

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.: Case No.: 2009-CP-40-05911
Case No.: 2010-CP-40-02889

RECEIVED

AUG - 4 2014

S.C. Supreme Court

Appellate Case No. 2014-000965

1634 Main, L.P.

Appellant

v.

Shirley Hammer,

Respondent

v.

Howard Hammer,

Appellant,

and

Howard Hammer

Appellant,

v.

Shirley Hammer,

Respondent

VERIFIED PETITION FOR WRIT OF SUPERSEDEAS

Now come your Petitioners, Appellants 1634 Main, L.P. and Howard Hammer, who present this verified petition for a writ of supersedeas as follows:

1. On March 5, 2014, Petitioners filed a petition for Writ of Supersedeas in the Court of Common Pleas for Richland County, and

simultaneously delivered a copy to the lower court, the Honorable Joseph M. Strickland, Master-in-Equity, presiding judge. The referenced Petition is attached as Exhibit A. The lower court has not ruled on this Petition, nor has it scheduled a hearing on it.

2. On May 23, 2014, Petitioners filed an Amended Petition for Writ of Supersedeas in the Court of Common Pleas for Richland County, and simultaneously delivered a copy to the lower court, the Honorable Joseph M. Strickland, Master-in-Equity, presiding judge. The referenced Amended Petition is attached as Exhibit B. By letter dated June 12, 2014, Petitioners requested Judge Strickland to set a hearing on the Amended Petition. See Exhibit C, attached hereto. The lower court has not ruled on the Amended Petition, nor has it scheduled a hearing on it.

3. A petition for writ of supersedeas should first be made to the lower court, but upon delay in ruling, a petition may be submitted to the appropriate appellate court or an individual justice for a ruling. Rule 241(d)(1) and (2), SCACR.

4. Attached hereto as Exhibit D is a certified copy of the order of the lower court.

5. The factual background necessary for an understanding of the Amended Petition, the grounds for the Amended Petition, and the legal argument are set forth in The Amended Petition, Exhibit B. *Id.* In addition, a more detailed factual statement follows.

Statement of Facts

The matters before this court arise out of judgments secured by Respondent Shirley Hammer against Appellants/Petitioners 1634 Main, L.P. and Howard Hammer in case numbers 2009-CP-40-05911 and 2010-CP-40-02889.¹ While these cases were on appeal, Respondent undertook supplementary proceedings of the judgment debtors, the Petitioners. According to Respondent, all of the judgments totaled \$335,168.76 as of January 9, 2014, which was the date of the last supplementary proceedings' hearing. After the January 9 hearing, the lower court issued an order filed January 21, 2014 which transferred real property located at 1634 Main Street in Columbia and which transferred partnership and member personal property interests in 1634 Main, L.P. and SH5, LLC to Respondent in satisfaction of the judgments. The lower court also awarded sanctions of \$55,385.70 in favor of respondent. As a result of the January 21 Order, and at that time, Petitioners were adjudged to owe Respondent about \$391,000.00

In supplementary proceedings, Respondent argued that the real property was worth up to \$1,000,000.00, and Respondent has represented to the lower court that the real property has since appraised for \$1,450,000.00. Thus, Petitioners had significant equity in the real property over and above the judgments owed Respondent.

¹ Perhaps not necessary for a decision on this petition, it should be noted that one of the issues on appeal involves whether all or just some of the judgments arising from these cases were referred to the Master-in-Equity for supplementary proceedings.

Petitioners have appealed the January 21 Order to this Court and the appeal is in the briefing process. After entry of the January 21 Order, this Court affirmed the judgments by an unpublished opinion filed March 19, 2014. 2014-MO-007. Petitioners accepted the unpublished decision and the judgments became final. The remittitur was filed at the Circuit Court April 7, 2014.

Even though the judgments were still on appeal (as is now the January 21 Order), the January 21 Order required Respondent to sell the real property, but placed no limits on how the property was to be managed or expenses controlled. Respondent is required to account to the lower court for the proceeds of sale, but Respondent has asserted that the expenses incurred by Respondent in owning the property and selling it will be paid from Petitioners' equity in the property. Respondent has no incentive to minimize these expenses and has even asserted that "The premium for the appeal bond comes out of the sales proceeds, so it doesn't really matter to Shirley how much the premium is." Ballard email dated July 11, 2014.²

Once the judgments became final in April 2014, Petitioners requested an accounting of the amounts Respondent contended were owed under the judgments and the January 21 Order as Petitioner Hammer's brother had agreed

² Aside from the cavalier attitude of willingly compromising Petitioners' equity in the property, this expense is not taxable to Mr. Hammer as Respondent elected to proceed with enforcement of the judgments while the cases were on appeal, and she elected to have the property transferred to her. Further, there is no provision for the recovery of such a cost under Rule 54(e), SCRCP, Rule 221(b), SCACR (a bond needed for sale of the property is actually opposite one to "preserve rights pending appeal" as set forth in the rule), or S.C. Code Ann. §15-37-10 et. seq.

to lend money to Mr. Hammer to redeem the property.³ An unsubstantiated statement of expenses totaling \$439,619.91 was provided by Respondent's counsel, which included the judgments and sanctions. Although Petitioners could not verify the accuracy of the statement and did not agree with certain items in the statement, on May 2, 2014 they agreed to pay the full amount demanded by Respondent to make her whole if the January 21 Order was vacated and the property ownership restored to the appropriate parties as it existed before the January 21 Order.

Respondent refused to accept the payment which would end the cases on appeal. Respondent's refusal is linked to demanding additional non-monetary concessions which are not part of the underlying judgments, and are not part of the instant appeal and January 21 Order. Specifically, before accepting full payment based on her own accounting, Respondent required a full and general release by Petitioner Hammer ("We will require a complete release from Howard in favor of Shirley and her agents, from the beginning of time through the date of execution." Email from Respondent's counsel dated May 14, 2014.). Most recently, if such a release was not given by Petitioners, Respondent demanded the payment of an additional \$100,000.00. Exhibit F. Not only has respondent issued demands to Petitioner Howard Hammer for conditions above simply making her whole, she even demanded an indemnification agreement from his

³ Mr. Hammer's brother actually tried to pay the judgments beginning in August 2013, but never could get a response or proposal from Respondent's counsel. See Exhibit E.

brother, Alvin, if the property was conveyed to Alvin. Ballard email dated May 2, 2014.

Various proposals of full payment to Respondent have been made by the Petitioners since May 2, 2014, but the amounts demanded continued to increase while the alleged sale price of the property dropped from \$1.475 million to \$1.195 million. As to the price dropping, compare Ballard email dated May 14, 2014 ("I will send you a breakdown of the numbers, but the jump is a \$73K sales commission to Marion Turbeville, who has brought two ready, willing and able buyers to the table already for purchase at the appraised price (in addition to Alvin, who made an informal offer yesterday) at \$1,475,000.00.") with Ballard emails in mid-July alleging a sale price of \$1.195 million (but refusing to share a copy of the contract of sale). As to increases in expenses, from May 2 until May 23, 2014, the unsubstantiated statement of expenses, excluding a real estate broker's commission, went from \$439,619.91 to \$461,120.58.⁴

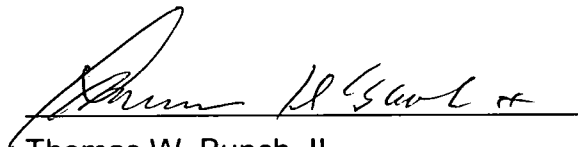
By July 15, 2014, despite several promises of payment to make her whole, it became evident that Respondent would continue to demand concessions to which she was not entitled. Now Respondent has asked this Court to expedite this appeal so that she can sell the property. She has stated that she must sell the property according to the terms of the January 21 Order. In reality, Respondent is simply willing to state that she must move forward with the sale of the property, but if she can extract additional concessions or money

⁴ Petitioners have notified Respondent that they will honor the real estate broker's commission if he presents a buyer and the sale closes. See Exhibit F.

from Petitioners, she is agreeable to vacating the January 21 Order and returning the conveyed property to Petitioners.

Prayer

Wherefore, as stated in the Amended Petition, Petitioners pray that this Court grant the Amended Petition by (1) allowing Petitioners to fully pay the amounts properly owed to Respondent, declaring void the Master's deed dated January 22, 2014, to Respondent, and any transfers made thereafter, and by vacating the lower court's January 21 Order; or (2) permitting the sale of the property at the alleged list price of \$1.475 million. As has become obvious, Respondent inaccurately represented that she had two ready, willing and able buyers of the property at the appraised value of \$1.475 million; therefore, in order to avoid a double recovery by Respondent the proper relief is to permit payment to Respondent of the sum of \$461,120.58 and vacate the January 21 Order with direction that the Master's deed and all subsequent transfers be cancelled.



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Arthur K. Aiken
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art@aikenandhightower.com

August 4, 2014

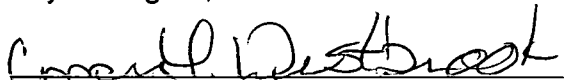
ATTORNEYS FOR APPELLANTS

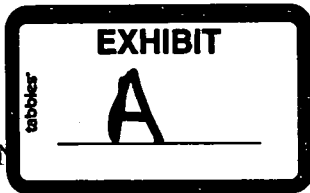
PERSONALLY APPEARED Howard Hammer, who, being duly sworn, deposes and says that he has read the foregoing Petition for Writ of Supersedeas, and that the facts stated therein are accurate and true.



By: Howard Hammer, individually and on behalf of 1634 Main, LP

SWORN TO BEFORE ME this _____ day of August, 2014.


Notary Public for South Carolina
My Commission Expires: 6-1-21



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Howard Hammer)
 Plaintiff/Petitioner)
)
 v.)
)
 Shirley Hammer a/k/a Shirley Grace Hightower,)
 Defendant/ Respondent)

IN THE COURT OF COMMON

CASE NO.
 2009-CP-40-05911

MOTION AND ORDER INFORMATION FORM
 AND COVER SHEET

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 1634 Main, L.P.,)
 Plaintiff/Petitioner)
)
 v.)
)
 Shirley Hammer a/k/a Shirley Grace Hightower,)
 Defendant/ Respondent)
)
 v.)
)
 Howard Hammer,)
)
 Additional Defendant on Counterclaim/Petitioner)

IN THE COURT OF COMMON PLEAS

CASE NO.
 2010-CP-40-2889

RICHLAND COUNTY
 FILED
 2014 MAR -5 PM 4:38
 JEANETTE W. ...
 CLERK, C.S.

Plaintiff's Attorney:
 Arthur K. Aiken
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 Columbia, SC 29205
 Phone: 803-799-5205
 Fax: 803-799-5206
 Email: art@aikenandhightower.com

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Defendant's Attorney:
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 Stephanie Weissenstein
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 Post Office Box 6338
 West Columbia, SC 29171
 phone: (803) 796-9299 fax: (803) 796-1066
 e-mail: stephanie@desaballard.com other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion Type

- Written motion attached
- Form Motion/Order --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Art Aiken by [Signature]
 Signature of Attorney for Plaintiff / Defendant

March 5, 2014
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$25.00

- EXEMPT: (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

- MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

**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**
) **FIFTH JUDICIAL CIRCUIT**
) Case No.: 2009-CP-40-05911
)

) **PETITION OF HOWARD**
) **HAMMER FOR A WRIT OF**
) **SUPERSEDEAS WITH ANNEXED**
) **MEMORANDUM IN SUPPORT**
)

**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
)

) **PETITION OF HOWARD**
) **HAMMER AND 1634 MAIN L.P.**
) **FOR A WRIT OF SUPERSEDEAS**
) **WITH ANNEXED**
) **MEMORANDUM IN SUPPORT**
)

2010 MAR -5 PM 1:28
JAMES H. ...
RICHLAND COUNTY
FILED

TO: ALL OTHER COUNSEL OF RECORD

PETITION

Your Petitioners, Plaintiff/Third-Party Defendant, Howard Hammer (HH) and the Plaintiff, 1634 Main, LP (1634 Main) (collectively petitioning parties), hereby petition, in accordance with Rule 62 SCRPC, for a writ of supersedeas as follows:

PARTIES

1. Petitioner, Howard Hammer (HH), is a judgment debtor to Respondent, Shirley Hammer (SH), in both of the cases captioned above.

2. Petitioner, 1634 Main, LP (1634 Main), is a judgment debtor to Respondent, Shirley Hammer (SH), in case number 2010-CP-40-2889.

3. Respondent, SH, is a judgment creditor of HH in both of the cases captioned above, and she is a judgment creditor of 1634 Main in case number 2010-CP-40-2889

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this Petition under Rule 62 SCRPC and Rule 241 SCACR, and this Court will have personal jurisdiction over the Respondent on proper service of this Petition.

5. Venue is proper in this Court.

FACTUAL ALLEGATIONS

6. The Judgments in the above captioned cases are on appeal, and those appeals are set for oral argument before the South Carolina Supreme Court on March 6, 2014.

7. This Court presided over supplementary proceedings in the above-captioned cases.

8. In the supplementary proceedings, this Court entered an Order on January 21, 2014, in which this Court, inter alia, ordered transfer of real property known as 1634 Main Street (building) from HH and 1634 Main to SH and transfer of all of HH's interest in 1634 Main to SH.

9. HH and 1634 Main are informed and believes that on January 22, 2014, this Court executed and delivered to SH a Deed making the transfers alleged in Paragraph 8 above.

10. HH and 1634 Main are informed and believe that this Court's January 22, 2014, Deed (Deed) is void under Rule 62(a) SCRPC because it was executed and delivered within ten (10) days of this Court's Order entered on January 21, 2014.

11. Since the transfer by Deed alleged in Paragraph 9 above, SH and her confederates precipitously changed the building's locks, refused to give HH keys to the new locks, and have inappropriately deprived HH of access to the building except during unreasonably abbreviated intervals.

12. In addition to their refusal to give HH normal access to his offices, files, and belongings within the building, SH and her confederates gave HH a deadline of Thursday, February 14, 2014, to remove his possessions, including many years of stored files, personal property, and office furniture.

13. On February 3, 2014, HH and 1634 Main filed Motions to Alter or Amend Judgment under Rule 59(e) addressing the Court's Order dated January 21, 2014.

14. The granting of this Petition is necessary to prevent undue hardship, a multiplicity of litigation, and irreparable damage should the South Carolina Supreme Court reverse the Judgments that are SH's only claim to the relief granted in this Court's Order of January 21, 2014.

15. A more detailed description of the grounds for this Petition is set forth in the Memorandum annexed to this Petition.

WHEREFORE, HH and 1634 Main pray that this Court grant this Petition, declare void the Master's deed dated January 21, 2014, to SH and the deed from SH to HighTower LLC dated January 22, 2014, and stay all further collection activities in these cases until this Court has ruled on the pending 59(e) motions addressed to this Court and the Supreme Court has adjudicated the aforesaid pending appeal of the underlying judgments.

MEMORANDUM IN SUPPORT

ARGUMENT

I. INTRODUCTION

The above are actions in which SH sought supplementary proceedings to enforce Judgments in her favor and against HH and 1634 Main. The Judgments that are the subjects of these actions are on appeal the South Carolina Supreme Court. This Court heard these matters on May 30, 2013, June 4, 2013, August 12, 2013 and January 9, 2014 (collectively hearings). Notwithstanding the explicit terms of Judge Manning's Order of Reference providing for, *inter alia*, this Court's power to "rule upon motions ... *to sell ... property of the judgment debtor in satisfaction of the ... debt*," the subject Order, entered on January 21, 2014, provides for an *outright transfer* by deed of all right, title, and interest of HH and 1634 Main in 1634 Main, LP, in the real property commonly known as 1634 Main Street in Columbia, South Carolina, and SH5, LLC (transferred property).¹ On January 22, 2014, this Court executed and delivered a Master's Deed making these transfers. These transfers by-passed the statutory safeguards that should have been afforded to not only the judgment debtor but also those other entities who had an ownership interest in or lien upon said property. Those parties would and should have been given public notice and opportunity to protect their interests in the due course of a statutorily required public sale.

Furthermore, the Court erroneously applied the provisions of S.C. Code Ann. § 15-39-10(c) to the instant case. That section deals with "the delivery of the *possession* of real or personal property," as in the case of property unlawfully withheld from the rightful owner (thus the additional provision therein for "damages for withholding property"). In this case the correct

¹ Counsel for SH represented to this Court more than once that the property transferred had a value of between \$900,000 and \$1,000,000. The total of the judgments is approximately only one-third of that value.

procedure provided by the section is execution "(a) against the property of the judgment debtor." As illustrated elsewhere herein, such execution has rigid guidelines which must be strictly adhered to through public sale with all the safeguards inherent therein.

II. THE PURPOSES OF A WRIT OF SUPERSEDEAS.

The writ of supersedeas serves one main purpose and three subsidiary purposes. First, the main purpose of the writ is "to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal." Graham v. Graham, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (quoting, 4A C.J.S. Appeal & Error § 662 at 494-95 [1957]). Second, the preservation of the status quo serves the subsidiary purpose of preserving to the appellant "the fruits of a meritorious appeal where they might otherwise be lost to him." Graham, 301 S.C. at 130, 390 S.E.2d at 470 (quoting, 4A C.J.S. Appeal & Error § 662 at 494-95 [1957]). Third, the writ may be granted "to preserve the jurisdiction of the appeal." Rule 241(c)(2) SCACR. Fourth, the writ may be granted "to prevent a contested issue from becoming moot." Rule 241(c)(2) SCACR.

III. THE PROPER STATUS QUO TO BE PRESERVED BY SUPERSEDEAS IS THE POSITION OF THE PARTIES PRIOR TO THIS COURT'S EXECUTION AND DELIVERY OF THE JANUARY 22, 2014, DEED BECAUSE THAT DEED IS VOID.

"No execution shall issue on a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry." Rule 62(a) SCRCP. By signing the January 22, 2014 Deed, this Court undertook proceedings for enforcement of the January 21, 2014, Order. The January 22, 2014, Deed is void because it was executed and delivered within ten (10) days of the entry of the January 21, 2014 Order. The proper status quo to be preserved by supersedeas is the position of the parties before the execution and delivery of the January 22, 2014, Deed.

IV. SUPERSEDEAS IS NECESSARY TO PRESERVE TO THE PETITIONERS THE FRUITS OF A MERITORIOUS APPEAL.

“The Supreme Court ... may reverse the judgment, decree, or order appealed from..., and the judgment shall be remitted to the court below to be enforced according to law.” S.C. Code Ann. § 18-9-270. “When the judgment is reversed or modified the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.” S.C. Code Ann. § 18-1-140. Reversal of the Judgments in these cases will require restoration to HH and 1634 Main of all property lost by the erroneous Judgments. In other words, all property lost by HH and 1634 Main as a result of enforcement of the Judgments will have to be restored to them if the Judgments are reversed.

The Order requires the execution and delivery to SH of a deed granting her fee simple absolute title in the building. The day after the Order was entered, this Court executed and delivered the fee simple absolute Deed to SH. Of course the Deed gives SH title sufficient to support transfer of the building in fee simple absolute to another. Transfer to a third party makes recovery of title to the building by HH on a successful appeal problematic. This risk to HH’s right to recover title to the building is not just theoretical. SH in fact immediately formed a limited liability corporation and in fact immediately (two days after the deed was signed, one day after its recordation on January 22, 2014, and well before 10 days had expired following the issuance of the Order) transferred title to the building to that corporation, thereby immediately violating the only protection ostensibly conceded to HH in the Order, specifically, that SH “immediately . . . market the assets transferred to her in this order in a commercially-reasonable manner,” not re-convey the assets to another entity of her own creation. By transferring the assets directly to SH the Court violated the mandates of S.C. Code Ann. §§ 15-39-310, 15-39-

410, and 15-39-610, which provide for the "*application of the property ... towards the satisfaction of the judgment as are provided upon the return of an execution.*" (Emphasis added.)

The Order also authorizes SH to sell the building. As apparent owner in fee simple absolute of the building according to the Deed, SH has the apparent right to sell the building. The Order further provides that SH has no duties to HH with respect to any sale of the building. The Order incorporates no provisions for protecting HH's rights should he win the appeal. S.C. Code Ann. § 18-9-130 gives judgment debtors specific protections against sale of their property pending appeal. According to that code section, "[a] plaintiff [judgment creditor] may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant [judgment debtor], with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant [judgment debtor] may sustain by reason of the sale in case the judgment is reversed." S.C. Code Ann. § 18-9-130 (brackets added). In violation of S.C. Code Ann. § 18-9-130, the Order sets no bond condition on SH's right to sell the building, so a supersedeas is essential to protect HH's interest in the building in case the Judgments are reversed. Otherwise, there is a grave risk that HH will be deprived of the fruits of a successful appeal. This risk is heightened and exacerbated here by the fact that the judgment debtor's financial stake in proceeds of any sale of the real estate is facially far greater than that of the judgment creditor based on its uncontested valuation in open court.

V. SUPERSEDEAS IS NECESSARY TO PREVENT THE CONTESTED ISSUES IN THE APPEAL FROM BECOMING MOOT.

The issues in the appeal in this case contest the right of SH to any judgments against HH and 1634 Main. Indeed, the arguments raised by HH and 1634 Main, if successful, will require an outright reversal of the Judgments in this case. For the reasons more fully discussed above,

the collection activity in these cases threatens to deprive HH and 1634 of their right to recover the building in case their appeal is successful. If HH and 1634 Main are permanently deprived of this right, all issues in the appeal become moot because, as a practical matter, there will be nothing of real substance to argue about. Furthermore, even if SH were to carry out to the letter the directives of this Court's Order (which have already been breached by her improper transfer of the assets to another entity), there is the additional risk that the assets could never be recovered if there were to be yet another conveyance to an innocent purchaser for value. Thus, absent the statutorily required bond by SH and the statutorily required safeguards of a judicial sale in due course by the sheriff or other officer to the highest bidder, the protections afforded by law to the judgment debtor pending a decision by the Supreme Court have been stripped bare.

CONCLUSION

For the reasons set forth above, it is respectfully requested that this Court stay its Order of January 21, 2014; recall the Master's Deed dated January 21, 2014, recorded on January 22, 2014; and grant HH and 1634 Main a writ of supersedeas staying all further collection activities on the Judgments pending the disposition of the appeal.

Respectfully submitted,

(SIGNATURES ON THE FOLLOWING PAGE)

AIKEN & HIGHTOWER, PA

By: 

Arthur K. Aiken

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Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR THE PETITIONERS

Columbia, South Carolina
March 4, 2014

ROBINSON MCFADDEN & MOORE, PC

By: 

Thomas w. Bunch, II

PO Box 944

Columbia, SC 29202

Phone: 803-779-8900

Email: tbunch@robinsonlaw.com

ATTORNEYS FOR PETITIONERS

Columbia, South Carolina
March 4, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Howard Hammer)

Plaintiff/Petitioner)

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

Defendant/ Respondent)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

1634 Main, L.P.,)

Plaintiff/Petitioner)

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

Defendant/ Respondent)

v.)

Howard Hammer,)

Additional Defendant on)
Counterclaim/Petitioner)

IN THE COURT OF COMMON PLEAS

Case No.: 2009-CP-40-05911

CERTIFICATE OF SERVICE

NON-APPROPRIATE
FILED
2014 MAR -5 PM 4:38
JENNIFER J. COX
PARALEGAL

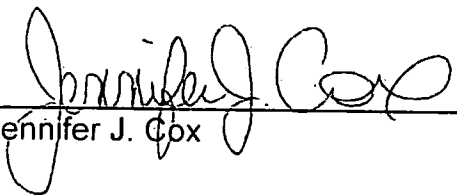
Case No.: 2010-CP-40-2889

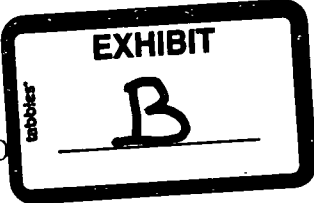
CERTIFICATE OF SERVICE

This is to certify that I, Jennifer J. Cox, a Paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Petition of Howard Hammer for a Writ of Supersedeas with Annexed Memorandum in Support and the Petition of Howard Hammer and 1634 Main, LP for a Writ of Supersedeas with Annexed Memorandum in Support** in the foregoing matter by placing a copy of same via hand delivery as follows:

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

Dated at Columbia, South Carolina this 5th day of March, 2014.


Jennifer J. Cox



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Howard Hammer)
 Plaintiff/Petitioner)
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 v.)
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 Shirley Hammer a/k/a Shirley Grace Hightower,)
 Defendant/ Respondent)

IN THE COURT OF COMMON PLEAS

CASE NO.
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MOTION AND ORDER INFORMATION FORM
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IN THE COURT OF COMMON PLEAS

CASE NO.
 2010-CP-40-2889

DEARLENE W. JOHNSON
 C.S.P. & C.S.
 2014 MAY 23 PM 4:11
 RICHLAND COUNTY
 FILED

Plaintiff's Attorney: Arthur K. Aiken 2231 Devine Street, Suite 201 Columbia, SC 29205 Phone: 803-799-5205 Fax: 803-799-5206 Email: art@aikenandhightower.com Thomas W. Bunch, II, Bar No. 1011 Address: PO Box 944 Columbia, SC 29202 phone: (803) 779-8900 fax: (803) 771-9411 e-mail: tbunch@RobinsonLaw.com other:	Defendant's Attorney: Desa Ballard Stephanie Weissenstein Address: 226 State Street (29169), Post Office Box 6338 West Columbia, SC 29171 phone: (803) 796-9299 fax: (803) 796-1066 e-mail: stephanie@desaballard.com other:
--	--

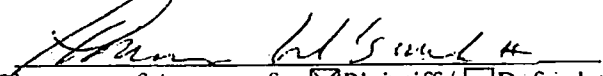
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amended Petition for Writ of Supersedeas
 Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion Type

Written motion attached
 Form Motion/Order --
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant March 5, 2014
Date submitted

SECTION III: Motion Fee

PAID – AMOUNT: \$25.00

- EXEMPT: Rule to Show Cause in Child or Spousal Support
(check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- MOTION FEE COLLECTED: _____
 CONTESTED – AMOUNT DUE: _____

**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**
) **FIFTH JUDICIAL CIRCUIT**
) Case No.: 2009-CP-40-05911
)
)
)

**AMENDED PETITION OF
HOWARD HAMMER FOR A
WRIT OF SUPERSEDEAS WITH
ANNEXED MEMORANDUM IN
SUPPORT**

**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
)
)
)

**AMENDED PETITION OF
HOWARD HAMMER AND 1634
MAIN, LP FOR A WRIT OF
SUPERSEDEAS WITH ANNEXED
MEMORANDUM IN SUPPORT**

JANETTE W. MCBRIDE
C.C.P. & G.S.
MAY 23 PM 4:11
RICHLAND COUNTY
FILED

TO: ALL OTHER COUNSEL OF RECORD

PETITION

Your Petitioners, Plaintiff/Third-Party Defendant, Howard Hammer (HH) and the Plaintiff, 1634 Main, LP (1634 Main) (collectively petitioning parties) hereby petition, in accordance with Rule 241 SCACR, and Rule 62, SCRPC, for a writ of supersedeas as follows:

PARTIES

1. Petitioner, Howard Hammer (HH), is a judgment debtor to Respondent, Shirley Hammer (SH), in both of the cases captioned above.

2. Petitioner, 1634 Main, LP (1634 Main), is a judgment debtor to Respondent, Shirley Hammer (SH), in case number 2010-CP-40-2889.

3. Respondent, SH, is a judgment creditor of HH in both of the cases captioned above, and she is a judgment creditor of 1634 Main in case number 2010-CP-40-2889

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this Petition under Rule 62 SCRPC and Rule 241 SCACR, and this Court has personal jurisdiction over the Respondent.

5. Venue is proper in this Court.

FACTUAL ALLEGATIONS

6. Petitions for Writs of Supersedeas were previously filed in these cases on March 5, 2014 with copies being served on all non-moving parties and provided to the Honorable Joseph M. Strickland. At that time the Judgments in the above captioned cases were on appeal, and those appeals were set for oral argument before the South Carolina Supreme Court on March 6, 2014.

7. After oral argument, the South Carolina Supreme Court affirmed the judgments by an unpublished opinion filed March 19, 2014.

8. While these cases were on appeal, this Court presided over supplementary proceedings arising from the judgments.

9. In the supplementary proceedings, this Court entered an Order on January 21, 2014 (“the January 21 Order”) in which this Court, inter alia, ordered transfer of real property known as 1634 Main Street (building) from HH and 1634 Main to SH.

10. HH and 1634 Main are informed and believe that on or about January 21, 2014, this Court executed and delivered to SH, a Deed (“the January 21 Deed”) making the transfer of 1634 Main St. alleged in Paragraph 9 above, and that SH has recorded the deed.

11. HH and 1634 Main are informed and believe that this Court’s January 21, 2014 Deed (Deed) is void under Rule 62(a) SCRPC because it was executed, delivered, and recorded within ten (10) days of this Court’s Order entered on January 21, 2014.

12. HH and 1634 Main further contend that the January 21 Order directing the transfer of property is flawed because, inter alia, the Court failed to set and SH failed to post a bond as required by S.C. Code Ann. §18-9-130(A)(2) for the transfer of the property while the appeal was pending.

13. Further, contrary to the 10 day stay of Rule 62(a) and since the transfer by deed alleged in Paragraph 10 above, SH and her confederates changed the locks to the building at 1634 Main St. without prior notice to HH, and inappropriately deprived HH of access to the building except during unreasonably abbreviated intervals.

14. In addition to their refusal to give HH access to his offices, files, and belongings within the building, SH and her confederates gave HH an arbitrary deadline of Thursday February 14, 2014, to remove his possessions, property and furnishings from the building, but then refused to grant sufficient access to the property so that HH could meet the so-called deadline.

15. On February 3, 2014, HH and 1634 Main timely filed Motions to Alter or Amend Judgment under Rule 59(e) that were directed at this Court’s Order entered on January 21, 2014. Those motions were denied by Judge Strickland. HH and 1634 Main have filed an appeal of the denial of these motions and the January 21 order.

16. Despite the pendency of the appeal of the underlying judgments, Judge Strickland's January 21 order transferred the property interests described in paragraph 9 above in satisfaction of, at that time, the non-final judgments. Said order also directed SH to sell the transferred property, and thereafter account to the Court for the proceeds of sale.

17. After the ruling by the Supreme Court and the judgments becoming final, SH provided an accounting of sums she contended were owed to her by HH including the judgments, \$55,385.70 awarded by Judge Strickland in the January 21 Order, and other sums SH contended would be due to her by said order. The amount provided by SH was \$439,619.91.

18. By letter dated May 6, 2014, SH belatedly acknowledged that a bond was required for conveyance of the property. She notified Judge Strickland that she was readying the property for sale, and expected an offer of sale "shortly."¹ She notified the court that it was necessary for the court to determine the amount of an appeal bond (sic) which SH needed to post, presumably under S.C. Code Ann. § 18-9-130(A)(2) which states that "A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment."

19. Thereafter, on May 19, 2104 SH filed a Motion for Appeal Bond in which she represented that 1634 Main St. recently appraised for \$1,450,000.00. SH has not provided a copy of that appraisal to either the Court or HH, although her counsel has also represented to counsel for HH and 1634 Main that 1634 Main St. appraised for \$1,475,000, or \$25,000 more than the representation made to the court by SH's motion.

¹ Now, more than two weeks later, no offer has been made on the property.

20. In response to SH's counsel's May 6 letter to Judge Strickland, HH notified Judge Strickland on May 8, 2014 that he would pay the \$439,619.91 amount in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s). SH declined the offer of full payment of all amounts owed to her according to the accounting provided by her counsel, and continues to request a bond for her to sell 1634 Main St.

21. Thereafter, SH increased her accounting to \$461,120.58. Although HH disputes both accountings, his counsel notified counsel for SH that HH would pay the \$461,120.58 in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s). SH will not accept the payment unless HH will make non-monetary concessions not included in the judgments and the January 21 order. Alternatively, HH and 1634 Main notified the Court at a status conference on May 19 that they had no objection to the sale of the property for the alleged listing price of \$1,475,000.00.²

22. SH contends that she is required to sell the building by the January 21 Order which is not final and is on appeal, but she is willing to forego such contention in exchange for conditions and concessions outside the court proceedings.

23. HH is prepared to pay the amounts owed to SH on the judgments and this court's January 21 Order, is prepared to dismiss the appeal of the January 21 order, and is prepared to end the litigation related to the judgments in these cases. Alternatively, HH is agreeable to SH selling the building at the appraised value of \$1.475 million (or \$1.450 million if that is what it

² Like the appraisal, SH has not provided the court or HH with a copy of the listing agreement.

actually is). Conversely, SH apparently wishes to continue the litigation despite being made whole.

24. The granting of these Petitions is necessary to bring this litigation to a close, conserve judicial and the parties' resources, and to avoid forfeiture of HH's property.

25. A more detailed description of the grounds and the legal basis for this Petition is set forth in the Memorandum annexed to this Petition

WHEREFORE, HH and 1634 Main pray that this Court grant this Petition by (1) allowing HH to fully pay the amounts properly owed to SH, declaring void the Master's deed dated January 22, 2014, to SH, and any transfers made thereafter, and by vacating its January 21 Order; or (2) permitting the sale of the property at the alleged list price of \$1.475 million.

MEMORANDUM IN SUPPORT

ARGUMENT

I. INTRODUCTION

The above are actions in which SH sought supplementary proceedings to enforce Judgments in her favor and against HH and 1634 Main. The Judgments that are the subjects of these actions have been affirmed by the South Carolina Supreme Court. This Court heard the supplementary proceedings on May 30, 2013, June 4, 2013, August 12, 2013 and January 9, 2014 (collectively hearings). The subject Order which was entered on January 21, 2014, provides for a transfer by deed of all right title and interest of HH and 1634 Main in 1634 Main, LP, real property commonly known as 1634 Main Street in Columbia, SC and SH5, LLC (transferred

property).³ On January 21, 2014, this Court executed and delivered a Master's Deed making these transfers. The transfers in the January 21 Order and in the Master's deed by-passed the statutory safeguards that should have been afforded to not only the judgment debtors, but also others who had interests in the property transferred who were not joined in any proceeding. Those parties should have been joined or at a minimum given notice to protect their interests in the due course of a sale of the property. Now, HH is prepared to pay the amounts owed to SH and conclude these cases, but SH refuses to accept the payment.

II. RULE 241, SCACR

Rule 241(c)(1), SCACR, provides that any party may move for a supersedeas as to matters which are not stayed on appeal such as enforcement of money judgments, judgments directing the sale or delivery of possession of real property, etc. (Rule 241(b)). The rule further provides that the court may not only grant or lift a stay of the matters which have been decided, but that the court may also "order other affirmative relief upon such terms and conditions as are deemed appropriate." 241(c)(3). The procedure for obtaining a supersedeas is to first apply to the lower court except in extraordinary circumstances. Rules 241(d) and 205, SCACR. Thus, the Circuit Court has jurisdiction over these petitions and the matters contained herein, including the requested relief.

III. THE PURPOSES OF A WRIT OF SUPERSEDEAS.

The writ of supersedeas serves one main purpose and three subsidiary purposes. First, the main purpose of writ is "to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal." Graham v. Graham. 301 S.C. 128, 130, 390 S.E.2d 469, 470

³ Counsel for SH represented to this Court more than once that the property transferred had a value of between \$900,000 and \$1,000,000.

(1990) (quoting, 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)). Second, the preservation of the status quo serves the subsidiary purpose of preserving to the appellant “the fruits of a meritorious appeal where they might otherwise be lost to him.” Graham, 301 S.C. at 130, 390 S.E.2d at 470 (quoting, 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)). Third, the writ may be granted “to preserve the jurisdiction of the appeal.” Rule 241(c)(2) SCACR. Fourth, the writ may be granted “to prevent a contested issue from becoming moot.” Rule 241(c)(2) SCACR.

IV. THE STATUS QUO TO BE PRESERVED BY SUPERSEDEAS IS THE POSITION OF THE PARTIES BEFORE THIS COURT EXECUTED AND DELIVERED THE DEED TO 1634 MAIN ST. BECAUSE THAT DEED IS VOID AND SHOULD NOT HAVE BEEN DELIVERED TO SH.

“No execution shall issue on a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.” Rule 62(a) SCRCR. By executing and delivering the Master’s Deed on the same date as the January 21 Order, this Court undertook proceedings for enforcement of the January 21, 2014 Order. Thereafter, SH undertook enforcement of the order by locking HH out of 1634 Main St. within the same 10 day period. The Master’s Deed is void because it was executed and delivered within ten (10) days of the entry of the January 21, 2014 Order. The proper status quo to be preserved by supersedeas is the position of the parties before the execution and delivery of the Master’s Deed.

V. SUPERSEDEAS IS NECESSARY TO PRESERVE TO THE PETITIONERS THE FRUITS OF A MERITORIOUS APPEAL.

“The Supreme Court ... may reverse the judgment, decree, or order appealed from..., and the judgment shall be remitted to the court below to be enforced according to law.” S.C. Code § 18-9-270. “When the judgment is reversed or modified the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.” S.C. Code § 18-1-140. Reversal of the judgment in this case will require restoration to HH and 1634 Main of all

property lost by the January 21 Order. In other words, all property lost by HH and 1634 Main as a result of the January 21 Order will have to be restored to him if the Order is reversed.

The Order requires the execution and delivery to SH of a deed granting her fee simple absolute title in the building. The day after the Order was entered, this Court executed and delivered the fee simple absolute Deed to SH. Of course the Deed gives SH title sufficient to support transfer of the building in fee simple absolute to another. Transfer to a third party makes recovery of title to the building by HH on a successful appeal problematic. This risk to HH's right to recover title to the building is not theoretical. SH has formed a limited liability corporation, and she has transferred title to the building to that corporation. Further, she asserts that she has "three prospects who are ready, willing and able to purchase the building" even though she has refused to divulge their identity or present a contact of sale. Nor, does she detail how she determined the prospects' readiness, willingness or ability to purchase the building. SH Motion for Appeal Bond.

The January 21 Order authorizes SH to sell the building, and by that Order, she has apparent ownership and right to sell the building. The Order further provides that SH has no duties to HH with respect to any sale of the building. The Order incorporates no provisions for protecting HH's rights should he win the appeal. Therefore, a supersedeas is essential to protect HH's interest in the building in case the judgment is reversed. Otherwise, there is a grave risk that HH will be deprived of the fruits of a successful appeal.

VI. SUPERSEDEAS IS NECESSARY TO PREVENT THE CONTESTED ISSUES IN THE APPEAL FROM BECOMING MOOT.

The issues in the appeal in these cases contest the ownership of SH of transferred property. Indeed, the arguments raised by HH and 1634 Main, if successful, will require an outright reversal of the January 21 Order and will void the transfers of the real and personal

property interest of HH and 1634 Main. For the reasons more fully discussed above, the authority given SH by the January 21 Order threatens to deprive HH and 1634 of their right to recover the building in case their appeal is successful.

VII. GRANTING THE REQUESTED RELIEF MOOTS ALL OWNERSHIP AND APPELLATE ISSUES, MAKES SH WHOLE, AND PRESERVES HH'S INTERESTS

By granting these petitions and the relief requested by HH and 1634 Main, the issue of SH's void ownership of the transferred property and the possibility of further void transfers being made by SH can be avoided. Granting of these petitions promotes judicial economy by mooting further proceedings at the Circuit Court in these cases and the appeal pending at the South Carolina Supreme Court. Granting these petitions saves the parties thousands of dollars in mounting legal fees. Permitting payment by HH and making SH whole is a far better alternative than continuing litigation and stripping HH and 1634 Main of their property. Alternatively, authorizing a sale of the property at the price of \$1.475 (or even \$1.45) million makes SH whole and provides HH and 1634 Main recovery of their equity in 1634 Main St.

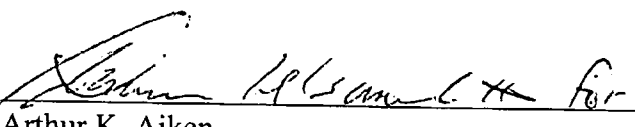
CONCLUSION

For the reasons set forth above, this Court should (1) allow HH to fully pay the amounts properly owed to SH, cancel the deed transferring the property to SH, and vacate its January 21 Order, or (2) order the sale of the property to the ready, willing and able prospect for at least the appraised value of the property.

Signature block on following page

Respectfully submitted,

AIKEN & HIGHTOWER, PA

By:  Arthur K. Aiken

2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com

Thomas W. Bunch, II
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900

ATTORNEYS FOR THE PETITIONERS

May 23, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Howard Hammer)
 Plaintiff/Petitioner)

Case No.: 2009-CP-40-05911

CERTIFICATE OF SERVICE

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Case No.: 2010-CP-40-2889

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

CERTIFICATE OF SERVICE

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

v.)
Howard Hammer,)

Additional Defendant on)
Counterclaim/Petitioner)

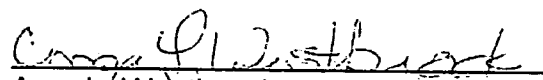
RICHLAND COUNTY
FILED
2014 MAY 23 PM 4:11
JEANNETTE MORRIS
C.C.P. CLERK

This is to certify that I, Amy L. Westbrook, paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Amended Petition of Howard Hammer for a Writ of Supersedeas with Annexed Memorandum in Support and the Amended Petition of Howard Hammer and 1634 Main, LP for a Writ of Supersedeas with Annexed**

Memorandum in Support in the foregoing matter by placing a copy of same via hand delivery as follows:

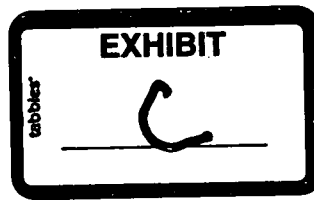
Stephanie Weissenstein, Esq
Desa Ballard, Esq..
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

Dated at Columbia, South Carolina this 23rd day of May, 2014.


Amy L. Westbrook



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW



ROBINSON, MCFADDEN & MOORE, P.C.
COLUMBIA, SOUTH CAROLINA

June 12, 2014

Thomas W. Bunch, II
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202

VIA E-MAIL AND FACSIMILE

PH
(803) 779-8900 | (803) 227-1103 *direct*

FAX
(803) 744-1545

The Honorable Joseph M. Strickland, Master in Equity
Richland County Master In Equity
Post Office Box 192
1701 Main Street
Columbia, SC 29202

tbunch@RobinsonLaw.com

Re: Shirley Hammer v. Howard Hammer, 1634 Main, LP, Alvin Hammer, et al
Case No. 2009-CP-40-05911
Case No. 2010-CP-40-02889

Our File No: 31141-0001

Dear Judge Strickland:

I am writing to request that you hold a follow-up status conference and hearing on the judgment debtors' Petition and Amended Petition for a Writ of Supersedeas and the judgment creditor's Motion for an Appeal Bond.

If necessary, please allow me to refresh the Court's recollection on how we arrived at this point. By letter to you in early May, the judgment creditor, Shirley Hammer, had asked you to set an appeal bond for the sale of property. We had advised you that the bond would not be necessary because 1634 Main and Mr. Hammer had offered to pay Mrs. Hammer all amounts she was owed under the judgments and your January 21 Order. On May 19, 2014, you held a status conference at my request on behalf of the judgment debtors 1634 Main, LP and Howard Hammer. We preliminarily set a follow-up conference, but the parties agreed that there had been insufficient progress to take more of your time. Also, during the May 19th conference, you had directed the judgment debtors' to respond to the actual appeal bond motion which had not been served until the 19th. 1634 Main and Mr. Hammer submitted their response on the appeal bond and also filed an Amended Petition for a Writ of Supersedeas.

One of the impediments to settlement was that Mrs. Hammer had moved to dismiss the appeal in these cases, and she wanted the Supreme Court to rule on her motion without giving the parties adequate time to effectuate a settlement. That motion was denied by the Supreme Court on June 12. I have again asked Mrs. Hammer's

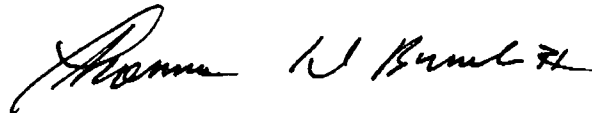
counsel if she will consent to a 60 day remand to discuss and implement a settlement agreement. She is considering this request, but has not yet made a decision.

Thus, we are requesting a continuation of the status conference and a hearing on the supersedeas petitions. Once these matters have been ruled upon, that might moot the need for the appeal bond since the judgment debtors are agreeable to paying the judgments in full.

Thank you for your consideration of this request.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.

A handwritten signature in black ink, appearing to read "Thomas W. Bunch, II". The signature is fluid and cursive, with a large initial "T" and "W".

Thomas W. Bunch, II

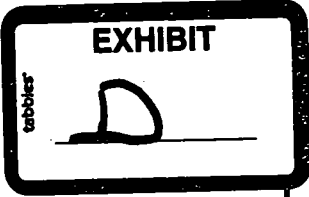
cc: Arthur K. Aiken (via email only)
Howard H. Hammer (via email only)
Desa A. Ballard (via email only)
Keith A. Babcock (via email only)

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-40-05911&
 2010-CP-40-2889



Shirley Hammer,

Howard Hammer,

Shirley Hammer
 PLAINTIFF(S)

1634 Main,LP,
 DEFENDANT(S)

Submitted by: Stephanie Weissenstein, Esquire	Attorney for : <input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented	<input type="checkbox"/> Self-Represented

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 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: TAX Map No: 09014-04-19		

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 Master-in-Equity

2097
Judge Code

1-21-14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of Jan 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of Jan 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

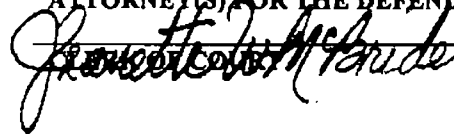
Stephanie Weissenstein, Esquire

Howard Hammer, Pro se

Art Aiken, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter:

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

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

Multiple horizontal lines for additional information.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Shirley Hammer)
)
 Plaintiff,)
)
 vs.)
)
 Howard Hammer)
)
 Defendant,)
 _____)
 STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Shirley Hammer)
)
 Plaintiff,)
)
 vs.)
)
 1634 Main, LP)
)
 Defendant,)
 _____)

IN THE COURT OF COMMON PLEAS
 CA# 2009-CP-40-05911
 CA# 2010-CP-40-2889

**ORDER DIRECTING TRANSFER
 OF REAL PROPERTY
 TO SATISFY JUDGMENTS**

RICHLAND COUNTY
 FILED
 2014 JAN 21 AM 9:04
 JERANETTE W. McBRIDE
 C.C.P. & G.S.

The matter before the court is a hearing in the nature of supplemental proceedings.

Present at the hearing on January 9, 2014 were the Plaintiff and her counsel, Stephanie Weissenstein. Also present was Howard Hammer, who appeared *pro se* in the Hammer v. Hammer matter, and as agent for 1634 Main, LP. Art Aiken appeared as counsel for 1634 Main, LP and as counsel for Howard Hammer for the 1634 Main matter.

STATEMENT OF THE CASE

These supplemental proceedings were initiated by verified petitions and Rules to Show Cause issued by Judge Casey Manning on April 22, 2013, based on executions against property issued dated January 29, 2013. On June 25, 2013, execution against property were issued for additional judgments, and returned by the Richland County Sheriff *nulla bona*. Throughout these proceedings, including hearings, Plaintiff has alleged her judgments are in the principle amount of \$317,777.17, as set forth below. The defendants made no objections to Plaintiff's assertion or this Court's consideration of the all judgments in these proceedings until oral arguments at the final merits hearing on January 9, 2014. Defendants' oral objections to this Court's consideration of the entirety of Plaintiff's judgments against Defendant's are untimely, and overruled.

Plaintiff holds judgments against the defendant debtors, as follows:

<u>Debtor/Date</u>	<u>Principal</u>	<u>Interest¹</u>	<u>Total</u>
1634 Main LP (01/29/2013 Judgment)	\$25,000.00	\$ 1,673.46	\$ 26,673.46
1634 Main LP (06/03/2013 Judgment)	\$102,032.87	\$ 4,397.90	\$106,430.77
	<u>\$127,032.87</u>	<u>\$ 071.36</u>	<u>\$133,104.23</u>
Howard Hammer (01/29/2013 Judgments)	\$130,000.00	\$ 701.99	\$138,701.99
Howard Hammer (06/03/2013 Judgments)	\$ 60,744.30	\$ 2,618.25	\$ 63,362.55
	<u>\$190,744.30</u>	<u>\$11,320.23</u>	<u>\$202,064.53</u>
Total due Shirley Hammer	<u>\$317,777.17</u>	<u>\$17,391.59</u>	<u>\$335,168.76</u>

These proceedings are conducted under Chapter 39 of Title 15 of the South Carolina Code, for the purpose of executing on property owned by debtor to satisfy judgments against them. The Rules to Show Cause and Order of Reference required defendants, Howard Hammer (Mr. Hammer) and 1634 Main LP (1634 Main), a limited partnership controlled by Mr. Hammer

¹ Post-judgment interest is calculated through January 9, 2014.

(via his ownership of the general partner, SH5, LLC, to appear before the Court on May 30, 2013, pursuant to S.C. Code Ann. Section 15-39-310 and bring records which would establish the existence of real and personal property so that the Master could execute against such discovered property for purposes of satisfying the judgments. Neither Mr. Hammer nor any representative of 1634 Main appeared as ordered by Judge Manning on May 30, 2013. Arthur Aiken appeared as counsel for Mr. Hammer and 1634 Main, but gave no explanation for Mr. Hammer's absence or his failure to appear. This Court continued the matter and ordered both defendants to appear at a hearing on June 4, 2013.

At the June 4, 2013 hearing, Mr. Hammer appeared, but brought no documents as had been ordered by Judge Manning; Mr. Aiken similarly produced no documents in response to the RTSC. Besides motions to dismiss, which were denied, no responsive pleadings were filed then, or since. At the June 4, 2013 hearing, Mr. Hammer was sworn in as a witness, but he was evasive, and did not provide substantive information about his assets. Additionally, he invoked the Fifth Amendment regarding questions related to 1634 Main LP and the real estate located at 1634 Main Street in Columbia.

The Court granted Mrs. Hammer's request to continue the examination by written discovery. By order dated June 10, 2013, this Court ordered both Mr. Hammer and 1634 Main LP to answer questions via written interrogatories and requests to produce to enable the Court to determine what assets exist against which the underlying judgments in these cases can be satisfied.

On or around June 11, 2013, Mrs. Hammer's counsel thereafter served written questions, consisting of interrogatories and requests to produce, on both Mr. Hammer and 1634 Main. The court's order also required Mr. Hammer and 1634 to file copies of their discovery responses with

this Court. This court also granted the Plaintiff's motion to consolidate these matters and all judgments awarded against these defendants in favor of plaintiff.

Neither Mr. Hammer nor 1634 Main LP served or filed any responses to the written discovery.

At a third hearing on August 12, 2013, Mr. Hammer again failed to appear. Mr. Aiken stated he was representing both Mr. Hammer and 1634, and reported that Mr. Hammer had gone to the Bahamas on a vacation with his children. At the hearing, Mr. Aiken presented to Mrs. Hammer's counsel answers to the interrogatories, but he did not provide any response to the requests to produce that were also due by that date. The court record reflects no responses to the written questions.

The written responses handed to Mrs. Hammer's counsel on August 12, 2013 were untimely and contained objections. The information was provided was non-substantive and provided no information useful to the Court in these proceedings. Neither Mr. Aiken on behalf of his client nor Howard Hammer, *pro se*, supplemented the responses prior to the hearing on January 9, 2014.

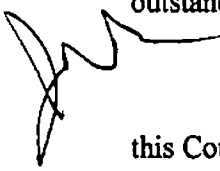
Neither Mr. Hammer nor 1634 Main LP has filed any responses to the written discovery served upon them, as they were required to do by this court's order dated June 10, 2013.

Mrs. Hammer's counsel subpoenaed documents from several witnesses with no response. She also subpoenaed several of those witnesses to appear at the August 12, 2013 hearing to give testimony and provide documentation about the assets of defendants Howard Hammer and 1634 Main, LP., only Alvin Hammer and Debra Covington appeared at the August 12, 2013 hearing. Ms. Covington provided the Court and Mrs. Hammer's counsel with documents responsive to the subpoena.

Alvin Hammer stated he had provided loans to Howard Hammer, but indicated he had no documentation responsive to the subpoenas that were served upon him. Alvin Hammer also volunteered he would be willing to discuss settlement options on behalf of Howard Hammer. Witness Bernard Ackerman did not appear and did not provide documents which were required to be provided.

The hearing on August 12, 2013 was concluded without resolution of the remaining motions, to give the parties time to try to work out a settlement. On September 9, 2013, the court was informed no settlement could be reached, and counsel for Plaintiff submitted a proposed order to the court for the transfer of certain real property located at 1634 Main Street to Plaintiff.

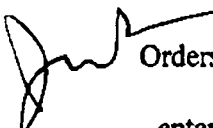
On September 9, 2013, the defendant debtors filed a motion for summary judgment alleging that transfer of the real property is beyond the power of this court, under S.C. Code §15-31-310, *et. seq.* A hearing was scheduled for January 9, 2014 for purposes of addressing all outstanding issues, and notice of the hearing was sent to all counsel of record October 14, 2013.



At the hearing on January 9, 2014, Counsel for Plaintiff renewed Plaintiff's request that this Court execute against property owned by Howard Hammer and 1634 Main, LP to satisfy the judgments. Mr. Hammer made an oral motion to dismiss Plaintiff's claim for execution against property on the basis that a separate action seeking foreclosure of judgments filed by Plaintiff on November 4, 2013 (Case No. 2013-CP-40-06898) divested this court of its jurisdiction over the supplemental proceedings. Counsel for 1634 Main, LP joined in the motion, and argued that only a foreclosure proceeding could divest his client of property for purposes of satisfying a judgment. Counsel for Plaintiff noted that the foreclosure matter would be rendered moot if these supplementary proceedings resulted in an execution against property owned by the judgment debtors, and that the foreclosure matter was filed in order to attach other property to the

judgment if it became necessary to do so. Both the oral Motion to Dismiss and Motion for Summary Judgment are denied.

The powers of the Master in Equity are defined by State law and by an Order of Reference, and the South Carolina Rules of Civil Procedure. In this case, Judge Manning issued Orders of Reference after the Executions Against Property owned by the judgment debtors were returned by the sheriff *nulla bona* under S.C. Code Ann. 15-39-130. In South Carolina, upon proof to the satisfaction of the court is received that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, then "such . . . *proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.*" S.C. Code §15-39-310.

 It was for this purpose the Orders of Reference were executed by Judge Manning. The Orders of Reference also specifically gave this court the "authority to enter into final judgment. . . entertain and *rule upon all motions necessary to dispose of this matter, to include but not be limited to: motions to dismiss, motions to appoint a receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of Plaintiff's debt.*" (emphasis added).

The judgment debtors own property which may be attributed to satisfy Plaintiff's debt. S.C. Code §15-39-10 (c) specifically states one manner of execution includes "the delivery of the possession of real or personal property or such delivery with damages for withholding the property". Such executions "may issue upon final judgments or decrees." S.C. Code §15-39-30. Separate foreclosure proceedings and judicial sale are not required.

Mrs. Hammer has introduced into evidence exhibits that reflect the real property owned in part by Mr. Hammer personally and in part by 1634 Main LP, located at 1634 and 1632 Main Street in Columbia, South Carolina, has a fair market value of \$900,000.00. At the hearing on January 9, 2014, Mr. Hammer stipulated to the estimated value, and testified there is a tax lien against the property. The real property is more fully identified as:

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 of record to 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 of 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 ½" rod; thence turning and running along property now or formerly of 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 of 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 of 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 a portion of 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.

This being a portion of the same property conveyed to Howard Hammer by deed of Shirley Hammer dated February 27, 2013, which was not recorded. The deed was properly delivered to Howard Hammer via letter from Timothy E. Madden to Thomas H. Pope dated February 27, 2013, effecting delivery transfer of title.

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 abovedescribed 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.

According to evidence of record in these proceedings and the public records, Mr.

Hammer owns, among other assets:

- 52.75 % undivided interest in real property located at 1634 Main Street in Columbia, which was transferred to him as a result of a settlement of the family court action involving Mr. and Mrs. Hammer. The quit claim deed executed by Mrs. Hammer deeding the 52.75% interest in the real property to Mr. Hammer was executed on February 27, 2013 and delivered to Mr. Hammer via letter from Mrs. Hammer's attorney Timothy E. Madden dated February 27, 2013. That deed has not been recorded in Richland County.
- An unknown percentage of ownership in a limited partnership identified as 1634 Main LP. Some portion of this interest was transferred from Mrs. Hammer to Mr. Hammer by instrument dated February 27, 2013, and delivered to Mr. Hammer via letter from Mrs. Hammer's attorney Timothy E. Madden dated February 27, 2013. Mr. Hammer also owns some percentage interest in 1634 Main LP independent of and in addition to that which was transferred to him by Mrs. Hammer.

- Some portion or all of a limited liability corporation named SH5, LLC, a South Carolina limited partnership, which is the general partner of defendant 1634 Main, LP.

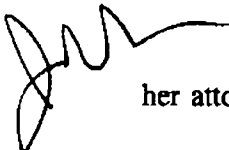
According to the evidence and documents of record, 1634 Main LP owns an unknown percentage of the real estate located at 1634 and 1632 Main Street, Columbia, SC, as described above.

As set forth below, all right, title and interest in these assets is transferred to Shirley Hammer. Transfers of real property are fee simple absolute. The transfer Mr. Hammer's interest in the identified entities is unconditional and permanent. These transfers are for the purpose of being applied to the unsatisfied judgments, the attorney's fees and costs awarded herein, and all costs related to the sale or transfer of these assets, as set forth below. Mrs. Hammer, as transferee, has no obligations of any kind to the transferors (Howard Hammer and 1634 Main LP) to account for the income or assets or the proceeds of sale, other than the accounting that is required as set forth below. Specifically, Mrs. Hammer is not a fiduciary to either Mr. Hammer or 1634 Main LP.

The Plaintiff moved that Howard Hammer be found in criminal contempt of court for his and 1634 Main, LP's failure to obey the orders of this court in numerous respects by not providing truthful or complete responses to the Plaintiff's questions and/or interrogatories and by not providing the documentation they were ordered to produce by the RTSC and this Court's order dated June 10, 2013. That motion is denied.

At the conclusion of these proceedings, plaintiff moved she be awarded attorney's fees and costs for these proceedings as sanctions against Howard Hammer and 1634 Main LP under the terms of the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. Section 15-36-10 *et*

seq. and Rule 11, SCRCP. Plaintiff alleges that because of the defendant's actions in these proceedings, including interfering with her ability to obtain discovery, refusing to answer questions as required by statute and as ordered by this Court, she incurred unnecessary and extraordinary legal expense for the prosecution of these supplemental proceedings. These proceedings have been extraordinary and multiplied in complexity as a direct result of Howard Hammer's intentional actions to thwart these proceedings as well as the actions of 1634 Main LP, acting through Howard Hammer. The willful failure to cooperate in these proceedings unnecessarily complicated and delayed these proceedings, some positions advanced by the judgment debtors were frivolous and were intended to delay these proceedings. I find that the fees and costs incurred by Mrs. Hammer in prosecuting this action, in the amount of \$55,385.70, are reasonable and were necessarily incurred to conclude this matter.

 Therefore, pursuant to S.C. Code Ann. Section 15-36-10 *et seq.* plaintiff's request that her attorney's fees and cost in the amount of \$55,385.70 be assessed against judgment debtor Howard Hammer as sanctions is hereby GRANTED. Additionally, the fees shall be paid on or before February 28, 2014 at 5:00 p.m.

When the Court orally announced its intent to grant Plaintiff's request for execution against property, Defendant Howard Hammer orally moved for the undersigned's recusal. Mr. Hammer's Motion for Recusal is denied.

ORDERS

All subpoenas issued in this matter are hereby quashed, rule 45, SCRCP.

Howard Hammer's Motion to Dismiss, made at the January 9, 2014 hearing, is DENIED.

Defendants' Motion for Summary Judgment is DENIED.

Howard Hammer's Motion for Recusal is DENIED.

Plaintiff's Motion for Attorney's Fees and Costs pursuant to S.C. Code Ann. Section 15-39-10 is GRANTED and judgment is entered against the judgment debtors for an additional \$55,385.70.

Plaintiff's Motion to Hold Howard Hammer in Criminal Contempt is denied.

IT IS FURTHER ORDERED:

1. Any and all interest of Howard Hammer and 1634 Main, LP in real property located at 1634 Main Street in Columbia, SC, and as more fully identified hereinabove, shall be transferred to Shirley Hammer, her heirs, successors and assigns, in fee simple absolute, pursuant to a Master's Deed.
2. Any and all legal and equitable ownership interest of Howard Hammer in 1634 Main LP, a limited partnership under South Carolina law, including any and all income, bank accounts, and other assets, is transferred by this order to Shirley Hammer.
3. Any and all legal and equitable ownership interest of Howard Hammer in SH5, LLC, a limited liability corporation under South Carolina law, including any and all income, bank accounts, and other assets, is transferred by this order to Shirley Hammer.
4. Mrs. Hammer, as transferee, has no obligations of any kind to the transferors (Howard Hammer and 1634 Main LP) to account for the income or assets or the proceeds of sale, other than the accounting that is required as set forth in Paragraph 7 below. Specifically, Mrs. Hammer is not a fiduciary to either Mr. Hammer or 1634 Main LP.

5. Mrs. Hammer shall immediately take such action as she deems necessary or appropriate to market and sell the assets transferred to her in this order in a commercially-reasonable manner (including such treatment as is necessary of the limited partnership and corporate entity for purposes of selling the assets. Mrs. Hammer may use any income from the building for regular maintenance and operating expenses of the real property.

6. Mrs. Hammer shall pay to herself from the sales proceeds:

a. Any and all costs incurred in connection with the marketing and sale of the property;

b. The total amount of the judgments held by her against Howard Hammer and 1634 Main LP as set forth above. Post-judgment interest on the judgments shall stop on the judgments upon execution of this order.


c. The attorney fees and costs awarded herein plus post-judgment interest at the rate established by Order of the Supreme Court dated January 3, 2014.

7. Mrs. Hammer shall escrow any additional funds that remain after the above disbursements, until an accounting can be performed and distributions ordered by this Court.

8. Mrs. Hammer is and has all powers as an owner of the real and personal property conveyed to her in this order, and she may collect rents or other income and take such other actions as may be appropriate to manage, market and sell the real property located at 1634 and 1632 Main Street, Columbia, South Carolina.

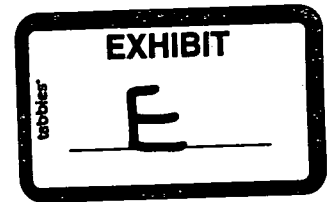
9. While they may seek whatever legal remedies may be available to them by way of appeal, Howard Hammer and 1634 Main LP shall not interfere with the management or sale by Shirley Hammer of the assets transferred herein.

IT IS SO ORDERED.


Joseph Strickland,
Master In Equity
For Richland County

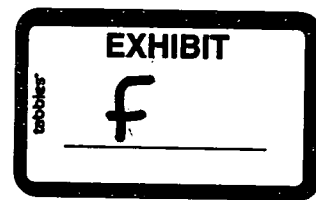
January 21, 2014

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA



To: art@aikenandhightower.com
From: kleroy@gedneyhowe.com
Sent: 9/09/2013 3:30PM
Subject: Hammer v. Hammer-Alvin Hammer settlement discussions

>> Dear Art:
>>
>>
>>
>> This is to respond to your advising me that Ms. Ballard's office
>> contends that they tried to negotiate settlement of the judgment in
>> the above with me. This is incorrect. The fact of the matter is
>> that after the hearing at which I appeared under subpoena that I
>> received a call from Ms. Weissenstein at Desa Ballard's office. She
>> stated that she was going to fax me a proposal and I asked that she
>> call me before sending it. I have never received a proposal from her
>> nor have I received any call from her after her initial call above. Thus
>> no attempt to negotiate any settlement with me has occurred.
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>> Alvin Hammer
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>>
>>
>> Karen Sudlow
>>
>> Legal Secretary
>>
>> Law Office of Gedney M. Howe, III, P.A.
>>
>> PO Box 1034
>>
>> Charleston, SC 29402
>>
>> Phone: 843-722-8048
>>
>> Fax: 843-722-2140
>>
>> Email: kleroy@gedneyhowe.com
>>
>>
>>



Thomas W. Bunch, II

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, July 15, 2014 1:29 PM
To: Thomas W. Bunch, II
Cc: mara@desaballard.com; Mara Ballard; Beth Cogan
Subject: RE: Hammer settlement; 1634 Main

Importance: High

I've gone back through our communications about this and given it a great deal of thought. We have the contract from the purchaser and Shirley will be signing it tomorrow.

Our position has always been that any settlement with Howard requires a full general release from Howard for Shirley (for which she would reciprocate if you wish). Your refusal to include a release as part of the settlement discussion is a deal breaker.

I did not re-do the settlement documents as I said I would because of the issue of the release. In one last effort to settle, however, I have authority to do this:

Cash payment to Shirley (via our office) of \$50K by close of business tomorrow (7-16) and an additional \$500,000.00 no later than 7-23-2014 (close of business) and a full general release from Howard. Consent to remand and unwind the transfers from Strickland order.

Or –

Cash payment to Shirley (via our office) of \$100K by close of business tomorrow (7-16) and an additional \$550,000.00 no later than 7-23-2014 (close of business) with no release from Howard. Consent to remand and unwind the transfers from Strickland order.

If this is acceptable, I'll have the documents to you by noon tomorrow.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to mara@desaballard.com

From: Thomas W. Bunch, II [<mailto:TBunch@robinsonlaw.com>]
Sent: Friday, July 11, 2014 3:14 PM
To: Desa Ballard
Subject: RE: Hammer settlement; 1634 Main

Desa,

You have indicated that Shirley is unwilling to guarantee Howard any amount from the sale of the property. Although I understand your position, our offer was intended to hold firm on the accountings you have provided since those continue to go up while the sale price goes down. This brings into play the validity of the alleged expenses and the commercial reasonableness of the sale if we cannot settle. Without settlement, it further brings into play the bond amount, whether Shirley could even get a bond, and whether a buyer could secure a marketable title. Of course, if Howard prevails on appeal, which he should, then the plot really twists.

In light of these uncertainties and significant issues, and the mounting costs for our respective clients, Howard is agreeable to approving the sale at \$1.195mm. Shirley's recovery from the sale would be \$530m which includes payment of the 5% real estate commission. Liens existing at the time of the transfer (January 21) would be paid, and the balance would be paid to Howard.

All of this assumes that the buyer pays the full sales price of \$1.195mm. If the buyer discovers something in its due diligence and wants a price reduction, we would have to assess the significance of that issue and agree on how that reduction should be allocated. I would like to be more definitive on this issue, but don't have a better way to handle it now. We are open to suggestions. Maybe the contract can be drawn tightly enough so that there can be no price reduction, but that is up to the current owner of the property.

As for the appeal, you can let that ride its course, or you can seek to stay it. I'm not sure why you would want the possibility that Judge Strickland's order could be reversed looming over a sale, but that is also your call.

If the sale goes through and this agreement is followed by SH, we would dismiss the appeal if no decision has been rendered. There would be no need for a release or indemnity related to what has transpired as to 1634 Main for the last six months as Judge Strickland's order would be the law of the case, and we are not willing to give broad release you previously sent over.

Tommy

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG - 4 2014

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

S.C. Supreme Court

Appellate Case No. 2014-000965

1634 Main, L.P.

Appellant

v.

Shirley Hammer,

Respondent

v.

Howard Hammer,

Appellant,

and

Howard Hammer

Appellant,

v.

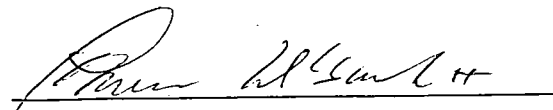
Shirley Hammer,

Respondent

PROOF OF SERVICE

I do hereby certify that on **August 4, 2014**, I caused to be served Appellants' Verified Petition For Writ Of Supersedeas in the captioned matter via hand delivery to the following individual(s) addressed as follows:

Desa Ballard, Esquire
Ballard & Watson
226 State Street
West Columbia, SC 29169


Thomas W. Bunch, II