is my finding, so forth and so on, in you
6 disagree with it, wait for the motion for
7 reconsideration stage.

8 If you comment on it, then somebody else is going
9 to comment, somebody else is going to comment and
10 that's what I don't like. I've got a case in Camden
11 where all the lawyers over the course of about a
12 week --- I probably got over 50 e-mails and it was
13 like he hit me first. I was here first. I was
14 sitting here first and he's being mean to me. I just
15 don't want my of that. Just pretend like we don't
16 have e-mail except if I ask you to respond. Then the
17 prevailing party or parties, I will be asking them to
18 do proposed orders. Okay.

19 MS. BALLARD: Your Honor, I have one housekeeping
20 matter.

21 THE COURT: Yes, ma'am.

22 MS. BALLARD: As we've gone through this exhibits
23 this week I realize to my great embarrassment that I
24 didn't redact Social Security numbers. I would like
25 permission to redact the Social Security numbers from

1 the exhibits that I introduced.

2 THE COURT: From the I.R.S. documents?

3 MS. BALLARD: Yes.

4 THE COURT: And tax ID number of the L.P.

5 MS. BALLARD: Yes, sir, I have my Sharpie ready
6 for that purpose.

7 THE COURT: One final thing, when I do make my
8 ruling I feel will be very cognizant of the timing of
9 that ruling because of Thanksgiving and Christmas.
10 When I was practicing, I used to hate to get an order
11 that I had to either move for reconsideration or file
12 an appeal when it was around Thanksgiving or
13 Christmas. I'm not going to ruin anybody's time. If
14 I have rule quickly it won't be a problem, but
15 Thanksgiving is already here. I'll keep that in mind,
16 so don't be surprised if I tell you how I'm going to
17 rule and I hold onto the order so your appeal or
18 motion time does not begin or end at a time that ---
19 kind of makes --- the point is not to --- I don't want
20 to inconvenience anybody more than I have to. Thank
21 you.

22 MS. LIPSCOMB: Thank you.

23 THE COURT: All right. Thank you for your
24 patience.

25 MS. BALLARD: Do I have permission to go through

1 those to redact, Your Honor?

2 THE COURT: Yes. That would be fine.

3 MS. BALLARD: Thank you, Your Honor.

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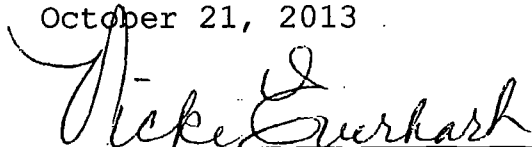
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Vicki Everhart, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 29th day of October, 2012 through the 1st day of November, 2012.

October 21, 2013 .



Vicki Everhart,
Transcriptionist for
Karen Ambroziak,
5th Circuit Court Reporter

1 take judicial notice of another case's proceedings.
2 The proceedings and the materials that the court is
3 being asked to consider must be put into court. I was
4 looking for that case at lunch, and I couldn't put my
5 hands on it, but I'm happy to hand that up as soon as
6 --- I can fax it to your office and to them as soon as
7 I get back.

8 MR. HAMMER: May I add to that?

9 THE COURT: Yes.

10 MR. HAMMER: The 2871 case has a specific order
11 in it, and I don't believe Ms. Lipscomb --- I mean,
12 Ms. Ballard will contest this. Sorry to have gotten
13 you confused.

14 MS. LIPSCOMB: We look alike.

15 MR. HAMMER: I hope neither of you have taken
16 offense.

17 The order, the specific order, is that both
18 parties, in order to unseal the record in the family
19 court, there would have to be a motion before Judge
20 Rucker and both parties would have to have notice of
21 the motion, and it would be heard by Judge Rucker.
22 That being the case, I would suggest that that is
23 something that Judge Rucker would have to attend to.

24 There would have to be a notice before Judge
25 Rucker. There are some matters involving the

Instrument: 2008048525

Book/Page: R1439 : 1279

DateTime: 6/18/2008 11:49:01 AM

Book 1439-1279

2008048525 06/18/2008 11:49:01:013

Deed

Fee: \$10.00 County Tax: \$0.00

State Tax: \$0.00

Prepared by:
Bernstein and Bernstein, LLC

2008048525 Richard W. Rodden

Richland County ROD

Space above line for recording information

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, HOWARD HAMMER, pursuant to Order issued in the action entitled Shirley Hammer vs. Howard Hammer, Docket No.: 2005-DR-40-2871, on May 12, 2008, and fully releasing and discharging any and all rights that I may have, or hereafter acquire, under the provisions of Section 20-7-471, et. seq., *South Carolina Code of Laws*, 1976, as amended, in the State aforesaid, have granted, bargained, sold and released, by these presents to grant, bargain, sell and release unto SHIRLEY HAMMER, her heirs and assigns forever:

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and delineated as Lot Six (6), Block A, on a plat prepared for Caroline Research Development Foundation by McNair, Gordon, Johnson, & Karasiewicz, dated May 1, 1981, recorded in the ROD for Richland County in Plat Book Z, page 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. Reference being made to said latter plat for a more complete and accurate description of metes and bounds, be all measurements a little more or less. This description is made of lieu of metes and bounds as permitted by law under §30-5-250 of The Code of Laws of South Carolina (1976), as amended

This conveyance is made subject to existing easements and to easements and restrictions of record including those shown on recorded plats.

This being the same property conveyed to HOWARD HAMMER by deed of Will H. Bryd, Jr., recorded on July 26, 1985, in the ROD Office for Richland County in Book D751, at page 584.

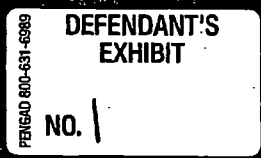
TMS Number: 11307-09-16

Grantee's Address: 320 St. James Street, Columbia, SC 29205

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

PLEASE BE ADVISED THAT NO TITLE SEARCH WAS CONDUCTED IN THE CONVEYANCE OF THE HEREIN PROPERTY. BERNSTEIN AND BERNSTEIN, ATTORNEYS AT LAW, IS NOT LIABLE FOR ANY TITLE DEFECTS.

Page: 1



This document is not to scale

Instrument: 2008048525

Book/Page: R1439: 1280

Date/Time: 6/18/2008 11:49:01 AM

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said SHIRLEY HAMMER, her Heirs and Assigns forever.

And HOWARD HAMMER does hereby bind his Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said SHIRLEY HAMMER, her Heirs and Assigns, against HOWARD HAMMER, his Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our Hands and Seals this 20 day of May, 2008, in the year of our Lord two thousand six and in the two hundredth and thirtieth year of the sovereignty and independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Jillian Brani
1st Witness

Howard Hammer (L.S.)
HOWARD HAMMER

Qualton K. Dick
2nd Witness

STATE OF MA
COUNTY OF Middlesex)
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within-named ALL THE HEIRS AND ASSIGNS OF HOWARD HAMMER sign, seal and, as his/her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness, witnessed the execution thereof.

Jillian Brani
1st Witness

SWORN to and subscribed before me
this 20 day of May, 2008

Qualton K. Dick
NOTARY PUBLIC FOR
My Commission Expires: 2/27/09

PLEASE BE ADVISED THAT NO TITLE SEARCH WAS CONDUCTED IN THE CONVEYANCE OF THE
HEREIN PROPERTY. BERNSTEIN AND BERNSTEIN, ATTORNEYS AT LAW, IS NOT LIABLE FOR ANY TITLE DEFECTS.
Page-2-

Instrument: 2008048525

Book/Page: R1439 : 1281

DateTime: 6/18/2008 11:49:01 AM

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by HOWARD HAMMER.

3. Check one of the following: The DEED is

- A. ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- B. ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- C. ☒ EXEMPT from the deed recording fee because (exempt #).
(Explanation if required) transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the IRS Code as defined by 12-6-40(A) of the South Carolina Code of Laws. This exemption will exempt transfers to a spouse and most transfers that are the result of a divorce. (exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

- A. ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 5.00
- B. ☐ The fee is computed on the fair market value of the realty which is \$.
- C. ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$.

6. The DEED Recording Fee is computed as follows:

- A. ☒ the amount listed in item 4 above.
- B. ☐ the amount listed in item 5 above (no amount place zero)
- C. ☐ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

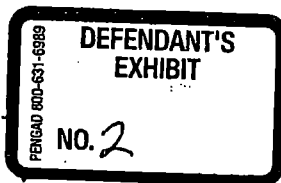
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Howard Hammer
Grantor

Sworn to and subscribed to before me
this 20 day of MAY, 2008

Guadalupe F. Lopez
Notary Public for

My Commission Expires: 2/2/09



PUBLIC OFFICE

PAGE 02/16



CONTRACT OF SALE - RESIDENTIAL

Revised 09/08

[] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. PARTIES: This Contract of Sale is entered into on 29 JUNE 2009 between
 Buyer(s) HUTCH (hereinafter called "Buyer"), and
 Seller(s) Shirley Hammer (hereinafter called "Seller").

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot 320 Block St James Phase Wheeler Hill Subdivision Wheeler Hill
 Address 320 St James Unit # 0 City Columbia Zip 29205
 TMS# 11207 09 16 or Richmond State of South Carolina dt 7/8/09

3. PRICE: The purchase price is \$ 625,000 or \$650,000 dt 7/2/09

4. EARNEST MONEY:

A. \$ 15,000 Earnest money is paid by Check () Cash () Other ()

B. \$ Additional earnest money to be delivered on or before

C. Earnest money to be held in trust by The Wolfe Company, Inc. (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamps), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes pre-paid to the day of closing and the real estate brokerage fee.

Buyer's and Seller's Transaction Costs will be paid as follows: (Select initial and date only one of the options below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Seller will pay Buyer's Transaction Costs not to exceed \$ 15,000 which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

Form 100
09/08
1 of 3

BUYER

H. V. 6/29/09
Initials Date

SELLER

SH 7/1/09
Initials Date

6. **FINANCING:** Buyer's obligation under this Contract is (✓) is not () contingent on Buyer obtaining financing. All financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract. See Paragraph 21.

A. **FINANCING TYPE.** Financing type will be: Lender-provided Conventional (✓); FHA (); VA (); Seller-provided (); Cash (no financing required) (); Other _____.

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA-required termite (CL-100) inspection.

B. **APPLICATION FOR FINANCING.** If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Broker. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

3. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

C. **SELLER FINANCING.** If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. **CASH TRANSACTION.** In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. **APPRAISAL CONTINGENCY.** This Contract is (✓) is not () contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have 24 hours after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If the Parties are unable to reach agreement within the prescribed time frame then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. **SELLER'S MORTGAGE PAYOFF:** (Seller/Date Initials / Date) Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. **CONVEYANCE DATE OF CLOSING/POSSESSION:** (Buyer and Seller to initial and date Paragraph 7A) Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of _____, or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before 21 August 2009, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing (✓) 24 hours after closing () 48 hours after closing () or in accordance with attached agreement ().

BUYER H.V. Jones 6/29/09
Initials Date

SELLER AS 7/1/09
Initials Date

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" will mean a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk-through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD: (If Property being sold "As-Is" proceed to Paragraph 10 - PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). [Note: If Buyer utilizes VA financing Seller will be required to pay for the cost of conducting the VA-required termite (CL-100) inspection.] Any re-inspections that may be required will also be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property, then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an Inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in his sole discretion, determines the results of any inspections, examinations or tests conducted to be unsatisfactory, Buyer may terminate this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from Seller's receipt of the Addendum to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

BUYER

(H.Y.)

Initials

6/29/09

Date

SELLER

(JA)

Initials

7/1/09

Date

- a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;
- b. Buyer will have 24 hours after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;
- c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

D. **FHA/VA APPRAISAL INSPECTIONS:** If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (Terms of Paragraph 9 do not apply) (Select, initial and date only one of the options below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) **PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD**
All Parties agree that Property is being sold "As-Is" with all defects including but not limited to lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have the seven (7) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Based on inspection results, Buyer may proceed under the terms of this Contract or void this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) **PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD**
All Parties agree that Property is being sold "As-Is". Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives the right to both request repairs and replacements and to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: After any inspections by Buyer and after any repairs or replacements made as a result of any such inspections, Seller agrees to maintain the Property (including lawn, shrubbery, grounds and features, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value which conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select, initial and date only one of the options below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

13. LEAD-BASED PAINT: Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

BUYER (11-7-6/29/09) _____
Initials Date

SELLER (JH) (7/1/09) _____
Initials Date

04/08
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14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty will () will not () be provided at closing. If applicable, the warranty premium will be paid by Buyer () Seller () in an amount not to exceed \$_____, provided by _____ (home warranty company) and written by the Buyer's Broker () Seller's Broker (). If the price of the warranty at closing exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing. Brokers may receive a fee for issuance of a home warranty.

15. PROPERTY DOCUMENTATION: (Initial and date after reviewing information in Paragraphs 15 A-D) (Buyer/Date Initials/ Date) (Seller/Date Initials/ Date) Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and that Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:
Connected to - public/community sewer system () septic tank ().
Connected to - public/community water system () well system () Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is () is not () partly or entirely located within a designated Special Flood Hazard Area (Flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is () is not () subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/region or otherwise. The special assessment fee is \$_____.

D. Seller represents that the Property is () is not () subject to a mandatory association fee (i.e., homeowner's association/region or otherwise). If the Property is subject to a mandatory association fee, the fee is \$_____ per _____ and is payable to _____.

16. ADDITIONAL CONTINGENCIES: (Initial and date after Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. SALE AND CLOSING CONTINGENCY

(Buyer/Date Initials/ Date) (Seller/Date Initials/ Date) This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____ Buyer's failure to disclose the existence of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is () is not () currently listed with a real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept another offer to purchase as a Primary Contract, with this contingency Contract becoming a Back-up Contract upon agreement of both Parties to the Back-up contract. If agreement cannot be reached, this Contract will become null and void and earnest money will be released to Buyer. See Paragraph 4(D).

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will automatically become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on their Property with all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time scheduled for the Seller's closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

BUYER (H.Y.V.6/29/09) _____
Initials Date

SELLER (H.Y.V.6/29/09) _____
Initials Date

09/08
5 of 8

B. CLOSING CONTINGENCY

(Buyer/Date Initials/Date) (Seller/Date Initials/Date) This Contract is contingent on completion of the closing of the sale of Buyer's Property, the Contract for which has all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and a closing occurring on a date/time prior to the date/time specified for closing the Seller's property. Buyer's Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property upon request.
2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-up Contract.

C. OTHER CONTINGENCIES

(Buyer/Date Initials/Date) (Seller/Date Initials/Date) This Contract is contingent on: _____

17. FIXTURES AND PERSONAL PROPERTY: This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, windows and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached mirrors, light bulbs, switch plates, heating and air system registers and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

WARRANTY + DEED TO REMAIN

19. ADJUSTMENTS: Real estate taxes, homeowner association/region fee, and rents when applicable, will be adjusted as of the date of closing. Tax provisions pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied through date of closing and Buyer will pay for those assessments levied after the date of closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely notice of termination, the Parties will proceed according to its terms.

BUYER

11.4.16/29/09
Initials Date

SELLER

11/1/09
Initials Date

06/13
6 of 8

07/01/2009 18:00

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PAGE 00/00

08/02/2007 07:52

803-896-5520

PUBLIC SAFETY

PAGE 07/16

21. DEFAULT: If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminated this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.

22. MEDIATION: Buyer and Seller agree to mediate any dispute between them arising out of or relating to this Contract, the breach of this Contract, services provided in relation to this Contract, or any resolving transaction, before resorting to arbitration or court action. Disputes will be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of REALTORS®. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.

23. ENTIRE BINDING CONTRACT: The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

24. NON-RESIDENT TAX: Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are non-residents of South Carolina as defined in said statute.

25. EXPIRATION OF OFFER: This offer from Buyer will be withdrawn at 6:00 o'clock PM (Eastern Time) on 29 JUNE 2009 unless accepted or countered by Seller in written form prior to such time.

26. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.

27. NOTICE AND DELIVERY: Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.

28. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.

29. DEFINITIONS:
A. In this Contract, a single Business Day is defined as a twenty-four (24) hour period, beginning at the time of final acceptance of this Contract, excluding Saturdays, Sundays and Federal legal holidays.

B. Final contract acceptance will occur at the time and date when the Party making the last offer receives written Notice that the offer has been accepted. The Agent representing this Party will fill in the final contract acceptance date and time on the last page of this Contract. If the Party is unrepresented, they will assume responsibility for filling in the required information. All deadlines/timelines set forth in this Contract will begin at time of final Contract acceptance unless otherwise agreed to by Buyer and Seller.

C. In this Contract, closing is defined as the time and date that the Closing Attorney disburses funds.

D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.

BUYER

H. J. 6/29/09

Date

SELLER

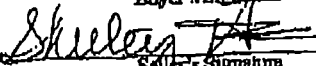
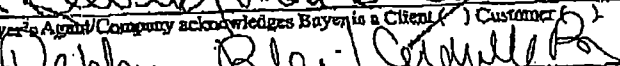
Initials

7/1/09

Date

31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Brokers and all affiliated agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

33. **DISCLAIMER:** Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services, or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage listed or unlisted; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

Buyer:		5:30 pm 6/28/	
	(U.S.)	HU. Ye.	Date/Time
Buyer's Signature		Buyer's Printed or Typed Name	
	(U.S.)		Date/Time
Buyer's Signature		Buyer's Printed or Typed Name	
	(U.S.)	Shirley Hammer	7/1/09
Seller's Signature		Seller's Printed or Typed Name	Date/Time
	(U.S.)		Date/Time
Seller's Signature		Seller's Printed or Typed Name	
Korver/Wolf Co.		319 1818	
Buyer's Agent/Company acknowledges Buyer is a Client () Customer ()		Agent's Telephone Number	
		463-3331	
Seller's Agent/Company acknowledges Seller is a Client () Customer ()		Agent's Telephone Number	

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK _____ M (ET) ON _____ DATE _____

ACCEPTANCE ENTERED BY _____ AGENT _____

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CP277

1316

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Howard Hammer,

Petitioner,

vs.

Shirley Hammer AKA Shirley Grace Hightower,

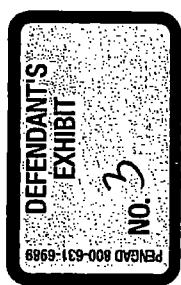
Respondent.

LIS PENDENS
2009 JUL 31 PM 4:42
JEANETTE W. McBRIDE
CLERK
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



3



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

1318

Received From: Hammer,

Date : 7/31/2009
 RECEIPT #: 88230
 Clerk: COCBORER

Paying for: Hammer, Howard

Transaction Type: Payment

Payment Type: Check \$10.00

Reference #: 11206

Total Paid \$10.00

Comment:

Total Received \$10.00
 Change Due \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance 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

DANVILLE BUSINESS ADVISORS, LLC

**500 TAYLOR STREET, SUITE 401
COLUMBIA SOUTH CAROLINA 29201**

EXCLUSIVE LEASING AND MANAGEMENT AGREEMENT

THIS AGREEMENT made this 8th day of JANUARY, 2002, by and between Danville Business Advisors, LLC, 500 Taylor Street, Suite 401, Columbia, South Carolina 29201 (hereinafter "Agent") and 1634 MAIN, LP, (hereinafter "Owner"):

WITNESSETH:

IN CONSIDERATION of the mutual promises and covenants herein contained, Owner and Agent agree as follows:

1. Owner hereby appoints Agent as the **SOLE AND EXCLUSIVE MANAGING AND LEASING AGENT** of Owner's premises, commonly known as 1634 MAIN STREET, COLUMBIA, S.C. (hereinafter the "Premises") for the period from JANUARY 1, 2002, to DECEMBER 31, 2002. Thereafter, this Agreement shall continue in effect from year to year unless and until terminated as hereinafter provided. Either party may terminate as hereinafter provided. Either party may terminate this Agreement on DECEMBER 31, 2002, by giving notice in writing of intention to terminate at least ninety (90) days prior to said DECEMBER 31, 2002, or by giving notice in writing of intention to terminate at least ninety (90) days prior to the end of any extended year term.
2. Agent hereby accepts such appointment and employment for and in consideration of the compensation hereinafter provided, and agrees to use its best efforts in managing and keeping the Premises leased to desirable tenants.
3. Owner hereby authorizes Agent to perform the following in the name of, for the account of, and at the expense of owner:
 - A. Execute all leases, renewals, extension or agreements concerning the rental, occupancy, or operation of the Premises, or any part thereof.
 - B. Collect all rental payments, tax escalations, percentage rentals, and other amounts due from the premises, provided, however, that nothing herein contained shall constitute a guarantee by Agent of the payment of such sums by tenants.
 - C. Institute all legal actions or proceedings required in the best judgment of Agent and with Owner's consent for the collection of rent or other amounts from the Premises, or the ousting, ejectment, or dispossessing of

Page Two

tenant and other persons therefrom, and engage attorneys for any such matters.

- D. Employ, promote, discharge, supervise, and pay servants, employees or contractors of Agent as Agent may determine advisable to be employed in the care, management, or operation of the Premises. It is understood and agreed that all such servants, employees, or contractors are in the employ of Owner solely and that Agent is in no manner or circumstances liable to such servants, employees, or contractors for their wages or other compensation, nor to Owner or others for any action or omission on the part of such servants, employees, or contractors. Owner shall reimburse all costs, expenses (to include worker's compensation), and fee incurred by Agent in connection with such servants, employees, or contractors.
- E. Make or cause to make all repairs, replacements, alterations, additions, improvements, and decorations in and to the Premises as Agent may determine advisable. Expenditures for such repairs, replacements, alterations, additions, improvements, and decorations to excess of FIVE HUNDRED (\$500.00) DOLLARS shall not be made without prior consent of Owner or unless submitted and approved in the annual budget, except in the event of an emergency, or if Agent in good faith determines that expenditures are necessary to protect the Premises from damage to prevent injury to persons or loss of life, or to maintain services to tenants.
- F. Purchase all supplies and materials as Agent may determine advisable.
- G. Make all contracts for electricity, gas, fuel, water, telephone, window cleaning, rubbish removal, laundry service, exterminating, equipment maintenance, and other utilities or services, or such of them as Agent shall deem advisable.
- H. Subject to Owner's approval, advertise the Premises or portions thereof, and prepare and secure signs, plans, circular matter and other forms of advertising.
- I. Make periodic inspections of the Premises, reports of which shall be maintained by Agent and discussed with Owner upon Owner's request or as Agent deems advisable.
- J. Assist in or initiate action, when directed by Owner, pertaining to real estate taxes and assessments or zoning.
- K. Prepare annual operating budget for Premises.

Page Three

- A. All monies furnished by Owner as working funds and all monies received by Agent for or on behalf of Owner shall be deposited by Agent in a bank mutually approved by Owner and Agent in account(s) maintained by Agent in Owner's name and not co-mingled with the funds of Agent, and shall be disbursed by Agent in such amounts and at such times as the same are required to pay for obligations, liabilities, costs, expenses, and fees (including, without limitation, the compensation of Agent as hereinafter provided) arising on account of or in connection with this Agreement.
 - B. Agent shall render to Owner a monthly statement of receipts and disbursements.
 - C. Owner shall pay all obligations, liabilities, costs, expenses, and fees arising on account of or in connection with this Agreement.
 - D. Owner shall reimburse Agent promptly for any monies which Agent may elect to advance on behalf of Owner. Nothing herein contained, however, shall be construed to obligate Agent to make any such advances.
 - E. Agent shall not pay from such account(s) interest or amortization on mortgages, taxes, assessments, or premiums on insurance without the written authorization of Owner.
 - F. Agent shall on or before the 20th day of the month pay to Owner all amounts in such operating account(s), retaining, however, a reasonable balance for working funds.
5. Agent is hereby given such other general authority and powers as may be necessary or advisable to carry out the intent of this Agreement.
6. Owner agrees to comply with all statutes, ordinances, laws, rules and orders of any federal, state, or local government or department, or officer thereof, having jurisdiction over the use, maintenance, operation, or construction of the Premises, as well as with all orders and requirements of the local Board of Fire Underwriters or other body exercising similar functions.
7. A. Owner agrees to indemnify and hold and save Agent free and harmless from any and all damages, claims, actions, judgments, obligations, liabilities, cost, expenses, and fees (including court costs and reasonable attorney's fees), however denominated, arising from or in any way connected with Agent's performing or not performing its duties under this Agreement or the direction of Owner. It is expressly agreed that the foregoing provisions of this sub-paragraph shall survive

Page Four

the termination of this Agreement, but this shall not be construed to mean that Owner's liability does not survive as to other provisions of this Agreement.

- B. Agent shall not be liable to owner for any negligence or error in judgment, except willful misfeasances, bad faith, or gross negligence in conduct of its duties.
 - C. Owner agrees to procure and maintain at its expense and during the term of this Agreement, comprehensive general public liability insurance, including property damage insurance, elevator liability insurance, worker's compensation insurance, and such other insurance as may be advisable for the protection of Owner and Agent. In each such policy of insurance, Owner agrees, upon request of Agent, to designate Agents and its officers, employees and agents as assureds. The insurance carrier and the amount of coverage in each such policy shall be mutually agreed upon by Owner and Agent. A certificate of each such policy issued by the carrier shall be delivered to Agent, and shall provide that Agent shall receive at least ten (10) days prior written notice from the carrier in the event of cancellation or any material change therein.
 - D. To the extent permitted by its insurance policies. Owner does hereby waive and release any and all claims which it may have against Agent for damage to the Premises or contents therein to the extent that such damage is covered by Owner's insurance policies.
8. Owner hereby grants Agent the privilege of displaying Agent's signs in and upon the Premises announcing that the Premises are under Agent's management.
9. A. Owner covenants and agrees to pay to Agent the following fees and commissions for its services hereunder:
- 1. For management: \$500.00 per month.
 - 2. For leasing: One-half of first months rent and five (5%) percent of monthly payment thereafter.
- B. Fees and commissions are payable as follows: Management fees monthly.
- C. Leasing commissions are considered earned upon execution of a lease concerning the Premises, or any part thereof, by both parties thereto, and payment of such commissions as provided herein shall survive any expiration on earlier termination of this Agreement and will be payable during the full initial term of such lease and any extensions, renewals, or relocations thereof.

Page Five

- D. Upon the sale of other transfer of ownership, this Agreement will terminate and Owner shall, prior to or contemporaneously with such sale on such transfer pay to Agent all sums then due and owing to Agent, and thereafter shall continue to pay Agent all leasing commissions in accordance with paragraph 9(a) as rentals are paid by tenants during the then current terms, including all exercised or automatic extensions of any lease negotiated by Agent for the Premises. If at the time of sale, any lease has less than one year remaining on the term and neither Landlord nor Tenant have given notice to evacuate, Agent shall be paid as though the remaining term is three (3) years. This obligation shall continue even though such rentals may be paid to the purchaser of the premises, or any other party, and are not actually received by the Owner. Agent shall release Owner from the payment of Leasing commissions thereafter to become due and payable if the person to whom the premises are sold or conveyed assumes and agrees to pay the Agent the balance due on such commissions as they accrue. In the event the Owner shall, without the Agent's approval, consent to a termination of a lease negotiated by Agent which is not in default prior to the expiration or its original term, Owner shall continue to pay to the Agent its commission on the remaining rental payment as they would have become due for the balance of the original lease term.
- E. All inquires for any leases, renewals, extensions, continuations of tenancy, or agreements for rental occupancy or operation of the Premises, or any part thereof, shall be referred to Agent, and all negotiations connected therewith shall be conducted solely by or under direction of Agent.

Not a
deletion
MCL
1-8-02

- ~~F. If Agent is called upon to perform any services not a part of the usual services performed by a managing agent, Owner covenants and agrees to pay Agent additional compensation thereof in an amount agreed upon by both parties.~~

MCL
1-8-02

- ~~10. If, during the term of this Agreement, the Premises, or any part thereof, are offered for sale or exchange Agent shall have the EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL the Premises or a part of the premises which is for sale. If the Premises, or any part thereof, is so sold or exchanged, Owner shall pay Agent a full commission equal TO BE NEGOTIATED () percent of the gross sales price.~~

- ~~11. Upon and for six (6) months after the termination of this Agreement by lapse of time or otherwise, Owner shall recognize Agents as Broker in all pending negotiations with respect to any lease, renewal, extension, or continuation of tenancy, or any sale of said Premises, and additionally, shall recognize Agent as Broker with respect to any persons to whom Agent shall have submitted or shown the Premises during the term hereof with respect to any lease, renewal, extension, or continuation of tenancy or sale, and in the event of consummation thereof, regardless of by whom such consummation is effected, Owner shall pay to Agent a commission as set forth herein.~~

Page Six

12. All notices to be given hereunder shall be in writing and shall be sent by United States registered mail, return receipt requested, postage prepaid, addressed if to Owner at 1634 MAIN STREET, COLUMBIA, SOUTH CAROLINA 29201, ATTN. HOWARD HAMMER, and if to Agent, at 500 TAYLOR STREET, STE. 401, COLUMBIA, SOUTH CAROLINA 29201, or to such other addresses as may from time to time be given as provided in this Paragraph 12. Any notice mailed as herein provided shall be deemed and treated to have been received on the date of mailing.
13. Notwithstanding the provisions of Paragraph 1 hereof, this Agreement may be terminated as follows:
 - A. If a petition in bankruptcy is filed by either Owner or Agent, or if either shall make an assignment for the benefit of creditors or take advantage of any insolvency act, the other hereto may terminate this Agreement by serving written notice by registered mail to the other party.
 - B. If Owner shall fail to comply with Paragraph 6 hereof, Agent may terminate this Agreement upon ten (10) days written notice by registered mail to Owner.
14. Agent is not and never shall be liable to any creditor or Owner nor to any claimant against the property of Owner. Nothing contained in this Agreement shall constitute or be construed to be created a partnership or joint venture between Owner and Agent. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns, and may not be changed orally but only by a writing signed by the party to be charged hereby.
15. Owner agrees to furnish any holder of mortgage liens against the Premises a copy of this Agreement and shall obtain for Agent an acknowledgment of receipt of same by said mortgages.
16. In the event that any action or proceeding is commenced in relation to this Agreement, the prevailing party shall be entitled to recover its court costs and expenses and reasonable attorney's fees.
17. In the event that any term, covenant or provisions of this Agreement shall become illegal, invalid or unenforceable, that term, covenant or provision shall be severed and removed herefrom and this Agreement shall be construed as if such term, covenant or provision had never been contained herein.
18. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Page Seven

19. The following additional stipulations form a part of this Agreement and inasfar as they conflict with any of the foregoing shall control:

NONE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals the day and year first above written.

IN THE PRESENCE OF:

Alice Gibson

OWNER: 1634 MAIN, LP

BY: Howard Hammer
HOWARD HAMMER

ITS: MANAGING PARTNER

AGENT: DANVILLE BUSINESS ADVISORS,
LLC

Marion D. Turbeville

BY: Marion D. Turbeville
MARION D. TURBEVILLE

ITS: BROKER-IN-CHARGE

HOWARD HAMMER

1609 Catawba Street
Columbia, SC 29205

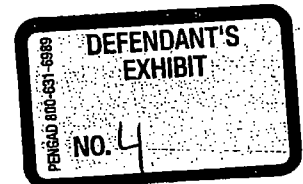
TELEPHONE
803-530-8517

FACSIMILE
803-799-9202

VIA HAND DELIVERY

Paul Degenhart
2131 Park Street
Columbia, SC 29201

July 10, 2009



Dear Paul,

This will follow up, memorialize and confirm our conversation of yesterday, August 19, 2009, in which I called after receiving information that Shirley's representatives wish for me to speak with you and/or your wife about the lis pendens filed on 320 St. James. Confirming our conversation, we spoke about the lis pendens and Shirley's request to me that the same be lifted and further, the information that I had received from Shirley's representatives and/or Shirley, through others, that the bank had a 12:00 deadline yesterday regarding the lis pendens. I called initially before twelve at which time you were kind enough to advise that the time for deadline conveyed to us was incorrect.

I further am confirming that we discussed several potential solutions to the situation. I related to you that there was a legal basis I believed for the lis pendens. I further related to you that I was amenable to discussion. One of the options we discussed was the possibility of your purchaser client purchasing the home I am living in a block or so from Shirley, and Shirley and I working out as necessary, if possible, resolution based partially on any difference in price and otherwise essentially trading my home for Shirley's and your purchaser taking my home instead of Shirley's. I explained to you that while I was amenable to discussion of such a resolution, that type of resolution would certainly not be something I would really want to do. It would be detrimental to my financial interest and interfere with other plans I am in the process of trying to look into regarding housing for me. Notwithstanding the hardship that such a solution would be on me, I related to you it was something that I would be willing to consider in order to try to help the situation and Shirley. We discussed some other vague possible solutions. I reiterate to you now, that while none of the solutions I believe were really in my best interest, I would do everything I reasonably could to discuss with Shirley and/or you some satisfactory arrangement that may resolve the situation. I had understood that I would hear from you today, and am awaiting further word.

Very Truly Yours,

Howard Hammer

*Received 4:10 P.M.
8/20/09
RDS*

4

ATTORNEY'S FINAL REPORT ON TITLE

This is to certify that I have caused the public records of Richland County, South Carolina to be examined with respect to title of the following property:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, State of South Carolina, being shown and delineated as Lot Six (6), Block A, on a plat prepared for Carolina Research Development Foundation by McNair, Gordon, Johnson, & Karasiewicz, dated May 1, 1981, recorded in the ROD for Richland County in Plat Book Z at page 363 and 363-A. Furthermore being shown and delineated on a plat prepared for Hu Ye and Wei Tan by Inman Land Surveying, Inc. dated July 30, 2009 recorded August 21, 2009 in the Office of the Register of deeds for Richland County in Plat Book 1550 at page 673. Reference being made to said latter plat for a more complete and accurate description of metes and bounds, be all measurements a little more or less.

This being the same property conveyed to Shirley Hammer by Deed of Mary N. Hightower recorded August 20, 2009 in the Office of the Register of Deeds for Richland County in Book 1549 at page 3937. This being the same property conveyed to Mary N. Hightower by Deed of Shirley Hammer recorded August 7, 2009 in the Office of the Register Of Deeds in Richland county in Book 1547 at page 807.

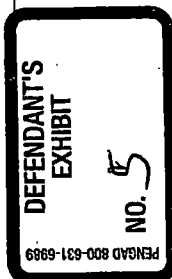
TMS#: 11307-09-16

Grantee Address: 320 St. James Street Columbia, SC 29205

This conveyance is made subject to all easements and to covenants, conditions, restrictions and easements of record, including, but not limited to, any shown on recorded plats.

Based on the above mentioned examination, I am of the opinion that the marketable fee simple title to said real estate is, as of the date of this report, vested in **Ye Hu and Wei Tan**, subject to the following liens, encumbrances, and other objections:

1. Mortgage from Ye Hu and Wei Tan to Shirley Hammer recorded August 21, 2009 in the Office of the Register of Deeds for Richland County in Book 1550 at page 686.
2. Reciprocal Easement recorded December 1, 2008 in the Register of Deeds for Richland County in Book 1478 at page 1953.
3. Covenants & Restrictions recorded in Book D576 at Page 1953.
4. Utility Easement to SCE&G recorded in Book D552 at Page 970.
5. Encroachment of a brick wall/retaining wall onto the Daniel property (One Rice Court) for a maximum distance of 2.1 feet as shown on plat prepared for Hu Ye & Wei Tan by Inman Land Surveying Company, Inc. dated July 30, 2009 to be recorded.
6. Encroachment of dwelling upon minimum building setback line as shown on plat prepared for Hu Ye & Wei Tan by Inman Land Surveying Company, Inc. dated July 30,

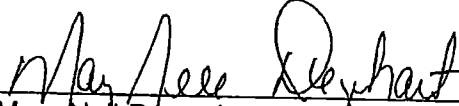


2009 to be recorded.

7. Lis Pendens recorded July 31, 2009 in the Office of the Clerk of Court for Richland County, #EP277.
8. Taxes for the year 2009, which are a lien, but not yet due and payable, and taxes for subsequent years.

Unless otherwise provided herein, this Title Certificate covers a period of not more than **forty** years prior to the date hereof.

Dated: August 21, 2009


Mary Nell Degenhart, Esq.
Degenhart Law Firm, P.A.
2131 Park Street
Columbia, SC 29201

Instrument: 2009063611

Book/Page: R1550 : 683

DateTime: 8/21/2009 8:47:00 AM

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Shirley Hammer (hereinafter referred to as "Grantor"), for and in consideration of the sum of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00) to the Grantor in hand paid at and before the sealing of these presents, by Ye Hu and Wei Tan (hereinafter referred to as "Grantees") in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release, unto the Grantees, their heirs, successors and assigns all of said Grantor's rights, title and interest in and to:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, State of South Carolina, being shown and delineated as Lot Six (6), Block A, on a plat prepared for Carolina Research Development Foundation by McNair, Gordon, Johnson, & Karasiewicz, dated May 1, 1981, recorded in the ROD for Richland County in Plat Book Z at page 363 and 363-A. Furthermore being shown and delineated on a plat prepared for Hu Ye and Wei Tan by Inman Land Surveying, Inc. dated July 30, 2009 recorded August 21, 2009 in the Office of the Register of deeds for Richland County in Plat Book 550 at page 673. Reference being made to said latter plat for a more complete and accurate description of metes and bounds, be all measurements a little more or less.

This being the same property conveyed to Shirley Hammer by Deed of Mary N. Hightower recorded August 20, 2009 in the Office of the Register of Deeds for Richland County in Book 1549 at page 3937.

TMS#: 11307-09-16

Grantee Address: 320 St. James Street Columbia, SC 29205

This conveyance is made subject to all applicable zoning ordinances, easements, covenants, and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned, unto the Grantee, her Successors and Assigns, forever.

And the Grantor does hereby bind herself and her successors and assigns to warrant and forever defend all and singular the said premises unto the Grantees, their Heirs, Successors, and Assigns, against themselves and their successors and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Book 1550-683

2009063611 08/21/2009 08:47:29:400

Warranty Deed

Fee: \$10.00 County Tax: \$715.00 State Tax: \$1690.00



2009063611 Richard W. Rodden

Richland County R.O.D.

PENGAD 800-631-6989

DEFENDANT'S
EXHIBIT

NO. 6

This document is not to scale

Instrument: 2009083611

Book/Page: R1550 : 684

Date/Time: 8/21/2009 8:47:00 AM

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the other, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed and sealed in her name this 20 day of August, 2009.

In the presence of:

Grantor:

M. Lee Degibet
Witness No. 1

Shirley Hammer
Shirley Hammer

Roberta L. Bosena
Witness No. 2

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared before me, Mary Nell Degibet, and made oath that s/he saw the within-named Grantor sign seal and as her act and deed deliver the within-written Deed and that s/he with Roberta L. Bosena witnessed the execution and delivery thereof.

Sworn to me this 20th day of
August, 2009

Roberta L. Bosena
Notary Public for SOUTH CAROLINA
My Commission Expires: July 11, 2011

M. Lee Degibet
Witness

Instrument: 2009063611

Book/Page: R1550 : 685

Date/Time: 6/21/2009 8:47:00 AM

Richland County R00

Richland County Auditor Paul Brewer 2007

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Book 1550-686

2009063612 08/21/2009 08:47:29:480

Mortgage

Fee:\$10.00 County Tax:\$0.00

State Tax:\$0.00

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MORTGAGE

2009063612 Richard W. Rodden

Richland County R.O.D.

WHEREAS, Ye Hu and Wei Tan (hereinafter called the Mortgagors), has agreed to execute this mortgage in favor of Shirley Hammer (hereinafter called the Mortgagee) to provide additional security for the payment of all contract or other amounts due Mortgagee for monies advanced by Mortgagee to Mortgagor pursuant to a note dated August 20, 2009 in the principal amount of Three Hundred Forty Thousand and 00/100 (\$340,000.00) Dollars as of the date of this mortgage plus allowable interest as evidenced by the note.

NOW, KNOW ALL MEN BY THESE PRESENTS: That the Mortgagors, for and in consideration of the debt or sum of money aforesaid, and to better secure its payment to the Mortgagee according to the conditions of same, and also in consideration of the further sum of **THREE (\$3.00) DOLLARS** to the Mortgagors in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by theses presents does grant, bargain, sell and release unto the Mortgagee, her successors, heirs and assigns, the real property described as follows:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, State of South Carolina, being shown and delineated as Lot Six (6), Block A, on a plat prepared for Carolina Research Development Foundation by McNair, Gordon, Johnson, & Karasiewicz, dated May 1, 1981, recorded in the ROD for Richland County in Plat Book Z at page 363 and 363-A. Furthermore being shown and delineated on a plat prepared for Hu Ye and Wei Tan by Inman Land Surveying, Inc. dated July 30, 2009 recorded August ___, 2009 in the Office of the Register of deeds for Richland County in Plat Book ___ at page ___. Reference being made to said latter plat for a more complete and accurate description of metes and bounds, be all measurements a little more or less.

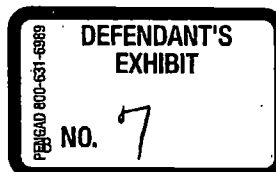
Derivation: This being the same property conveyed to the Mortgagors by deed of Shirley Hammer dated August 20, 2009, recorded in Book ___ at Page ___ in Richland County.

Mortgagee's Address: 1713 Phelps Street
Columbia, SC 29205

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the premises belonging, or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises unto the Mortgagee, its/his successors, heirs and assigns forever.

AND the Mortgagor does hereby bind itself and its successors to warrant and forever defend all and singular the premises unto the Mortgagee, its/his successors, heirs and assigns, from and against itself and its successors, lawfully claiming, or to claim the same, or any part thereof.



AND IT IS AGREED, by and between the parties that the mortgagor, its successors and assigns, shall keep any building erected on the premises insured against loss and damage by fire for the benefit of the mortgagee, for an amount not less than the full fair market value thereof, with such company as shall be approved by the mortgagee, its/his successors, heirs and assigns, and shall deliver the policy to the mortgagee; and in default thereof, the mortgagee, its/his successors, heirs or assigns may effect such insurance and reimburse themselves under this mortgage for the expense thereof, together with interest thereon at the rate provided in the note from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the mortgagee, its/his successors, heirs and assigns, shall be entitled to receive from the aggregate of the insurance monies to be paid a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the parties that upon any default being made in the payment of the debt secured by this mortgage or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, or failure to pay any other indebtedness which constitutes a lien upon the real property when the same shall severally become payable, then the entire amount of the debt secured or intended to be secured hereby shall become due, at the option of the mortgagee, its/his successors, heirs or assigns, although the period for the payment thereof may not then have expired, and mortgagee shall be entitled to foreclose this mortgage as security for the aforesaid debt.

AND IT IS AGREED, by and between the parties that should legal proceedings be instituted for the collection of the debt secured hereby, then the mortgagee, its/his successors, heirs or assigns, shall have the right to have a receiver appointed of the rents and profits of the premises, who, after deducting all charges and expenses attending such proceedings, and the execution of the trust as receiver, shall apply the residue of the rents and profits towards the payment of the debt secured thereby.

AND IT IS FURTHER AGREED, by and between the parties that should legal proceedings be instituted for the foreclosure of this mortgage, or should the mortgagee become a party to any action by reason of this mortgage, or should the debt secured hereby be placed in the hands of an attorney at law for collection, by suit or otherwise, all costs and expenses incurred by the mortgagee, including a reasonable attorney's fee, shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties, that if the mortgagor does and shall well and truly pay, or cause to be paid, unto the mortgagee, its/his successors, heirs and assigns, the debt or sum of money aforesaid, with interest thereon, and if any shall be due, according to the true intent and meaning of the note of this mortgage, then this mortgage shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue.

AND IT IS AGREED, by and between the said parties, that the Mortgagee shall release portions of the secured property upon sale by Mortgagor and the payment of all net proceeds due Mortgagee.

AND IT IS AGREED, by and between the said parties, that the mortgagor shall hold and enjoy the premises until payment in full shall be made.

Any reference in this instrument to the plural shall include the singular, and any reference to the neuter shall include the male and female, the male shall include the female, and vice versa.

WITNESS the hand and the seal of the Mortgagor.

Date: August 20, 2009

IN THE PRESENCE OF:

Ng Lee Dayhart
James C. Walker

By: *Ye Hu* (SEAL)
Ye Hu

By: *Wei Tan, by Ye Hu* (SEAL)
his attorney in fact
Wei Tan

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Mortgagors, sign, seal and as their act and deed of the Mortgagors deliver the within written mortgage, that (s)he with the other witness whose signature appears above, witnessed the execution thereof.

Ng Lee Dayhart

SWORN to before me

This 20 Day of August, 2009.

Ng Lee Dayhart

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

My Commission Expires January 23, 2016

Exhibit A

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, State of South Carolina, being shown and delineated as Lot Six (6), Block A, on a plat prepared for Carolina Research Development Foundation by McNair, Gordon, Johnson, & Karasiewicz, dated May 1, 1981, recorded in the ROD for Richland County in Plat Book Z at page 363 and 363-A. Furthermore being shown and delineated on a plat prepared for Hu Ye and Wei Tan by Inman Land Surveying, Inc. dated July 30, 2009 recorded August ____, 2009 in the Office of the Register of deeds for Richland County in Plat Book ____ at page _____. Reference being made to said latter plat for a more complete and accurate description of metes and bounds, be all measurements a little more or less.

This being the same property conveyed to Ye Hu and Wei Tan by Deed of Shirley Hammer recorded in the Office of the Register of Deeds for Richland County simultaneously herewith.

TMS#: 11307-09-16

Property Address: 320 St. James Street Columbia, SC 29205

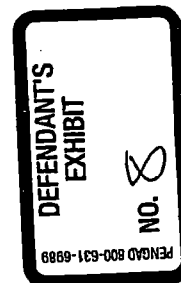


Investors Title Insurance Company

P.O. Drawer 2687

Chapel Hill, North Carolina 27515-2687
(919) 968-2200 (800) 326-4842 Fax: (919) 968-2235

Local Agent:



State of South Carolina, County of Richland

SELLER/BORROWER AFFIDAVIT

(Seller to execute if sale; Borrower to execute if refinance or construction)

Commitment Number: 200906286SCC

To induce the above-referenced agent to issue a policy in accordance with the above commitment, the undersigned Seller/Borrower being first duly sworn, depose and say as follows:

1. The deponent(s) is/are the owner of the real estate referred to in the above-referenced commitment.
2. The deponent(s) is/are a citizen of the United States or an entity authorized to do business in South Carolina, is under no legal disability, and had never been known by any other name (except as listed below), or the Seller/Borrower is not a non-resident alien, foreign corporation, foreign trust, foreign estate or other foreign entity (as defined in the Internal Revenue Code or Income Tax Regulations).
3. That no proceedings in bankruptcy or receivership have been instituted by or against the deponent(s); nor has deponent(s) made any assignment for the benefit of creditors, which is in effect as to said real estate.
4. That there are no actions or proceedings now pending in any State or Federal Court, nor any State or Federal tax liens, or any other State or Federal lien or civil judgment of any kind or nature, including but not limited to support obligations, which could constitute a lien or charge against the real estate.
5. That there are no delinquent real estate taxes or unpaid current real estate, special assessments or pending assessments, or unpaid utility bills.
6. That there are no unpaid bills or claims for labor, services, or material furnished for alteration, repair or construction of any improvement to said real estate, and no such alteration, repair or construction has occurred within the last six (6) months. NOTE: If alterations, repairs or construction has occurred within this time frame, an Affidavit Regarding Liens must be completed. Please contact the agent listed above for the appropriate form.
7. That unless otherwise indicated, the real estate is occupied by deponent(s), and there are no unrecorded liens, leases or options to purchase, or other unrecorded provisions, easements, rights of way, or agreements which encumber the real estate.
8. That no dispute exists between deponent(s) and others concerning the title to said real estate, the boundary lines of same, nor the location of the improvements upon this real estate or the adjoining real estate.
9. The deponent(s) know(s) of no other real estate mortgages on the property other than the mortgage(s) disclosed on the title insurance commitment.
10. That unless otherwise indicated, the real estate has not been used as collateral for a loan made to a person other than the deponent(s) or to a business in which the deponent(s) has (have) an interest. If so, please list below.
11. ~~There are no purchase money obligations being created in this transaction for any seller.~~
12. There are no mobile or manufactured houses located on the real estate that have not been previously disclosed.
13. If you have evidence of prior title insurance on this property, you may be entitled to a reduced premium. Please contact the above agent for details.

Note any exceptions to the above statements here: A purchase money obligation is being created in this transfer in favor of the Seller.

The undersigned agree(s) to indemnify Investors Title Insurance Company for any loss or expense it may incur by reason of its reliance on the accuracy of the statements made herein.

FURTHER DEPONENT(S) SAYETH NOT.

SELLER/BORROWER:

By: Shirley Hammer

By: _____

Executed, subscribed and sworn to me this 20 day of August, 2009.

Notary Public: [Signature]

My Commission Expires: _____

My Commission Expires January 23, 2016

[NOTARY SEAL]

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Investors Title Insurance Company

A Stock Company

P.O. Box 542

Columbia, S.C. 29202

Telephone (803) 799-8650 • National WATS (800) 732-8005

AFFIDAVIT REGARDING LIENS (Replaces ALL Mechanics' and Materialmen's Lien Forms)

STATE OF SC
COUNTY OF Richland ss.

On this 20 day of August, 2009, before me personally appeared Shirley Hamner,
Owner of property, and _____ General Contractor, to me personally known, who, being duly

sworn on their oaths, did say as follows:

(1) that, in the event that this affidavit is given for the purpose of obtaining title insurance on property which is in the process of being constructed, said affiants do hereby jointly and severally agree to indemnify and hold INVESTORS TITLE INSURANCE COMPANY harmless of and from any and all loss, cost, damage and expense of every kind, including Attorney's fees, which said INVESTORS TITLE INSURANCE COMPANY shall or may suffer, or incur or become liable for under its said policy or policies directly or indirectly, out of such improvements, repairs or other construction on the property hereafter described or on account of any such mechanics' or materialmen's lien or liens or claim or claims, or in connection with its enforcement of its rights under this agreement; OR,

(2) that, in the event that this affidavit is given for the purpose of obtaining title insurance on property on which recent improvements have been made or construction is nearly completed, they are the Owner of the property hereafter described and the General Contractor in connection with the construction or repair of the improvements located on said property as indicated above (if the word "None" appears in the above space preceding "General Contractor," owner stated that said construction or repair was made under his own supervision, no general contractor having been employed) and that all of the persons, firms and corporations, except those whose names, if any, appear on the Waiver of Liens on the reverse side hereof, including the General Contractor and all sub-contractors, who have furnished services, labor or materials, according to plans and specifications, or extra items, used in the construction or repair of such improvements, have been paid in full, that there are no mechanics' or materialmen's liens against said property and no claims outstanding which would entitle the holder thereof to claim a lien against the property (except those claims, if any, which are waived by the Waiver of Liens on the reverse side hereof) and that such construction or repair has been fully completed and accepted by the owner, or if not fully completed and accepted by the owner, that all persons, firms and corporations, who have furnished services, labor or materials, used in such construction or repair have been paid in full or have executed the Waiver of Liens on the reverse side hereof. The General Contractor hereby waives and releases his right to file a mechanics' or materialmen's lien against said property; further, that there are no financing statements, chattel mortgages, conditional bills of sale or retention of title agreements affecting any fixtures or any cabinets, mantels, awnings, doors or windows or screens therefor or any plumbing, lighting, heating, cooking, refrigerating, ventilating or air-conditioning equipment or apparatus used separately or in combination as packaged units or installations in connection with the improvements on the property; OR,

(3) that, in the event that this affidavit is given for the purpose of obtaining title insurance on property on which there has been no recent improvements, the Owner says on oath that there are no pending suits, judgments, executions or encumbrances against _____ either in _____ County or in any other county in the State of South Carolina or in any Federal Court; except:

Owner further swears that no improvements or repairs have been made on said property during the one hundred twenty (120) days immediately preceding this date; that there are no outstanding bills incurred for labor employed and materials used in making any repairs or improvements on said premises, and that there are no unpaid bills or liens against said property for sewage, street improvements, etc.; OR,

(4) that, in the event that this affidavit is given for the purpose of obtaining title insurance on property on which new construction is contemplated, that Owner and/or General Contractor proposes to construct a building or any other improvements on said property herein described, that _____ has made a loan to finance such construction which is secured by a Deed of Trust or Mortgage filed for record in Book: _____, Page _____ of the official recording office of the County of _____, State of _____, that as of the time and date of filing of said Deed of Trust or Mortgage, (a) no materials or equipment were situated on said premises and there was nothing whatsoever thereon to evidence the visible commencement of construction or to visibly evidence the intent to commence construction, or (b) that prior to recordation of the aforesaid Deed of Trust or Mortgage certain materials for the property described therein had been furnished and/or labor performed by the following persons, firms or corporations:

The parties hereto do waive, by execution of the Waiver of Liens on the reverse side hereof, any lien, claim to lien or any other interest whatsoever they might have in said lands in order for disbursements of the aforesaid Deed of Trust or Mortgage as a valid lien on said premises, and all parties hereto do further agree that the aforesaid Deed of Trust or Mortgage shall constitute a first and paramount lien for all amounts which have been or may be advanced thereunder, and all of the claims and rights of the parties hereto are hereby subordinated to the lien of said Deed of Trust or Mortgage.

(On-going Construction)

(Construction Recently Completed)

(No Recent Improvements)

(New Construction/Non-Commencement)

That this affidavit is made for the purpose of inducing the making of a loan on said property and INVESTORS TITLE INSURANCE COMPANY to issue its policy or policies insuring the title to said property without exception to claims of mechanics, materialmen and laborers, and said affiants do hereby jointly and severally agree to indemnify and hold INVESTORS TITLE INSURANCE COMPANY harmless of and from any and all loss, cost, damage and expense of every kind, including Attorney's fees, which said INVESTORS TITLE INSURANCE COMPANY shall or may suffer or incur or become liable for under its said policy or policies directly or indirectly, out of such improvements, repairs or other construction on the property hereafter described or on account of any such mechanics' or materialmen's lien or liens or claim or claims, or in connection with its enforcement of its rights under this agreement.

The real estate (and improvements) referred to herein is situated in the County of Bichland State of South Carolina, and is briefly described in the attached Schedule C.

Shirley Hemmer (SEAL)
Seller (or Owner of Property, if a refinancing)

____ (SEAL)
Seller (or Owner of Property, if a refinancing)

____ (SEAL)
General Contractor

Executed, subscribed, and sworn to and before me this 20 day of August, 19 2009

Myra Mae Dayhoff
Notary Public

My Commission Expires: My Commission Expires January 23, 2018

WAIVER OF LIENS:

We, the undersigned are subcontractors, materialmen, or other persons furnishing services or labor or materials, as indicated beside our respective signatures below, in the construction or repair of improvements upon the real estate briefly described above.

In consideration of the sum of \$1.00 to each of us in hand paid, receipt whereof is hereby acknowledged, and other benefits accruing to us, and in order to procure the making of one or more loans on said real estate, as improved, we do hereby waive, release and quit-claim in favor of each and every party making a loan on said real estate, as improved, and his or its successors and assigns, all right that we, or any of us, may now or hereafter have to a lien upon the said land and improvements, by virtue of the laws of the state wherein said land is situated, or any amendments of said laws; and we do further warrant that we have not and will not assign our claims for payment, nor our right to perfect a lien against said property, and that we have the right to execute this waiver and release thereof.

ALL of the subscribers to this instrument respectively warrant that all laborers employed by them upon the aforesaid premises have been fully paid and that none of such laborers have any claim, demand, or lien against said premises; and further, that no financing statements, chattel mortgage, conditional bill of sale or retention of title agreement has been given or executed by the owner or any general contractor or other party or any of us, for or in connection with any material, appliances, machinery, fixtures, or furnishings placed upon or installed in the aforesaid premises by any of us, other than:

It is understood and agreed that any and all signatures hereto are for all services rendered, work done and material furnished heretofore and hereafter by the signers in any and all capacities, and are not understood to be only for the particular item against which the signature is affixed.

Witness the following signatures and seals this _____ day of _____, 19 ____.

Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)
Labor or Material Furnished	_____ (SEAL)

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN:				
	1. ☐ FHA	2. ☐ FmHA	3. ☐ CONV. UNINS.	4. ☐ VA	5. ☐ CONV. INS.
	6. FILE NUMBER: YE, HU		7. LOAN NUMBER: 7201818870		
	8. MORTGAGE INS CASE NUMBER:				

NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER: Tan 320 St. James Drive Columbia, SC 29205	E. NAME AND ADDRESS OF SELLER: Shirley Hammer 320 St. James Drive Columbia, SC 29205	F. NAME AND ADDRESS OF LENDER:

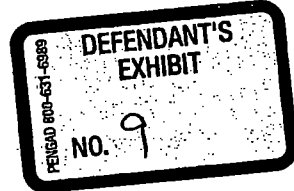
G. PROPERTY LOCATION: St. James Drive Columbia, SC 29205 and County, South Carolina	H. SETTLEMENT AGENT: DEGENHART LAW FIRM, P.A. PLACE OF SETTLEMENT 2131 PARK STREET COLUMBIA, SC 29201	I. SETTLEMENT DATE: August 20, 2009

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
Contract Sales Price	650,000.00	401. Contract Sales Price	650,000.00
Personal Property		402. Personal Property	
Settlement Charges to Borrower (Line 1400)	2,606.00	403.	
		404.	
		405.	
Adjustments For Items Paid By Seller In advance		Adjustments For Items Paid By Seller In advance	
City/Town Taxes to		406. City/Town Taxes to	
County Taxes to		407. County Taxes to	
Assessments to		408. Assessments to	
		409.	
		410.	
		411.	
		412.	
GROSS AMOUNT DUE FROM BORROWER	652,606.00	420. GROSS AMOUNT DUE TO SELLER	650,000.00
AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
Deposit or earnest money	15,000.00	501. Excess Deposit (See Instructions)	
Principal Amount of New Loan(s)		502. Settlement Charges to Seller (Line 1400)	15,395.00
Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
		504. Payoff of first Mortgage	
		505. Payoff of second Mortgage	
		506. Deposit retained by broker	15,000.00
		507.	
3. Purchase Money Note	340,000.00	508. Purchase Money Note	340,000.00
		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
0. City/Town Taxes to		510. City/Town Taxes to	
1. County Taxes 01/01/09 to 08/21/09	2,332.21	511. County Taxes 01/01/09 to 08/21/09	2,332.21
2. Assessments to		512. Assessments to	
3.		513.	
4.		514.	
5.		515.	
6.		516.	
7.		517.	
8.		518.	
9.		519.	
20. TOTAL PAID BY/FOR BORROWER	357,332.21	620. TOTAL REDUCTION AMOUNT DUE SELLER	372,727.21
00. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
01. Gross Amount Due From Borrower (Line 120)	652,606.00	601. Gross Amount Due To Seller (Line 420)	650,000.00
02. Less Amount Paid By/FOR Borrower (Line 220)	(357,332.21)	602. Less Reductions Due Seller (Line 620)	(372,727.21)
03. CASH (X FROM) (TO) BORROWER	295,273.79	603. CASH (X TO) (FROM) SELLER	277,272.79

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Borrower Wei Tan
by Yetta Wei Tan
his attorney in fact

Seller Shirley Hammer
Shirley Hammer



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A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.	
6. FILE NUMBER: YE, HU		7. LOAN NUMBER: 7201818870	
8. MORTGAGE INS CASE NUMBER:			
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME AND ADDRESS OF BORROWER: Ye Hu and Wei Tan 320 St James Drive Columbia, SC 29205		E. NAME AND ADDRESS OF SELLER: Shirley Hammer 320 St James Drive Columbia, SC 29205	
		F. NAME AND ADDRESS OF LENDER: MetroBank, NA PO Box 5564 Plano, TX 77263	
G. PROPERTY LOCATION: 320 St James Drive Columbia, SC 29205 Richland County, South Carolina		H. SETTLEMENT AGENT: 57-0967183 DEGENHART LAW FIRM, P.A. PLACE OF SETTLEMENT 2131 PARK STREET COLUMBIA, SC 29201	
		I. SETTLEMENT DATE: August 17, 2009	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price 650,000.00		401. Contract Sales Price 650,000.00	
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400) 12,392.39		403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In advance		Adjustments For Items Paid By Seller In advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER 662,392.39		420. GROSS AMOUNT DUE TO SELLER 650,000.00	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money 15,000.00		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s) 340,000.00		502. Settlement Charges to Seller (Line 1400) 13,775.00	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506. Deposit retained by broker 15,000.00	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes 01/01/09 to 08/18/09 2,302.05		511. County Taxes 01/01/09 to 08/18/09 2,302.05	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER 357,302.05		520. TOTAL REDUCTION AMOUNT DUE SELLER 31,077.05	
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120) 662,392.39		601. Gross Amount Due To Seller (Line 420) 650,000.00	
302. Less Amount Paid By/For Borrower (Line 220) (357,302.05)		602. Less Reductions Due Seller (Line 520) (31,077.05)	
303. CASH (X FROM) (TO) BORROWER 305,090.34		603. CASH (X TO) (FROM) SELLER 618,922.95	

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Borrower

Ye Hu

Wei Tan, by Ye Hu,

Wei Tan

as attorney in fact

Seller

Shirley Hammer

L. SETTLEMENT CHARGES				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
JLAL COMMISSION Based on Price \$ 650,000.00 @ 4.0000 % 26,000.00					
Division of Commission (line 700) as follows:					
701. \$ 13,000.00	to Coldwell Banker United Realtors				
702. \$ 13,000.00	to The Wolfe Company				
703. Commission Paid at Settlement	Less Deposit Retained	15,000.00			
704.	to				11,000.
800. ITEMS PAYABLE IN CONNECTION WITH LOAN.					
801. Loan Origination Fee, 1.0000 %	to MetroBank, NA				
802. Loan Discount	to			3,400.00	
803. Appraisal Fee	to MetroBank, NA fbo Palmetto Real Estate and Apprais				
804. Credit Report	to MetroBank, NA fbo CBC-Innovis			425.00	
805. Lender's Inspection Fee	to			25.00	
806. Mortgage Ins. App. Fee	to				
807. Assumption Fee	to				
808. Admin Fee	to MetroBank, NA				
809. Tax Service Fee	to MetroBank, NA			350.00	
810.				85.00	
811.					
812. Processing Fee	to MetroBank, NA				
813. Underwriting Fee	to MetroBank, NA			250.00	
814. Flood Cert Fee	to First American Flood Data Services			660.00	
815.				20.00	
816.					
817.					
818.					
819.					
820.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From 08/17/09 to 09/01/09 @ \$ 67.530000/day (15 days %)				1,012.96	
902. Mortgage Insurance Premium for months to					
903. Hazard Insurance Premium for 1.0 years to Lexington Farm Bureau					
904.				POC:B764.28	
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City/Town Taxes	months @ \$	per month			
1004. County Taxes	11.000 months @ \$	305.77 per month			
1005. Assessments	months @ \$	per month		3,363.47	
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008. Aggregate Adjustment	months @ \$	per month			
1100. TITLE CHARGES	months @ \$	per month		0.03	
1101. Settlement or Closing Fee	to DEGENHART LAW FIRM, P.A.				
1102. Abstract or Title Search	to Elite Title Company, LLC			450.00	
1103. Title Examination	to DEGENHART LAW FIRM, P.A.			160.00	
1104. Title Insurance Binder	to DEGENHART LAW FIRM, P.A.				75.00
1105. Document Preparation	to DEGENHART LAW FIRM, P.A.			100.00	
1106. Notary Fees	to				160.00
1107. Attorney's Fees	to				
(Includes above item numbers:)					
1108. Title Insurance	to Degenhart Law Firm, P.A.				1,275.00
(Includes above item numbers:)					
1109. Lender's Coverage	\$ 340,000.00				
1110. Owner's Coverage	\$ 650,000.00	75.00			
1111. overnight/wire/edocs/copies	to DEGENHART LAW FIRM, P.A.		1,200.00		
1112. Endorsements	to DEGENHART LAW FIRM, P.A.			85.00	
1113. Courier Fee	to DEGENHART LAW FIRM, P.A.			160.00	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					50.00
1201. Recording Fees: Deed \$ 10.00; Mortgage \$ 36.00; Releases \$					
1202. City/County Tax/Slamps: Deed				26.00	20.00
1203. State Tax/Slamps: Revenue Slamps	2,405.00; Mortgage				
1204. Record SPOA	to Richland County Register of Deeds				2,405.00
1205. Record Lost Mortgage Sat	to Richland County Register of Deeds			10.00	
1300. ADDITIONAL SETTLEMENT CHARGES					10.00
1301. Survey	to Inman Land Surveying				
1302. Pest Inspection	to			400.00	
1303. Prepare SPOA	to Degenhart Law Firm				
1304. Lost Mortgage Satisfaction	to Degenhart Law Firm			125.00	
1305.					65.00
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				12,392.39	13,775.00

Certified to be a true copy.

Dea Lee Degenhart
DEGENHART LAW FIRM, P.A.
Settlement Agent

Balloon Payment Loan Calculator

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v. 1.3

Download from Vertex42.com

Inputs

Loan Amount	\$340,000
Annual Interest Rate	5.25%
Amortization Period	360 months
# of Regular Payments	36 months
Begin Date	8/21/2009

Assumptions

- * Interest compounds monthly
- * Payments made at end of month
- * Balloon amount paid a month after the last regular monthly payment

Summary

Monthly Payment	\$1,877.49	☐ Interest Only
Balloon Payment	\$ 326,250.75	
Balloon Payment w/Rounding	#####	
Total Payments	\$ 393,840.96	
Total Interest Paid	\$ 53,840.96	

DEFENDANT'S
EXHIBIT

NO. 10

Amortization Schedule

Month	Date	Payment	Interest	Principal	Balance
	8/21/2009				\$ 340,000.00
1	9/21/2009	1,877.49	1,487.50	389.99	339,610.01
2	10/21/2009	1,877.49	1,485.79	391.70	339,218.31
3	11/21/2009	1,877.49	1,484.08	393.41	338,824.90
4	12/21/2009	1,877.49	1,482.36	395.13	338,429.77
5	1/21/2010	1,877.49	1,480.63	396.86	338,032.91
6	2/21/2010	1,877.49	1,478.89	398.60	337,634.31
7	3/21/2010	1,877.49	1,477.15	400.34	337,233.97
8	4/21/2010	1,877.49	1,475.40	402.09	336,831.88
9	5/21/2010	1,877.49	1,473.64	403.85	336,428.03
10	6/21/2010	1,877.49	1,471.87	405.62	336,022.41
11	7/21/2010	1,877.49	1,470.10	407.39	335,615.02
12	8/21/2010	1,877.49	1,468.32	409.17	335,205.85
13	9/21/2010	1,877.49	1,466.53	410.96	334,794.89
14	10/21/2010	1,877.49	1,464.73	412.76	334,382.13
15	11/21/2010	1,877.49	1,462.92	414.57	333,967.56
16	12/21/2010	1,877.49	1,461.11	416.38	333,551.18
17	1/21/2011	1,877.49	1,459.29	418.20	333,132.98
18	2/21/2011	1,877.49	1,457.46	420.03	332,712.95
19	3/21/2011	1,877.49	1,455.62	421.87	332,291.08
20	4/21/2011	1,877.49	1,453.77	423.72	331,867.36
21	5/21/2011	1,877.49	1,451.92	425.57	331,441.79
22	6/21/2011	1,877.49	1,450.06	427.43	331,014.36
23	7/21/2011	1,877.49	1,448.19	429.30	330,585.06
24	8/21/2011	1,877.49	1,446.31	431.18	330,153.88
25	9/21/2011	1,877.49	1,444.42	433.07	329,720.81
26	10/21/2011	1,877.49	1,442.53	434.96	329,285.85
27	11/21/2011	1,877.49	1,440.63	436.86	328,848.99
28	12/21/2011	1,877.49	1,438.71	438.78	328,410.21

10

29	1/21/2012	1,877.49	1,436.79	440.70	327,969.51
30	2/21/2012	1,877.49	1,434.87	442.62	327,526.89
31	3/21/2012	1,877.49	1,432.93	444.56	327,082.33
32	4/21/2012	1,877.49	1,430.99	446.50	326,635.83
33	5/21/2012	1,877.49	1,429.03	448.46	326,187.37
34	6/21/2012	1,877.49	1,427.07	450.42	325,736.95
35	7/21/2012	1,877.49	1,425.10	452.39	325,284.56
36	8/21/2012	1,877.49	1,423.12	454.37	324,830.19
37	9/21/2012	326,251.32	1,421.13	324,830.19	0.00

State of South Carolina)
)
 County of Richland)

PROMISSORY NOTE

\$340,000

August 20, 2009

FOR VALUE RECEIVED, the undersigned, Ye Hu and Wei Tan, (hereinafter called "Makers"), hereby promise to pay to the order of Shirley Hammer, (hereinafter called "Payee"), the principal sum of Three Hundred Forty Thousand and 00/100 Dollars (\$340,000.00). Interest shall accrue from the date hereof at the rate of five and one quarter percent (5.25%) per annum. Payment of principal and interest shall be made monthly on the first day of each month beginning September 21, 2009. If on August 21, 2012, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date". The monthly Principal and Interest payment shall be One Thousand Eight Hundred Seventy Seven and 49/100 Dollars (\$1,877.49). The Parties hereto agree that this Note may be prepaid by the Maker without penalty. The Parties further agree that the payment terms of this Note may be changed with the mutual agreement of Maker and the Payee.

Payments of principal and interest shall be made in lawful money of the U.S. of America, in care of Shirley Hammer 1713 Phelps St., Columbia SC 29205 or at such other place as may be designated in writing by the holder of this Note.

Failure of the holder to assert any right hereunder shall not be deemed to be a waiver thereof. Maker waives notice of all action by the holder. No course of dealing by the holder and no failure or delay by the holder in exercising any right, remedy or power hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy or power preclude any other or further exercise hereof or exercise of any other right, remedy or power hereunder. Maker for itself, its heirs, successors and assigns, hereby waives presentment, demand, diligence, notice of protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of or under this Note, or any collateral or security therefor; assents to any extension or postponement of the time for payment or any other indulgence, to the addition, substitution or release of any other party or person primarily or secondarily liable; and to any substitution, exchange or release of security; and agrees to pay, to the extent permitted by law, all costs and expenses, including, without limitation, attorneys' fees, incurred or paid by the holder in enforcing this Note and any collateral or security therefor, whether or not litigation is commenced.

Moreover, upon

(i) commencement of any voluntary proceeding by Maker under any provision of Title 11 of the United States Code, as now or hereafter amended, or of any other proceeding, under any law, now or hereafter in force, relating to bankruptcy, insolvency, reorganization, liquidation, or otherwise to the relief of debtors or the readjustment of indebtedness;

(ii) the making of an assignment for the benefit of creditors or a composition or similar arrangement with creditors;

- (iii) the conveyance of property or assets to a trust mortgagee or liquidating agent;
- (iv) appointment of a receiver, trustee or similar judicial officer or agent to take charge of or liquidate property or assets or any of them; or
- (v) commencement against Maker of any involuntary proceeding of the kind described in this paragraph, unless Maker is diligently contesting the same by appropriate action, or if, despite such contest, such proceeding is not dismissed within a period of 30 days;
- (vi) a default in any required payment on or before a respective due date;

this Note shall become immediately due and payable without presentment, demand, protest or notice of any kind.

Maker acknowledges and agrees that this Note is negotiable by Payee and that the Note may be assigned or pledged by Payee to one or more financial institutions as security for a loan or loans to Payee. Maker hereby consents to any such assignment and agrees to execute any documents and instruments required to effect such assignment or pledge.

Maker also agrees that in case of a default in any payment on the due date(s), foreclosure of this Note, by suit or otherwise, the Payee shall recover of the Maker a reasonable sum as attorney's fees, which shall not be less than fifteen (15%) percent of the original amount of the Note, which shall be secured by this Note, and shall be included in judgment of foreclosure.

This Note shall be governed under the laws of the State of South Carolina. If any provision is determined to be vague or uncertain, it shall be construed in the favor of the Payee.

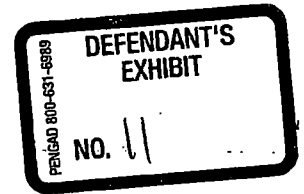
IN WITNESS WHEREOF, the undersigned hereby agrees to the terms of this Note as of the date first written above.

Signed in the presence of:

Ag. Fee Receipt
John C. Walker

Ye Hu
 By: Ye Hu

Wei Tan, by Ye Hu, his attorney in fact
 By: Wei Tan

TX6
@ 9/18/10AGREEMENT OF LIMITED PARTNERSHIPOF1634 Main Limited Partnership

This Agreement of Limited Partnership is made to be effective as of December 12, 2000, by and among SH5, LLC (the "General Partner"), and the persons listed as limited partners in Schedule A attached hereto, as amended from time to time to admit additional limited partners (the "Limited Partners").

1. FORMATION.

1.1 The Partners hereby form and establish the Partnership pursuant to the terms of this Agreement of Limited Partnership (this "Agreement") in accordance with the provisions of the Act.

1.2 The Partnership's certificate of limited partnership (the "Certificate") was filed with the Office of the South Carolina Secretary of State on December 12, 2000.

2. NAME.

2.1 The name of the Partnership shall be 1634 Main Limited Partnership (the "Partnership").

2.2 The Partnership business shall be conducted under such names as the General Partner may from time to time deem necessary or advisable, provided that (1) the name shall contain the words "limited partnership" or the abbreviation "L.P.," (2) the name used shall not adversely affect the limited liability of any Limited Partner, and (3) appropriate amendments to the Certificate and this Agreement and/or necessary filings under applicable assumed or fictitious name statutes are first obtained.

3. OFFICES AND AGENT.

3.1 The principal office of the Partnership shall be 1634 Main Street, Columbia, South Carolina 29201, or at such other place as the General Partner may, from time to time, designate by notice to the Limited Partners.

3.2 The Partnership may have such additional offices as the General Partner may, from time to time, deem necessary or advisable.

1634 Main Limited Partnership

Page 1

3.3 The registered agent for the Partnership shall be Howard Hammer, and the registered office for the Partnership shall be its principal office. Upon any change in the registered agent or office, the General Partner is authorized and required to file an appropriate amendment to the Certificate with the South Carolina Secretary of State.

4. PURPOSE.

The purpose and business of the Partnership shall be to acquire, buy, develop, own, invest in, hold, manage, exchange, operate, lease (whether as lessor or lessee), sublease (whether as sublessor or sublessee), refinance, sell and transfer any real or personal property or other Partnership assets and to engage in any and all activities incidental or related to the foregoing, and in all respects to act as an owner of real and personal property, upon and subject to the terms and conditions of this Agreement.

5. TERM.

The Partnership shall terminate on December 31, 2040, unless sooner terminated as herein provided.

6. DEFINITIONS.

For purposes of this Agreement:

6.1 The "Act" means the South Carolina Uniform Limited Partnership Act (or any corresponding provision of succeeding law);

6.2 The "Code" means the United States Internal Revenue Code of 1986, as amended (or any corresponding provision of succeeding law);

6.3 "Majority in Interest of the Limited Partners" means at any time the Limited Partners who own more than fifty percent (50%) of the total percentage interests in the Partnership owned by the Limited Partners;

6.4 The "Partners" mean collectively the General Partner and the Limited Partners.

6.5 The "Regulations" mean the United States Treasury Department income tax regulations, as amended, or any successor provisions.

7. CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS.

7.1 The initial capital contributions of the Partners shall be as shown on the attached Schedule "A."

7.2 There shall be no additional capital contributions to the capital of the Partnership unless agreed to by all of the Partners; provided, however, gift contributions under Article 7.8 shall not require such agreement. The required consent and approval need not be in writing and any additional contributions of capital will be presumed to have been made with the required consent.

7.3 An individual capital account shall be maintained for each Partner in accordance with the capital accounting rules of section 704(b) of the Code and applicable Regulations. In general, the capital interest of each Partner shall consist of the Partner's original contribution increased by (a) the Partner's additional contributions to capital and (b) the Partner's share of Partnership profits, including capital gains and tax-exempt income, and decreased by (a) distributions to the Partner in reduction of the Partner's Partnership capital and (b) the Partner's share of Partnership losses, including capital losses. Partner loans to the Partnership shall not be reflected in Partner capital accounts.

7.4 The amount of a Partner's contributions of property to the Partnership and of the Partnership's distributions of such property to a Partner, as reflected in the Partner's capital account, shall be the fair market value of the property on the date of the contribution or distribution, reduced by any liabilities secured by the contributed or distributed property if those liabilities are treated under applicable federal income tax laws as being assumed by the transferee or if the transferee is treated under such laws as receiving the property subject to those liabilities. A Partner's share of income, deduction, gain, and loss reflected in the capital account will be computed in a manner consistent with applicable federal income tax laws and Regulations.

7.5 The percentage interest of each Partner, both General and Limited, will be determined by dividing the balance of the Partner's capital account by the total of all of the capital accounts of all Partners. A Partner's percentage interest shall be determinative of the Partner's ownership interest in the Partnership as an entity.

7.6 No Partner shall receive any interest on his or her capital contributions or Partnership interest.

7.7 Except as provided below in Article 7.8, no Limited Partner shall be entitled to withdraw or demand the return of any part of his capital contribution except upon dissolution of the Partnership, and as specifically provided for in this Agreement.

7.8 In the event anyone contributes cash or property to the partnership with the intent to make a gift to the partners, the appropriate amount of gift shall be added on a pro rata basis to each Partner's capital account based on each Partner's percentage interest in the Partnership and, for a period of thirty (30) days after such gift, each donee-partner shall have the right to withdraw

from his capital account an amount equal to his share of such gift. Upon receipt of a gift, the General Partner shall notify each donee-partner of the gift including the approximate value of any property received and of the Partner's right to withdraw the gift.

8. PROFITS, LOSSES, AND CASH FLOW.

8.1 The net profits or net losses of the Partnership, and every item of income, deduction, gain, loss, and credit therein, shall be credited or charged to the Partners in proportion to their percentage interests in the Partnership.

8.2 The cash flow of the Partnership shall be distributed at least annually to the Partners in proportion to their percentage interests in the Partnership; provided, however, the Partnership may retain some or all of the cash flow:

(a) for the business needs of the partnership including capital reserves and working capital for anticipated investments and operating expenses, in the amounts the General Partner reasonably determines is necessary or advisable; or,

(b) if all of the Partners, on an annual basis, consent.

8.3 Notwithstanding any other provision of this Agreement:

(a) Income, gain, loss, deductions, and credit with respect to property contributed to the Partnership by a Partner shall be shared among the Partners so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with applicable Regulations;

(b) In the event that there is a net decrease in the Minimum Gain (as that term is defined in the Regulations) of the Partnership (or the Minimum Gain allocable to one or more Partners) during a Partnership taxable year, each Partner shall be allocated items of income and gain for that taxable year (and, if necessary, for subsequent years) in accordance with the Regulations governing minimum gain chargebacks; and all deductions attributable to non-recourse indebtedness shall be credited or charged to the Partners in accordance with applicable Regulations.

(c) Net losses for any Partnership taxable year that would otherwise be allocated with respect to a percentage interest in the Partnership owned by a Limited Partner and which would cause such Limited Partner to have an Adjusted Capital Account Deficit with respect to his interest as a Limited Partner shall instead be allocated pro rata among the General Partner.

(d) In the event any Limited Partner unexpectedly receives any adjustment, allocation, or distribution described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, which adjustment, allocation or distribution creates or increases an Adjusted Capital Account Deficit, items of Partnership gross income and gain shall

be specially allocated to such Limited Partner in an amount and manner sufficient to eliminate any Adjusted Capital Account Deficit created or increased by such adjustment, allocation, or distribution as quickly as possible in accordance with the Regulations.

(e) After satisfaction of any allocations required by Article 8.3(d), net profit for a Partnership taxable year shall be allocated pro rata to the General Partner until the General Partner has received allocations of net profit equal in the aggregate to any net losses previously allocated to it pursuant to Article 8.3(c).

(f) An "Adjusted Capital Account Deficit" exists with respect to a Limited Partner if the Limited Partner's capital account, determined for this purpose by reducing the capital account by the items described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations and by increasing the capital account by the amount described in section 1.704-1(b)(2)(ii)(c) of the Regulations that the Partner is obligated to restore, is a negative amount.

(g) In the event of an assignment of a Partnership interest or of a Partner's death, retirement, or expulsion, profits and losses shall be allocated, and cash flow distributed, based on the number of days in the Partnership year during which each Partner owned his Partnership interest, or on any other reasonable basis consistent with applicable laws and Regulations.

9. RIGHTS OF LIMITED PARTNERS.

9.1 The Limited Partners shall not take part in the management of the business, nor transact any business for the Partnership, nor shall they have power to sign for or to bind the Partnership.

9.2 The Limited Partners shall have no right or power to cause the dissolution and winding up of the Partnership by court decree or otherwise, except as set forth in this Agreement. No Limited Partner shall have the right to bring an action for partition against the Partnership. Dissenting minority Limited Partners shall have no right to have their interest appraised and redeemed.

10. LIMITED LIABILITY.

No Limited Partner shall be required to make any contribution to the capital of the Partnership except as set forth in this Agreement, nor shall any Limited Partner in his capacity as such, be bound by, or personally liable for, any expense, loss, liability or obligation of the Partnership except to the extent of his interest in the Partnership and the obligation to return distributions made to him under certain circumstances as required by the Act.

11. DEATH, BANKRUPTCY OR INCAPACITY OF A LIMITED PARTNER.

11.1 A Limited Partner shall automatically lose his status as such upon death, bankruptcy, insolvency, legal incapacity, dissolution, or any other event which causes an entity to cease to exist, and the personal representative, trustee, guardian, successor, or other authorized representative, shall succeed to his rights as a holder of an interest in the Partnership and to his pro rata allocation of income, gain, losses and depreciation or distributions upon dissolution. The estate or successor in interest of the deceased, bankrupt, insolvent, incapacitated or dissolved Limited Partner shall be liable for all his obligations under this Agreement. In no event, however, shall a personal representative, trustee, guardian, successor, or other authorized representative become a substitute Limited Partner unless the requirements of Article 13 of this Agreement are satisfied.

11.2 In cases where a Limited Partner's interest in the Partnership is held in joint tenancy and one joint tenant dies, such interest shall pass in its entirety to the surviving joint tenant, together with all the rights and obligations appurtenant to such interest. The joint tenancy must be indicated on the signature page to this Agreement for such Limited Partners or by another sufficient writing signed by the joint tenants and provided to the Partnership. Before exercising, in his or her sole name, any of the rights of a Limited Partner, the surviving joint tenant shall give notice of the death to the General Partner. Proof of death, in the form of a death certificate, shall be included as part of such notice. Upon receipt of such notice to the General Partner, the General Partner shall cause the Partnership books and records to be amended so as to reflect the surviving joint tenant as owner of the interest and as Limited Partner in his or her sole name. The Limited Partners hereby authorize the General Partner to execute and acknowledge on their behalf any amendments to the Certificate and/or this Agreement of Limited Partnership necessitated by the death of a joint tenant-Limited Partner.

12. SALE, ASSIGNMENT OR OTHER TRANSFER OF LIMITED PARTNERS' INTERESTS.

12.1 Subject to the provisions of Articles 12.3 and 12.5, a Limited Partner, or assignee thereof, may sell, assign, pledge, give, pass by will or intestacy, or otherwise transfer all or any part of his interest in the Partnership, but only after complying with Articles 12.3 and 12.5 and obtaining the written consent of the General Partner (which consent may not be unreasonably withheld), to anyone who already is a Limited Partner or General Partner in this Partnership, or any inter vivos trust created by the Limited Partner for the Limited Partner that is entirely revocable by the Limited Partner, or a member of the transferor's immediate family, or any inter vivos or testamentary trusts created or held for the benefit of the transferor's immediate family, or to charitable, religious, scientific, or educational organizations which are duly qualified as such under section 501(c) of the Code. For purposes of this Article 12.1, "immediate family" shall include parents, children, siblings, and the lineal descendants of each of them.

12.2 Except as provided in Article 12.1, no Limited Partner shall sell, assign, pledge, or otherwise transfer all or any part of his interest in the Partnership without obtaining the written

consent of the General Partner (which consent may not be required to be given under any circumstances), and without complying with Articles 12.3, 12.4 and 12.5.

12.3 Notwithstanding anything contained in this Agreement to the contrary, no sale, assignment or other transfer shall be made, under any circumstances, unless: (i) all of the provisions of this Agreement have been complied with; (ii) such sale, assignment or other transfer, together with all other sales or transfers of interests in the Partnership within the preceding twelve (12) months, will not result in a termination of the Partnership pursuant to section 708 of the Code; and (iii) the transferor provides the General Partner with all information reasonably requested of him by the General Partner concerning the transferor, transferee, and transfer necessary to allow the General Partner to comply with Article 12.7 hereunder.

12.4 Notwithstanding anything contained in this Agreement to the contrary, as a condition precedent to consummation of any agreement to transfer or any transfer of any interest in the Partnership (or portion thereof) under Article 12.2, any Limited Partner (the "Selling Partner") who desires to sell, transfer, or otherwise dispose of his interest in the Partnership (or any portion thereof) shall establish the terms and conditions of offer and shall offer his interest in the Partnership (or such portion thereof) on the same terms and conditions, first, to the Partnership; and second, to the remaining Partners, in which event each Partner shall have the right to purchase the proportion of the Selling Partner's interest offered for sale equal to such Partner's respective percentage interest (the "Percentage Interest") in the Partnership, excluding the Selling Partner's Percentage Interest, and if any Partner does not purchase the proportion of the Selling Partner's interest offered to him, the balance of such interest may be purchased by the other Partners based upon their respective Percentage Interests, excluding the Percentage Interest of the Selling Partner and any Partners electing not to purchase such interest.

The offering to the Partnership shall commence upon the Selling Partner providing written notice to the Partnership and all Partners of the terms and conditions of such offer. The Partnership may exercise its right to purchase the interest subject to such notice by providing written notice to the Selling Partner of its intent to purchase such interest on or before the thirtieth (30th) day following commencement of the offering to the Partnership. The offering to the Partners shall commence on the thirty-first (31st) day following commencement of the offering. Each Partner may exercise his right to purchase his respective proportion of the interest subject to such notice by providing written notice to the Selling Partner of his intent to purchase such interest on or before the sixtieth (60th) day following commencement of the offering to the Partnership.

The closing of the purchase of any interest in the Partnership pursuant to this Article 12.4 shall be an all-cash transaction and shall take place within ninety (90) days of the exercise of the option to purchase, unless the parties agree otherwise. In the event neither the Partnership nor the Partners elect to purchase the interest of the Selling Partner, the Selling Partner shall be free for a period of one year from the expiration of the offering period to the Partners, to sell its interest to a third party on the same terms and conditions as set forth in the written notice to the Partnership and the Partners. In the event the Selling Partner elects to change the terms or conditions of the offer to sell its interest or such interest is not sold within one (1) year from the

date of the termination of the offering period to the Partners, the entire procedure set forth above shall be repeated.

Notwithstanding Article 12.2, the General Partner, in writing, may except any transfer from the requirement that it comply with the "right of first offer" established in this Article 12.4.

12.5 Notwithstanding anything contained in this Agreement to the contrary, unless expressly waived by the General Partner, the Partnership shall retain and have a right of offset against any and all distributions or payments of cash (including all returns of capital) respecting all obligations of the Limited Partner (and its partners, shareholders, members or any entity owned by it or affiliated with it) to the Partnership. Such right of offset is exercisable by the Partnership without regard to any assignment, transfer or other disposition of a Partner's interest in the Partnership.

12.6 No election shall be made to exclude the Partnership from the application of the provisions of Subchapter K of Chapter 1 of Subtitle A the Code or from any similar provisions of state tax laws. If a Partnership interest (or any part thereof) is transferred, a Partner dies, or Partnership assets are distributed to a Partner, the General Partner may, in its sole discretion, cause the Partnership to elect pursuant to section 754 of the Code, or the corresponding provision of subsequent law, to cause the basis of the Partnership's assets to be adjusted for federal income tax purposes, under sections 734 and 743 of the Code, or the corresponding provisions of subsequent law.

12.7 Upon the consummation of any transfer of any interest in the Partnership under this Article 12, the General Partner shall properly notify the Internal Revenue Service of such transfer if required by section 6050K of the Code.

13. SUBSTITUTE LIMITED PARTNERS.

13.1 The admission of a vendee, assignee or other transferee of the interest of a Limited Partner as a substitute Limited Partner shall be within the sole discretion of the General Partner (all General Partners must consent if there is more than one General Partner at the time consent is required) and shall require the written consent of a Majority in Interest of the Limited Partners, and shall be conditioned upon:

(a) The instrument of sale, assignment or other transfer being in form and substance satisfactory to the General Partner;

(b) The execution and acknowledgment by the vendor, assignor or other transferor and by the vendee, assignee or other transferee named therein of such instruments as the General Partner may deem necessary or desirable to effectuate such admission;

(c) The vendee's, assignee's or other transferee's written acceptance and adoption of all the terms, provisions and obligations under this Agreement, as the same may have been amended; and

(d) The vendee's, assignee's or other transferee's paying to the Partnership in cash the sum of Five Hundred Dollars (\$500) plus all reasonable expenses connected with his admission, including, but not limited to, the cost of preparing an amendment to this Agreement to effect such admission.

13.2 If after a sale, assignment or other transfer in compliance with Article 12, the vendee, assignee or other transferee is not admitted as a substitute Limited Partner, such vendee, assignee or other transferee shall have none of the rights of a Limited Partner, except the right to receive his share of all allocations and distributions provided for herein.

13.3 The Partnership and the General Partner shall be entitled to treat each Limited Partner as the absolute owner of his Partnership interest in all respects, and shall incur no liability for distributions of cash or other property made in good faith to him until such time as a written instrument of sale, assignment or other transfer of his interest has been received by the Partnership and recorded in its books.

14. SALE, ASSIGNMENT OR OTHER TRANSFER OF GENERAL PARTNER'S INTEREST.

14.1 The General Partner may not mortgage, pledge, hypothecate, transfer, sell, assign, abandon, or otherwise dispose of all or any part of its interests in the Partnership, whether voluntarily, by operation of law or otherwise (the foregoing actions being hereafter collectively referred to as "Transfers" or singularly as a "Transfer") except as permitted in this Article 14.

14.2 If the General Partner (the "Transferor") makes a Transfer of all of its interest in the Partnership pursuant to this Article 14, the Transferor shall be liable for all obligations and liabilities incurred by it as the General Partner of the Partnership on or before the effective date of such Transfer, but shall not be liable for any obligations or liabilities of the Partnership arising after the effective date of the Transfer.

14.3 No Transfer by the General Partner shall be permitted unless:

(a) Unless waived by the remaining (or substitute) General Partner(s), counsel for the Partnership renders an opinion that none of the actions taken in connection with such Transfer (1) will cause the Partnership to be classified other than as a partnership for Federal income tax purposes, or (2) will cause the termination or dissolution of the Partnership;

(b) Such documents or instruments, in form and substance satisfactory to the remaining (or substitute) General Partner(s), shall have been executed and delivered as may be

required in the opinion of the remaining (or substitute) General Partner(s) to effect fully any such Transfer; and

(c) The consent of a Majority in Interest of the Limited Partners is received by the remaining (or substitute) General Partner(s) to the Transfer. Such consent shall be evidenced by a Certificate of Approval of Transfer signed by a Majority in Interest of the Limited Partners.

14.4 In the event any General Partner ceases to serve as a general partner as a result of retirement, withdrawal, bankruptcy, assignment for the benefit of creditors, dissolution, death, disability, insanity or any other event (the "Withdrawing General Partner"), any then remaining (or substitute) General Partner(s) shall purchase all the interest of the Withdrawing General Partner in the Partnership for an amount equal to its Fair Market Value (hereafter defined), as determined by the Valuation Process (hereafter defined). At the option of the remaining (or substitute) General Partner(s), the Fair Market Value of the interest in the Partnership owned by the Withdrawing General Partner shall be paid in cash at closing (which shall occur within thirty (30) days after receipt of the Fair Market Value) or by Purchase Money Financing (hereafter defined).

Except as provided in Article 14.5, if no General Partner remains, the substitute General Partner(s) designated by a Majority in Interest of the Limited Partners pursuant to Article 19.2 shall acquire the interest of any and all Withdrawing General Partner(s) in accordance with the terms hereof. Such remaining (or substitute) General Partner(s) shall be entitled to continue the business of the Partnership as permitted by the Act.

For purposes of this Article 14.4:

(a) Fair Market Value shall mean the fair market value of any General Partner's interest in the Partnership as of the last day of the calendar month preceding the calendar month during which the Fair Market Value is to be determined. The Fair Market Value shall be determined by the Valuation Process, with the party determining the Fair Market Value taking into account all matters reasonably deemed appropriate, including, without limitation, lack of marketability and lack of control, and deeming the interest of such General Partner to be an interest of a Limited Partner.

(b) Purchase Money Financing shall mean financing related to the purchase of any interest of a General Partner in the Partnership whereby the party purchasing such interest remits to the party selling such interest ten percent (10%) of the Fair Market Value in cash and executes a purchase money promissory note in an amount equal to ninety percent (90%) of the Fair Market Value. Said promissory note shall be for a term of five (5) years and shall provide for five equal annual installments of principal and interest, with interest to be calculated at a rate equal to the prevailing rate of a five-year United States Treasury Bill as of the date of the execution of such promissory note plus 100 basis points. The obligation to repay such promissory note shall be secured by a pledge of the interest in the Partnership being purchased and/or redeemed.

(c) Valuation Process shall mean the process set forth herein to establish the Fair Market Value of any interest of a General Partner in the Partnership. The party purchasing such interest ("Purchaser") and the party owning such interest, its heirs, successors or assigns ("Seller") shall agree on the Fair Market Value within ten (10) days of the event triggering the sale. If Purchaser and Seller cannot agree on a Fair Market Value within such time frame, Purchaser, Seller and the Partnership's accountant will meet within fifteen (15) days of the expiration of such ten (10) day period, at which time Purchaser and Seller shall state their respective estimates as to the Fair Market Value and shall negotiate in good faith to reach an agreement as to the Fair Market Value. If the parties cannot agree as to the Fair Market Value, both parties will provide their final estimate of the Fair Market Value to the Partnership's accountant. At such time, the Partnership's accountant shall provide Seller and Purchaser with the names of three (3) qualified appraisers, and Seller and Purchaser shall select one (1) such appraiser to determine the Fair Market Value; provided, however, that if Seller and Purchaser cannot agree on the selection of an appraiser, each party will be allowed to strike one (1) name off said list, with a coin toss to determine which party strikes first. The appraiser remaining after both parties strike one (1) name shall determine the Fair Market Value. Once the appraiser has been selected, the accountant shall provide the appraiser with the two estimates of the Fair Market Value, and said appraiser shall choose the estimate which the appraiser believes more closely approximates the Fair Market Value. The estimate chosen by the appraiser shall be deemed the Fair Market Value. The appraiser shall render its determination of the Fair Market Value within fifteen (15) days of receipt of the estimates by the appraiser. The cost of the Valuation Process shall be borne solely by the party whose estimate was not selected as the Fair Market Value.

14.5 Notwithstanding Articles 14.3(c) and 14.4, a General Partner may give or pass by will or intestacy all or any part of his General Partnership interest in the Partnership to anyone who is already a Limited Partner or General Partner in this Partnership or any inter vivos trust created by the General Partner for the General Partner that is entirely revocable by the General Partner, by obtaining the written consent of the other General Partner(s), if any (which consent may not be unreasonably withheld).

15. BOOKS OF ACCOUNT, RECORDS AND REPORTS.

15.1 The General Partner shall be responsible for the preparation and safe-keeping of proper and complete records and books of account (including any records and books required by the Act) in which shall be entered fully and accurately all transactions and such other matters relating to the Partnership's business as are usually entered into records and books of account maintained by persons engaged in businesses of a like character. The Partnership shall prepare its books and records and shall report for income tax purposes on a calendar-year basis. The books and records shall at all times be maintained by the General Partner at the office of the Partnership and shall be open to the reasonable inspection and examination of the Partners or their duly authorized representatives during reasonable business hours. The Partnership shall furnish a list of names and addresses of and interests held by all Partners to any Limited Partner who requests such a list in writing for any proper purpose. The requesting Limited Partner shall pay the cost of furnishing such list.

15.2 Within seventy-five (75) days after the end of each year of the Partnership, the General Partner shall send to each person who was a Limited Partner at any time during such year such tax information, including, without limitation, Federal tax Schedule K-1, as shall be reasonably necessary for the preparation by such person of his Federal income tax return, and income and other tax returns for South Carolina.

15.3 Financial statements shall be prepared not less often than annually, and copies of the statements shall be delivered to each Partner upon request. A copy of Internal Revenue Service Form 1065 shall satisfy this requirement. Copies of all income tax returns filed by the Partnership also shall be made available to all Partners upon request.

15.4 The rights of the Partners to obtain information concerning the Partnership and its operations as provided in this Article 15 shall be in addition to, and not in limitation of, the rights of limited partners under the Act, all such rights being cumulative.

16. MANAGEMENT AND OPERATION OF BUSINESS.

16.1 Except as otherwise specified herein, all decisions with respect to the management of the business and affairs of the Partnership shall be made solely by the General Partner. In the event the General Partner does not agree on any management matter, if there is more than one General Partner at any time, the decision of General Partner(s) holding a majority of the aggregate General Partnership interest shall control, except as provided in Article 16.2.

16.2 Howard Hammer, a Limited Partner, is hereby designated the "tax matters partner" pursuant to section 6231(a)(7) of the Code and as such, shall be solely responsible for representing the Partnership in all dealings with the Internal Revenue Service and any state, local, and any foreign tax authorities, but he shall keep the other Partners reasonably informed of any Partnership dealings with any tax agency.

16.3 The General Partner shall be under no duty to devote itself full time to the business of the Partnership, but shall devote only such time as it deems necessary to conduct the Partnership business and to operate and manage the Partnership in an efficient manner.

16.4 The General Partner shall be entitled to reasonable salary for services rendered to the Partnership, which compensation will be in addition to any distributions due to the General Partner.

16.5 The General Partner may charge to the Partnership all reasonable, ordinary and necessary costs and expenses, direct and indirect, attributable to the activities, conduct and management of the business of the Partnership.

16.6 In addition to, and not in limitation of, any rights and powers conferred by law or other provisions of this Agreement, and except as limited, restricted or prohibited by the express

provisions of this Agreement, the General Partner shall have and may exercise, in its absolute discretion, on behalf of the Partnership all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes, business and objectives of the Partnership. Such powers shall include, without limitation, the following:

- (a) To develop, acquire, hold, mortgage, encumber, hold title to, pledge, sell, lease, construct or otherwise dispose of Partnership assets (including, without limitation, real or personal property) and any interest therein or appurtenant thereto as well as personal property and leasehold interests connected therewith, including the purchase, lease (whether as lessor or lessee), sublease (whether as sublessor or sublessee), maintenance, exchange, trade or sale of any Partnership asset at such price, rental or amount, for cash, securities or other property and upon such terms as the General Partner deem to be in the best interest of the Partnership;
- (b) To borrow money so long as there is no personal liability of any Limited Partner, and, if security is required therefor, to mortgage or subject to any other security device all or any portion of the Partnership assets, to obtain replacements of any mortgage or other security device, to prepay, in whole or in part, refinance, increase, modify, consolidate or extend any mortgage or other security device, when and upon such terms as the General Partner determine to be in the best interest of the Partnership;
- (c) To deposit, withdraw, invest, pay, retain and distribute the Partnership's funds in any manner consistent with the provisions of this Agreement;
- (d) To invest and reinvest all or any part of the Partnership assets in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trust, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds;
- (e) To hold any securities or other property in their own names as General Partner, in their own names, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form;
- (f) To institute and defend actions at law or in equity;
- (g) To employ persons in the operation and management of the Partnership's business;
- (h) To enter into and carry out contracts and agreements and any or all documents and instruments and to do any and all such other things as may be in furtherance of Partnership purposes or necessary or appropriate to the conduct of Partnership activities including, but not limited to, deeds, mortgages, leases and any other form of conveyance of any interest in real or personal property;

(i) To purchase/repurchase interests in the Partnership on behalf of the Partnership;

(j) To execute, acknowledge and deliver any and all instruments which may be deemed necessary or convenient to effect the foregoing;

(k) To engage or retain one or more persons to perform acts as may be required by the Partnership, at the Partnership's expense, and to compensate such person or persons at a rate to be set by the General Partner, provided that the compensation is at the then prevailing rate for the type of services and/or materials provided. Any person, whether a Partner, an affiliate of a Partner or otherwise, may be employed or engaged by the Partnership to render services, including, but not limited to, building, constructing, leasing, property management services, accounting services and legal services; and he shall be entitled to, and shall be paid compensation for said services; provided, however, that anything in this Agreement to the contrary notwithstanding, the compensation to be received for such services is competitive in the price and terms with other nonaffiliated persons rendering comparable services and is at the then prevailing rate for the type of services and/or materials provided. Any of the Partners may engage in or possess an interest in other business ventures of any nature and description independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, brokerage and development of real property; and neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to said independent ventures or to the income or profits derived therefrom. The fact that a Partner, or an affiliate of a Partner, is employed by, or is directly or indirectly interested in or connected with any person, firm or corporation employed by the Partnership to render or perform any service, or from whom or which the Partnership may buy merchandise or other property, shall not prohibit the General Partner from employing such person, firm or corporation or from otherwise dealing with him or it.

(l) To make elections for federal and state income tax purposes upon such terms as the General Partner deem to be in the best interest of the Partnership;

(m) To engage or retain one or more persons to participate, at Partnership expense, in federal or state income tax matters relating directly or indirectly to the Partnership or any allocation or distribution made to any of the Partners, when the General Partner deems such participation to be in the best interest of the Partnership; and

(n) To execute and file such amendments to the Partnership's Certificate as the General Partner deems appropriate.

16.7 In addition to other acts expressly prohibited or restricted by this Agreement or by law, the General Partner shall have no authority to act on behalf of the Partnership in:

(a) Doing any act in contravention of this Agreement;

(b) Possessing or in any manner dealing with Partnership property or assigning the rights of the Partnership in Partnership property for other than Partnership purposes;

- (c) Admitting a person as a Limited Partner except as provided in this Agreement;
- (d) Commingling the funds of the Partnership with the funds of any other person or entity.

17. RESERVES.

The General Partner may cause the Partnership to create a reserve account to be used for operations, maintenance and repair of Partnership assets and for other matters deemed necessary by the General Partner. The General Partner shall, in its reasonable discretion, determine the amount of payments to such reserve account.

18. EXCULPATION OF General Partner.

The General Partner shall not be liable to the Partnership or the Limited Partners for or as a result of any act, omission or error in judgment which was taken, omitted or made by it in the exercise of its judgment in good faith under this Agreement. The General Partner may consult with such legal or other professional counsel as it may select and may take action or omit to take action in good faith reliance on, and in accordance with, the opinion or advice of such counsel.

19. DISSOLUTION OF THE PARTNERSHIP.

19.1 The Partnership will dissolve on December 31, 2040, and shall thereafter wind up its business and terminate its existence as provided by applicable law and this Agreement; provided, however, that the Partnership shall be dissolved, and shall thereafter wind up its business and terminate its existence as provided by applicable law and this Agreement, prior to such date, upon the occurrence of any one of the following events:

- (a) The removal, retirement, withdrawal, bankruptcy, assignment for the benefit of creditors, dissolution, death, disability or insanity of a General Partner, or any other event which results in any General Partner ceasing to be a general partner; subject, however, to Article 19.2;
- (b) The joint determination of the General Partner and a Majority in Interest of the Limited Partners that the Partnership should be dissolved;
- (c) The sale or other disposition of all or substantially all of the Partnership assets; provided, however, that in the event the Partnership provides purchase money financing to any purchaser, the Partnership shall not be dissolved until such purchase money financing is paid in full; and

(d) Any other event resulting in the dissolution or termination of the Partnership under the Act or other applicable laws of the State of South Carolina; subject, however, to Article 19.2.

19.2 Notwithstanding the provisions of Article 19.1(a) or (d), the Partnership shall not be dissolved and terminated and its business shall be continued pursuant to the terms and conditions of this Agreement if, within ninety (90) days after the occurrence of any of the events referred to in Article 19.1(a) or (d), the then remaining General Partner(s), or a Majority in Interest of the Limited Partners if no General Partner then remains, elect in writing to continue the business of the Partnership and, if necessary, designate one or more persons or entities to be substituted as General Partner(s).

20. DISTRIBUTION UPON DISSOLUTION.

20.1 Upon the dissolution and termination of the Partnership, the remaining General Partner(s), or if there is none, a representative selected by a Majority in Interest of the Limited Partners shall liquidate the assets of the Partnership. The proceeds of such liquidation shall be applied and distributed as follows:

(a) First, to the payment of all debts and liabilities of the Partnership then due, including expenses of liquidation, but not including any loans or advances made by any Partner.

(b) Second, to pay any then due loans or advances that the Partners have made to the Partnership, but if the amount available for such repayment shall be insufficient, then in proportion to such loans and advances;

(c) Third, to the creation of any reserves which the General Partner, or if there is none, the representative of the Limited Partners, may deem reasonably necessary for the payment of any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the business and operation of the Partnership, provided that at the expiration of such period of time as the General Partner shall deem advisable, the balance of such reserves after payment of such contingencies shall be distributed in the manner hereinafter set forth.

(d) Fourth, to the Partners in amounts equal to (or in proportion to if less than) the positive balances, if any, in their respective capital accounts;

(e) Fifth, to the Partners in proportion to their percentage interests in the Partnership.

20.2 Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed. The difference between the value of

property distributed in kind and its book value shall be treated as a gain or loss on the sale of property, and shall be credited to the Partners accordingly.

20.3 A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities.

20.4 Not more than one hundred twenty (120) days after the dissolution and termination of the Partnership each of the Partners shall be furnished with statements similar, so far as may be practicable, to those set forth in Article 15 of this Agreement.

20.5 The General Partner shall not be liable for the return of the capital contributions of the Limited Partners, and the Limited Partners shall look solely to the assets of the Partnership for any return of capital.

20.6 The Limited Partners shall have no liability to the Partnership, to the other Partners, or to the creditors of the Partnership on account of any deficit balance in the Limited Partners' capital accounts.

20.7 If the General Partner has a deficit balance in its capital account at the time of the liquidation of the Partnership or the liquidation of its interest in the Partnership (after taking into account capital account adjustments resulting from all allocations and distributions pursuant to this Agreement), the General Partner must pay to the Partnership the amount of the deficit balances. This amount, upon the liquidation of the Partnership, shall be paid to the creditors of the Partnership or distributed to the other Partners in accordance with their positive capital account balances in accordance with section 704(b) of the Code and the Regulations thereunder.

21. NOTICES.

All notices under this Agreement shall be in writing and shall be deemed to have been given when delivered personally; or mailed by certified or registered mail, postage prepaid, return receipt requested. Notice to the General Partner shall be delivered at, or mailed to, the registered office of the Partnership. Notice to the Partnership shall be delivered at, or mailed to its registered office with a copy to each of its business offices. Notices to a Limited Partner shall be delivered at, or mailed to, the address of such Limited Partner listed in Schedule A attached hereto or delivered at, or mailed to, the last address furnished by such Limited Partner for such purposes to the General Partner. Limited Partners shall give notice of a change of address to the General Partner in the manner provided in this Article 21.

22. AMENDMENTS.

This Agreement is subject to amendment only by written consent of the General Partner and a Majority in Interest of the Limited Partners; provided, however, that no consent of the Limited Partners shall be required if such amendments: (a) are ministerial in nature; or (b) reflect

a reduction in capital contributions of the Partners as the result of a cash distribution or return of capital to the Partners as contemplated by the Act.

23. ADDITIONAL DOCUMENTS.

Each party hereto agrees to execute and acknowledge all documents and writings which the General Partner may deem necessary or expedient in the creation of this Partnership and the achievement of its purpose.

24. SUCCESSORS AND ASSIGNS.

Except as herein otherwise provided to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

25. INTERPRETATION AND GOVERNING LAW.

When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa, and the masculine gender shall include the feminine and the neuter shall include the masculine and feminine.

The Article headings or titles and the table of contents, if any, shall not define, limit, extend or interpret the scope of this Agreement or any particular Article. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina without giving effect to the conflicts of laws provisions thereof.

26. SEVERABILITY.

If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

27. AGREEMENT IN COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the Partners to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

28. THIRD PARTIES.

The agreements, covenants and representations contained herein are for the benefit of the parties hereto inter se and are not for the benefit of any third parties including, without limitation, any creditors of the Partnership.

29. POWER OF ATTORNEY.

Provided that the action to be taken is in accordance with the terms of this Agreement, each Limited Partner hereby makes, constitutes and appoints the General Partner, and each of them if there is more than one General Partner, with full power of substitution and resubstitution, his true and lawful attorney for him and in his name, place and stead and for his use and benefit to sign, execute, certify, swear to, acknowledge, file and record (if required) the Agreement, and to sign, execute, certify, swear to, acknowledge, file and record (if required) all instruments amending the Agreement or expressly contemplated by the Agreement, as now or hereafter amended, that may be appropriate, including, without limitation, agreements or other instruments or documents (a) to reflect the exercise by the General Partner of any of the powers granted to it under the Agreement; (b) to reflect any amendments made to the Agreement by the General Partner pursuant to the Agreement; (c) to reflect the admission to the Partnership of any Partner or the withdrawal from the Partnership of any Partner, in the manner prescribed in or contemplated by the Agreement; (d) to reflect any reduction in the capital contributions of the Limited Partners which may be represented by any distribution; (e) which may be required of the Partnership and of the Partners by the laws of the State of South Carolina or any other jurisdiction; and (f) to perfect from time to time the security interest of the Partnership in any Partnership interest (at the sole discretion of the General Partner). Each Limited Partner authorizes such attorney-in-fact to take any further action which such attorney-in-fact shall consider necessary or advisable in connection with any of the foregoing, hereby giving such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in and about the foregoing as fully as such Limited Partner might or could if personally present, and hereby ratifying and confirming all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof.

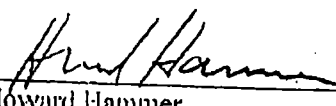
The power of attorney hereby granted is a special power of attorney coupled with an interest and is irrevocable; may be exercised by such attorney-in-fact by reference to any list, including Schedule A, of the Limited Partners executing any agreement, certificate, instrument or document with the single signature of such attorney-in-fact acting as attorney-in-fact for all of them; and shall survive the delivery of his interest in the Partnership, except that where the purchaser, transferee or assignee of the whole of such interest with the consent of the General Partner is admitted as a substituted Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling such attorney-in-fact to execute, acknowledge and file any such agreement, certificate, instrument or document necessary to effect such substitution.

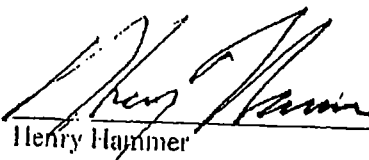
IN WITNESS WHEREOF, the parties have hereunto set their hands and Seals effective the date and year first above written.

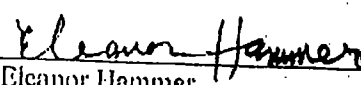
General Partner:

 (SEAL)
SH5, LLC
By: Howard Hammer, member

LIMITED PARTNERS:

 (SEAL)
Howard Hammer

 (SEAL)
Henry Hammer

 (SEAL)
Eleanor Hammer

CERTIFICATE NUMBER 3

LIMITED PARTNERSHIP INTEREST

CERTIFICATE

This certifies that Howard [REDACTED] lawful owner of a Fifty-five percent (55%) Limited Partnership interest in 1634 Main, L.P., a South Carolina Limited Partnership, created on December 12, 2000

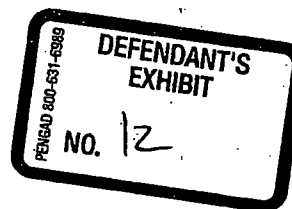
DATED:

SH5, LLC



General Partner

By: Howard Hammer, sole member



12

CERTIFICATE NUMBER 4

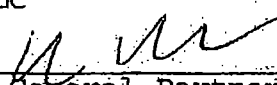
LIMITED PARTNERSHIP INTEREST

CERTIFICATE

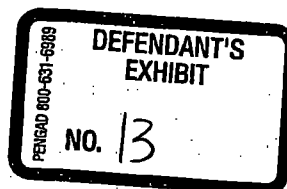
This certifies that SH5, LLC, is the lawful owner of a One percent
(1%) General Partnership interest in 1634 Main, L.P., a South
Carolina Limited Partnership, created on December 12, 2000

DATED:

SH5, LLC


General Partner

By: Howard Hammer, sole member



13

Richland County RCB
Customer Ticket

Ticket Number: 213199
Printed On: 2002/02/15 16:16:23 PM
Operator ID: RCB
Submitter Name:
PUBLIC

Charges

2002/02/15 16:16:03 PM
Postage 1
Amount \$ 0.35
Unit: 1 \$ 0.35

2002/02/15 16:16:03 PM
Copies 1
Amount \$ 1.25
Unit: 5 \$ 1.25

2002/02/15 16:16:03 PM
Labels
Amount \$ 0.10
Unit: 1 \$ 0.10

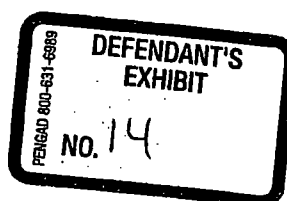
2002/02/15 16:16:03 PM
Inst: 2002014449 BAPG 0062711909
Record Timestamp: 02/15/2002 16:16:03:18
Amount \$ 1475.20
County Fee \$ 10.00
Pages: 3 \$ 10.00
Attachments: 2 \$ 0.00
City Stamp Tx \$ 435.60
St Stamp Tx \$ 1029.60

Payments

2002/02/15 16:16:03 PM
Check \$ 1465.20
Check Number: 127
Payer: PUBLIC
2002/02/15 16:16:03 PM
Cash \$ 12.00
2002/02/15 16:16:03 PM
Change \$ -0.30

Total Charges \$ 1475.90
Total Payments \$ 1475.90
Balance \$ 0.00

Draw Down Balance 0.00



Book 00627-1809

2004-04-19 10:10:00

Deed

Fee: \$10.00 County Tax: \$455.00 State Tax: \$1029.50



2004-04-19 10:10:00

SPECIAL WARRANTY DEED

GRANTEE'S ADDRESS

STATE OF SOUTH CAROLINA)

)

SPECIAL WARRANTY DEED

COUNTY OF RICHLAND)

)

KNOW ALL MEN BY THESE PRESENTS, that 1634 Main, L.P., a South Carolina limited partnership whose address is 1634 Main Street, Columbia, South Carolina 29201 ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, to it paid by Shirley Hammer ("Grantee"), the receipt of which is hereby acknowledged, subject to the conditions, matter, and/or reservations herein set forth, if any, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto the said Grantee 52.75% of the following described property:

The real estate described on Exhibit "A" attached hereto.

DERIVATION: This being the identical property conveyed to 1634 Main L.P., by Deed of 1634 Main (E&A) L.L.C., dated December 19, 2002 and recorded in Deed Book 469 at Page 1543, in the Office of the Register of Deeds for Richland County, South Carolina.

TMS: 09014-04-19

TOGETHER WITH all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE is made subject to easements, conditions, and restrictions of record.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its successors and assigns forever.

AND Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors and assigns, and against all persons claiming through or under the Grantor but not otherwise.

WITNESS Grantor's hand and seal this 11 day of February, 2002.

WITNESSES:

Kelli L. Sullivan
Rhonda Winters

GRANTOR:

1634 Main L.P. a South Carolina limited partnership.

By: SH5 LLC, its general partner

By: Howard Hammer
Howard Hammer, member

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I Rhonda Winters a Notary Public for the state and county aforesaid, do hereby certify that Howard Hammer as member SH5 LLC a limited liability company, the general partner of 1634 Main L.P., acting on behalf of said of 1634 Main L.P., personally appeared before me this day and acknowledged before me the due execution of the foregoing instrument as the act and deed of the foregoing 1634 Main, L.P., for the purposes stated in the instrument and she is personally know to me.

Witness my hand and official seal

This 11th day of February, 2002

Rhonda S. Winters
Notary Public for SC

My Commission Expires: 06-01-06

(Seal)

20796(57uu)
DA-DESC

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, being shown and designated as Parcel A and Parcel B, collectively containing 0.50 acre, on Plat Prepared for Downtown Associates by Cox and Pinkins, Inc. dated February 5, 1996, recorded in the Office of the RMC for Richland County in Plat Book _____ at page _____ (the failure to record said plat or to insert the recording data herein shall not affect the validity hereof), said plat being incorporated herein by reference, said parcels being collectively described as follows:

BEGINNING at a Bldg. Corner at the westernmost corner of Parcel B whereat said property corners with property now or formerly Martha W. Fowler, et al. along the eastern margin of the right-of-way of Main Street a distance of 107.4 feet, more or less, from its intersection with Blanding Street, and running along property now or formerly Martha W. Fowler, et al. N70°16'01"E - 209.01 feet to a 1/2" rod; thence turning and running along property now or formerly Lexington State Bank as follows: S19°27'00"E - 17.80 feet to a point; N71°09'40"E - 211.75 feet to an "X" on concrete; thence turning and running along the western margin of the right-of-way of Sumter Street S19°25'59"E - 42.33 feet to an "X" on concrete; thence turning and running along property now or formerly James L. Tapp Co., Inc. as follows: S71°06'28"W - 211.73 feet to an "X" on concrete; S19°27'00"E - 0.77 feet to an "X" on concrete; thence turning and running along property now or formerly Kimbrell's Investment, Co. S70°17'08"W - 208.84 feet to an "X" on concrete; thence turning and running along the eastern margin of the right-of-way of Main Street N19°36'31"W - 61.03 feet to the POINT OF BEGINNING.

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 1634 MAIN ST bearing null County Tax Map Number 745-0844-02 was transferred by 1634 MAIN ST L.P. to Shirley H. H. H. on Feb 11, 2002.
3. Check one of the following: The deed is:
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid to be paid in money or money's worth.
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☐ exempt from the deed recording fee because (See Information section of affidavit): _____
 (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 395,531.00
 - (b) ☐ The fee is computed on the fair market value of the realty which is _____
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement, or realty after the transfer. IF "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: _____

(b) Place the amount listed in item 5 above here: _____

(If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ _____

8. AS required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Member, General Public

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

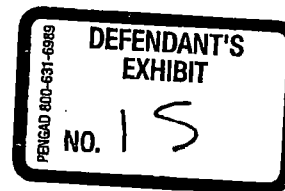
Member
Responsible Person Connected with the Transaction

SWORN to before me this 15th
day of February, 2002

Howard Hammen
Print or Type Name Here

Melvin D. Dantz
Notary Public for South Carolina

My Commission Expires: 2/11/2011



1374

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer,

☒ Plaintiff

v.

Howard Hammer,

☐ Defendant

IN THE FAMILY COURT

CASE NO.

2005-DR-40-2871

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Timothy E. Madden, Bar No. 11786 Address: P.O. Box 10084, Greenville, SC 29603 phone: 864-250-2300 fax: 864-250-2328 e-mail: tim.madden@nelsonmullins.com other:		Defendant's Attorney: Susan Lipscomb, Bar No. Address: 1634 Main Street, Suite 200, Columbia, SC 29201 phone: 803-233-6654 fax: 803-233-6663 e-mail: 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: _____ Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written ☒ Form Motion by the court as set forth in the attached proposed order.			
Attorney for ☒ Plaintiff / ☐ Defendant SECTION III: Motion Fee ☐ PAID ☒ EXEMPT (check reason) Use 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 (11-03)

15

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SHIRLEY HAMMER,)

Plaintiff,)

vs.)

HOWARD HAMMER)

Defendant.)

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT**ORDER**

(Addressing Order and Rule to Show Cause)

Dated August 9, 2010

Civil Action No.
2005-DR-40-2871

RICHLAND COUNTY
FILED
2010 SEP 29 PM 12:40
JEANETTE M. McBRIDE
CLERK OF COURT
& FAMILY COURT

Plaintiff's Attorney:
Timothy E. Madden

Hearing Date:
August 26, 2010
September 8, 2010

Defendant's Attorney:
Susan B. Lipscomb

Judge:
John M. Rucker

Guardian ad Litem:
Richard G. Whiting

Court Reporter:

This Order is issued as a result of a hearing which commenced on August 26, 2010, (in Newberry County) and ended on September 8, 2010, in Richland County. This Order addresses the verified Contempt Complaint filed by Plaintiff dated August 9, 2010, (as amended, as discussed herein below, and hereinafter referred to as the "Contempt Complaint") and the Order and Rule to Show Cause issued by the undersigned on August 9, 2010 (hereinafter referenced as the "Rule").

Based on the Contempt Complaint, orders previously issued, the Rule, evidence, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this Order.

Plaintiff and Defendant were previously citizens and residents of Richland County, South Carolina. They were divorced by an order previously issued by this Court. Plaintiff now resides in

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Lexington County, South Carolina. Pursuant to an agreement reached by the parties on June 24, 2009, (which became a part of and incorporated into the Order of this Court dated August 19, 2009, as is hereinafter referenced as "Order (Ending Action)") the undersigned retained jurisdiction to hear and determine matters and controversy between these parties in the Family Court. The issues raised in the Contempt Complaint and Rule arise out of and relate to various orders previously entered by the Family Court for the Fifth Judicial Circuit, Richland County, South Carolina. This Court, therefore, has personal and subject matter jurisdiction and is the appropriate venue for the determination of the matters addressed in this Order.

In the Contempt Complaint, Plaintiff alleges Defendant willfully and intentionally violated orders previously issued by this Court as follows:

- 1) By failing to follow and adhere to the visitation provisions of the August 19, 2009, Order which resulted from the June 23, 2009, hearing (hereinafter the "Custody Order"); and
- 2) By failing to follow and adhere to the directives/opinions of the Guardian ad Litem as required by the Custody Order and as required by the Order dated June 4, 2010, (hereinafter the "GAL Order"); and
- 3) By failing to pay child support, as previously ordered;
- 4) By failing to transfer the \$750,000.00 in cash from Defendant's IRA to Plaintiff as required by orders previously issued; and
- 5) By failing to pay the \$9,000.00 attorneys fees and cost as required by the January 27, 2010, Order of this Court.

Plaintiff also seeks attorney's fees and costs related to the Rule. During the course of the hearing, the parties agreed to reserve the issue of attorney's fees and costs related to the Rule to be

heard and determined in conjunction with a separate motion for attorney's fees and costs which Plaintiff filed and which was set for a hearing on August 26, 2010, and September 8, 2010, but which will be heard at a date in the future because there was insufficient time remaining on September 8, 2010, to address this motion.

CONTINUANCE DENIED

At the call of the case on September 8, 2010, Defendant moved for a continuance of the hearing and claimed he had insufficient or no notice of the hearing. The Court's file reflects the Rule and Contempt Complaint were personally served on Defendant on August 17, 2010. The hearing was initially noticed for and commenced on August 26, 2010. Due to insufficient time the hearing was recessed and continued, and ultimately rescheduled for September 8, 2010. The docket clerk coordinated the September 8, 2010, date with counsel. Service was proper and notice was appropriately given. Defendant did not present the Court sufficient basis on which to grant a continuance. Therefore, the undersigned denied Defendant's motion for a continuance.

THE VISITATION AND GUARDIAN AD LITEM ISSUE

The Custody Order governs custody and visitation. Pursuant to the Custody Order the parties agreed on a schedule of time for Defendant to exercise parenting time with the minor children. The Custody Order provides for this time on alternating weekends, during holidays, during the summer, during Jewish holidays, and other times.

Plaintiff contends Defendant violated the Order by failing to return the children as required by the Custody Order at the conclusion of his time on the following occasions.

- (a) The first day of Hanukah, December, 2009;
- (b) Mother's Day, 2010;
- (c) Father's Day, 2010;

- (d) Summer visitation during June, 2010;
- (e) Summer visitation during July, 2010;
- (f) Summer visitation during August, 2010.

The Custody Order grants to the Guardian the authority to modify the schedule of the time with each parent. The Guardian's authority was restated and made clear in the GAL Order.

Plaintiff contends Defendant violated the Custody Order and the GAL order by failing to follow the directives of the Guardian ad Litem with respect to visitation particularly during the summer of 2010.

At the August 26, 2010, hearing this Court heard motions previously filed by Defendant regarding the summer visitation for 2010. These motions were filed and pending during summer visitation. The undersigned ruled from the bench at the August 26, 2010, hearing and a written order denying Defendant's motions is being issued contemporaneously with the issuance of this order.

From all evidence, Defendant did not follow the schedule of visitation as directed by the Guardian for the summer of 2010 and violated some of the provisions of the Custody Order regarding the return of the children to Plaintiff when and where required. Although these violations occurred, I exercise my discretion and decline to hold Defendant in contempt for this conduct. This Court, however, admonishes and instructs both parties that the Custody Order and GAL Order including the directives of the Guardian shall be strictly followed and the failure of a party to comply with such orders and/or directives will be swiftly and seriously addressed by this Court if there is any future action brought in which a violation of one or both of these orders is determined to have occurred.

THE IRA TRANSFER

On May 12, 2008, Judge Mobley Jones entered an order which approved the parties' agreement wherein Defendant is required to transfer to Plaintiff \$750,000.00 in cash from his IRA. No appeal was taken from this Order. As a result of a hearing on June 24, 2009, the Order (Ending Action) was entered. The Order (Ending Action) implements a portion of the 2008 Order by requiring the simultaneous transfer of the IRA and the interest held by Plaintiff in the building and/or related entity to Defendant. There is no notice of appeal of the Order (Ending Action)¹.

To implement the IRA and building transfer this Court issued a separate order dated August 19, 2009, (the IRA Order) which was corrected by the order dated January 27, 2010. Defendant moved to reconsider the January 27, 2010, order, which motion was denied in open court prior to the contempt testimony. A separate written Order is being issued on this motion.

There is no question that the transfer of money from Defendant's IRA has not occurred. There is no question that the documents evidencing the transfer of the building/entity from Plaintiff to Defendant have not been executed.

The evidence reflects different opinions between the parties as to why these transactions have not taken place. The May 12, 2008 Order unequivocally grants ownership of the sum \$750,000.00 from Defendant's IRA to Plaintiff and grants ownership of Plaintiff's legal and equitable interest in the building and related entity to Defendant. There has never been an order issued which changed these requirements.

Based on the disagreements of the parties, I do not find there to be an incident of willful contempt. Recognizing the disputes of the parties and the difficulties in finalizing the

¹ Defendant filed a motion to reconsider, after or amend the Order (Ending Action) which was deemed by the Order of the Court dated January 27, 2010. Defendant appealed the January 27, 2010, order. He contends this appeal constitutes an appeal of the Order (Ending Action), It does not.

implementation of the transfer of these assets to date, to extract compliance with the previously entered orders of this Court I order the following:

- 1) No later than October 23, 2010, each party shall sign the documents reasonably necessary to comply with the provisions of the May 12, 2008, Order and August 19, 2009 Orders regarding the transfer of the \$750,000.00 in IRA in cash from Defendant to Plaintiff and the transfer from Plaintiff to Defendant of the interest in the law office building and related entity.
- 2) If either party fails to sign the documents necessary to transfer these interests by October 23, 2010, then the Clerk of Court for Richland County is hereby ordered to sign such documents, deeds, assignments, transfer instruments, or take other actions or sign other documents necessary to fully effectuate and transfer ownership of these assets as require by the aforementioned Orders. Notice of failure to sign such documents shall be delivered to the undersigned through counsel, and the undersigned will then notify the Clerk of the action to take.

CHILD SUPPORT

It is uncontested that Defendant has not paid any money directly to Plaintiff as child support since December 31, 2009.

On May 11, 2010, this Court heard motions regarding temporary child support and ruled from the bench requiring Defendant to pay the Plaintiff temporary child support in the amount of \$1,175.00 per month for the period beginning January 1, 2010. The written order from this hearing was entered June 4, 2010, but not served on the parties until about August 18, 2010.

Because of the delay between the entry of the Order and the service, I do not find there to be a willful incident of contempt regarding the failure to pay child support pursuant to the June 9,

2010, Order. Defendant has failed to pay child support and this failure must be remedied. Beginning with the month of September, 2010, Defendant shall pay the sum \$1,177.00 per month through the Clerk of Court together with the five (5%) percent handling fee imposed by the Clerk, as child support as required by the June 4, 2010, Order. This Court reserves jurisdiction to address the due date for payment of the arrearage which is ordered for January through May, 2010 by the June 4, 2010, Order and/or to address the due date for the arrearage which accumulated June, July and August, 2010. Part of the reason for the reservation of a ruling on this arrearage is the pending Motion filed by Plaintiff requesting that the Order for June 4, 2010, be modified to include a date for the payment of the January through May arrearage and the date for the payment of the attorneys fees and cost, and the pending Motion to reconsider the June 4, 2010 Order filed by the Defendant. These Motions will be addressed by a separate order, to be issued after a hearing on these motions².

ATTORNEY'S FEES AND COST

By the Order dated January 27, 2010, Defendant was required to pay Plaintiff \$9,000.00 in attorney's fees and cost incident to the various motions to reconsider which were heard on October 27, 2009. It is undisputed that Defendant has not paid this obligation. Defendant maintains the Order requiring him to pay this money is under appeal and therefore the obligation to pay is stayed by the appeal.

The January 27, 2010, Order which requires Defendant to pay Plaintiff \$9,000.00 is an order to pay money as a contribution toward attorney's fees and costs which were incurred due to motions filed by Defendant. This obligation was due and payable on March 28, 2010. By law a judgment such as this one carries interest at a required rate. An award of fees and costs made during the pendency of an action is not stayed by an appeal. Money judgments are not stayed by an appeal.

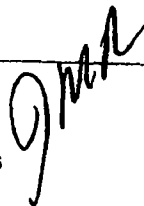
² There was insufficient time on September 8, 2010, to address these motions.

Handwritten signature and initials, possibly 'GMA', written in dark ink over the page number 15.

Defendant's obligation to pay \$9,000.00 to Plaintiff is past due and owing. Defendant shall pay this obligation to Plaintiff no later than October 23, 2010.

NOW THEREFORE IT IS ORDERED:

1. Both parties shall strictly adhere to the provisions of the Custody Order regarding the dates and times for exchange of the children and the directives of the Guardian Ad Litem as previously ordered, and the failure to do so will be expeditiously addressed and punished by this Court.
3. ~~No later than October 23, 2010, the parties shall each sign the documents and do the things reasonably necessary to comply with the provisions of the May 12, 2008, Order and August 19, 2009, Orders regarding the transfer of the \$750,000.00 in IRA in cash from Defendant to Plaintiff and the transfer from Plaintiff to Defendant of the interest in the law office building and related entity. If either party fails to sign the documents necessary to transfer these interests, then the Clerk of Court for Richland County is hereby ordered to sign such documents, deeds, assignments, transfer instruments, or take other actions or sign other documents necessary to effectuate and transfer ownership of these assets as require by the aforementioned Orders. Either party may notify the undersigned of the failure of the other party to comply with these provisions so that the Clerk may be notified by the undersigned of the specific action to be taken.~~
4. No later than October 23, 2010, Defendant shall pay the \$9,000.00 required by the Order dated January 27, 2010.
5. Plaintiff's request for attorney's fees and costs incident to the Rule and Contempt Complaint is reserved for determination in the future, as detailed hereinabove.
6. Beginning with the month of September, 2010, Defendant shall pay the sum \$1,177.00 per month through the Clerk of Court together with the five (5%) percent handling fee



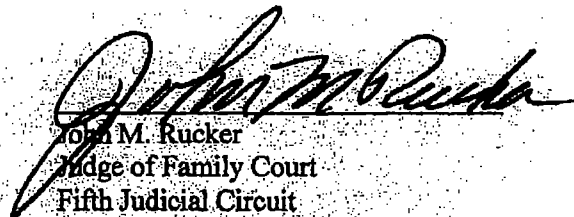
imposed by the Clerk, as child support as required by the June 4, 2010, Order. This Court reserves jurisdiction to address the due date for payment of the arrearage which is ordered for January through May, 2010 by the June 4, 2010, Order and/or to address the due date for the arrearage which accumulated June, July and August, 2010.

7. The issuance of this order constitutes a resolution of the Rule, with the exception of the issue reserved for adjudication as detailed hereinabove.

AND IT IS SO ORDERED:

Dated: September 24, 2010

Newberry, South Carolina


John M. Rucker
Judge of Family Court
Fifth Judicial Circuit

ATTEST: A TRUE COPY
JEANETTE W. McBRIDE
RICHLAND COUNTY
CLERK OF COURT

By: Bobbie C. Williams +P
DEPUTY CLERK FAMILY COURT
9/24/10

MAY 12 2008

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT CCCP, GS &
FAMILY COURTSHIRLEY HAMMER,)
Plaintiff,)

C.A. NO.: 2005-DR-40-2871

vs.)

DIVORCE DECREE

HOWARD HAMMER,)
Defendant.)

HEARING DATE:

May 12, 2008

HEARING JUDGE:

Dorothy Mobley Jones

PLAINTIFF'S ATTORNEY:

Timothy E. Madden

J. Mark Taylor

DEFENDANT'S ATTORNEY:

James T. McLaren

C. Dixon Lee, III

COURT REPORTER:

Dayton Grainger

This matter is before me pursuant to a Summons and Complaint filed by Plaintiff (Wife) on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property and other relief as is more fully set forth in the Complaint. Wife filed an Amended Complaint on September 9, 2005. Defendant (Husband) filed an Answer and Counterclaim to the Amended Complaint on January 4, 2007. On December 6, 2007 Wife filed a Second Amended Complaint, seeking a divorce and other relief.

A hearing was held before me on May 12, 2008. Present at the hearing were Wife, represented by J. Mark Taylor of the firm Moore, Taylor & Thomas, PA and Husband, represented by James T. McLaren, of the firm McLaren & Lee.

Prior to the taking of testimony, this Court inquired of Wife and Husband to determine if reconciliation is possible. Reconciliation is not possible and further efforts in that regard would be unavailing.



At the outset of the hearing counsel announced to the Court that the parties had reached an agreement as to certain issues. The agreement was presented to the Court for approval.

Based upon the pleadings, testimony, statements by counsel, financial declarations and applicable law, this Court makes the following findings of fact and conclusions of law.

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action. The issues raised in this action are among those described in S.C. Code §20-7-420 (1976, as amended).

The parties were married to one another on August 4, 1998, in Columbia, South Carolina. Of this marriage two (2) children have been born. These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002. No other children have been born or adopted during the marriage, and no other children are currently expected.

This Court has subject matter and personal jurisdiction. Richland County is the proper venue for this action.

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy.

Wife is fifty-two (52) years of age and is in good physical and mental health. She is currently not employed.

Husband is sixty-two (62) years of age. He is currently self employed as a lawyer.

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*.

A settlement agreement exists between these parties. This agreement is set forth in the document entitled "Partial Settlement of Outstanding Issues" which was signed on May 9, 2008 by both parties and approved by the court on May 12, 2008. This document contains the parties' entire

agreement. The parties understand the Agreement is a full and final resolution of all legal issues addressed by it.

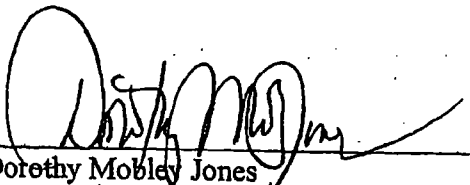
The parties separated on September 2, 2005, and have lived separate and apart continuously since that time. This period of separation was corroborated by an independent witness.

There is no fraud or collusion between the parties for the purposes of obtaining a divorce.

NOW, THEREFORE, IT IS ORDERED as follows:

The parties are granted an absolute divorce from each other on the statutory grounds of one year's continuous separation.

AND IT IS SO ORDERED.


Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated: May 12, 2008

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SHIRLEY HAMMER,)

Plaintiff,)

vs.)

HOWARD HAMMER,)

Defendant.)

IN THE FAMILY COURT FOR THE MAY 12 2008
FIFTH JUDICIAL CIRCUIT CCCP, GS &
FAMILY COURT

C.A. NO.: 2005-DR-40-2871

ORDER

HEARING DATE:

May 12, 2008

HEARING JUDGE:

Dorothy Mobley Jones

PLAINTIFF'S ATTORNEY:

Timothy E. Madden

J. Mark Taylor

DEFENDANT'S ATTORNEY:

James T. McLaren

C. Dixon Lee, III

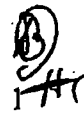
COURT REPORTER:

Dayton Grainer

This matter is before me pursuant to a Summons and Complaint filed by Plaintiff (Wife) on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property and other relief as is more fully set forth in the Complaint. Wife filed an Amended Complaint on September 9, 2005. Defendant (Husband) filed an Answer and Counterclaim to the Amended Complaint on January 4, 2007. On December 6, 2007 Wife filed a Second Amended Complaint, seeking a divorce and other relief.

A hearing was held before me on May 12, 2008. Present at the hearing were Wife, represented by J. Mark Taylor of the firm Moore, Taylor & Thomas, PA and Husband, represented by James T. McLaren, of the firm McLaren & Lee.

Prior to the taking of testimony, this Court inquired of Wife and Husband to determine if reconciliation is possible. Reconciliation is not possible and further efforts in that regard would be unavailing.



At the outset of the hearing counsel announced to the Court that the parties had reached an agreement as to certain issues. The agreement was presented to the Court for approval.

Based upon the pleadings, testimony, statements by counsel, financial declarations and applicable law, this Court makes the following findings of fact and conclusions of law.

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action. The issues raised in this action are among those described in S.C. Code §20-7-420 (1976, as amended).

The parties were married to one another on August 4, 1998, in Columbia, South Carolina. Of this marriage two (2) children have been born. These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002. No other children have been born or adopted during the marriage, and no other children are currently expected.

This Court has subject matter and personal jurisdiction. Richland County is the proper venue for this action.

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy.

Wife is fifty-two (52) years of age and is in good physical and mental health. She is currently not employed.

Husband is sixty-two (62) years of age. He is currently self employed as a lawyer.

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*.

Settlements between litigants are encouraged. In determining whether or not to approve a settlement agreement this Court must find (1) the existence of an agreement; (2) the agreement was entered into freely and voluntarily; (3) the agreement is fair and equitable from procedural and substantive perspectives and (4) the agreement is in the best interest of the minor children.

A settlement agreement exists between these parties. This agreement is set forth in the document entitled "Partial Settlement of Outstanding Issues" which was signed on May 9, 2008 by both parties and is attached hereto as Exhibit A (the "Agreement"). This document contains the parties' entire agreement. The parties understand the Agreement is a full and final resolution of all legal issues addressed by it. The Agreement does not address the issue of divorce.

There is no indication that either party was forced or under any duress or coercion at the time they entered the Agreement or at the time the Agreement was presented to the Court for approval. Each party represented he or she entered the Agreement and attended the hearing for its approval free of any mind-altering or judgment-impairing substances. Therefore, the Agreement was entered into freely and voluntarily.

The parties negotiated and entered the Agreement with benefit and advice of independent experienced counsel. Each party is satisfied with the representation provided to him or her by his or her attorney.

Each party represented familiarity with the assets, debts, income, and expenses of the other, thereby enabling each of them to enter the Agreement from an educated perspective. Each party testified he or she fully disclosed all of his or her assets, debts, income and expenses to the other party.

Substantively, the Agreement reflects a resolution of the legal issues which is within the range of fairness given this Court's experience. The Agreement is the product of compromise and negotiation. Upon review of the Equitable Apportionment Act (S.C. Code §20-7-472, et. seq. (1976, as amended)), the Alimony Statute (S.C. Code §20-3-130, et. seq. (1990, as amended)), and the Child Support Guidelines, and other applicable law, the parties' Agreement is fair and equitable.

As the parties directly affected by this Agreement, Husband and Wife are in a better position to judge the fairness of it.

Therefore, the Agreement is fair and equitable from both procedural and substantive perspectives.

The parties' Agreement, identified in this Order should, therefore, be adopted, approved and is hereby incorporated into, merged and made the Order of this Court.

NOW, THEREFORE, IT IS ORDERED as follows:

1. The Agreement between the parties, set forth in the document entitled "Partial Settlement of Outstanding Issues" (the "Agreement") which was signed on May 9, 2008 by both parties and is attached hereto as Exhibit A, is hereby adopted, approved, incorporated into, merged, integrated with and made the Order of this Court.

2. This Court retains jurisdiction to issue any orders necessary to effectuate the terms of the Agreement.

3. The Agreement shall be binding on the parties hereto, their heirs, executors, administrators and assigns.

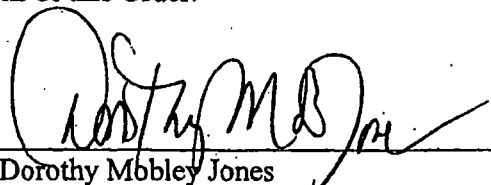
4. Each party shall fully indemnify and hold the other harmless with respect to all obligations set forth in the Agreement.

5. Each party shall expeditiously sign all documents and do all things reasonably necessary to effectuate the terms, provisions, and intent of the Agreement.

6. This civil action shall remain on the active roster of cases for the sole and limited purpose of allowing the parties to resolve or the Family Court to address the issues of divorce, custody, visitation and future attorney fees related to custody and visitation issues (as detailed in

the Agreement). Allowing this matter to remain active for this limited purpose shall in no way impact the finality or effect of the terms and provisions of this Order.

AND IT IS SO ORDERED.



Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated: May 12, 2008

PARTIAL SETTLEMENT OF OUTSTANDING ISSUES

The parties agree to the following settlement terms to resolve all issues in the pending Family Court litigation with the exception of the issues of custody, visitation, and attorney's fees and costs related to custody and visitation which are incurred after the date of Court approval of this Agreement. Howard's consent to this partial settlement is confirmed by his signature and the signature of his attorney on this document. Shirley's consent to this partial settlement is confirmed by her signature and the signature of her attorney on this document.

Partial Settlement:

1. This partial settlement does not address the issues of custody, visitation, and attorney's fees and costs incurred by Howard and Shirley related to custody and visitation after the date of Court approval of this Agreement. Howard and Shirley shall continue to be parties to the pending Family Court litigation to resolve these issues, and the terms of the Consent Temporary Order shall continue to be in full force and effect regarding the issues of child custody and visitation pending further Order of the Family Court, except as modified and supplanted by this Agreement.

2. This partial settlement fully and permanently resolves all other issues in the pending Family Court litigation, except for the issues of custody, visitation, and attorney's fees and costs incurred by Howard and Shirley related to custody and visitation after the date of Court approval of this Agreement. This partial settlement shall be presented to the Family Court as soon as a hearing may be scheduled to seek adoption, approval and

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incorporation of these terms into a Divorce Decree or other appropriate order. Each party shall do all things reasonably necessary to obtain a hearing to seek the approval of this settlement, and to obtain Family Court approval of this settlement.

3. As equitable apportionment of marital assets and debts and by way of recognition of non-marital assets and debts:

A. Each party shall keep and retain as his or her separate property (premarital, inherited, etc.) any asset in his or her name, possession or control and Howard shall retain as his separate property any assets in the parties joint names except and unless stated otherwise in this document.

B. Each party shall pay any debt incurred by him or her or in his or her name, unless specifically stated otherwise in this document. Each party represents to the other that neither has incurred any debt in the name of the other or for which the other may be held legally responsible except as is specified otherwise in this document.

C. Shirley shall receive or retain the following:

(a) The home at 320 St. James Street, Columbia, South Carolina, free and clear of any debt, lien or encumbrance. As part of the division of assets and debts, and as an incident of non-taxable support for Shirley, Howard shall fully pay and extinguish the debt on this property no later than 5:00 p.m. June 6, 2008. Until this debt is fully extinguished it, Howard shall timely pay it. By May 14, 2008, Howard shall execute a general warranty deed conveying all of his interest in this property to Shirley. Shirley shall otherwise be responsible for the expenses related to this property.

(b) The sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) in cash by way of qualified transfer from Howard's retirement assets. This transfer shall be made pursuant to a Qualified Domestic Relations Order (QDRO) (or

Y.2 H.A.

orders) or other similar devices so that the act of transfer does not create an immediate taxable event for Howard or Shirley. If Shirley withdraws or liquidates the funds after transfer, and any tax or penalty is incurred, Shirley shall pay such tax or penalty.

(c) The sum One Million Two Hundred Sixty-Two Thousand and 00/100 Dollars (\$1,262,000.00) in cash. Howard shall pay this sum to Shirley no later than 12 p.m. on June 6, 2008, by wire transfer into the account of her attorney.

(d) The Sims Street property, subject to the debt or obligations or benefits associated with it.

(e) All furniture and personal property in her possession or control, except Howard's separate furniture and personal property (i.e. that which he brought into the marriage or inherited).

(f) The Toyota vehicle she drives; free and clear of any debt, lien or encumbrance.

D. Howard shall receive the following:

(a) Any interest of either party in the office building which houses Howard Hammer's law office and the accompanying parking lot, and in any business entity related to this building, subject to any debt, lien or encumbrance associated with this property. This asset has a net value of about \$1,000,000.00. When Howard has fulfilled his obligations under paragraphs 3(C)(a) and 3(C)(c) and 3(D)(b), Shirley shall execute a deed, subject to any lien, debt or encumbrance, and such other documents as are necessary to convey this/these assets to Howard.

(b) The Rice Court property, subject to the debt or obligations or benefits associated with it, which has a net value of \$100,000.00. Howard will do whatever is necessary to remove Shirley from any debt or obligation related to this

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property, including but not limited to obtaining from the lender her release from liability on the note and mortgage.

(c) The Seabrook real property, which has a net value of about \$1,500,000.00.

(d) The two Chateau deVille rental properties, which have a combined net value of about \$195,000.00.

(e) The Woodrow Street rental property, which has a net value of about \$115,000.00.

(f) The Hollywood Street rental property, which has a net value of about \$190,000.00.

(g) The 57th street property at Isle of Palms, South Carolina, which has a net value of about \$700,000.00 (for the Hammer share).

(h) His law practice, subject to all obligations associated with it.

(i) Any furniture or personal property in his possession or control, and the items in the storage unit, together with his separate furniture and personal property (i.e. his pre-marital and/or inherited).

(j) The vehicles he drives (the Porsche and Mercedes), subject to the debt on it.

4. Howard shall pay to Shirley rehabilitative non-modifiable alimony in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00). This alimony shall be paid in a lump sum, by a qualified transfer from Howard's retirement asset(s) to retirement asset(s) in Shirley's name or control. This transfer shall be made pursuant to a Qualified

P. 4 H.A.

Domestic Relations Order (QDRO) (or orders) or other similar devices so that the act of transfer does not create an immediate taxable event for Howard or Shirley. If Shirley withdraws or liquidates the funds after transfer, and any tax or penalty is incurred, Shirley shall pay such tax or penalty. The payment of this rehabilitative alimony shall not be tax-deductible by Howard. The transfer shall occur as expeditiously as possible after the Family Court approves this settlement. Other than this rehabilitative alimony, or except as provided in the following sentence, neither party shall pay alimony or spousal support to other party, past, present or future, *pendente lite* or permanently. If, however, for any reason, this transfer of \$250,000.00 does not occur and/or the transfers of the funds from Howard to Shirley required under the equitable apportionment provisions (totaling \$1,750,000 in cash) of this offer do not occur, then Shirley shall have the right to seek temporary and/or permanent alimony from Howard from the Family Court. In no event shall Howard have the right to seek alimony from Shirley, and any right or claim he has or may have to such support is forever terminated.

5. Beginning June 1, 2008, and no later than the 7th day of each month thereafter, Howard shall pay to Shirley the sum of Two Thousand and 00/100 Dollars (\$2,000.00) per month as child support, provided he is practicing law. If he is not practicing law the amount may be renegotiated or addressed by the Court. This payment shall be made by bank draft from Howard's account to Shirley's account beginning with the month of June, 2008. If Howard ever fails to pay this obligation by the 7th of any month and she gives notice to Howard's brother, Alvin Hammer, of the default, and it is not cured within three (3) days thereafter, Shirley may file an affidavit to obtain an Order requiring all future payments to be paid through the Family Court. The amount of Howard's child support is based on Howard's annual income being approximately \$260,000.00 per year.

P.S. H.H.

6. Howard shall maintain life insurance on his life with death benefits payable to Shirley in the amount of \$250,000.00 for so long as he has an obligation to pay child support for one or both of the minor children. He shall provide Shirley with a copy of the policy and a copy of the designation of beneficiaries establishing proof of his compliance with this requirement. These documents shall be delivered no later than 12 p.m. on June 1, 2008.

7. This financial agreement intends to and in fact does satisfy all claims by each party for attorney fees, expert fees, suit money and costs through and including the date of approval of this Agreement by the Court.

8. The order approving this settlement shall contain the following language:

A. This Order is an "Order of Protection" entered pursuant to S.C Code §20-4-10 (1976, as amended) et seq.

B. Pursuant to S.C Code § 20-4-60(e) (1976, as amended), the parties consent to this order.

C. Each party is hereby enjoined and restrained from abusing, threatening to abuse, or molesting the other party, and each party is enjoined and restrained from communicating or attempting to communicate with the other party in any way which would violate the provisions of S.C. Code 20-4-10 (1976, as amended) et. seq.

D. Each party is enjoined and restrained from entering the residence of the other party, including but not limited to Defendant being enjoined and restrained from entering the residence now in the sole possession of Shirley, 320 St. James Street, Columbia, South Carolina.

E. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE

p. #6 H.H.

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CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

F. This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court.

9. The order approving this settlement shall contain the following language, to the extent allowed by applicable law:

A. This Order is an "Order of Protection" entered pursuant to S.C. Code §20-4-10 (1976, as amended) et seq.

B. Pursuant to S.C. Code § 20-4-60(e) (1976, as amended), the parties consent to this order.

C. Defendant is hereby enjoined and restrained from abusing, threatening to abuse, or molesting Shirley's sister, Florence Medlin, and is enjoined and restrained from communicating or attempting to communicate with Florence Medlin in any way which would violate the provisions of S.C. Code 20-4-10 (1976, as amended) et seq.

D. Defendant is enjoined and restrained from entering the residence of Florence Medlin, including but not limited to being enjoined and restrained from entering the residence of Florence Medlin at 1713 Phelps Street, Columbia, South Carolina, or any other residence she may occupy.

E. **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.**

F. This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court.

p* H.H.

W.H.

10. Howard and Shirley shall execute full releases in favor of each other (except and preserving their respective rights in the issues remaining for adjudication in the Family Court litigation). The release shall be in the form of the document attached as Exhibit A. The other releases attached at Exhibit A shall also be executed and delivered.

11. All Rules to Show Cause shall be dismissed with prejudice. All pending motions related to issues other than the children shall be dismissed with prejudice. All pending motions related to the children shall be dismissed without prejudice. The pleadings shall be amended to properly frame the remaining issues for adjudication (i.e. custody and visitation matters, and attorney fees, suit money and costs associated with custody and visitation issues incurred after the date of Court approval of this Agreement).

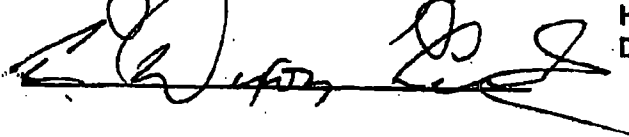
12. The terms and conditions of this Agreement shall be fully binding on and enforceable by the heirs, assigns and successors of the parties, and their estates. The obligations of the parties under the terms and conditions of this Agreement shall not be extinguished by bankruptcy or insolvency proceedings or any assignment for the benefit of creditors.

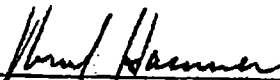
13. Except for the obligations created by this partial settlement, each party hereby releases and relinquishes and by these presents are hereby barred from any and all rights and claims he or she may have or hereafter acquire as a spouse under the present or future laws of any jurisdiction by way of dower, inheritance, descent, distribution, elective share, and all other rights or claims whatsoever, including but not limited to claims in or to the property or estate of the other, whether real, personal or mixed, and whether now owned or hereafter acquired. Both parties are aware of their elective share rights and they hereby release and relinquish any right to elective share that he or she may have with the full knowledge of all rights thereto.

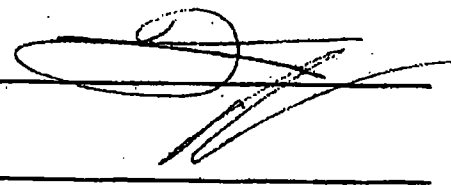
14. When this settlement is approved it shall be enforceable through the contempt powers of the Family Court.

15. This agreement is a binding contract and is enforceable as such under law.

WITNESS:

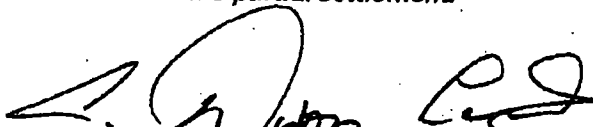




 Howard Hammer
 Date: May 9, 2008




 Shirley Hammer
 Date: May 9, 2008

We confirm this partial settlement:


 James T. McLaren
 Dixon Lee
 Attorneys for Howard Hammer
 Date: May 9, 2008


 J. Mark Taylor
 Timothy E. Madden
 Attorneys for Shirley Hammer
 Date: May 9, 2008

pt 9 p. 4.

*Exhibit A***AGREEMENT AND RELEASE OF CLAIMS**

This AGREEMENT is made and entered into by and between Howard Hammer and Shirley Hammer, who agree to be bound by all of the terms and conditions set forth herein.

The parties desire to fully and completely settle and dispose of any claims which either party might have against the other from the beginning of time through and including May __, 2008, the date on which the parties executed a settlement agreement regarding pending litigation in the Richland County Family Court (hereinafter the "Settlement Agreement"), except for the obligations created by the Settlement Agreement. Accordingly, the parties agree as follows:

1. Consideration

The promises of each of the parties as set forth in the Settlement Agreement signed by each of them form the consideration for this agreement.

2. Release of Claims and Covenant Not to Sue

In return for the consideration described in Paragraph 1, each party releases the other, and the other's agents, assigns, and heirs forever, from every legal or equitable claim that he/she has or might have against the other, except for the obligations created by the Settlement Agreement. The claims released in this agreement include any claims under any local, state, or federal constitutions, laws, statutes, rules, regulations or executive orders, including any amendments thereto. The parties further agree that they are releasing any claims that might arise under the common law of any state.

The parties agree not to file any lawsuits, complaints or grievances against the other, or any agents, assign of the other, with respect to any claim one might have against the other, except for the obligations created by the Settlement Agreement referenced herein.

3. Full and Final Settlement

The consideration provided pursuant to this Agreement constitutes a full and final compromise settlement of all claims that either party might have against the other, except for the obligations created by the Settlement Agreement. The parties do not waive any rights or claims that might arise as a result of any conduct that occurs after the date of the Settlement Agreement or that arise under the obligations created by the settlement document or any order issued by the Family Court which adopts and approves the Settlement Agreement.

4. No Other Promises

The parties agree that the only consideration for the signing of this agreement is that set forth in the agreement and that no other promises or assurances of any kind have been made to either party as an inducement to sign this agreement.

5. Complete Defense

This agreement shall be treated as a complete defense to any actions that may be brought, instituted, or taken by either party against the other relating to the matters addressed in this Agreement.

6. Successors, Assigns, and Representatives

This agreement shall inure to and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

7. Governing Law and Jurisdiction

This agreement shall be construed in accordance with the laws of the state of South Carolina and all applicable federal laws.

8. Entire Agreement; Modification

This agreement constitutes the entire understanding of the parties, and no representation, promise, or inducement not included herein shall be binding upon the parties. This agreement may not be changed orally, but only by an agreement in writing signed by the parties.

9. Review of Agreement Provisions

The parties represent and warrant that each has had ample opportunity to consider this agreement and has been advised in writing to consult an attorney, if desired, before executing this agreement.

10. Acknowledgement

THE PARTIES AFFIRM THAT THEY:

- a. POSSESSE SUFFICIENT EDUCATION AND/OR EXPERIENCE TO FULLY UNDERSTAND THIS AGREEMENT;
- b. HAVE CAREFULLY READ AND UNDERSTAND THIS ENTIRE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS;
- c. HAVE HAD A REASONABLE PERIOD OF TIME WITHIN WHICH TO REVIEW AND CONSIDER THIS AGREEMENT;
- d. HAVE CONSULTED WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT; AND
- e. ARE FULLY COMPETENT TO EXECUTE THIS AGREEMENT AND RELEASE OF CLAIMS AND DOES SO VOLUNTARILY AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT, OR INTIMIDATION OF ANY KIND OR TYPE.

FOR HOWARD HAMMER

Howard Hammer

Date

SHIRLEY HAMMER

Shirley Hammer

Date

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Alan Medlin, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Howard Hammer, do hereby release, acquit and forever discharge Alan Medlin, his agents, assigns, heirs, and any and all other persons, firms or corporations acting at his direction or for his benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Alan Medlin or against his agents, assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
 _____, South Carolina, this _____ day of _____, 2008.

 Howard Hammer (L.S.)

SIGNED, SEALED & DELIVERED
 In The Presence Of:

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Florence Medlin, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Howard Hammer, do hereby release, acquit and forever discharge Florence Medlin, her agents, assigns, heirs, and any and all other persons, firms or corporations acting at her direction or for her benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Florence Medlin or against her agents, assigns, heirs, and any other person, firm or corporation acting at her direction or for her benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
 _____, South Carolina, this _____ day of _____, 2008.

 Howard Hammer (L.S.)

SIGNED, SEALED & DELIVERED
 In The Presence Of:

STATE OF SOUTH CAROLINA

)

RECEIPT AND RELEASE

COUNTY OF RICHLAND

)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Alan Medlin, do hereby release, acquit and forever discharge Howard Hammer, his agents, assigns, heirs, and any and all other persons, firms or corporations acting at his direction or for his benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents, assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____, South Carolina, this _____ day of _____, 2008.

Alan Medlin (L.S.)

SIGNED, SEALED & DELIVERED
In The Presence Of:

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Florence Medlin, do hereby release, acquit and forever discharge Howard Hammer, his agents, assigns, heirs, and any and all other persons, firms or corporations acting at his direction or for his benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents, assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____, South Carolina, this _ day of _____, 2008.

Florence Medlin (L.S.)

SIGNED, SEALED & DELIVERED
In The Presence Of:

1408
FILED

MAY 12 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT
FAMILY COURT

SHIRLEY HAMMER,

Plaintiff,

VS.

HOWARD HAMMER,

Defendant.

C.A. NO.: 2005-DR-40-2871

MEMORANDUM ORDER

On May 12, 2008, this Court issued an Order and Divorce Decree in this action. To assist the parties in providing verification of certain terms contained in the aforementioned Order and Divorce Decree, this Court issues this Memorandum Order. Among other provisions, the Order and Divorce Decree dated May 12, 2008, contains the following provisions:

A. This Order is an "Order of Protection" entered pursuant to S.C. Code §20-4-10 (1976, as amended) et seq.

B. Pursuant to S.C. Code § 20-4-60(e) (1976, as amended), the parties consent to this order.

C. Each party is hereby enjoined and restrained from abusing, threatening to abuse, or molesting the other party, and each party is enjoined and restrained from communicating or attempting to communicate with the other party in any way which would violate the provisions of S.C. Code 20-4-10 (1976, as amended) et. seq.

D. Each party is enjoined and restrained from entering the residence of the other party, including but not limited to Defendant being enjoined and restrained from entering the residence now in the sole possession of Shirley, 320 St. James Street, Columbia, South Carolina.

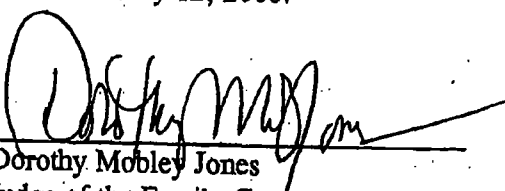

Hr

E. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

F. This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court.

The issuance of this Memorandum Order in no way alters or amends the terms and provisions or validity of the Order and Divorce Decree dated May 12, 2008.

AND IT IS SO ORDERED.


Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated: May 12, 2008


2-2

FILED

MAY 12 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT
CCCP, GS &
FAMILY COURT

SHIRLEY HAMMER,
Plaintiff,

vs.

HOWARD HAMMER,
Defendant.

C.A. NO.: 2005-DR-40-2871

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C. Each party is hereby enjoined and restrained from abusing, threatening to abuse, or molesting the other party, and each party is enjoined and restrained from communicating or attempting to communicate with the other party in any way which would violate the provisions of S.C. Code 20-4-10 (1976, as amended) et. seq.

D. Each party is enjoined and restrained from entering the residence of the other party, including but not limited to Defendant being enjoined and restrained from entering the residence now in the sole possession of Shirley, 320 St. James Street, Columbia, South Carolina.

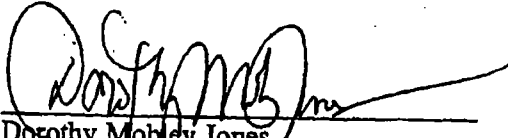
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E. VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

F. This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court.

The issuance of this Memorandum Order in no way alters or amends the terms and provisions or validity of the Order and Divorce Decree dated May 12, 2008.

AND IT IS SO ORDERED.


Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated: May 12, 2008

AGREEMENT AND RELEASE OF CLAIMS

This AGREEMENT is made and entered into by and between Howard Hammer and Shirley Hammer, who agree to be bound by all of the terms and conditions set forth herein.

The parties desire to fully and completely settle and dispose of any claims which either party might have against the other from the beginning of time through and including May __, 2008, the date on which the parties executed a settlement agreement regarding pending litigation in the Richland County Family Court (hereinafter the "Settlement Agreement"), except for the obligations created by the Settlement Agreement. Accordingly, the parties agree as follows:

1. Consideration

The promises of each of the parties as set forth in the Settlement Agreement signed by each of them form the consideration for this agreement.

2. Release of Claims and Covenant Not to Sue

In return for the consideration described in Paragraph 1, each party releases the other, and the other's agents, assigns, and heirs forever, from every legal or equitable claim that he/she has or might have against the other, except for the obligations created by the Settlement Agreement. The claims released in this agreement include any claims under any local, state, or federal constitutions, laws, statutes, rules, regulations or executive orders, including any amendments thereto. The parties further agree that they are releasing any claims that might arise under the common law of any state.

The parties agree not to file any lawsuits, complaints or grievances against the other, or any agents, assign of the other, with respect to any claim one might have against the other, except for the obligations created by the Settlement Agreement referenced herein.

3. Full and Final Settlement

The consideration provided pursuant to this Agreement constitutes a full and final compromise settlement of all claims that either party might have against the other, except for the obligations created by the Settlement Agreement. The parties do not waive any rights or claims that might arise as a result of any conduct that occurs after the date of the Settlement Agreement or that arise under the obligations created by the settlement document or any order issued by the Family Court which adopts and approves the Settlement Agreement.

4. No Other Promises

The parties agree that the only consideration for the signing of this agreement is that set forth in the agreement and that no other promises or assurances of any kind have been made to either party as an inducement to sign this agreement.

5. Complete Defense

This agreement shall be treated as a complete defense to any actions that may be brought, instituted, or taken by either party against the other relating to the matters addressed in this Agreement.

6. Successors, Assigns, and Representatives

This agreement shall inure to and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

7. Governing Law and Jurisdiction

This agreement shall be construed in accordance with the laws of the state of South Carolina and all applicable federal laws.

8. Entire Agreement; Modification

This agreement constitutes the entire understanding of the parties, and no representation, promise, or inducement not included herein shall be binding upon the parties. This agreement may not be changed orally, but only by an agreement in writing signed by the parties.

9. Review of Agreement Provisions

The parties represent and warrant that each has had ample opportunity to consider this agreement and has been advised in writing to consult an attorney, if desired, before executing this agreement.

10. Acknowledgement

THE PARTIES AFFIRM THAT THEY:

- a. POSSESSE SUFFICIENT EDUCATION AND/OR EXPERIENCE TO FULLY UNDERSTAND THIS AGREEMENT;
- b. HAVE CAREFULLY READ AND UNDERSTAND THIS ENTIRE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS;
- c. HAVE HAD A REASONABLE PERIOD OF TIME WITHIN WHICH TO REVIEW AND CONSIDER THIS AGREEMENT;
- d. HAVE CONSULTED WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT; AND
- e. ARE FULLY COMPETENT TO EXECUTE THIS AGREEMENT AND RELEASE OF CLAIMS AND DOES SO VOLUNTARILY AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT, OR INTIMIDATION OF ANY KIND OR TYPE.

~~H.H.~~
~~FOR~~ HOWARD HAMMER

Howard Hammer
Howard Hammer

May 9, 2008
Date

SHIRLEY HAMMER

Shirley Hammer
Shirley Hammer

May 9, 2008
Date

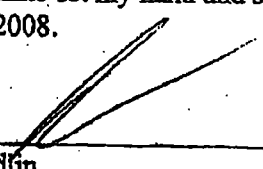
STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

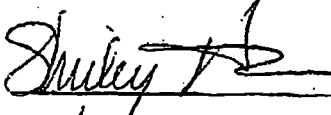
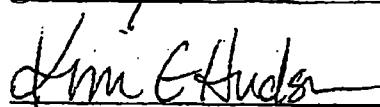
FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Alan Medlin, do hereby release, acquit and forever discharge Howard Hammer, his agents, assigns, heirs, and any and all other persons, firms or corporations acting at his direction or for his benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents, assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Blacksburg, South Carolina, this 29 day of May, 2008.


 Alan Medlin

(L.S.)

SIGNED, SEALED & DELIVERED
 In The Presence Of:

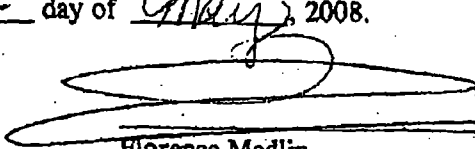
STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum of One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Florence Medlin, do hereby release, acquit and forever discharge Howard Hammer, his assigns and his heirs, of and from any and all causes of action, claims, demands, costs, now actually known and existing, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer his assigns and heirs, from the beginning of time through and including the date of this Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Columbia
_____, South Carolina, this 9th day of May, 2008.

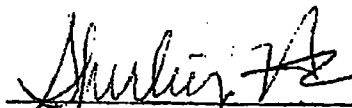


Florence Medlin

(L.S.)

SIGNED, SEALED & DELIVERED

In The Presence Of:


_____

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
104 South Main Street / Ninth Floor / Greenville, SC 29601
Tel: 864.250.2300 Fax: 864.250.2381
www.nelsonmullins.com

Timothy E. Madden
Tel: 864.250.2279
Fax: 864.250.2381
tim.madden@nelsonmullins.com

November 10, 2010

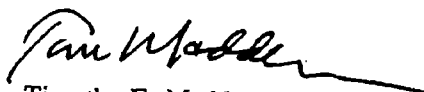
Susan Batten Lipscomb
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia, SC 29201

RE: Howard Hammer v. Shirley Hammer
Civil Action No. 2010-DR-40-3712
Our File No. 30279/01500

Dear Susan:

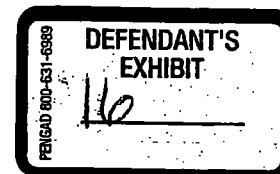
In connection with the above captioned matter, enclosed please find the Quit Claim Deed and Assignment of Limited Partnership Interest executed by Shirley Hammer.

Very truly yours,


Timothy E. Madden

TEM:kmj
Enclosures

Cc: Shirley Hammer, w/enclosures
Dick Whiting, w/enclosures



NO TITLE SEARCH

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.
P.O. BOX 10084, GREENVILLE, SC 29603

Grantee's Address:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that Shirley Hammer (hereinafter "Grantor") pursuant to the Order dated May 12, 2008 issued by the Honorable Dorothy Mobley Jones in C.A. No. 2005-DR-40-2871, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release, all of her right, title and interest, if any, unto Howard Hammer (hereinafter "Grantee") his heirs and assigns forever:

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, being shown and designated as Parcel A and Parcel B, collectively containing 0.50 acre, on Plat Prepared for Downtown Associates by Cox and Dinkins, Inc. dated February 5, 1996, recorded in the Office of the RMC for Richland County in Plat Book ____ at page ____ (the failure to record said plat or to insert the recording data herein shall not affect the validity hereof), said plat being incorporated herein by reference, said parcels being collectively described as follows:

BEGINNING at a Bldg. Corner at the westernmost corner of Parcel B whereat said property corners with property now or formerly Martha W. Fowler, et al. along the eastern margin of the right-of-way of Main Street a distance of 107.4 feet, more or less, from its intersection with Blanding Street, and running along property now or formerly Martha W. Fowler, et al. N70°16'01"E - 209.01 feet to a 1/4" rod; thence turning and running along property now or formerly Lexington State Bank as follows: S19°27'00"E - 17.80 feet to a point; N71°09'40"E - 211.75 feet to an "X" on concrete; thence turning and running along the western margin of the right-of-way of Sumter Street S19°25'59"E - 42.33 feet to an "X" on concrete; thence turning and running along property now or formerly James L. Tapp Co., Inc. as follows: S71°06'28"W - 211.73 feet to an "X" on concrete; S19°27'00"E - 0.77 feet to an "X" on concrete; thence turning and running along property now or formerly Kimbrell's Investment, Co. S70°17'08"W - 208.84 feet to an "X" on concrete; thence turning and running along the eastern margin of the right-of-way of Main Street N19°36'31"W - 61.03 feet to the POINT OF BEGINNING.

This being the same property conveyed to Shirley Hammer by deed of 1634 Main, L.P., a South Carolina limited partnership dated February 11, 2002 and recorded in the Office of the Register of Deeds for Richland County, South Carolina in Deed Book 00627 at Page 1909.

Tax Map #09014-04-19

This conveyance is made subject to all easements, conditions, covenants, restrictions and rights-of-way which are a matter of public record and/or actually existing upon the grounds affecting the above-described property.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

WITNESS the Grantor's hand(s) and seal(s) this the 5 day of Nov, ~~2009~~ ²⁰¹⁰ ^{SH}

SIGNED, sealed and delivered in the presence of:

[Signature]
Witness #1

[Signature]
Shirley Hammer

[Signature]
Witness #2

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor sign, seal and as his act and deed, deliver the foregoing written instrument, and that (s)he with the other witness subscribed above, witnessed the execution thereof.

[Signature]
Witness #1

SWORN to before me this the
27 day of Oct, ~~2009~~
5 NOV 2010

[Signature]
Notary Public for South Carolina
My Commission Expires: 4/2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is an interest in 1634 Main Street, Columbia, SC 29201, bearing Richland County Tax Map Number 09014-04-19 and was transferred by Shirley Hammer to Howard Hammer.
3. Check one of the following. The deed is:
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X exempt from the deed recording fee because (See Information section of affidavit);

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 (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit);
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes or No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: _____
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am responsible person who was connected with the transaction as: Grantor .

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Shirley Hammer (Seal)
Responsible Person Connected with the Transaction

Shirley Hammer, Grantor
Print or Type Name Here

SWORN to before me this 27 5 PM
day of Oct, 2009. NOV, 2010

John E. M. ...
Notary Public for South Carolina

My Commission Expires: 4/2014

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose

partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.

(14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.

(15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

ASSIGNMENT OF LIMITED
 PARTNERSHIP INTEREST

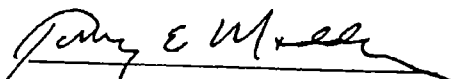
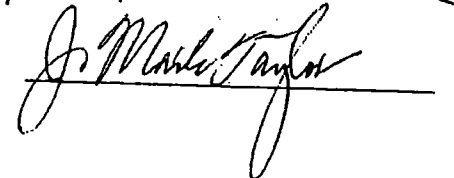
THIS ASSIGNMENT OF LIMITED PARTNERSHIP INTEREST is made effective as of this 5 day of Nov, ²⁰¹⁰~~2009~~, by and between SHIRLEY HAMMER ("Assignor") and HOWARD HAMMER ("Assignee").

The Assignor does hereby assign and transfer to Assignee any and all of her right, title and interest in a limited partnership interest in 1634 MAIN, LIMITED PARTNERSHIP, a South Carolina limited partnership (the "LP").

This Assignment is made pursuant to that certain Partial Settlement of Outstanding Issues, dated May 9, 2008, by and between Assignor and Assignee, *and pursuant to Court Order.*

IN WITNESS WHEREOF, this Assignment of Limited Partnership Interest is effective as of the date stated above in the opening paragraph.

WITNESSETH:

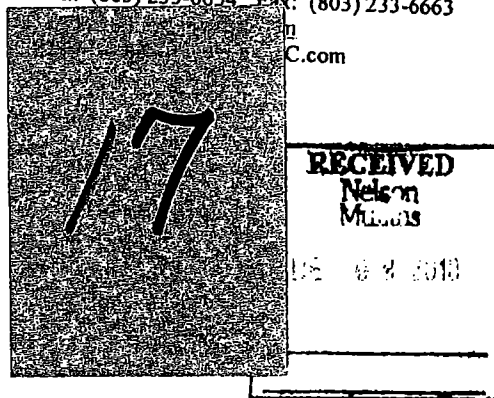




 SHIRLEY HAMMER

LIPSCOMB LAW FIRM, PASusan Batten Lipscomb
Attorney at LawJohn Richard Lipscomb
Attorney at Law1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663

C.com

December

Timothy E. Madden, Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 10084
Greenville, SC 29603Re: Shirley Hammer v. Howard Hammer
Civil Action #: 2005-DR-40-2871

Dear Tim:

I have received the Deed and Assignment of Limited Partnership Interest. I had hoped that we would have met by this time and consummated a global settlement. Our letter of November 12, 2010 speaks for itself regarding what I had believed that Howard would consider with regard to settlement. Accordingly, I did not think it was necessary to be concerned about a technical matter set forth below that needs to be resolved before Ms. Hammer is able to make an unimpeded transfer of her interest in 1634 Main Street, Columbia, SC. However, in light of your response dated November 16, 2010 and the limited conference I had with Mr. Hammer about the response, I am now concerned now about the entire situation.

Mr. Hammer's feelings of concern and/or affection for Ms. Hammer have dissipated. Over the course of this litigation, he has been very protective of Ms. Hammer and sensitive about negative comments by friends and others concerning her motives. He no longer associates with some of those who have made derogatory comments. Her response to the conciliatory views I forwarded as set forth in the November 12, 2010 letter have brought about a total and complete about-face of Mr. Hammer's feelings toward Ms. Hammer, his views about her motives, and his mindset regarding further discussion.

He is focused primarily on the children seeing to it that Ms. Hammer fulfills her obligations regarding their religious and educational wellbeing and parental counseling. His secondary focus seems geared toward clearing his good name, personally and professionally. He is not interested in making further proposals. He expects that all of his personal property, both in Ms. Hammer's possession and control and in the control of others in her family, will be delivered to him without necessity of further court action.

In light of Mr. Hammer's new attitude resulting from Ms. Hammer's proposal, although Michael and I will attempt to do our best to continue to work toward some amicable resolution, I must, in accord with my responsibilities to the 1634 Main Limited Partnership client and to Mr. Hammer, so long as I continue to represent him, be very careful to detail. Even if Michael and I are successful in getting a response to Ms. Hammer's counterproposal for settlement, the deed and Assignment need to be dated subsequent to a proper court order to make sure there are no tax consequences.



LIPSCOMB LAW FIRM, PA

Susan Batten Lipcomb
Attorney at Law

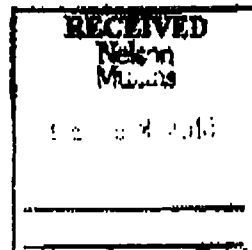
John Richard Lipcomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipcombLaw@Gmail.com
www.LipcombLawFirmSC.com

December 1, 2010

Timothy E. Madden, Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 10084
Greenville, SC 29603

Re: Shirley Hammer v. Howard Hammer
Civil Action #: 2005-DR-40-2871



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As you are aware there is a lawsuit pending to require payment by Ms. Hammer on account of her interest in 1634 Main. As you also know, the lawsuit was filed several months ago, well before any transfer by Howard.

As lawyer for 1634 Main Street, I believe I have a responsibility to insure that the requirements of the Limited Partnership Agreement are fully complied with particularly in view of the pending law suit by 1634 Main against Ms. Hammer and the declaratory judgment action pending in Family Court.

Accordingly I am returning the Deed and Limited Partnership transfer document to you until such time as the lawsuit by 1634 Main against Ms. Hammer is resolved and the requirements of the Limited Partnership Agreement are fully complied with. I hope that you will take all necessary steps to accomplish this by communicating with Desa Ballard with a view towards Desa contacting me to discuss negotiation for settlement of the lawsuit by 1634 Main against Ms. Hammer.

Yours very truly,



Susan B. Lipscomb

VTY

Enclosures: Original Deed
Assignment

THE STATE OF SOUTH CAROLINA**In The Court of Appeals**

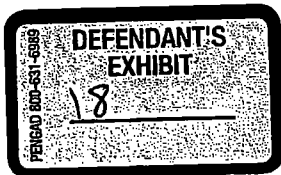
Howard Hammer, Appellant,

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

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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.

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

ORDER DISMISSING COMPLAINT
(Does not end action)

2010 APR 14 PM 3:11
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Defendant Shirley Hightower moved for dismissal of Plaintiff's complaint because this Court lacks subject matter jurisdiction. Present at the March 2, 2010, hearing on this motion were Desa Ballard, attorney for Defendant, and Plaintiff Howard Hammer, who argued on his own behalf with the assistance of his lawyer, Susan Lipscomb. For the reasons set forth below, Defendant's motion to dismiss for lack of subject matter jurisdiction is GRANTED.

FINDINGS OF FACT

This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr. Hammer"), seeking a declaratory judgment and other relief in connection with "a certain contract" entered between the parties in May 2008 ("May 2008 Contract"), which was incorporated into an order of the Family Court. Mr. Hammer asserts that the May 2008 Contract is void *ab initio* as violating public policy because a key term of the contract is a payment of funds by Mr. Hammer to Defendant Shirley Hammer in exchange for her agreement to drop certain criminal charges against Mr. Hammer. The contract also included terms involving, among other matters, property located at 320 St. James Street,

Columbia, South Carolina, which was formerly the marital home, and retirement (IRA) accounts.

The "May 2008 Contract" is a partial settlement of family court litigation that has been pending since September 2, 2005. More significantly, 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"). In the Order, 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").

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. The Family Court litigation was settled in two phases. First, the divorce and property settlements were agreed to on May 9, 2008 and made Orders by Judge Jones on May 12, 2008. Second, on June 23 and 24, 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. The 2009 Family Court Order expressly re-affirmed the May 2008 Order.

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, Orders.

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

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.

Finally, Mr. Hammer filed this declaratory judgment action in the Court of Common Pleas. Both in her Answer and First Amended Answer, Motion to Dismiss, and Counterclaims to the 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).

CONCLUSIONS OF LAW

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 section refers to Divorce and settlement agreements in South Carolina.

Further, 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 matriomii, 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;

S.C. Code Ann. § 63-3-50. Each claim raised by Mr. Hammer in this court has already been heard and determined by the Family Court, which had exclusive subject-matter jurisdiction under S.C. Code Ann. § 63-3-50(A)(2)(25) & (30), and under S.C. Code Ann. § 20-3-690 (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, which 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. (Family Court Orders,

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

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 exclusive subject matter jurisdiction to the family court over the construction and enforcement of all these contracts. S.C. Code Ann. §§ 63-3-50(A)(2)(25) & (30), 20-3-690.

Plaintiff argues that this Court has concurrent jurisdiction with the Family Court as to the issues set forth in the May 2008 contract and argues that Plaintiff has the right to choose his forum for litigating the matters. In the seminal case of *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), our Supreme Court expressly held that, once a settlement agreement is approved by the Family Court, it may be enforced only 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; 2009 Order Ending Action at 8, ¶¶ 7 and 9. 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).

Even if this Court had concurrent jurisdiction, which it plainly does not under applicable law, the family court would still have exclusive jurisdiction over the May 2008 Court Order and incorporated contract because litigation began in the family court first, and has continued there.

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, actions 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

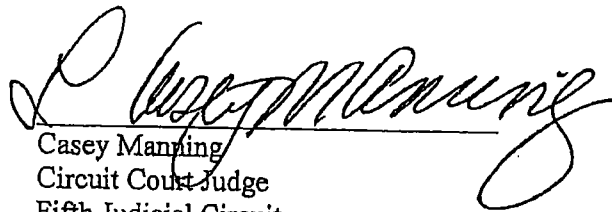
proceedings in the case." See: *Tucker v. Tucker*, 264 S.C. 172, 177, 213 S.E.2d 588 (1975)" (emphasis added). *Id.* at 575, 281 S.E.2d at 110.

Here the family court acquired jurisdiction on September 2, 2005, almost four years before Mr. Hammer filed his complaint in this case.

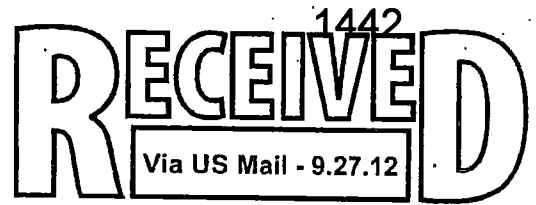
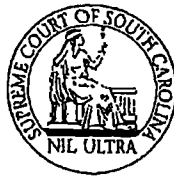
Collectively, the Family Court Orders concern the same parties' in litigation and concern the same claims and issues, all of which were adversely determined against Mr. Hammer. Accordingly, he is barred from re-litigating those claims and issues here.

THEREFORE, for the reasons set forth above, Defendant Shirley Hammer's Motion to Dismiss for lack of subject matter jurisdiction is GRANTED. This order does not end the action as to Defendant's counterclaims.

IT IS SO ORDERED.


Casey Manning
Circuit Court Judge
Fifth Judicial Circuit


March 14, 2010



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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September 26, 2012

Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Hammer, Howard v. Hammer, Shirley
Lower Court Case No. 2009CP4005911
Appellate Case No. 2010-164067

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the order of this Court transferring the case from the South Carolina Court of Appeals along with the earlier decisions of the South Carolina Court of Appeals are enclosed.

Very truly yours,



CLERK.

cc:

Susan Batten Lipscomb

Stephanie Nichole Weissenstein

Desa Allen Ballard

Howard Hammer

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

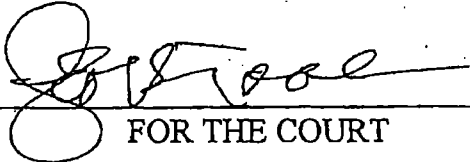
Appellate Case No. 2012-212288

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.



FOR THE COURT C.J.

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

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), SCRPC; (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.

The South Carolina Court of Appeals

Howard Hammer, Appellant,

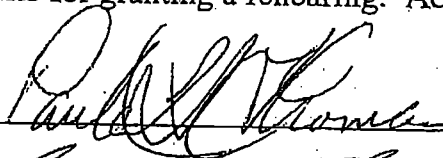
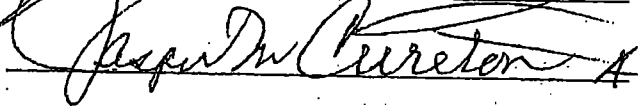
v.

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

Appellate Case No. 2010-164067

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:
Susan Batten Lipscomb
Stephanie Nichole Weissenstein
Desa Allen Ballard

FILED

23 Aug 2012

Form **7004**(Rev. December 2005)
Department of the Treasury
Internal Revenue Service**Application for Automatic 6-Month Extension of Time To File
Certain Business Income Tax, Information, and Other Returns**▶ **File a separate application for each return.**

OMB No. 1545-0233

**Type or
Print**

Name

1634 Main, LP

Taxpayer identification number

File by the due
date for the
return for which
an extension is
requested. See
Instructions.

Number, street, and room or suite no. If P.O. box, see instructions.

P.O. Box 1421

City, town, state, and ZIP code (If a foreign address, enter city, province or state, and country (follow the country's practice for entering postal code)).

Columbia, SC 29201-1421**Caution:** Carefully complete all items. Incorrect information may cause delay or rejection.1 Enter only one code for type of return that this automatic 6-month extension is for (see below) 092 If the foreign corporation does not have an office or place of business in the United States, check here ☐3 If the organization qualifies under Regulations section 1.6081-5 (see Instructions), check here ☐4 a For calendar year **2005**, or other tax year beginning _____, and ending _____

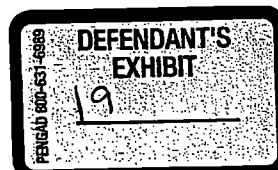
b Short tax year. If this tax year is less than 12 months, check the reason:

☐ Initial return ☐ Final return ☐ Change in accounting period ☐ Consolidated return to be filed5 If the organization is a corporation and is the common parent of a group that intends to file consolidated, check here ☐
Also, you must attach a schedule, listing the name, address, and EIN for each member covered by this extension.6 Tentative total tax (see Instructions) 67 Total payments and credits (see Instructions) 78 Balance due. Subtract line 7 from line 6. Generally, you must deposit this amount using the Electronic Federal Tax Payment System (EFTPS), a Federal Tax Deposit (FTD) Coupon, or Electronic Funds Withdrawal (EFW) (see Instructions for exceptions) 8

Extension Is For:		Form Code
Form 706-GS(D)	20-L	18
Form 706-GS(T)	20-ND	19
Form 990-C	20-ND (section 4951 taxes)	20
Form 1041 (estate)	20-PC	21
Form 1041 (trust)	20-POL	22
Form 1041-N	20-REIT	23
Form 1041-QFT	20-RIC	24
Form 1042	20-S	25
Form 1065	09 Form 1120-SF	26
Form 1065-B	10 Form 3520-A	27
Form 1066	11 Form 8612	28
Form 1120	12 Form 8613	29
Form 1120 (subchapter T cooperative)	13 Form 8725	30
Form 1120-A	14 Form 8804	31
Form 1120-F	15 Form 8831	32
Form 1120-FSC	16 Form 8876	33
Form 1120-H	17	

LHA For Paperwork Reduction Act Notice, see Instructions.

Form 7004 (Rev. 12-2005)

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2005.06000 1634 Main, LP

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1065
Form
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2005, or tax year beginning _____, and ending _____
Extension Granted to 10/16/06

OMB No. 1545-0099

2005

A Principal business activity		Use the IRS label. Otherwise, print or type.	Name of partnership		D Employer identification number [REDACTED]
Rental			1634 Main, LP		
B Principal product or service			Number, street, and room or suite no. If a P.O. box, see the instructions.		
Real Estate			P.O. Box 1421		E Date business started 01/01/2001
C Business code number			City or town, state, and ZIP code		F Total assets
531120			Columbia, SC 29201-1421		\$ 308,068.

G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return
H Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ☐
I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year **7**

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1 a Gross receipts or sales	1a	
	b Less returns and allowances	1b	
	2 Cost of goods sold (Schedule A, line 8)		2
	3 Gross profit. Subtract line 2 from line 1a		3
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)		4
	5 Net farm profit (loss) (attach Schedule F (Form 1040))		5
6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)		6	
7 Other income (loss) (attach schedule)	See Statement 1	7	1,497.
8 Total income (loss). Combine lines 3 through 7		8	1,497.
Deductions (see instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)		9
	10 Guaranteed payments to partners		10
	11 Repairs and maintenance		11
	12 Bad debts		12
	13 Rent		13
	14 Taxes and licenses		14
	15 Interest		15
	16 a Depreciation (if required, attach Form 4562)	16a	
	b Less depreciation reported on Schedule A and elsewhere on return	16b	16b
	17 Depletion (Do not deduct oil and gas depletion.)		17
	18 Retirement plans, etc.		18
	19 Employee benefit programs		19
20 Other deductions (attach schedule)		20	
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20		21	
22 Ordinary business income (loss). Subtract line 21 from line 8		22	1,497.

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member _____ Date _____

May the IRS discuss this return with the preparer shown below (see instr.)? ☒ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature **Bernard N. Ackerman, CPA, P.A.** Date _____
 Firm's name (or yours if self-employed), address, and ZIP code **864 Riverview Road**
Rock Hill, SC 29730-2743 EIN _____
 Phone no. **803-366-8371** Preparer's SSN or PTN **P00153155**

Form 1065 (2005) 1634 Main, LP

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Schedule A Cost of Goods Sold (see the Instructions)

1	Inventory at beginning of year	1
2	Purchases less cost of items withdrawn for personal use	2
3	Cost of labor	3
4	Additional section 263A costs (attach schedule)	4
5	Other costs (attach schedule)	5
6	Total. Add lines 1 through 5	6
7	Inventory at end of year	7
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8

9 a Check all methods used for valuing closing inventory:

(i) ☐ Cost as described in Regulations section 1.471-3

(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4

(iii) ☐ Other (specify method used and attach explanation) ▶

- b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ☐
- c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐
- d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☐ No
- e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No
- If "Yes," attach explanation.

Schedule B Other Information

	Yes	No
1 What type of entity is filing this return? Check the applicable box:		
a ☐ Domestic general partnership		
b ☒ Domestic limited partnership		
c ☐ Domestic limited liability company		
d ☐ Domestic limited liability partnership		
e ☐ Foreign partnership		
f ☐ Other ▶		
2 Are any partners in this partnership also partnerships?		X
3 During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If yes, see Instructions for required attachment		X
4 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
5 Does this partnership meet all three of the following requirements?		
a The partnership's total receipts for the tax year were less than \$250,000;		
b The partnership's total assets at the end of the tax year were less than \$600,000; and		
c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.		
If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item H on Schedule K-1	X	
6 Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the Instructions		X
7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8 Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
9 At any time during calendar year 2005, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the Instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		X
10 During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the Instructions		X
11 Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership in the Instructions		X
12 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see the Instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ SH5, LLC Identifying number of TMP ▶ [REDACTED]

Address of designated TMP ▶ 1634 Main Street

Address of designated TMP ▶ Columbia, SC 29201

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Form 1065 (2005)

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Form 1065 (2006) **1634 Main, LP****30-0070876** Page **3****Schedule K Partners' Distributive Share Items**

Total amount

Income (Loss)	1	Ordinary business income (loss) (page 1, line 22)	1	1,497.
	2	Net rental real estate income (loss) (attach Form 8826) <u>See Statement 2</u>	2	59,053.
	3a	Other gross rental income (loss) <u>3a</u>		
	b	Expenses from other rental activities (attach statement) <u>3b</u>		
	c	Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4	Guaranteed payments	4	
	5	Interest income <u>See Statement 3</u>	5	9,946.
	6	Dividends: a Ordinary dividends	6a	
	b	Qualified dividends <u>6b</u>		
	7	Royalties	7	
	8	Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
Deductions	9a	Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
	b	Collectibles (28%) gain (loss) <u>9b</u>		
	c	Unrecaptured section 1250 gain (attach statement) <u>9c</u>		
	10	Net section 1231 gain (loss) (attach Form 4797)	10	
Self-Employment	11	Other income (loss) (see instructions) Type <u>▶</u>	11	
	12	Section 179 deduction (attach Form 4562)	12	
	13a	Contributions	13a	
	b	Investment interest expense	13b	
Credits & Credit Recapture	c	Section 69(e)(2) expenditures: (1) Type <u>▶</u> (2) Amount <u>▶</u>	13c(2)	
	d	Other deductions (see instructions) Type <u>▶</u>	13d	
	14a	Net earnings (loss) from self-employment	14a	9.
	b	Gross farming or fishing income	14b	
	c	Gross nonfarm income	14c	9.
	15a	Low-income housing credit (section 42(b)(6))	15a	
Foreign Transactions	b	Low-income housing credit (other)	15b	
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c	
	d	Other rental real estate credits (see instructions) Type <u>▶</u>	15d	
	e	Other rental credits (see instructions) Type <u>▶</u>	15e	
	f	Other credits and credit recapture (see instructions) Type <u>▶</u>	15f	
	16a	Name of country or U.S. possession <u>▶</u>		
	b	Gross income from all sources	16b	
	c	Gross income sourced at partner level	16c	
	d	Foreign gross income sourced at partnership level		
	e	Passive <u>▶</u> e Listed categories (attach stmt.) <u>▶</u> f General limitation <u>▶</u>	16f	
Alternative Minimum Tax (AMT) Items	g	Deductions allocated and apportioned at partner level		
	h	Interest expense <u>▶</u> h Other <u>▶</u>	16h	
	i	Deductions allocated and apportioned at partnership level to foreign source income		
	j	Passive <u>▶</u> j Listed categories (attach stmt.) <u>▶</u> k General limitation <u>▶</u>	16k	
	l	Total foreign taxes (check one): ☐ Paid ☐ Accrued <u>▶</u> k General limitation <u>▶</u>	16l	
	m	Reduction in taxes available for credit (attach statement)	16m	
	n	Other foreign tax information (attach statement)		
	17a	Post-1986 depreciation adjustment	17a	<2,023.>
Other Information	b	Adjusted gain or loss	17b	
	c	Depletion (other than oil and gas)	17c	
	d	Oil, gas, and geothermal properties - gross income	17d	
	e	Oil, gas, and geothermal properties - deductions	17e	
	f	Other AMT items (attach statement)	17f	
	18a	Tax-exempt interest income	18a	
Other Information	b	Other tax-exempt income	18b	
	c	Nondeductible expenses	18c	
	19a	Distributions of cash and marketable securities	19a	603,517.
	b	Distributions of other property	19b	
	20a	Investment income	20a	9,946.
	b	Investment expenses	20b	
c	Other items and amounts (attach statement)			

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Form 1065 (2006)

Form 1065 (2005) 1634 Main, LP

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Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i						1	70,496.
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other	
a General partners		444.					
b Limited partners			70,052.				

Note: Schedules L, M-1 and M-2 are not required if Question 5 of Schedule B is answered "Yes."

Schedule L Balance Sheets per Books

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		599,662.		25,359.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)				
7 Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets	295,940.		295,940.	
b Less accumulated depreciation	60,897.	235,043.	72,294.	223,646.
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)		59,063.		59,063.
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets (attach statement)				
14 Total assets		893,768.		308,068.
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)		52,680.		
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)				
21 Partners' capital accounts		841,088.		308,068.
22 Total liabilities and capital		893,768.		308,068.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

1 Net income (loss) per books	70,497.	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a Depreciation \$	
a Depreciation \$		Stmt 7	1.
b Travel and entertainment \$		8 Add lines 6 and 7	1.
6 Add lines 1 through 4	70,497.	9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	70,496.

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	841,088.	6 Distributions: a Cash	603,517.
2 Capital contributed: a Cash	0.	b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	70,497.	8 Add lines 6 and 7	603,517.
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	308,068.
5 Add lines 1 through 4	911,585.		

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Form 1065 (2005)
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Form

8825**Rental Real Estate Income and Expenses of a Partnership or an S Corporation**

OMB No. 1545-1168

Department of the Treasury
Internal Revenue Service▶ See instructions on page 2.
▶ Attach to Form 1065, Form 1085-B, or Form 1120S.**2005**

Name

1634 Main, LP

Employer identification number

1 Show the kind and location of each property. See page 2 to list additional properties.

A Office Building, Columbia, SCBCD

Rental Real Estate Income		Properties			
		A	B	C	D
2 Gross rents	2	157,622.			
Rental Real Estate Expenses					
3 Advertising	3	864.			
4 Auto and travel	4				
5 Cleaning and maintenance	5	11,005.			
6 Commissions	6	2,052.			
7 Insurance	7	1,854.			
8 Legal and other professional fees	8				
9 Interest	9				
10 Repairs	10	16,661.			
11 Taxes	11	22,912.			
12 Utilities	12	21,878.			
13 Wages and salaries	13				
14 Depreciation (see instructions)	14	11,397.			
15 Other (list) ▶ <u>Stmt 8</u>	15	9,946.			
16 Total expenses for each property. Add lines 3 through 15	16	98,569.			

17 Total gross rents. Add gross rents from line 2, columns A through H 17 157,622.

18 Total expenses. Add total expenses from line 16, columns A through H 18 (98,569)

19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities 19

20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1) 20a

b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a.
Attach a schedule if more space is needed:

(1) Name

(2) Employer identification number

_____	_____
_____	_____
_____	_____

21 Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on:

• Form 1065 or 1120S: Schedule K, line 2, or

• Form 1065-B: Part I, line 4

21 59,053.

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11-09-05 JWA For Paperwork Reduction Act Notice, see page 2 of form.

Form 8825 (2005)

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1634 Main, LP

Form 8825 (2005)

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Page 2

1 Show the kind and location of each property.

E

F

G

H

Rental Real Estate Income		Properties			
		E	F	G	H
2 Gross rents	2				
Rental Real Estate Expenses					
3 Advertising	3				
4 Auto and travel	4				
5 Cleaning and maintenance	5				
6 Commissions	6				
7 Insurance	7				
8 Legal and other professional fees	8				
9 Interest	9				
10 Repairs	10				
11 Taxes	11				
12 Utilities	12				
13 Wages and salaries	13				
14 Depreciation (see instructions)	14				
15 Other (list) ▶	15				
16 Total expenses for each property. Add lines 3 through 15	16				

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Form 8825 (2005)

Form **4562**
(Rev. January 2006)
Department of the Treasury
Internal Revenue Service
Name(s) shown on return

Depreciation and Amortization

(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

R-

OMB No. 1545-0172

2005Attachment
Sequence No. 67
Identifying number

1634 Main, LP

Business or activity to which this form relates

Office Building,
Columbia, SC

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	105,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	420,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2004 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2006. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.)

14	Special allowance for certain aircraft, certain property with a long production period, and qualified NYL or GO Zone property (other than listed property) placed in service during the tax year	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2005	17	11,397.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B - Assets Placed in Service During 2005 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property	/		27.5 yrs.	MM	S/L	
	/		27.5 yrs.	MM	S/L	
i Nonresidential real property	/		39 yrs.	MM	S/L	
	/			MM	S/L	

Section C - Assets Placed in Service During 2005 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year	/		40 yrs.	MM	S/L	

Part IV Summary (see instructions)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see Instr.	22	11,397.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

510251 01-05-06 LHA For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (2005) (Rev. 1-2006)

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Form 4562 (2005) (Rev. 1-2006) 1634 Main, LP

Page 2

Part V Listed Property (include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)
 Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A - Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? ☐ Yes ☐ No		24b If "Yes," is the evidence written? ☐ Yes ☐ No	
(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis
		(e) Basis for depreciation (business/investment use only)	(f) Recovery period
		(g) Method/ Convention	(h) Depreciation deduction
		(i) Elected section 179 cost	
25 Special allowance for certain aircraft, certain property with a long production period, and qualified NYL or GO Zone property placed in service during the tax year and used more than 60% in a qualified business use			
26 Property used more than 50% in a qualified business use:			
		%	
		%	
		%	
27 Property used 50% or less in a qualified business use:			
		%	S/L -
		%	S/L -
		%	S/L -
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1			28
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1			29

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

30 Total business/investment miles driven during the year (do not include commuting miles)	(a) Vehicle	(b) Vehicle	(c) Vehicle	(d) Vehicle	(e) Vehicle	(f) Vehicle
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year. Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes	No	Yes	No	Yes	No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use?		

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2005 tax year:					
43 Amortization of costs that began before your 2005 tax year					43
44 Total. Add amounts in column (f). See the instructions for where to report					44

61626201-05-06

Form 4562 (2005) (Rev. 1-2006)

17190822 758692 3459

8
2005.06000 1634 Main, LP

3459 1

2005 DEPRECIATION AND AMORTIZATION REPORT
Office Building, Columbia, SC

R- 1

Asset No.	Description	Date Acquired	Method	Life	Line No.	Unadjusted Cost Or Basis	Bus % Excl	* Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Amount Of Depreciation
1	Building	01/01/01	SL	39.00	17	253,415.			253,415.	25,721.		6,498.
2	Land	01/01/01	L			59,063.			59,063.			0.
3	Carpet & Furnishings	01/01/01	200DB	5.00	17	42,525.			42,525.	35,177.		4,899.
	* Total Rental Depreciation					355,003.		0.	355,003.	60,898.	0.	11,397.

528102
01-08-08

(D) - Asset disposed

* ITC, Section 179, Salvage, Bonus, Commercial Revitalization Deduction, GO Zone

8.1

1465

Worksheet for Figuring Net Earnings (Loss) From Self-Employment

Name of partnership		Employer identification number
1634 Main, LP		
1 a Ordinary Income (loss) (Schedule K, line 1)	1a 1,497.	
b Net Income (loss) from CERTAIN rental real estate activities	1b	
c Net Income (loss) from other rental activities (Schedule K, line 3c)	1c	
d Net loss from Form 4797, Part II, line 17, included on line 1a above. Enter as a positive amount	1d	
e Other additions	1e	
f Combine lines 1a through 1e	1f 1,497.	
2 a Net gain from Form 4797, Part II, line 17, included on line 1a above	2a	
b Other subtractions	2b	
c Add lines 2a and 2b	2c	
3 a Subtract line 2c from line 1f. If line 1f is a loss, increase the loss on line 1f by the amount on line 2c	3a 1,497.	
b Part of line 3a allocated to limited partners, estates, trusts, corporations, exempt organizations, and IRAs	3b 1,488.	
c Subtract line 3b from line 3a	3c	9.
4 a Guaranteed payments to partners (Schedule K, line 4) derived from a trade or business as defined in section 1402(a)	4a	
b Part of line 4a allocated to individual limited partners for other than services and to estates, trusts, corporations, exempt organizations, and IRAs	4b	
c Subtract line 4b from line 4a	4c	
5 Net earnings (loss) from self-employment. Combine lines 3c and 4c. Enter here and on Schedule K, line 14a	5	9.

1634 Main, LP

Form 1065	Other Income	Statement	1

Description	Amount
Other income	1,497.
Total to Form 1065, Line 7	1,497.

Schedule K	Net Income (Loss) from Rental Real Estate	Statement	2

Description	Amount
Office Building, Columbia, SC	59,053.
Total to Schedule K, Line 2	59,053.

Schedule K	Interest Income	Statement	3

Description	U.S. Bonds	Other
Interest Income		9,946.
Total to Schedule K, Line 5		9,946.

Schedule L	Other Current Liabilities	Statement	4

Description	Beginning of Tax Year	End of Tax Year
Amount due Stanley Hammer	4,215.	0.
Amount due Howard Hammer	33,188.	0.
Amount due Judith Hammer	2,107.	0.
Amount due Alvin Hammer	4,214.	0.
Amount due David Hammer	4,214.	0.
Amount due SH5, LLC	527.	0.
Amount due Shirley Hammer	4,215.	0.
Total to Schedule L, Line 17	52,680.	0.

1634 Main, LP

Form 1065		Partners' Capital Account Summary			Statement 5
Partner Number	Beginning Capital	Capital Contributed	Schedule M-2 Lns 3, 4 & 7	With- drawals	Ending Capital
1	9,401.		444.	938.	8,907.
2	529,253.		26,647.	419,567.	136,333.
5	67,208.		40,044.	7,497.	99,755.
6	67,209.		3,362.	7,498.	63,073.
7	67,207.		0.	67,207.	0.
8	67,208.		0.	67,208.	0.
9	33,602.		0.	33,602.	0.
Total	841,088.		70,497.	603,517.	308,068.

1634 Main, LP

Form 1065 Summary of Partners' Effective Ratios Statement 6

Partner No.	Name of Partner	Computed Percentage
1	SH5, LLC	.006300000
2	Howard Hammer	.378000000
5	Shirley Hightower	.568000000
6	David Hammer	.047700000
7	Alvin Hammer	.000000000
8	Stanley Hammer	.000000000
9	Judith Hammer	.000000000
Total		<u>1.000000000</u>

1634 Main, LP

Schedule M-1 Deductions on Return Not Charged Against Books Statement 7

Description	Amount
Other miscellaneous deductions	1.
Total to Schedule M-1, Line 7	1.

Other Rental Expenses Statement 8

Property: Office Building, Columbia, SC

Description	Amount
Water & Sewer	1,063.
Security	708.
Professional Fees	8,175.
Total to Rental Schedule, Line 15	9,946.

ALTERNATIVE MINIMUM TAX DEPRECIATION REPORT

Asset No.	Description	Date Acquired	AMT Method	AMT Life	AMT Cost Or Basis	AMT Accumulated	Regular Depreciation	AMT Depreciation	AMT Adjustment
1	Building	01/01/01	SL	40.00	253,415.	25,078.	6,498.	6,335.	163.
2	Land	01/01/01			59,063.	0.	0.	0.	0.
3	Carpet & Furnishings	01/01/01	150DB	5.00	42,525.	31,898.	4,899.	7,085.	<2,186.>
	Totals				355,003.	56,976.	11,397.	13,420.	<2,023.>
	MACRS AMT Adjustment							<2,023.>	

528104
05-01-05

Schedule K-1
(Form 1065)

For calendar year 2005, or tax

2005Department of the Treasury
Internal Revenue Service

year beginning

ending

**Partner's Share of Income, Deductions,
Credits, etc.**

▶ See separate instructions.

Part I Information About the Partnership**A** Partnership's employer identification number**B** Partnership's name, address, city, state, and ZIP code1634 Main, LP
P.O. Box 1421
Columbia, SC 29201-1421**C** IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)**E** ☐ Tax shelter registration number, if any**F** ☐ Check if Form 8271 is attached**Part II Information About the Partner****G** Partner's identifying number**H** Partner's name, address, city, state, and ZIP codeSH5, LLC
1634 Main Street
Columbia, SC 29201**I** ☒ General partner or LLC
member-manager☐ Limited partner or other LLC
member**J** ☒ Domestic partner☐ Foreign partner**K** What type of entity is this partner? Individual**L** Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	1.00000000%	0.63000000%
Loss	1.00000000%	0.63000000%
Capital	1.00000000%	0.63000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	9,401.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	444.
Withdrawals & distributions	\$(	938.)
Ending capital account	\$	8,907.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0089

**Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items**

1 Ordinary business income (loss)	15 Credits & credit recapture
9.	
2 Net rental real estate income (loss)	
372.	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income	
63.	
6a Ordinary dividends	
6b Qualified dividends	17 Alternative min tax (AMT) items
	A <13.>
7 Royalties	
8 Net short-term capital gain (loss)	18 Tax-exempt income and nondeductible expenses
9a Net long-term capital gain (loss)	
9b Collectibles (28%) gain (loss)	19 Distributions
9c Unrecaptured sec 1250 gain	A 938.
10 Net section 1231 gain (loss)	20 Other information
11 Other income (loss)	A 63.
12 Section 179 deduction	
13 Other deductions	
14 Self-employment earnings (loss)	
A 9.	
C 9.	

* See attached statement for additional information.

For IRS Use Only

JWA For Privacy Act and Paperwork Reduction Act Notice, see instructions for Form 1065.

Schedule K-1 (Form 1065) 2005

511291
01-11-06

17190822 758692 3459

13
2005.06000 1634 Main, LP3459 1
1

Schedule K-1
(Form 1065)

2005

Department of the Treasury
Internal Revenue ServiceFor calendar year 2005, or tax
year beginning _____
ending _____Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
[REDACTED]

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
P.O. Box 1421
Columbia, SC 29201-1421

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number
[REDACTED]

H Partner's name, address, city, state, and ZIP code

Howard Hammer
1634 Main Street
Columbia, SC 29201I ☐ General partner or LLC

member-manager

☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	63.00000000%	37.80000000%
Loss	63.00000000%	37.80000000%
Capital	63.00000000%	37.80000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	529,253.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	26,647.
Withdrawals & distributions	\$	419,567.
Ending capital account	\$	136,333.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0098

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	566.	15 Credits & credit recapture
2 Net rental real estate income (loss)	22,322.	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	3,759.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		A <764.>
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 419,567.
10 Net section 1231 gain (loss)		20 Other information
11 Other income (loss)		A 3,759.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2005

511261
01-11-05

17190822 758692 3459

2005.06000 1634 Main, LP

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3459 2
1

Schedule K-1
(Form 1065)

2005

Department of the Treasury
Internal Revenue Service

For calendar year 2005, or tax

year beginning

ending

Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
P.O. Box 1421
Columbia, SC 29201-1421

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached**Part II Information About the Partner**

G Partner's identifying number

H Partner's name, address, city, state, and ZIP code

Shirley Hightower
1634 Main Street
Columbia, SC 29201I ☐ General partner or LLC

member-manager

☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	8.0000000%	56.8000000%
Loss	8.0000000%	56.8000000%
Capital	8.0000000%	56.8000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	67,208.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	40,044.
Withdrawals & distributions	\$	7,497.
Ending capital account	\$	99,755.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1 Ordinary business income (loss)	851.	15 Credits & credit recapture
2 Net rental real estate income (loss)	33,542.	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	5,650.	
6a Ordinary dividends		
6b Qualified dividends		17 Alternative min tax (AMT) items
7 Royalties		A <1,150.>
8 Net short-term capital gain (loss)		18 Tax-exempt income and nondeductible expenses
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 7,497.
10 Net section 1291 gain (loss)		20 Other information
11 Other income (loss)		A 5,650.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2005

611261
01-11-08

Schedule K-1
(Form 1065)

2005

Department of the Treasury
Internal Revenue Service

For calendar year 2005, or tax

year beginning

ending

Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
P.O. Box 1421
Columbia, SC 29201-1421C IRS Center where partnership filed return
Cincinnati, OHD ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number

H Partner's name, address, city, state, and ZIP code

David Hammer
1634 Main Street
Columbia, SC 29201I ☐ General partner or LLC
member-manager☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	8.00000000%	4.77000000%
Loss	8.00000000%	4.77000000%
Capital	8.00000000%	4.77000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	67,209.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	3,362.
Withdrawals & distributions	\$	7,498.
Ending capital account	\$	63,073.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	71.	15 Credits & credit recapture
2 Net rental real estate income (loss)	2,817.	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	474.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends	A	<96.>
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 7,498.
10 Net section 1231 gain (loss)	A	20 Other information
11 Other income (loss)		474.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A	0.

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2005

511291
01-11-06

17190822 758692 3459

2005.06000 1634 Main, LP

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1

Schedule K-1
(Form 1065)

2005

For calendar year 2005, or tax

Department of the Treasury
Internal Revenue Service

year beginning

ending

Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
P.O. Box 1421
Columbia, SC 29201-1421

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

B Partner's identifying number

H Partner's name, address, city, state, and ZIP code

Alvin Hammer
68 Lenwood Drive
Charleston, SC 29206I ☐ General partner or LLC
member-manager☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	8.00000000%	0.00000000%
Loss	8.00000000%	0.00000000%
Capital	8.00000000%	0.00000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	67,207.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	0.
Withdrawals & distributions	\$	67,207.
Ending capital account	\$	0.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☒ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	0.	16 Credits & credit recapture
2 Net rental real estate income (loss)		
3 Other net rental income (loss)		18 Foreign transactions
4 Guaranteed payments		
5 Interest income		
6a Ordinary dividends		
6b Qualified dividends		17 Alternative min tax (AMT) items
7 Royalties		
8 Net short-term capital gain (loss)		18 Tax-exempt income and nondeductible expenses
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 67,207.
10 Net section 1231 gain (loss)		20 Other information
11 Other income (loss)		
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

* See attached statement for additional information.

For IRS Use Only

JWA For Privacy Act and Paperwork Reduction Act Notice, see instructions for Form 1065.

Schedule K-1 (Form 1065) 2005

611261
01-11-06

17190822 758692 3459

2005.06000 1634 Main, LP

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3459 7
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Schedule K-1
(Form 1065)

2005

For calendar year 2005, or tax

Department of the Treasury
Internal Revenue Service

year beginning _____

ending _____

Partner's Share of Income, Deductions,
Credits, etc.

▶ See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP

P.O. Box 1421

Columbia, SC 29201-1421

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if any _____F ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number

H Partner's name, address, city, state, and ZIP code

Stanley Hammer

3301 Madison Avenue

Greensboro, NC 27403

I ☐ General partner or LLC

member-manager

☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	8.00000000%	0.00000000%
Loss	8.00000000%	0.00000000%
Capital	8.00000000%	0.00000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	67,208.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	0.
Withdrawals & distributions	\$	67,208.
Ending capital account	\$	0.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain) _____☒ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	0.	15 Credits & credit recapture
2 Net rental real estate income (loss)		
3 Other net rental income (loss)		16 Foreign transactions
4 Guaranteed payments		
5 Interest income		
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 67,208.
10 Net section 1231 gain (loss)		20 Other information
11 Other income (loss)		
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

* See attached statement for additional information.

For IRS Use Only

JWA For Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2005

611281
01-11-06

17190822 758692 3459

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1634 Main, LP

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3459 8
1

Schedule K-1
(Form 1065)

2005

Department of the Treasury
Internal Revenue ServiceFor calendar year 2005, or tax
year beginning _____
ending _____Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
[REDACTED]

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
P.O. Box 1421
Columbia, SC 29201-1421C IRS Center where partnership filed return
Cincinnati, OHD ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if any _____F ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number
[REDACTED]

H Partner's name, address, city, state, and ZIP code

Judith Hammer
3301 Madison Avenue
Greensboro, NC 27403I ☐ General partner or LLC
member-manager☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	4.0000000%	0.0000000%
Loss	4.0000000%	0.0000000%
Capital	4.0000000%	0.0000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	33,602.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	0.
Withdrawals & distributions	\$	33,602.
Ending capital account	\$	0.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain) _____☒ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss) 0.	15 Credits & credit recapture
2 Net rental real estate income (loss)	16 Foreign transactions
3 Other net rental income (loss)	17 Alternative min tax (AMT) items
4 Guaranteed payments	18 Tax-exempt income and nondeductible expenses
5 Interest income	19 Distributions A 33,602.
6a Ordinary dividends	20 Other information
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	
9b Collectibles (28%) gain (loss)	
9c Unrecaptured sec 125D gain	
10 Net section 1231 gain (loss)	
11 Other income (loss)	
12 Section 179 deduction	
13 Other deductions	
14 Self-employment earnings (loss) A 0.	

*See attached statement for additional information.

For IRS Use Only

JWA For Privacy Act and Paperwork Reduction Act Notice, see instructions for Form 1065.

Schedule K-1 (Form 1065) 2005

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2005.06000 1634 Main, LP3459 9
1

1065

Form
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2006, or tax year beginning _____, and ending _____

OMB No. 1545-0089

2006

A Principal business activity

Rental

B Principal product or service

Real Estate

C Business code number

531120

Name of partnership

1634 Main, LP

c/o Danville Business Advisors, LLC

Number, street, and room or suite no. If a P.O. box, see the instructions.

500 Taylor Street

City or town, state, and ZIP code

Columbia, SC 29201

D Employer identification number

E Date business started

01/01/2001

F Total assets

\$ 293,620.

- G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return
- H Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____
- I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year _____ 4
- J Check if Schedule M-3 required (attach Schedule M-3) _____

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1 a Gross receipts or sales	1a		1a
	b Less returns and allowances	1b		1a
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)			4
	6 Net farm profit (loss) (attach Schedule F (Form 1040))			6
Deductions (see instructions for limitations)	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			6
	7 Other income (loss) (attach schedule)			
	8 Total income (loss). Combine lines 3 through 7			
	9 Salaries and wages (other than to partners) (less employment credits)			14
	10 Guaranteed payments to partners			16
	11 Repairs and maintenance			16a
	12 Bad debts			16b
	13 Rent			16c
	14 Taxes and licenses			17
	15 Interest			18
	16 a Depreciation (If required, attach Form 4662)	16a		19
	b Less depreciation reported on Schedule A and elsewhere on return	16b		20
17 Depletion (Do not deduct oil and gas depletion.)			21	
18 Retirement plans, etc.			22	
19 Employee benefit programs			23	
20 Other deductions (attach schedule)				
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20				
22 Ordinary business income (loss). Subtract line 21 from line 8			0.	
23 Credit for federal telephone excise tax paid (attach Form 8913)				

Sign
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member manager

Date

May the IRS discuss this return
with the preparer shown below
(see Instr.)? ☒ Yes ☐ NoPaid
Preparer's
Use OnlyPreparer's
signature

Date

Check if
self-employed ☐

Preparer's SSN or PTIN

Firm's name (or
your name if self-
employed),
address, and
ZIP code

Bernard N. Ackerman, CPA, P.A.

864 Riverview Road

Rock Hill, SC 29730-2743

EIN

Phone no. 803-366-8371

811001
12-28-06

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Form 1065 (2006)

Form 1065 (2006) 1634 Main, LP c/o Danville Business Advi

Page 2

Schedule A Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1
2	Purchases less cost of items withdrawn for personal use	2
3	Cost of labor	3
4	Additional section 263A costs (attach schedule)	4
5	Other costs (attach schedule)	5
6	Total. Add lines 1 through 5	6
7	Inventory at end of year	7
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8

8 a Check all methods used for valuing closing inventory:

(I) ☐ Cost as described in Regulations section 1.471-3

(II) ☐ Lower of cost or market as described in Regulations section 1.471-4

(III) ☐ Other (specify method used and attach explanation) ▶

- b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ☐
- c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐
- d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☐ No
- e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No
- If "Yes," attach explanation.

Schedule B Other Information

		Yes	No
1	What type of entity is filing this return? Check the applicable box:		
a	☐ Domestic general partnership		
b	☒ Domestic limited partnership		
c	☐ Domestic limited liability company		
d	☐ Domestic limited liability partnership		
e	☐ Foreign partnership		
f	☐ Other ▶		
2	Are any partners in this partnership also partnerships?		X
3	During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If yes, see instructions for required attachment		X
4	Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
5	Does this partnership meet all three of the following requirements?		
a	The partnership's total receipts for the tax year were less than \$250,000;		
b	The partnership's total assets at the end of the tax year were less than \$600,000; and		
c	Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.		
	If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item N on Schedule K-1	X	
6	Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the instructions		X
7	Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8	Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
9	At any time during calendar year 2006, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		X
10	During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the instructions		X
11	Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership in the instructions		X
12	Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ SH5, LLC Identifying number of TMP ▶

Address of designated TMP ▶ 1634 Main Street
Columbia, SC 29201

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12-28-08

Form 1065 (2006)

Form 1065 (2006) **1634 Main, LP c/o Danville Business Advi**
Schedule K Partners' Distributive Share Items

Page 3

		Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1 0.
	2 Net rental/real estate income (loss) (attach Form 8825) See Statement 1	2 <15,814.>
	3a Other gross rental income (loss)	3a
	b Expenses from other rental activities (attach statement)	3b
	c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4 Guaranteed payments	4
	5 Interest income See Statement 2	5
	6 Dividends: a Ordinary dividends	6 1,366.
	b Qualified dividends	6a
	7 Royalties	7
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8
9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
b Collectibles (28%) gain (loss)	9b	
c Unrecaptured section 1250 gain (attach statement)	9c	
10 Net section 1231 gain (loss) (attach Form 4797)	10	
11 Other income (loss) (see instructions) Type ▶	11	
Deductions	12 Section 179 deduction (attach Form 4562)	12
	13a Contributions	13a
	b Investment interest expense	13b
	c Section 69(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)
Self-Employment	14a Net earnings (loss) from self-employment	14a
	b Gross farming or fishing income	14b
	c Gross nonfarm income	14c 0.
Credits	15a Low-income housing credit (section 42(j)(5))	15a
	b Low-income housing credit (other)	15b
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c
	d Other rental real estate credits (see instructions) Type ▶	15d
	e Other rental credits (see instructions) Type ▶	15e
	f Other credits (see instructions) Type ▶	15f
Foreign Transactions	16a Name of country or U.S. possession ▶	
	b Gross income from all sources	16b
	c Gross income sourced at partner level	16c
	Foreign gross income sourced at partnership level	
	d Passive ▶ e Listed categories (attach stmt.) ▶ f General limitation ▶	16f
	Deductions allocated and apportioned at partner level	
	g Interest expense ▶ h Other ▶	16h
	Deductions allocated and apportioned at partnership level to foreign source income	
	i Passive ▶ j Listed categories (attach stmt.) ▶ k General limitation ▶	16k
	l Total foreign taxes (check one): Paid ☐ Accrued ☐	16l
	m Reduction in taxes available for credit (attach statement)	16m
n Other foreign tax information (attach statement)		
Alternative Minimum Tax (AMT) Items	17a Post-1986 depreciation adjustment	17a
	b Adjusted gain or loss	17b <930.>
	c Depletion (other than oil and gas)	17c
	d Oil, gas, and geothermal properties - gross income	17d
	e Oil, gas, and geothermal properties - deductions	17e
	f Other AMT items (attach statement)	17f
Other Information	18a Tax-exempt interest income	18a
	b Other tax-exempt income	18b
	c Nondeductible expenses	18c
	19a Distributions of cash and marketable securities	19a
	b Distributions of other property	19b
	20a Investment income	20a 1,366.
	b Investment expenses	20b
c Other items and amounts (attach statement)		

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12-26-06

Form 1065 (2006)

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i 1						<14,448.>
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other
a General partners		<91.>				
b Limited partners			<14,357.>			

Schedule L Balance Sheets per Books

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		25,359.		19,858.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)				
7 Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets	295,940.		295,940.	
b Less accumulated depreciation	72,294.	223,646.	81,241.	214,699.
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)		59,063.		59,063.
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets (attach statement)				
14 Total assets		308,068.		293,620.
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)				
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)				
21 Partners' capital accounts		308,068.		293,620.
22 Total liabilities and capital		308,068.		293,620.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1 Net income (loss) per books	<14,448.>	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a Depreciation \$	
a Depreciation \$		8 Add lines 6 and 7	
b Travel and entertainment \$		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	<14,448.>
5 Add lines 1 through 4	<14,448.>		

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	308,068.	6 Distributions: a Cash	
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	<14,448.>	8 Add lines 6 and 7	
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	293,620.
5 Add lines 1 through 4	293,620.		

Form 8825
(Rev. December 2006)
Department of the Treasury
Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation

OMB No. 1545-1180

▶ See instructions on page 2.
▶ Attach to Form 1065, Form 1065-B, or Form 1120S.

Name 1634 Main, LPc/o Danville Business Advisors, LLC

Employer identification number

1 Show the kind and location of each property. See page 2 to list additional properties.

A Office Building, Columbia, SCBCD

Rental Real Estate Income	Properties			
	A	B	C	D
2 Gross rents	2 86,574.			
Rental Real Estate Expenses				
3 Advertising	3 45.			
4 Auto and travel	4			
5 Cleaning and maintenance	5 8,379.			
6 Commissions	6 1,304.			
7 Insurance	7 1,854.			
8 Legal and other professional fees	8			
9 Interest	9			
10 Repairs	10 31,085.			
11 Taxes	11 24,533.			
12 Utilities	12 16,305.			
13 Wages and salaries	13			
14 Depreciation (see instructions)	14 8,947.			
15 Other (list) ▶ <u>Stmt 4</u>	15 9,936.			
16 Total expenses for each property. Add lines 3 through 15	16 102,388.			

17 Total gross rents. Add gross rents from line 2, columns A through H 17 86,574.

18 Total expenses. Add total expenses from line 16, columns A through H 18 102,388.

19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities 19

20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1) 20a

b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a.
Attach a schedule if more space is needed:

(1) Name

(2) Employer identification number

21 Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on:

• Form 1065 or 1120S: Schedule K, line 2, or

• Form 1065-B: Part I, line 4

21 <15,814.>

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12-16-08 JWA For Paperwork Reduction Act Notice, see page 2 of form.

Form 8825 (12-2006)

11020403 758692 3459

2006.05030 1634 Main, LP c/o Danville 3459 1

1634 Main, LP c/o Danville Business Advi

Form 8825 (2006)

Page 2

1 Show the kind and location of each property.

E

F

G

H

		Properties			
		E	F	G	H
Rental Real Estate Income					
2	Gross rents	2			
Rental Real Estate Expenses					
3	Advertising	3			
4	Auto and travel	4			
5	Cleaning and maintenance	5			
6	Commissions	6			
7	Insurance	7			
8	Legal and other professional fees	8			
9	Interest	9			
10	Repairs	10			
11	Taxes	11			
12	Utilities	12			
13	Wages and salaries	13			
14	Depreciation (see Instructions)	14			
15	Other (list) ▶	15			
16	Total expenses for each property. Add lines 3 through 15	16			

JWA

Form 8825 (12-2006)

Form **4562**Department of the Treasury
Internal Revenue Service

Name(s) shown on return

Depreciation and Amortization
(Including Information on Listed Property)

▶ See separate instructions.

▶ Attach to your tax return.

R-

OMB No. 1545-0172

2006Attachment
Sequence No. 87

Identifying number

1634 Main, LP

c/o Danville Business Advisors, LLC

Office Building,
Columbia, SC**Part I Election To Expense Certain Property Under Section 179** Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	108,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	430,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2005 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2007. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.)

14	Special allowance for qualified New York Liberty or Gulf Opportunity Zone property (other than listed property) placed in service during the tax year	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	
17	MACRS Depreciation (Do not include listed property.) (See instructions.)	17	8,947.

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2006	17	8,947.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B - Assets Placed In Service During 2006 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property	/		27.5 yrs.	MM	S/L	
	/		27.5 yrs.	MM	S/L	
i Nonresidential real property	/		39 yrs.	MM	S/L	
	/			MM	S/L	

Section C - Assets Placed In Service During 2006 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year	/		40 yrs.	MM	S/L	

Part IV Summary (see instructions)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instr.	22	8,947.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

618251
10-17-06 LHA For Paperwork Reduction Act Notice, see separate instructions.

Form 4562 (2006)

11020403 758692 3459

2006.05030 1634 Main, LP c/o Danville 3459 1

Form 4562 (2006)

1634 Main, LP c/o Danville Business Advi

Page 2

Part V Listed Property (include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)
 Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A - Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed?		☐ Yes ☐ No		24b If "Yes," is the evidence written?		☐ Yes ☐ No	
(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction
25 Special allowance for qualified New York Liberty or Gulf Opportunity Zone property placed in service during the tax year and used more than 50% in a qualified business use							25
26 Property used more than 50% in a qualified business use:							
		%					
		%					
		%					
27 Property used 50% or less in a qualified business use:							
		%			S/L -		
		%			S/L -		
		%			S/L -		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1							28
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.
 If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

30 Total business/investment miles driven during the year (do not include commuting miles)	(a) Vehicle	(b) Vehicle	(c) Vehicle	(d) Vehicle	(e) Vehicle	(f) Vehicle
31 Total commuting miles driven during the year						
32 Total other personal (noncommuting) miles driven						
33 Total miles driven during the year. Add lines 30 through 32						
34 Was the vehicle available for personal use during off-duty hours?	Yes	No	Yes	No	Yes	No
35 Was the vehicle used primarily by a more than 5% owner or related person?						
36 Is another vehicle available for personal use?						

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use?		
Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.		

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2006 tax year:					
43 Amortization of costs that began before your 2006 tax year					43
44 Total. Add amounts in column (f). See the instructions for where to report					44

816252/10-17-08

8

Form 4562 (2006)

11020403 758692 3459

2006.05030 1634 Main, LP c/o Danville 3459__1

2006 DEPRECIATION AND AMORTIZATION REPORT
Office Building, Columbia, SC

R- 1

Asset No.	Description	Date Acquired	Method	Life	Line No.	Unadjusted Cost Or Basis	Bus % Excl	Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Current Year Deduction
1	Building	010101	SL	39.00	17	253,415.			253,415.	32,218.		6,498.
2	Land	010101	L			59,063.			59,063.			0.
3	Carpet & Furnishings	010101	200DB	5.00	17	42,525.			42,525.	40,076.		2,449.
	* Total Rental Depreciation					355,003.			355,003.	72,294.		8,947.

028102
07-28-08

(D) - Asset disposed

* ITC, Section 179, Salvage, Bonus, Commercial Revitalization Deduction, GO Zone

8.1

Schedule K	Net Income (Loss) from Rental Real Estate	Statement	1

Description	Amount
Office Building, Columbia, SC	<15,814.>
Total to Schedule K, Line 2	<15,814.>

Schedule K	Interest Income	Statement	2

Description	U.S. Bonds	Other
Interest Income		1,366.
Total to Schedule K, Line 5		1,366.

Form 1065	Partners' Capital Account Summary	Statement	3

Partner Number	Beginning Capital	Capital Contributed	Schedule M-2 Lns 3, 4 & 7	With- drawals	Ending Capital
1	8,907.		<91.>		8,816.
2	136,333.		<5,461.>		130,872.
5	99,755.		<8,207.>		91,548.
6	63,073.		<689.>		62,384.
Total	308,068.		<14,448.>		293,620.

1634 Main, LP c/o Danville Business Advi

1489

Other Rental Expenses

Statement 4

Property: Office Building, Columbia, SC

Description

Amount

Water & Sewer	1,004.
Telephone	1,282.
Security	449.
Professional Fees	7,035.
Miscellaneous	166.
Total to Rental Schedule, Line 15	9,936.

ALTERNATIVE MINIMUM TAX DEPRECIATION REPORT

Asset No.	Description	Date Acquired	AMT Method	AMT Life	AMT Cost Or Basis	AMT Accumulated	Regular Depreciation	AMT Depreciation	AMT Adjustment
1	Building	010101	SL	40.00	253,415.	31,413.	6,498.	6,335.	163.
2	Land	010101			59,063.	0.	0.	0.	0.
3	Carpet & Furnishings	010101	150DB	5.00	42,525.	38,983.	2,449.	3,542.	<1,093.>
	Totals				355,003.	70,396.	8,947.	9,877.	<930.>
	MACRS AMT Adjustment							<930.>	

628104
05-01-08

Schedule K-1
(Form 1065)

2006

For calendar year 2006, or tax

Department of the Treasury
Internal Revenue Service

year beginning

ending

Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
c/o Danville Business Advisors, LLC
500 Taylor Street
Columbia, SC 29201

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number

H Partner's name, address, city, state, and ZIP code

SH5, LLC
1634 Main Street
Columbia, SC 29201I ☒ General partner or LLC ☐ Limited partner or other LLC
member-manager memberJ ☒ Domestic partner ☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	0.6300000%	0.6300000%
Loss	0.6300000%	0.6300000%
Capital	0.6300000%	0.6300000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	8,907.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	<91.
Withdrawals & distributions	\$	
Ending capital account	\$	8,816.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	0.	15 Credits
2 Net rental real estate income (loss)	<100.>	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	9.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends	A	<6.>
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		
10 Net section 1231 gain (loss)	A	20 Other Information
11 Other income (loss)		9.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A	0.

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2006

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01-02-07

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2006.05030 1634 Main, LP c/o Danville 3459 1

Schedule K-1
(Form 1065)

2006

For calendar year 2006, or tax

Department of the Treasury
Internal Revenue Service

year beginning

ending

Partner's Share of Income, Deductions,
Credits, etc.

▶ See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
c/o Danville Business Advisors, LLC
500 Taylor Street
Columbia, SC 29201

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number

H Partner's name, address, city, state, and ZIP code

Howard Hammer
1634 Main Street
Columbia, SC 29201I ☐ General partner or LLC
member-manager☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partner

K What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	37.8000000%	37.8000000%
Loss	37.8000000%	37.8000000%
Capital	37.8000000%	37.8000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	136,333.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	<5,461.
Withdrawals & distributions	\$(	
Ending capital account	\$	130,872.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	16 Credits
0.	
2 Net rental real estate income (loss)	16 Foreign transactions
<5,977.>	
3 Other net rental income (loss)	
4 Guaranteed payments	
5 Interest income	
516.	
6a Ordinary dividends	17 Alternative min tax (AMT) items
6b Qualified dividends	A <351.>
7 Royalties	18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	
9b Collectibles (28%) gain (loss)	19 Distributions
9c Unrecaptured sec 1250 gain	
10 Net section 1231 gain (loss)	A 516.
11 Other income (loss)	
12 Section 179 deduction	
13 Other deductions	
14 Self-employment earnings (loss)	
A 0.	

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2006

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01-02-07

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21 1

Schedule K-1
(Form 1065)

2006

For calendar year 2006, or tax

Department of the Treasury
Internal Revenue Service

year beginning:

ending:

Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
c/o Danville Business Advisors, LLC
500 Taylor Street
Columbia, SC 29201

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number

H Partner's name, address, city, state, and ZIP code

Shirley Hightower
1634 Main Street
Columbia, SC 29201I ☐ General partner or LLC
member-manager☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partner

K What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	56.8000000%	56.8000000%
Loss	56.8000000%	56.8000000%
Capital	56.8000000%	56.8000000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	99,755.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	<8,207.
Withdrawals & distributions	\$	
Ending capital account	\$	91,548.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	0.	16 Credits
2 Net rental real estate income (loss)	<8,983.>	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	776.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		A <529.>
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		
10 Net section 1231 gain (loss)	A	20 Other information
11 Other income (loss)		776.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A	0.

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2006

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22 1634 Main, LP c/o Danville 3459 5
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Schedule K-1
(Form 1065)

2006

For calendar year 2006, or tax

Department of the Treasury
Internal Revenue Serviceyear beginning _____
ending _____Partner's Share of Income, Deductions,
Credits, etc.

See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
[REDACTED]

B Partnership's name, address, city, state, and ZIP code

1634 Main, LP
c/o Danville Business Advisors, LLC
500 Taylor Street
Columbia, SC 29201

C IRS Center where partnership filed return

Cincinnati, OH

D ☐ Check if this is a publicly traded partnership (PTP)E ☐ Tax shelter registration number, if anyF ☐ Check if Form 8271 is attached

Part II Information About the Partner

G Partner's identifying number
[REDACTED]

H Partner's name, address, city, state, and ZIP code

David Hammer
1634 Main Street
Columbia, SC 29201I ☐ General partner or LLC

member-manager

☒ Limited partner or other LLC
memberJ ☒ Domestic partner☐ Foreign partnerK What type of entity is this partner? Individual

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	4.7700000%	4.7700000%
Loss	4.7700000%	4.7700000%
Capital	4.7700000%	4.7700000%

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

N Partner's capital account analysis:

Beginning capital account	\$	63,073.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	<689.
Withdrawals & distributions	\$	
Ending capital account	\$	62,384.

☒ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	0.	15 Credits
2 Net rental real estate income (loss)	<754.>	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	65.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		A <44.>
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		
8a Net long-term capital gain (loss)		
8b Collectibles (28%) gain (loss)		19 Distributions
9a Unrecaptured sec 1250 gain		
10 Net section 1231 gain (loss)	A 65.	20 Other information
11 Other income (loss)		
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

*See attached statement for additional information.

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Schedule K-1 (Form 1065) 2006

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01-02-07

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23 1634 Main, LP c/o Danville 3459 6
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1065

Form
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2007, or tax year beginning _____, and ending _____

OMB No. 1545-0099

2007

A Principal business activity Rental		Use the IRS label. Otherwise, print or type.	Name of partnership 1634 Main, LP		D Employer identification number [REDACTED]
B Principal product or service Real Estate			c/o Danville Business Advisors, LLC		
C Business code number 531120			Number, street, and room or suite no. If a P.O. box, see the instructions. 500 Taylor Street, Suite 401		
			City or town, state, and ZIP code Columbia, SC 29201		
E Date business started 01/01/2001					
F Total assets \$ 307,292.					
G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return					
H Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶					
I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ 4					
J Check if Schedule M-3 attached ☐					

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1 a Gross receipts or sales	1a	1b	1c
	b Less returns and allowances			
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Ordinary income (loss) from other partnerships			4
	5 Net farm profit (loss) (attach Schedule F (Form 4797, Part II, line 17))			5
6 Net gain (loss) from Form 4797, Part II, line 17			6	
7 Other income (loss) (attach schedule)			7	
8 Total income (loss). Combine lines 3 through 7			8	
Deductions (see instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)			9
	10 Guaranteed payments to partners			10
	11 Repairs and maintenance			11
	12 Bad debts			12
	13 Rent			13
	14 Taxes and licenses			14
	15 Interest			15
	16 a Depreciation (If required, attach Form 4562)	16a		16
	b Less depreciation reported on Schedule A and elsewhere on return	16b		16c
	17 Depletion (Do not deduct oil and gas depletion.)			17
	18 Retirement plans, etc.			18
	19 Employee benefit programs			19
	20 Other deductions (attach schedule)			20
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21
22 Ordinary business income (loss). Subtract line 21 from line 8			22	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member manager: _____ Date: _____

May the IRS discuss this return with the preparer shown below (see Instr.)? ☒ Yes ☐ No

Preparer's signature: _____ Date: _____ Check if self-employed ☐ Preparer's SSN or PTIN: _____

Firm's name (or yours if self-employed), address, and ZIP code: **Bernard N. Ackerman, CPA, P.A.**
864 Riverview Road
Rock Hill, SC 29730-2743

Phone no. **803-366-8371**

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2007)

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Form 1065 (2007) 1634 Main, LP c/o Danville Business Advi

Page 2

Schedule A Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	

9 a Check all methods used for valuing closing inventory:

(I) ☐ Cost as described in Regulations section 1.471-3

(II) ☐ Lower of cost or market as described in Regulations section 1.471-4

(III) ☐ Other (specify method used and attach explanation) ▶

- b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ▶ ☐
- c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐
- d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☐ No
- e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No
- If "Yes," attach explanation.

Schedule B Other Information

1	What type of entity is filing this return? Check the applicable box:	Yes	No
a	☐ Domestic general partnership		
b	☒ Domestic limited partnership		
c	☐ Domestic limited liability company		
d	☐ Domestic limited liability partnership		
e	☐ Foreign partnership		
f	☐ Other ▶		
2	Are any partners in this partnership also partnerships?		X
3	During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," see instructions for required attachment		X
4	Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
5	Does this partnership meet all three of the following requirements?		
a	The partnership's total receipts for the tax year were less than \$250,000;		
b	The partnership's total assets at the end of the tax year were less than \$600,000; and		
c	Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return	X	
	If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		
6	Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the instructions		X
7	Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8	Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
9	At any time during calendar year 2007, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		X
10	During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the instructions		X
11	Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership in the instructions		X
12	Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ SH5, LLC Identifying number of TMP ▶

Address of designated TMP ▶ 1634 Main Street

Columbia, SC 29201

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12-27-07

Form 1065 (2007)

16060325 758692 3459

2007.05030 1634 Main, LP c/o Danville 3459__1

Form 1065 (2007) 1634 Main, LP c/o Danville Business Advi

Page 3

Schedule K Partners' Distributive Share Items

		Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1 0.
	2 Net rental real estate income (loss) (attach Form 8825) See Statement 1	2 13,155.
	3a Other gross rental income (loss)	3a
	b Expenses from other rental activities (attach statement)	3b
	c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4 Guaranteed payments	4
	5 Interest income See Statement 2	5 517.
	6 Dividends: a Ordinary dividends	6a
	b Qualified dividends	6b
	7 Royalties	7
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8
9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
b Collectibles (28%) gain (loss)	9b	
c Unrecaptured section 1250 gain (attach statement)	9c	
10 Net section 1231 gain (loss) (attach Form 4797)	10	
11 Other income (loss) (see instructions) Type	11	
Deductions	12 Section 179 deduction (attach Form 4562)	12
	13a Contributions	13a
	b Investment interest expense	13b
	c Section 59(e)(2) expenditures: (1) Type (2) Amount	13c(2)
d Other deductions (see instructions) Type	13d	
Self-Employment	14a Net earnings (loss) from self-employment	14a 0.
	b Gross farming or fishing income	14b
	c Gross nonfarm income	14c
Credits	15a Low-income housing credit (section 42(j)(5))	15a
	b Low-income housing credit (other)	15b
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c
	d Other rental real estate credits (see instructions) Type	15d
	e Other rental credits (see instructions) Type	15e
	f Other credits (see instructions) Type	15f
Foreign Transactions	16a Name of country or U.S. possession	16a
	b Gross income from all sources	16b
	c Gross income sourced at partner level	16c
	Foreign gross income sourced at partnership level	
	d Passive category e General category f Other	16f
	Deductions allocated and apportioned at partner level	
	g Interest expense h Other	16h
	Deductions allocated and apportioned at partnership level to foreign source income	
	i Passive category j General category k Other	16k
	l Total foreign taxes (check one): Paid ☐ Accrued ☐	16l
m Reduction in taxes available for credit (attach statement)	16m	
n Other foreign tax information (attach statement)		
Alternative Minimum Tax (AMT) Items	17a Post-1986 depreciation adjustment	17a 163.
	b Adjusted gain or loss	17b
	c Depletion (other than oil and gas)	17c
	d Oil, gas, and geothermal properties - gross income	17d
	e Oil, gas, and geothermal properties - deductions	17e
	f Other AMT items (attach statement)	17f
Other Information	18a Tax-exempt interest income	18a
	b Other tax-exempt income	18b
	c Nondeductible expenses	18c
	19a Distributions of cash and marketable securities	19a
	b Distributions of other property	19b
	20a Investment income	20a 517.
b Investment expenses	20b	
c Other items and amounts (attach statement)		

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12-27-07

Form 1065 (2007)

16060325 758692 3459

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2007.05030 1634 Main, LP c/o Danville 3459__1

Form 1065 (2007) 1634 Main, LP c/o Danville Business Advi

Page 4

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i						1	13,672.
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other	
a General partners		86.					
b Limited partners			13,586.				

Schedule L Balance Sheets per Books

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		19,858.		40,028.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)				
7 Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets	295,940.		295,940.	
b Less accumulated depreciation	81,241.	214,699.	87,739.	208,201.
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)		59,063.		59,063.
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets (attach statement)				
14 Total assets		293,620.		307,292.
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)				
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)				
21 Partners' capital accounts		293,620.		307,292.
22 Total liabilities and capital		293,620.		307,292.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1 Net income (loss) per books	13,672.	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a Depreciation \$	
a Depreciation \$		8 Add lines 6 and 7	
b Travel and entertainment \$		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	13,672.
5 Add lines 1 through 4	13,672.		

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	293,620.	6 Distributions: a Cash	
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	13,672.	8 Add lines 6 and 7	
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	307,292.
5 Add lines 1 through 4	307,292.		

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12-27-07 JWA

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2007.05030 1634 Main, LP c/o Danville

Form 1065 (2007)

3459 1

Form **8825**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation

OMB No. 1545-1188

▶ See Instructions on page 2.
▶ Attach to Form 1065, Form 1065-B, or Form 1120S.

Name 1634 Main, LP

c/o Danville Business Advisors, LLC

Employer identification number

1 Show the kind and location of each property. See page 2 to list additional properties.

A Office Building, Columbia, SC

B Office Building, Columbia, SC

C

D

Rental Real Estate Income		Properties			
		A	B	C	D
2 Gross rents	2	112,909.			
Rental Real Estate Expenses					
3 Advertising	3				
4 Auto and travel	4				
5 Cleaning and maintenance	5	9,207.			
6 Commissions	6	9,295.			
7 Insurance	7	1,854.			
8 Legal and other professional fees	8				
9 Interest	9				
10 Repairs	10	19,696.			
11 Taxes	11	25,753.			
12 Utilities	12	18,053.			
13 Wages and salaries	13				
14 Depreciation (see Instructions)	14	6,498.			
15 Other (list) ▶ Stmt 4	15	9,398.			
16 Total expenses for each property. Add lines 3 through 15	16	99,754.			
17 Total gross rents. Add gross rents from line 2, columns A through H		17	112,909.		
18 Total expenses. Add total expenses from line 16, columns A through H		18	(99,754)		
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities		19			
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)		20a			
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed:					
(1) Name	(2) Employer identification number				
21 Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on:		21	13,155.		
• Form 1065 or 1120S: Schedule K, line 2, or • Form 1065-B: Part I, line 4					

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Form 8825 (12-2008)

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Page 2

1 Show the kind and location of each property.

E

F

G

H

Rental Real Estate Income		Properties			
		E	F	G	H
2 Gross rents	2				
Rental Real Estate Expenses					
3 Advertising	3				
4 Auto and travel	4				
5 Cleaning and maintenance	5				
6 Commissions	6				
7 Insurance	7				
8 Legal and other professional fees	8				
9 Interest	9				
10 Repairs	10				
11 Taxes	11				
12 Utilities	12				
13 Wages and salaries	13				
14 Depreciation (see instructions)	14				
15 Other (list) ▶	15				
16 Total expenses for each property. Add lines 3 through 15	16				

JWA

Form 8825 (12-2008)

Form

4562Department of the Treasury
Internal Revenue Service**Depreciation and Amortization**
(Including Information on Listed Property)

R-

OMB No. 1545-0172

2007Attachment
Sequence No. 67

▶ See separate instructions.

▶ Attach to your tax return.

Name(s) shown on return

1634 Main, LP

c/o Danville Business Advisors, LLC

Business or activity to which this form relates

Office Building,
Columbia, SC

Identifying number

Part I Election To Expense Certain Property Under Section 179. Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	125,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	500,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2006 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 9	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2008. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.)

14	Special allowance for qualified New York Liberty or Gulf Opportunity Zone property (other than listed property) and cellulosic biomass ethanol plant property placed in service during the tax year	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2007	17	6,498.

18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B - Assets Placed in Service During 2007 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property					
b	5-year property					
c	7-year property					
d	10-year property					
e	15-year property					
f	20-year property					
g	25-year property		25 yrs.		S/L	
h	Residential rental property	/	27.5 yrs.	MM	S/L	
		/	27.5 yrs.	MM	S/L	
i	Nonresidential real property	/	39 yrs.	MM	S/L	
		/		MM	S/L	

Section C - Assets Placed in Service During 2007 Tax Year Using the Alternative Depreciation System

20a	Class life				S/L	
b	12-year		12 yrs.		S/L	
c	40-year	/	40 yrs.	MM	S/L	

Part IV Summary (see instructions)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see Instr.	22	6,498.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

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Form 4562 (2007)

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