

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

7 21 29

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**RECEIVED**

Charles B. Simmons, Jr., Master in Equity

---

MAY 08 2014

Case No. 2013-CP-23-03075

**SC Court of Appeals**

Appellate Case No. 2014-000086

---

Sherman Financial Group, LLC.....Appellant,

vs.

FM FRI Greenville, LLC.....Respondent.

---

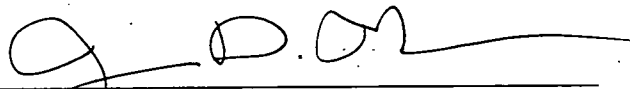
PETITION FOR REHEARING

---

In accordance with Rule 221(a), SCACR, Appellant Sherman Financial Group, LLC submits this Petition for Rehearing and respectfully requests the Court reconsider or clarify its April 23, 2014 Order dismissing the present Appeal (the "Order of Dismissal"). In the Order of Dismissal, the Court recounts Appellant's three primary reasons why it believes appeal is proper: "(1) the circuit court's ruling—that its prior orders are law of the case—is appealable because it deprives Appellant of its right to trial on the merits; (2) the appealed orders constitute a final contempt decree; and (3) the appealed orders violate due process and thus affect a substantial right under Section 14-3-330 of the South Carolina Code (1976 & Supp. 2013)." The Order of Dismissal then proceeds only to address and declare, without explanation, that no substantial right is affected.

Appellant must, of course, accept the Court's decision to dismiss its Appeal. The Court's rationale for dismissal, however, may have a lasting impact on the matter below. For instance, Judge Stilwell's Order dated August 23, 2013 explicitly states that "[the lower court] has made no rulings with respect to the merits of the case and leaves open for a trial on the merits all justiciable issues raised in the parties pleadings." ( A copy of Judge Stilwell's August 23, 2013 Order is attached hereto as Exhibit A for ease of reference). It is this Order and its immediate predecessor (also attached) that Respondent FM FRI Greenville, LLC asserts is law of the case.<sup>1</sup> If this Court remains of the opinion that no final or appealable interlocutory ruling has been rendered, then Appellant requests clarification that its right of appeal would be preserved as to all aspects of Judge Stilwell's rulings. After all, it seems implausible that an order explicitly devoid of any merits decision and expressly leaving open all justiciable controversies would be forever binding. Likewise, Appellant seeks clarification as to why the orders below charging Appellant with contempt are not immediately appealable.

Respectfully submitted,



---

Steven E. Farrar (#1960)  
William B. Swent (#13519)  
Jason D. Maertens (#73583)  
Smith Moore Leatherwood LLP  
2 West Washington Street, Suite 1100 (29601)  
Post Office Box 87  
Greenville, SC 29602

---

<sup>1</sup> The law-of-the-case doctrine allows that "an appealable order from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties and the same subject matter." Prof'l Bankers Corp. v. Floyd, 285 S.C. 607, 613, 331 S.E.2d 362, 365 (Ct. App. 1985). The law-of-the-case doctrine does not apply to statements of the court that do not constitute a binding adjudication on the merits. Weil v. Weil, 382 S.E.2d 471, 299 S.C. 84 (Ct. App. 1989).

(864) 751-7600  
(864) 751-7800 (fax)  
steve.farrar@smithmoorelaw.com  
william.swent@smithmoorelaw.com  
jason.maertens@smithmoorelaw.com

Attorneys for Appellant

May 6, 2014

# **Exhibit A**

812310  
(2)

FORM 4

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

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
B. WICKERSHAM

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP2303075

Sherman Financial Group  
LLC

FM FRI Greenville LLC

2013 AUG 23 P 2:40

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This matter comes before the Court pursuant to the Plaintiff's Motion to Reconsider the Court's Order of July 31, 2013. The arguments advanced in the Plaintiff's Motion to Reconsider suggest that the Plaintiff has convoluted and confused the meaning of the Court's previous Order. This Court has made no rulings with respect to the merits of the case and leaves open for a trial on the merits all justiciable issues raised in the parties' pleadings. The Court's Order is without prejudice to any party with respect to allocations of an unpaid allowance or a breach under the contract. Should the Plaintiff need clarification, it should submit a motion asking for specific clarification. The Plaintiff's Motion for Reconsideration is thereby DENIED.

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.


Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

*135*

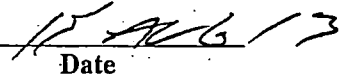
(2)

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

  
Circuit Court Judge

2158

Judge Code



Date

**For Clerk of Court Office Use Only**

8/23/13

8/23/13

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

Steven E. Farrar Smith Moore Leatherwood LLP P.O. Box  
87 Greenville, SC 29602

Cynthia Buck Brown Harper, Lambert & Brown, P.A. P.O.  
Box 908 Greenville, SC 29602

~~Calvin Theodore Vick Jr. Harper, Lambert & Brown, P.A.  
P.O. Box 908 Greenville, SC 29602~~

~~Raymond Patrick Smith Harper, Lambert & Brown, P.A.  
P.O. Box 908 Greenville, SC 29602~~

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of  
Court - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7/31/13

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP2303075

Sherman Financial Group LLC	FM FRI Greenville LLC
--------------------------------	-----------------------

2013 JUL 31 A B: 24

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This matter came before the Court pursuant to the Plaintiff's Motion to Deposit Rental Payments into the Court during the pendency of the instant action. Also before the Court were the Defendant's Motions for Ejectment and Modification of the Previously-Issued Restraining Order. The Honorable Gary Hill previously issued a Temporary Restraining Order on May 31, 2013, and subsequently entered a Preliminary Injunction Order on June 24, 2013.

The Plaintiff's Motion to Deposit the Proceeds into the Court is hereby DENIED. This Court recognizes that it is within its discretion to order that funds be deposited into the Court pursuant to Rule 67 of the South Carolina Rules of Civil Procedure and Section 27-37-155 of the South Carolina Code of Laws, 1976, as amended. However, that authority is discretionary, and this Court finds no evidence that either party is insolvent or that there is a likelihood that the monies will be hidden, absconded with or secreted away. The specific terms of the lease require payment, and these parties are obliged to operate under the same until its termination later this year. Having said that, the Plaintiff shall bring the rent current by making the full payment of both June and July rent to the Defendant in accordance with the terms of the lease. The \$152,137.76 shall remain on deposit with the Court as a bond incident to the Temporary Restraining Order.

The Defendant's Motions for Ejectment and Modification of the Court's Previous Order are also DENIED, with the specific qualification as to bond enumerated above. The issue of whether there has been a material breach under the contract is outstanding. That question is appropriately left to a trial on the merits, allowing for a full inspection by the triers of fact.

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

007 *[Signature]*

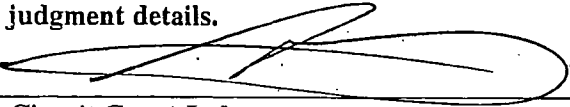
**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



2158

30 JUL 13

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on <sup>7.31.13</sup>, and a copy mailed first class or placed in the appropriate attorney's box on <sup>7.31.13</sup>, to attorneys of record or to parties (when appearing pro se) as follows:

Steven E. Farrar Smith Moore Leatherwood LLP P.O. Box  
87 Greenville, SC 29602

Cynthia Buck Brown Harper, Lambert & Brown, P.A. P.O.  
Box 908 Greenville, SC 29602  
Calvin Theodore Vick Jr. Harper, Lambert & Brown, P.A.  
P.O. Box 908 Greenville, SC 29602  
Raymond Patrick Smith Harper, Lambert & Brown, P.A.  
P.O. Box 908 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Paul B. Wickensimer*

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of  
Court - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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

---

---

---

---

---

---

---

---

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

---

Case No. 2013-CP-23-03075

Appellate Case No. 2014-000086

---

Sherman Financial Group, LLC.....Appellant,

vs.

FM FRI Greenville, LLC.....Respondent.

---

MEMORANDUM OF LAW IN SUPPORT OF  
APPELLANT'S PETITION FOR REHEARING

---

Appellant Sherman Financial Group, LLC ("Appellant/Tenant") submits this Petition for Rehearing, and respectfully requests this Court clarify its April 23, 2014 Order granting Respondent FM FRI Greenville, LLC's motion to dismiss. Rule 221(a), SCACR.

This appeal arises out of underlying *pre-trial* rulings ordering Appellant/Tenant to pay rent under the South Carolina Ejectment Statute, S.C. Code Ann. § 27-37-10, *et seq.*, or else suffer civil contempt. Appellant/Tenant appealed these rulings as final contempt decrees and, if not, an abuse of due process affecting a substantial right. Respondent FM FRI Greenville, LLC ("Respondent/Landlord") moved to dismiss this appeal on the grounds that the underlying rulings are not subject to immediate appeal. On April 23,

2014, this Court granted Respondent/Landlord's motion to dismiss (the "Order of Dismissal").

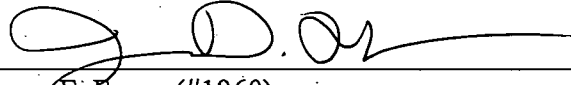
In the Order of Dismissal, this Court outlined Appellant/Tenant's arguments that appeal is proper as follows:

Appellant asserts its appeal is proper under section 14-3-330 of the South Carolina Code (1976 & Supp. 2013) for the following reasons: (1) the circuit court's ruling that its prior orders are the law of the case is appealable because it deprives Appellant of its right to a trial on the merits; (2) the appealed orders constitute a final contempt decree; and (3) the appealed orders violate due process and thus affect a substantial right under section 14-3-330(2).

This Court, however, did not address (1) whether the circuit court's rulings are law of the case depriving Appellant/Tenant of the right to trial on the merits, and (2) whether the appealable orders constitute a final contempt decree. This Court also do not specifically address why the appealed rulings do not affect a substantial right under Section 14-3-330(2) of the South Carolina Code of Laws.

Appellant/Tenant *believes* the Court ruled as follows: (1) that the circuit court orders are not law of the case and, therefore, Appellant/Tenant is not deprived of its right to trial on the merits; (2) that the appealed ordered *do not* constitute a final contempt decree and, therefore, Appellant/Tenant's appeal is not ripe (i.e., Appellant/Tenant must wait until the circuit court holds Appellant/Tenant in contempt before an appeal can be taken); and (3) that the appealed orders do not yet affect a substantial right because an appeal can later be taken (i.e., an appeal of a final contempt decree). If this is indeed the decision of this Court, Appellant/Tenant simply asks for an acknowledgment of the above. If not, Appellant/Tenant respectfully requests this Court clarify the grounds upon which the motion to dismiss was granted.

Respectfully submitted,



---

Steven E. Farrar (#1960)  
William B. Swent (#13519)  
Jason D. Maertens (#73583)  
Smith Moore Leatherwood LLP  
2 West Washington Street, Suite 1100 (29601)  
Post Office Box 87  
Greenville, SC 29602  
(864) 751-7600  
(864) 751-7800 (fax)  
steve.farrar@smithmoorelaw.com  
william.swent@smithmoorelaw.com  
jason.maertens@smithmoorelaw.com

Attorneys for Appellant

May 6, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

---

Case No. 2013-CP-23-03075

Appellate Case No. 2014-000086

---

Sherman Financial Group, L LC.....Appellant,

vs.

FM FRI Greenville, LLC.....Respondent.

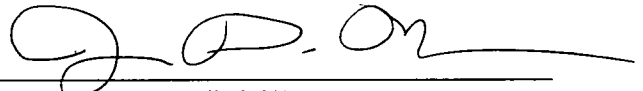
---

PROOF OF SERVICE

---

I certify that I have served the Petition for Rehearing with Appellant's Memorandum of Law in Support of Appellant's Petition for Rehearing on FM FRI Greenville, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on May 6, 2014, addressed to its attorney of record, Cynthia Buck Brown, Post Office Box 908, Greenville, South Carolina 29602.

May 6, 2014



---

Steven E. Farrar (#1960)  
William B. Swent (#13519)  
Jason D. Maertens (#73583)  
Smith Moore Leatherwood LLP  
300 East McBee Avenue, Suite 500 (29601)  
Post Office Box 87  
Greenville, SC 29602  
(864) 242-6440 / (864) 240-2498 (fax)  
steve.farrar@smithmoorelaw.com  
william.swent@smithmoorelaw.com  
jason.maertens@smithmoorelaw.com  
Attorneys for Plaintiff/Appellant

May 6, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211


Re: *Sherman Financial Group, LLC v. FM FRI Greenville, LLC*  
Court of Appeals Case No. 2014-000086

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find an original and seven (7) copies of Petition for Rehearing, Exhibit A, and Memorandum of Law in Support of Appellant's Petition for Rehearing paginated per Rule 240(c), SCACR. In addition, please find an original and one copy of a Proof of Service and a check in the amount of \$25.00 to cover the filing fee. Please file same and return the clocked copy to me by way of the enclosed, self-addressed, stamped envelope. Should anything further be necessary from me in order to accomplish the filing of these documents, please do not hesitate to contact me at your convenience.

Yours very truly,

SMITH MOORE LEATHERWOOD LLP

  
Jason D. Maertens

JDM/sps

Enclosures

cc: Ms. Cynthia Buck Brown (w/ enclosures)  
Mr. Calvin T. Vick, Jr. (w/ enclosures)  
Mr. R. Patrick Smith (w/ enclosures)

**RECEIVED**  
MAY 08 2014  
**SC Court of Appeals**