

RECEIVED

MAY 19 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
James F. Barber Jr., Supervising Circuit Court Judge
Case No. 2009-CP-40-05911
Case No. 2010-CP-40-02889

Appellate Case No. 2014-000965


1634 Main, LP,	Appellant
Vs.	
Shirley Hammer,	Respondent
Vs.	
Howard Hammer,	Appellant
and	
Howard Hammer	Appellant
Vs.	
Shirley Hammer,	Respondent.

MOTION TO DISMISS

Pursuant to Rule 207(a), SCACR, Respondent Shirley Hammer moves for an order of this court to dismiss the Appeals filed by Howard Hammer and 1634 Main Street, LP for failure to request transcripts of the proceedings or to notify the Court and the Respondent of the prior receipt of transcripts within 10 days of the filing of the Notice of Appeal, SCACR 207(a)(1).

1. Appellant Howard Hammer served his Notice of Appeal on (Thursday) April 24, 2014.
2. Appellant 1634 Main, LP served their Notice of Appeal on (Thursday) April 24, 2014.
3. Pursuant to Rule 207(a), appellants had ten (10) days to order the transcript of the trial court proceedings, including making financial arrangements to do so.
4. Both Appellants requested the transcripts on (Monday) May 12, 2014. Exhibit A. They did not copy the Court as required by Rule 207. He attempted to remedy this omission by a second letter, dated January 23, 2014 (received by counsel for Shirley on May 14, 2014). Exhibit B.
5. The transcript was required to have been ordered no later than Monday, May 5, 2014. Appellants were, therefore a week late in serving their transcript requests and, therefore, dismissal of their appeal is warranted.
6. Moreover, even when requesting the transcript (Exhibit A), appellants did not properly copy this Court.
7. This Appeal continues to be governed by this Court's order dated September 7, 2012 (Exhibit C). That order, and a subsequent orders issued by this Court on September 18, 2013 and November 12, 2013 in prior appeals (Exhibit D), make clear that these proceedings are expedited and no extensions are anticipated.

The order on appeal (January 21, 2014), awarded certain real and personal property to Shirley Hammer and ordered that the sale of real property occur. Shirley Hammer has purchasers ready, willing and able to purchase the real property. This appeal is brought merely for delay, and has begun, like many of Mr. Hammer's prior filings, with a violation of the rules. Therefore, based on the forgoing, Respondent respectfully requests that this Honorable Court dismiss the instant appeals.


Desa Ballard

Ballard & Watson Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
Bar # 000498

ATTORNEY FOR SHIRLEY HAMMER

May 19, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
James F. Barber Jr., Supervising Circuit Court Judge
Case No. 2009-CP-40-05911
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1634 Main, LP,	Appellant
Vs.	
Shirley Hammer,	Respondent
Vs.	
Howard Hammer,	Appellant
and	
Howard Hammer	Appellant
Vs.	
Shirley Hammer,	Respondent.

CERTIFICATE OF SERVICE

I, Mara Ballard, an employee of Ballard & Watson Attorneys at Law, do hereby certify that on May 19, 2014, I served a copy of the **Motion to Dismiss** in the above-captioned case on the following individuals by standard US Mail:

**Arthur K. Aiken Esquire
Aiken & Hightower
2231 Devine St.
Ste. 201
Columbia South Carolina 29205**

Howard Hammer
1609 Catawba Street
Columbia South Carolina 29205


Mara T. Ballard, EA, CFE, CMA

May 19, 2014
West Columbia, South Carolina

AIKEN & HIGHTOWER, P.A.

(EXHIBIT A)

RECEIVED
via US Mail 5.13.14

Attorneys at Law
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206

Arthur K. Aiken, Esq.

A. Bea Hightower, Esq.

May 12, 2014

Attn: Robin Reibold
Master-In-Equity
P.O. Box 192
Columbia, SC 29202

RE: Hammer v. Hammer JR#: 2010-CP-40-02889 and 2009-CP-40-05911
Hammer v. 1634 Main, LP. JR#: 2010-CP-40-02889

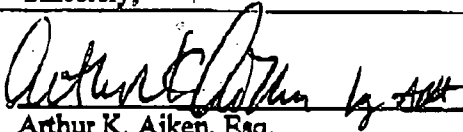
Dear Ms. Reibold:

I am writing on behalf of all appellants in above cases regarding appeals from supplemental proceedings. It is my understanding you have furnished a transcript of all hearings to one of appellants. If correct and it is agreeable for that to be used from which to submit record on appeal please advise so that time to begin to run for briefs can be calculated from date of receipt of confirmation from you.

If transcript you have already supplied is not complete or cannot be used, please consider this letter as request on behalf of all for transcript of all hearings in the matter. Please also consider this as agreement to pay.

Please advise in accordance with above request.

Sincerely,



Arthur K. Aiken, Esq.
Aiken and Hightower, P.A.
2231 Devine Street Suite 201
Columbia, SC 29205

CC: Desa Ballard, Esq.
Howard Hammer
Court Administration

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,
Plaintiff/Petitioner,

vs.

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

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

CERTIFICATE OF SERVICE

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,
Plaintiff/Petitioner,

vs.

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

vs.

Howard Hammer,

Additional-Defendant-on-Counterclaim/Petitioner

) **COURT OF COMMON PLEAS**
) **FIFTH JUDICIAL CIRCUIT**
) Case No.: 2010-CP-40-2889

CERTIFICATE OF SERVICE

I, Howard Hammer, certify that I have on this day, May 12, 2014 affected service of request for transcript on the following via United States Mail addressed: **Desa Ballard, Ballard Watson Weissenstein PO Box 6338 West Columbia, SC 29171-6338; South Carolina State Government Court Administration 1015 Sumter Street Columbia, SC 29201; and Robin Reibold PO Box 192 Columbia, SC 29202.**

By: _____

Howard Hammer

EXHIBIT B

AIKEN & HIGHTOWER, PA

Attorneys at Law

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

RECEIVED
via US Mail 5.14.14

Arthur K. Aiken

A. Bea Hightower

January 23, 2014

The Honorable Daniel B. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211


Re: Hammer v. Hammer-2010-CP-40-02889
1634 Main, LP v Hammer v Hammer-2009-CP-40-05911

Dear Mr. Shearouse:

Howard Hammer and I filed Notices of Appeal in the above matters on May 2, 2014. We sent the enclosed letter requesting the transcripts to the court reporter and others, but we neglected to send it to you. We apologize for this oversight.

We have what we believe to be complete transcripts of all of the relevant hearings, but we need confirmation of this from the court reporter. As soon as we have confirmation that we have complete transcripts, we will notify your office.

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

Enclosures as stated

cc: Desa Ballard (w/enclosures)

AIKEN & HIGHTOWER, P.A.

EXHIBIT B

Attorneys at Law
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206

Arthur K. Aiken, Esq.

A. Bea Hightower, Esq.

May 12, 2014

Attn: Robin Reibold
Master-In-Equity
P.O. Box 192
Columbia, SC 29202

RE: Hammer v. Hammer JR#: 2010-CP-40-02889 and 2009-CP-40-05911
Hammer v. 1634 Main, LP. JR#: 2010-CP-40-02889

Dear Ms. Reibold:

I am writing on behalf of all appellants in above cases regarding appeals from supplemental proceedings. It is my understanding you have furnished a transcript of all hearings to one of appellants. If correct and it is agreeable for that to be used from which to submit record on appeal please advise so that time to begin to run for briefs can be calculated from date of receipt of confirmation from you.

If transcript you have already supplied is not complete or cannot be used, please consider this letter as request on behalf of all for transcript of all hearings in the matter. Please also consider this as agreement to pay.

Please advise in accordance with above request.

Sincerely,



Arthur K. Aiken, Esq.
Aiken and Hightower, P.A.
2231 Devine Street Suite 201
Columbia, SC 29205

CC: Desa Ballard, Esq.
Howard Hammer
Court Administration

(EXHIBIT C)

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



EXHIBIT C

Appellate Case No. 2012-212288

ORDER

Petitioner has filed a document with this Court entitled "Petition and Complaint for Consolidation and Assignment for Full and Final Adjudication" in which she asks this Court to consolidate the above referenced matters for adjudication, assign them to one judge for adjudication in a single proceeding, subject to the jurisdiction of this Court, for a full and final resolution of all issues. While we cannot grant the relief petitioner seeks, we can take other measures in an effort to curtail Howard Hammer's abuse of the judicial system.

First, all appeals currently pending before the Court of Appeals involving petitioner, Mr. Hammer or 1634 Main LP shall be transferred to this Court. Rule 204(b), SCACR. After the appeals are transferred to this Court and their status assessed, instructions will be given to the parties for expediting the appeals.

Second, the Honorable James R. Barber, III, and the Honorable Dana A. Morris are hereby assigned to oversee any actions involving petitioner, Mr. Hammer or 1634 Main LP currently pending in the circuit court and family court respectively, and any subsequent actions involving the parties that may be filed, and shall expedite any such actions and provide status reports to the Chief Justice every thirty days from the date of this order until all litigation between the parties has been resolved.



C.J.

FOR THE COURT

Columbia, South Carolina

September 7, 2012

cc:

Robert T. Bockman

Arthur Kerr Aiken

Desa Allen Ballard

Pope D. Johnson, III

EXHIBIT C

Susan Batten Lipscomb
Timothy E. Madden
Howard Hammer, Esq.
Richard Giles Whiting
The Honorable Jenny Abbott Kitchings

(EXHIBIT D)

The Supreme Court of South Carolina

Howard Hammer, Appellant,

v.

Shirley Hammer, Respondent.

Appellate Case No. 2013-001652

1634 Main, L.P., Appellant,

v.

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

v.

Howard Hammer, Appellant.

Appellate Case No. 2013-001638

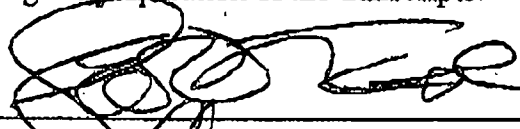
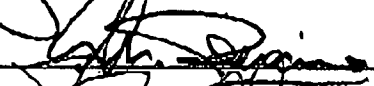

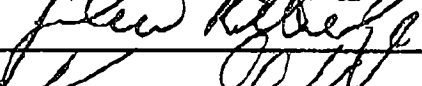
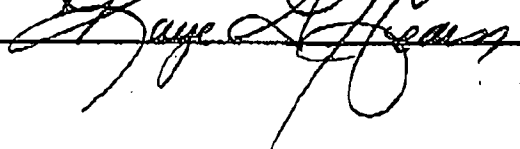
ORDER

Respondent moves for these appeals to be certified to this Court pursuant to Rule 204(b), consolidated and expedited. Appellants have not filed a return to the motion. However, appellant 1634 Main, L.P. has filed a motion to strike or dismiss the motion to certify, consolidate and expedite the appeals, or in the alternative, to file a return out of time to the motion to certify, consolidate and expedite the appeals. Respondent has filed a return in opposition to the motion to strike or dismiss.

The motion to strike or dismiss, or in the alternative, for permission to file a

EXHIBIT D

belated return, is denied. We grant the motion to certify the appeals to this Court. We also grant the motions to consolidate and expedite the appeals. However, before setting an expedited briefing schedule, we find it necessary to first remand the 1634 Main matter to the circuit court, per the motion to remand pending in the Court of Appeals, for a ruling on the pending Rule 59(e), SCRPC, motion. The appeals will be held in abeyance pending a ruling by the circuit court on the Rule 59(e) motion. The circuit court shall issue a written order on the motion by 5:00 p.m. on Friday, September 20, 2013. Any notice of appeal from the circuit court's order must be served and filed by 5:00 on Monday, September 23, 2013. Thereafter, this Court will issue an order setting forth an expedited briefing schedule, and if necessary, expediting the preparation of the transcripts.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

September 18, 2013

cc:
 The Honorable Jenny Abbott Kitchings
 Arthur Kerr Aiken
 Susan Batten Lipscomb
 Stephanie Nichole Weissenstein
 Desa Allen Ballard

EXHIBIT D

The Supreme Court of South Carolina

Howard Hammer, Appellant,

v.

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

And

1634 Main, L.P., Appellant,

v.

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

v.

Howard Hammer, Appellant.

Appellate Case No. 2013-001634

ORDER

The Motion for an Extension of Time to File the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal is denied. Pursuant to this Court's order dated October 15, 2013, these documents must be served and filed on or before November 14, 2013.

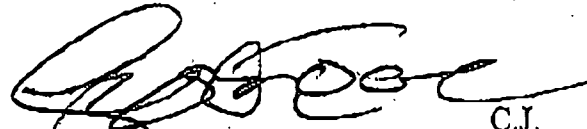

C.J.
FOR THE COURT

EXHIBIT D

Columbia, South Carolina

November 12, 2013

cc:

Mr. Howard Hammer
Susan Batten Lipscomb, Esquire
Desa Allen Ballard, Esquire
Stephanie Nichole Weissenstein, Esquire
Arthur Kerr Aiken, Esquire

(TX)								File
Date	Time	Destination	Mode	TXtime	Page	Result	User Name	No.
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Apr. 29.	3:25PM	FBMC CLAIMS L210	G3TESM	3:43"	P. 3	OK		6695
May. 8.	2:13PM	FBMC CLAIMS L202	G3TESM	2:35"	P. 6	OK		6732
May. 13.	10:29AM	99570762	G3TESM	0:16"	P. 2	OK		6739
	10:30AM	FBMC CLAIMS L209	G3TESM	6:32"	P. 15	OK		6740

(RX)								File
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	9:03AM		G3RES	5:42"	P. 31	OK		6629
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	4:47PM	8432252208	G3RES	0:58"	P. 4	OK		6673
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Apr. 26.	5:44AM	8034997079	G3RED	1:39"	P. 3	OK		6689
Apr. 28.	1:31PM	8437226131	G3RES	2:05"	P. 6	E		6691
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	5:19PM		G3RES	0:40"	P. 5	OK		6701
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	5:50PM	FF240-IP	G3RED	1:04"	P. 2	OK		6705
May. 2.	10:45AM	PETERMURDAUGHPARKER	G3RES	0:24"	P. 2	OK		6712
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	3:58PM	18435791369	G3RED	2:22"	P. 10	OK		6716
May. 5.	12:37AM	8034997079	G3RED	3:19"	P. 5	OK		6718
May. 6.	11:41AM		G3RES	0:27"	P. 2	OK		6723
	12:14PM		G3RED	0:26"	P. 2	OK		6725
	7:59PM		G3RES	0:40"	P. 2	OK		6727
May. 7.	7:12AM		G3RES	0:22"	P. 1	OK		6729
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May. 15.	9:31AM		G3RES	0:23"	P. 1	OK		6748
	1:50PM		G3RES	0:34"	P. 1	OK		6751
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May. 18.	1:57PM	8435381729	G3RED	1:18"	P. 2	OK		6764
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May. 19.	10:18AM		G3RES	0:23"	P. 2	OK		6768
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TX Count 002614

RX Count 009313

: Batch
M : Memory
S : Standard
R : Reduction
N : RX Notice
F : Folder
C : Confidential
L : Send later
D : Delay
H : Stored/D. Server
A : RX Notice

\$: Transfer
@ : Forwarding
F : Fine
* : LAN-Fax
M : Mail

P : SEP Code
E : ECM
U : Super Fine
+ : Delivery
<-> : IP-FAX