

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 14 2014

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

Judge 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

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

RETURN TO MOTION FOR COSTS OF RESPONDENT SHIRLEY HAMMER

Pursuant to Rule 222 and Rule 240, SCACR Appellants submit this Return to the Motion for Costs of Respondent Shirley Hammer, opposing the request for costs and requesting a reduction as further set out below.

Rule 222, SCACR allows costs to be assessed against the losing party.

Rule 222(b) provides:

The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the costs of printing the party's final brief(s) under Rule 210.

The rule also provides that in addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court. The Supreme Court set the amount of attorney's fees at \$1,000.00 by order dated July 24, 1997.

Respondent seeks \$1,000 each for Howard Hammer v. Shirley Hammer, Appellate No 2013-001652 and for 1634 Main, LP v. Shirley Hammer a/k/a Shirley Grace Hightower v. Howard Hammer, Appellate No. 2013-001634. The request for the second \$1,000 should be denied and the statement of costs reduced by \$1,000. The cases were consolidated for the appeal. The October 2, 2013, Order consolidating the cases states as follows:

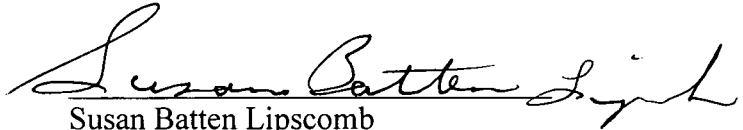
These are five separate appeals arising out of these two lower court cases. Appellate Case Nos. 2013-001634, 2013-001635, 2013-001707, 2013-002049 and 2013-002050. These appeals are hereby consolidated under Appellate Case No. 2013-001634, with the caption shown above.

The appeals were consolidated under one appellate case number. There was only one case on appeal, Appellate Case No. 2013-001634. Furthermore, the Supreme Court in its Memorandum Opinion began its introductory sentence as follows: "In this consolidated **case**....". (Emphasis added) The Supreme Court did not refer to the matter as separate cases or matters. It was one appeal, one case.

Furthermore, Respondent seeks recover for \$100.00 motion filing fees. Those costs are not recoverable under Rule 222, SCARCP and should be rejected.

In conclusion, the Respondent's Request for two \$1,000.00 attorneys' fee costs should be denied and the amount of costs reduced by \$1,000.00 and costs requested reduced by the amount of \$100.00 for motion filing fees.

Respectfully submitted,



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April 14, 2014

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge George James, Jr., Circuit Court Judge

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 HightowerDefendant and Third Party
Plaintiff/Respondent

v.

Howard Hammer.....Appellant/Additional
Defendant on Counterclaim/Appellant
Case No. 2010-CP-40-2889, Appellate No. 2013-001638

PROOF OF SERVICE

I, Susan Batten Lipscomb do hereby certify that on April 14, 2014, **RETURN TO MOTION FOR COSTS OF RESPONDENT SHIRLEY HAMMER** was served on counsel of record by placing a copy thereof in the U.S. Mail to the addresses as set forth below:

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Susan Batten Lipscomb