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Tuesday, August 12, 2014

Via U.S. Mail

Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *1634 Main, LP vs. Shirley Hammer vs. Howard Hammer and Hammer v
Hammer*
Appellate Case No: 2014-000965

Dear Mr. Shearouse:

Please find enclosed for filing an original and seven (7) copies of the Respondent Shirley Hammer's Response to the Verified Petition for Writ of Supersedeas. Also enclosed is our Certificate of Service. Please file the original and six (6) copies with the court and return a clocked copy to us in the enclosed self-addressed, stamped envelope.

If you should have any questions, please do not hesitate to contact us. With warm personal regards, I am,

Sincerely yours,

Mara T. Ballard, CFE, CMA
mara@desaballard.com

c: (via US Mail and Email)
Arthur K. Aiken, Esquire
Thomas Bunch, Esquire
Shirley Hammer (via email only)

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
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.

**RESPONSE:
VERIFIED PETITION FOR WRIT OF SUPERSEDEAS**

Respondent Shirley Hammer (hereafter “Shirley”) responds to the Petition for Writ of Supersedeas dated August 4, 2014 as follows, and in so doing, requests that the Petition be denied. While Appellants (1634 Main LP and Howard Hammer – hereafter referred to collectively as “Howard”) style their Petition as one for Supersedeas, that is not the relief they are seeking. Howard’s motion asks this Court to force Shirley to accept a settlement offer made by Howard. It is clear that settlement negotiations are not admissible, Rule 408,

SCREv. Nonetheless, Howard has provided the Court with bits and pieces of correspondence regarding settlement discussions between Shirley's counsel and Howard's counsel. These have apparently been submitted in an effort to present a distorted view of the activity that has gone on during the pendency of this appeal. Since Howard wants this Court to know about the settlement discussions that have occurred (although it has nothing to do with the merits of this appeal), Shirley provides the following additional information. She also attaches a complete chronology of the written settlement discussions (Exhibit A), since Howard has selected only those which he uses to characterize Shirley's attitude (or that of her counsel) as "cavalier." See footnote 2, Petition dated August 4, 2014.

1. This appeal is from an order of Judge Strickland that awarded property which belonged to Howard (both real and personal) with a directive to Shirley to sell the real property¹. The gist of Judge Strickland's order was to make Shirley a receiver, to sell the property and pay herself the amount of the judgments, plus an amount for fees incurred up to Judge Strickland's order. Howard (or his other creditors) will get the balance².

¹ The personal property awarded to Shirley are interests in limited partnerships that make up the convoluted ownership structure under which Howard's interest in the real estate was held. Howard also owns an estimated one-third interest in several other corporate entities that own the majority of real property formerly occupied by the Heart of Columbia Hotel in Columbia. Those assets were hidden from the court during the supplemental proceedings. See *by way of example*, deed from Howard Hammer, Alvin Hammer, and Stanley Hammer to HASCI, dated November 2, 2009, attached as Exhibit B.

² Judge Strickland also ordered Howard to pay Shirley fees in the amount of \$55,385.70 no later than February 28, 2014. See Paragraph 2 of Page 10 of January 21, 2014 order (Exhibit C). Howard did not pay. Shirley filed a motion for contempt against Howard which had been scheduled to be heard on June 3, 2014. Playing into Howard's motive to delay (discussed later), his lawyer waited until the last minute to notify Judge Strickland of a scheduling conflict that he had known about for several weeks and Judge Strickland postponed the contempt hearing. The hearing is now scheduled for September 8, 2014. (Exhibit D).

2. Judge Strickland also ordered Shirley to market the property in a commercially-reasonable manner, which she has done, through the use of the very same property manager Howard used when he owned the property. The order allows Shirley to recover from the sales proceeds the costs incurred by her in marketing and selling the property.
3. Shirley has marketed the property and has a purchaser for the property, "as is" for \$1,195,000.00³. As the contract was being finalized, the potential buyer refused to sign, due to the uncertainty of Shirley's ability to convey clear title because of the pendency of this appeal. Shirley filed a Motion to Expedite this appeal, to try to prevent the sale from being lost. That motion was granted by order of this Court dated August 6, 2014.
4. In an effort to sell the building and conclude these proceedings, Shirley filed a Motion for Appeal Bond on May, 19, 2014. A hearing was held at which Howard argued that the amount of the bond should be set at twice the appraised value of the building (\$1,495,000)⁴. To date, Judge Strickland has not ruled on the motion for an appeal bond⁵.

³ There were as many as three (3) potential purchasers at one time; it is unknown whether Howard has delayed the sale long enough for the other two (2) to lose interest. Howard asserts that we will not share a copy of the contract with him; however, Shirley emailed him a redacted copy of the Letter of Intent on June 21, 2014 (Exhibit E). The redaction was necessary to protect the identity of the Buyer to prevent Howard's interference with the sale as he was found by Judge James and confirmed by this court on the sale of the former marital home. As noted below, the contract has not been finalized due to the instant appeal.

⁴ This, despite Howard's own contention that the value of the building is \$376,484.50 as appealed to the Richland County Tax Assessor (Exhibit F), which would set the bond, using his twice the value method, at \$752,969.00.

⁵ Howard argues in his Petition that Shirley has no incentive to sell the property. Yet he offers no explanation as to why Shirley has expedited this process at every step of the way, including initiating a proceeding for an appeal bond, on which Judge Strickland has not yet ruled. Howard's position is that the appeal bond must exceed \$2.9 million (thus ensuring Shirley cannot afford to purchase it).

5. In May, 2014, attorney Tommy Bunch appeared for Howard and contacted Shirley's counsel for purpose of settlement discussions⁶. Previously, settlement discussions had been initiated by attorney Keith Babcock on behalf of Howard's brother, Alvin Hammer, but those discussions ended when Alvin refused a request to indemnify Shirley against any future suits against her by Howard. *See* Exhibit A, p. 2.
6. Shirley requires a release from Howard as a condition of any settlement. Without a full release, Shirley anticipates having to defend even more lawsuits filed against her by Howard. Case in point: Shirley settled her domestic case with Howard in 2008 and 2009 and has been defending lawsuits brought against her in circuit court by Howard ever since then; thus, a full release is an absolute necessity. Howard refuses to grant a release in Shirley's favor, in a transparent attempt to make good on his previously stated intention to bankrupt Shirley (as found by Judge George James and affirmed by this Court) through litigation.
7. Howard's most recent position is that he now wants to pay the judgments (but not the additional funds awarded to Shirley). The initial judgments were entered⁷ in February, 2013. Howard could have paid the judgments anytime up to the decision by Judge Strickland to award Shirley the property (the order now on appeal). He refused to do so and therefore, that ship has sailed.
8. The judgments were satisfied with the award to Shirley of property formerly owned by Howard. Shirley owns the property and is required to sell it. Once the real

⁶ At one point, it appeared settlement was possible; that was the reason Shirley consented to Howard's request for a 30-day extension of time to file his initial briefs and designations. This Court granted that motion by order dated June 18, 2014.

⁷ Shirley obtained her judgments by orders of Judge James (January 29, 2013). Because Howard would not pay them, Shirley initiated supplemental proceedings. Additional judgments were ordered and subsequently included in the supplemental proceedings.

property is sold pursuant to Judge Strickland's order, Shirley will have the protection of a court order confirming her compliance with the order, which will assist her in defending against future suits by Howard.⁸

9. If this Court reverses Judge Strickland's order, Shirley's judgments will be reinstated, and they will have accrued judgment at the post-judgment rate since they were entered beginning in February, 2013. In the event that Judge Strickland's order is reversed, Shirley has a foreclosure action pending to foreclose her judgments against property owned by Howard (other persons with potential interests are also named), which will result in the sale of the property. Shirley Hammer v. Howard Hammer, 1634 Main, LP, Alvin Hammer, et. al., Case No. 2013-CP-40-6898.

10. Thus, Howard is delaying the inevitable by seeking reversal of Judge Strickland's order in this Court. Either through Judge Strickland's order or the pending foreclosure proceedings, Shirley will be paid her judgments and costs of collection. Howard will recover the balance. Essentially, Howard is fighting a sale that will provide him with the excess funds that are not due to Shirley⁹.

⁸ The threats have already started; Howard claims that Shirley has improperly dispossessed him from the building, is selling the property for below market value, and otherwise failing to protect his interest. This further evidences the necessity of a full release from Howard as a condition of any settlement. Shirley's only choice is to continue to attempt to comply with Judge Strickland's order, and Howard is attempting to block that sale, both through this appeal, and requesting an unreasonable amount of bond, or requiring that Shirley guarantee him a certain net recovery from the sales proceeds. If the order on appeal is reversed, Shirley will continue to proceed with her foreclosure action in order to recover the funds due to her and Howard will continue to throw up every roadblock to her recovery.

⁹ Among the downsides for Howard in receiving the excess proceeds from the sale is that he is seriously delinquent in his child support payments to Shirley for their two (2) minor children. Excess funds from the sale would therefore create a fund against which Shirley could recover her long-overdue past child support. The latest hearing on his contempt of court in the family court was

11. Simply put, Howard wants the real property back, with no release, so he can continue to sue Shirley. Barring that, he wants Shirley to sell the property under terms which require her to warrant and guarantee that he will receive a certain amount of money from the sale. And now, he wants this Court to force Shirley to take his settlement offer, without a release. Howard wants his cake, the plate it is on, the oven it was baked in, and the building which housed the kitchen.

12. Shirley has incurred yet more attorney fees in responding to this frivolous petition, and she seeks an award of fees against Howard, as well as an award of sanctions. Rule 269, SCACR.

Wherefore, Shirley seeks an order of this Court denying Howard's petition, and awarding her attorney fees and sanctions against him



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ATTORNEY FOR SHIRLEY HAMMER

August 11, 2014

continued due to his claim of ongoing illness. (Exhibit G). Shirley is informed and believes that there are other non-family court creditors as well.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
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CERTIFICATE OF SERVICE

I, Mara Ballard, an employee of Ballard & Watson Attorneys at Law, do hereby certify that on August 12, 2014, I served a copy of the **Response: Verified Petition for Writ of Supersedeas** in the above-captioned case on the following individuals by electronic mail and by regular United States Mail, with sufficient first class postage affixed, addressed as follows:

**Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, South Carolina 29205**

**Tommy Bunch, Esquire
Robinson McFadden
Post Office Box 944
Columbia, South Carolina 29202**


Mara T. Ballard

August 12, 2014
West Columbia, South Carolina