

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 12 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

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

Table of Authorities.....	ii
Introduction.....	1
Argument.....	3
 A. Where a judgment requires the payment of money, a master-in-equity may order the sale of real property or issue a charging lien on partnership and limited liability company interests, but the lower court has no authority to make a fee simple transfer of ownership of a judgment debtor's real and personal property.	
 B. The lower court properly did not award any sanctions for contempt or violation of Rule 11, SCRPC, but failed to follow the mandates of S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Act, and improperly awarded sanctions thereunder	
 C. Where process was not served in accordance with Rule 4, SCRPC, the lower court did not have jurisdiction over Appellants in the supplementary proceedings.	
Conclusion.....	16

TABLE OF AUTHORITIES

CASES

<i>Armstrong v. Humphries</i> , 5 S.C. 128 (1874).....	6
<i>Deer Island Lumber Co. v. Virginia-Carolina Chemical Co.</i> , 111 S.C. 299, 97 S.E. 833 (1919).....	9
<i>Everhart v. Everhart</i> , 261 S.C. 322, 325-26, 200 S.E.2d 87, 88 (1973).....	16
<i>In re Hinson</i> , 20 B.R. 753 (Bankr. D.S.C. 1982).	10
<i>Lynn v. International Broth. Of Firemen and Oilers</i> , 228 S.C. 357, 90 S.E.2d 204 (1955).....	9
<i>Petroleum Transp., Inc. v. Public Service Commission</i> , 255 S.C. 419, 179 S.E.2d 326 (1971).....	15
<i>Rhodes v. Casey</i> , 20 S.C. 491 (1884)	9

STATUTES

S.C. Code Ann. § 15-35-180 (2005)	4
S.C. Code Ann. § 15-35-810 (2005)	4, 10
S.C. Code Ann. § 15-36-10.	11, 12, 13
S.C. Code § 15-39-10 et seq. (1976).....	10
S.C. Code Ann. § 15-39-10 (2005).....	4, 5, 6, 7, 10
S. C. Code Ann. §§ 15-39-310 – 490 (2005)	5, 8, 10
S.C. Code Ann. § 15-39-610 (2005)	6, 9, 10
S.C. Code Ann. § 15-39-630	6, 10
S.C. Code Ann. §§ 15-39-610 – 900 (2005).	5
S.C. Code Ann. § 33-42-1230 (2006).	7
S.C. Code Ann. § 33-44-504 (2006).....	8

RULES

Rule 1, SCRCP	15
Rule 4(c), SCRCP.....	15, 16
Rule 81, SCRCP	15

I. Introduction

In this appeal the Court is faced with three principal issues: whether the lower court ever acquired jurisdiction in supplementary proceedings over the Appellants when service of process was defective under the Rules of Civil Procedure (Argument C); whether the lower court in supplementary proceedings had the authority to transfer Appellants real and personal property in fee simple when the applicable statutes required a judicial sale (Argument A); and whether the lower court erred in awarding sanctions against Appellant Howard Hammer when it ordered payment of Respondent's attorney's fees as sanctions for Respondent simply commencing supplementary proceedings, and the lower court failed to follow the applicable statute, and took no evidence as to the attorney's fees it awarded as sanctions (Argument B).

Underlying the principal issues on appeal is that while judgments were on appeal and without any security to protect Appellants' interests,¹ the lower court inexplicably transferred to Respondent outright ownership of Appellants' property valued by all parties between \$900,000 and \$1,475,000 in satisfaction of approximately \$391,000 in judgments inclusive of the sanctions. Relinquishing control of the supplementary proceedings, the lower court directed Respondent to take such action "she deems necessary" to sell the property in a commercially reasonable manner. It further ordered that:

- a. Respondent had no other duties to Appellants,

¹ See Argument I.B.4 of Appellants' Brief.

- b. Respondent could pay herself all costs of marketing and sale with no guidelines or limitation on reasonableness,
- c. Respondent had no duties to account for rental income from the property,
- d. Respondent could pay herself the judgments and sanctions awarded by the lower court from the remaining proceeds of sale, and
- e. then Respondent should hold in escrow any remaining funds pending an accounting and further distribution by the court.

Presumably, at a minimum, the escrowed proceeds would be paid to Appellants, the parties from whom the property was wrongfully taken, but that is not stated in the Order. R. ____ . The lower court's order gave outright ownership of property to the divorced spouse of Appellant Hammer. After protracted and on-going divorce litigation, Respondent has no incentive to control expenses, no controls on her management of the property, and no incentive to maximize the value of the property at her sale. Instead of exercising its judicial authority, the lower court yielded to Respondent unconditional authority, not because it might have been the proper legal course of action (which it was not), but because it was the easiest course of action.

THE COURT: Why wouldn't it be simpler, if you've identified an asset, just to transfer it to Mrs. Hammer's name, she'd be the owner in full, and we can all go home.

MS. BALLARD: I'm fine with that. If we can transfer all of Mr. Hammer's interest in 1634 Main, LP and all of his interest in 1634 Main, the building, because it's divided, he owns 1635. Now, in order to do that we'd also need to transfer his interest in SH5 because he owns SH5, LLC individually, and it is the general

partner of 1634 Main, LP. All of that is spelled out in Judge James' orders.

Tr. August 9, p. 40, l.19 – p. 41, l. 5; R. ____.

Allowing expediency to trump rules and statutes, if allowed to stand, the lower court's order will have divested Appellants of hundreds of thousands of dollars of equity in their property at the expense of the proper due process of a public sale which would likely generate substantial bidding activity. Allowing the order to stand would also defeat Appellants' attempts to pay the judgments which they have tried to do for the last year, and which Respondent has refused unless she could extract extra judicial and non-monetary concessions from Appellants.²

The lower court's order should be reversed and argument follows.

II. Argument

A. Where a judgment requires the payment of money, a master-in-equity may order the sale of real property or issue a charging lien on partnership and limited liability company interests, but the lower court has no authority to make a fee simple transfer of ownership of a judgment debtor's real and personal property.

In the matter before this court, the underlying judgments require the payment of money. They do not require the delivery of any real or personal property. They do not require the performance of any other act. As such, the method of enforcement is by execution:

When a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by

² See Appellants Verified Petition for Writ of Supersedeas filed August 4, 2014.
³ This Petition was filed when the lower court neither scheduled a hearing, nor ruled on Appellant's petitions for such a writ filed with the lower court in March and May, 2014.

execution as provided in this Title. When it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given or the person or officer who is required thereby or by law to obey it and his obedience thereto enforced. If he refuse he may be punished by the court as for contempt.

S.C. Code Ann. § 15-35-180 (2005).

Thus, it is clear that an execution should have issued, and the law provides for three types of execution.

There shall be three kinds of executions, (a) against the property of the judgment debtor, (b) against his person and (c) for the delivery of the possession of real or personal property or such delivery with damages for withholding the property. They shall be deemed the process of the court.

S.C. Code Ann. § 15-39-10 (2005).

The execution which issued in this case was against the property of the judgment debtors ("a" above). It was neither against the person ("b" above), nor was it for the delivery of possession of property ("c" above, as for property being wrongfully withheld in violation of the owner's right of possession). R. ____ . In fact, as the underlying judgments were for the payment of money, an execution for the delivery of property ("c" above), and upon which the lower Court incorrectly relied, would not have aided Respondent.

A money judgment creates a lien on real property owned by the judgment debtor in the county in which a judgment is enrolled. S.C. Code Ann. § 15-35-810 (2005). An execution delivering possession of the real property here at issue simply would give Respondent possession of real property on which she had a statutory lien, but no right of ownership. Thus, the execution directing property to be sold was the Respondent's correct remedy under § 15-39-10(a), and that

remedy should have been implemented by the lower court. However, in supplementary proceedings, the lower court relied on and applied § 15-39-10(c) erroneously thereby exceeding the authority under this code section by transferring – not possession of the real property - but fee simple ownership of it.

The lower court's lack of authority to make the fee simple transfer is made clear by a review of the statutory scheme for enforcement of money judgments. Supplementary proceedings are governed by Title 15, Chapter 39, Article 3 of the South Carolina Code, S. C. Code Ann. §§ 15-39-310 – 490 (2005). Section 15-39-310 sets forth the powers of a court in supplementary proceedings. If an execution is returned unsatisfied, the judgment creditor “. . . is entitled to an order from a judge of the circuit court requiring such judgment debtor to appear and answer questions concerning his property” The code section concludes: “And 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.**” (Emphasis added). Thus, the lower court in this case was required to apply the judgment debtors' property in the same manner as “the return of an execution.”

The code and the entire statutory scheme are quite specific that property taken under execution is to be sold. See Title 15, Chapter 39, Article 5 (Judicial Sales Generally) of the South Carolina Code, S.C. Code Ann. §§ 15-39-610 – 900 (2005).

When any sheriff or other officer shall take the lands, tenements, goods and chattels of any person whatsoever by virtue of any execution and the owner of such lands, tenements, goods and chattels shall not, within five days after such taking, satisfy the debt,

damages and costs of the party issuing such execution, such sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to satisfy the judgment for the best price that can be got for them. (emphasis added)

S.C. Code Ann. § 15-39-610 (2005). Thus, tangible property of “lands, tenements, goods and chattels” must be sold if it is to be applied toward the satisfaction of a judgment. S.C. Code Ann. § 15-39-630 then directs that in counties where the office of a master exists judicial sales shall be made by the master. Going back 240 years, it has been held that the directives of this code section are mandatory. Lower courts are bound to pursue the statutory directive. Disregarding the obligations of the statute, as the lower court did by transferring Appellants’ title to the real estate to Respondent, was manifest and reversible error. *Armstrong v. Humphries*, 5 S.C. 128 (1874).

The lower court’s sole basis for transferring title to the real property to Respondent begins on the last paragraph of page 6 of its order. The court states:

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’.

R. ____ . The following two pages of the order set forth the real property descriptions and Appellant Hammer’s ownership interests in the real property, and in Appellant 1634 Main, L.P. and SH5, LLC, which is the general partner of 1634 Main, L.P. From the lower court’s order quoting § 15-39-10(c) that an execution may issue for possession of property, the lower court erroneously applied the statute by conveying fee simple title to real and personal property:

. . . all right, title and interest in these assets is transferred to Shirley Hammer. Transfers of real property are fee simple absolute. The transfer [of] Mr. Hammer's interest in the identified entities is unconditional and permanent.

R. ____.

The lower court's misapprehension of §15-39-10(c), and its overall authority in supplementary proceedings, is made evident when one considers the conveyance of Appellant Hammer's personal property interests in the limited partnership and the limited liability company. The applicable statutes allow for charging liens in favor of Respondent on Appellant Hammer's interests in these entities. The Uniform Limited Partnership Act states:

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

S.C. Code Ann. § 33-42-1230 (2006).

The Uniform Limited Liability Company Act states:

(a) On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than the company's property, by one or more of the other members; or

(3) with the company's property, but only if permitted by the operating agreement.

(d) This chapter does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

(e) **This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment** out of the judgment debtor's distributional interest in a limited liability company. (emphasis added)

S.C. Code Ann. 33-44-504 (2006).

Respondent argues that S. C. Code Ann. §15-39-410 (2005) gives the lower court the authority to transfer title to Appellants' property. Putting aside the fact that the lower court did not rely on § 410, Respondent's reliance is mistaken. Section 410 provides that a judge may order property of the judgment debtor possessed by the judgment debtor or third parties (or due to the judgment debtor) "to be applied toward the satisfaction of the judgment." Therefore, the question arises as to what the legislature meant by use of the word "applied", or essentially the same terminology used in § 15-39-310 ("application of the property") which requires the lower court to follow an execution process in supplementary proceedings.

Respondent glosses over and fails to analyze the complete statutory scheme in its argument under § 15-39-410. Section 15-39-310 requires a court in supplementary proceedings to apply property in the same manner as an execution:

And 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.

Nothing in § 410 gives any indication that § 410 expands the scope of the authority given in § 310. Further, nothing in § 410 gives any indication that grants more authority than § 15-39-610 which requires that tangible property of “lands, tenements, goods and chattels” must be sold if it is to be applied toward the satisfaction of a judgment.

To the contrary, § 15-39-410 has only been implemented where funds or choses in action with a definitive dollar amount can be applied directly to the payment of a money judgment, a dollar for dollar offset, if you will. See, e.g., *Lynn v. International Broth. Of Firemen and Oilers*, 228 S.C. 357, 90 S.E.2d 204 (1955) (funds owed to judgment debtor by local union ordered applied to the judgment); *Rhodes v. Casey*, 20 S.C. 491 (1884) (money judgment in favor of judgment debtor ordered to be applied to amounts owed to judgment creditor); and *Deer Island Lumber Co. v. Virginia-Carolina Chemical Co.*, 111 S.C. 299, 97 S.E. 833 (1919) (funds in the hands of a third party belonging to judgment debtor may be directly applied). Under circumstances where a chose in action or a fund in an ascertainable amount is at issue, § 410 may have aided Respondent. However, those are not the facts in the instant matter. Moreover, Respondent has not cited and Appellants have not located any authority that would support the proposition that under § 410 fee simple ownership of lands or goods may be transferred to a judgment creditor in satisfaction of a judgment.³

³ Respondent implicitly recognized the error of her way in seeking a direct fee simple transfer of Appellants property. On November 13, 2013 Respondent filed a new suit in Richland County seeking to foreclose on Appellants' (and others) property to satisfy her judgment. See, *Shirley Hammer v. Howard Hammer*,

Appellants cited and argued the applicable case of *In re Hinson*, 20 B.R. 753 (Bankr. D.S.C. 1982). Respondent's attempt to distinguish that case is unavailing. In *Hinson*, the Honorable J. Bratton Davis assessed the interplay between the establishment of a judgment lien under S.C. Code Ann. § 15-35-810 (2005) and the enforcement of that lien under S.C. Code Ann. § 15-39-10 et seq. (2005). Although the main dispute in the case was the avoidance of a lien under bankruptcy law, *Hinson* correctly held that a judgment became a lien on property when entered in the county where a judgment debtor owns real property under § 810. It further noted that "this code section does not transfer any interest in the debtor's property to the judgment creditor. This transfer can only be accomplished by sale pursuant to South Carolina Code § 15-39-10 et seq. (1976)."

The specific statutes, S.C. Code Ann. §§ 15-39-310, 610, and 630, require that the lower court in supplementary proceedings apply property in the manner for the return to an execution and that real property be sold by the lower court. The statute upon which the lower court relied, S.C. Code Ann. § 15-39-10(c) was erroneously applied since this section allows only a transfer of possession of property, not a fee simple conveyance. For these reasons, and the others argued in Appellants' brief, the lower court's order conveying the real and personal property should be reversed.

1634 Main, LP, Alvin Hammer (and 13 other parties including the minor under age 14 David Hammer), Docket No. 2013-CP-40-6898. Respondent continues to pursue this action. Notably, Respondent argues that protection of the minor's interest in the appeal before this court is unnecessary, but he is joined as a party in her foreclosure case.

B. The lower court properly did not award any sanctions for contempt or violation of Rule 11, SCRCP, but failed to follow the mandates of S.C. Code Ann. § 15-36-10, the Frivolous Civil Proceedings Act, and improperly awarded sanctions thereunder.

The lower court denied Respondent's motion for criminal contempt.⁴ This ruling has not been appealed and is the law of the case. Likewise, despite Respondent's oral motion at the January 9, 2014 hearing for alleged violation of Rule 11, SCRCP, (R. ___, Order at pp. 9, 10), the lower court did not find a violation of Rule 11. The lower court's only basis for awarding sanctions states: "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 Howard Hammer as sanctions is hereby GRANTED."

Respondent did not request reconsideration of the lower court's denial of her motion under Rule 11, SCRCP, and there has been no appeal of this ruling. Despite Respondent's factual assertions to the contrary and her brief's reliance on Rule 11, it is clear that the lower court did not award any sanctions using Rule 11 as a basis therefor.

As to the sanctions awarded under S.C. Code § 15-36-10, Respondent failed to file the required motion and properly pursue the remedies allowed by § 15-36-10. Appellants adopt here all of the arguments made in Appellants' Brief. However, even if the lower court or this court could enter sanctions or affirm any

⁴ Respondent's Motion for Contempt was asserted against Appellant Howard Hammer and set forth only two grounds – Mr. Hammer's failure to timely Answer approximately 180 written interrogatories, and the failure of several entities to respond to subpoenas. At no time did Respondent move to compel discovery responses. The Motion for Contempt fails to set forth any harm or prejudice suffered by Respondent. The interrogatory responses were later delivered to Respondent's counsel, and the court ultimately quashed the subpoenas

sanctions against Mr. Hammer, such sanctions cannot be supported by either the record or Respondent's argument.

Respondent requested that Appellant Hammer be sanctioned for the full amount of her attorney's fees for pursuing supplementary proceedings. Respondent characterizes these fees as "additional" (Resp. Br. at p. __), but does not state to what they are in addition. Respondent cannot, in fact, state to what these legal fees are "additional" because the amount requested is for all of Respondent's alleged legal fees incurred in initiating and engaging in the supplementary proceedings. (Tr. January 9, p. 13, l. 24, - p. 14, l. 5, and p. 56, ll. 4-6.). There is no contractual or statutory basis for awarding Respondent's legal fees for bringing supplementary proceedings. Nevertheless, the lower court awarded fees, at least in part, for Respondent simply engaging in the supplementary proceedings.

The lower court's error in awarding all of Respondent's legal fees for the entire proceedings is also inconsistent with the lower court's order. Specifically, the lower court found that only "some positions advanced by the judgment debtors were frivolous." January 21 Order, p. 10, R. __ . The lower court did not specify what it considered frivolous; it simply made a conclusory ruling unsupported by any specific findings then awarded 100% of Respondent's fees based on "some positions." S. C. Code Ann. § 15-36-10 is designed specifically to avoid such blanket findings by requiring motions specifying the alleged violation and giving the opposing party a substantive and meaningful opportunity to respond.

A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

S.C. Code Ann. § 15-36-10(D)

Subsection E of the statute states the elements for the court to consider in determining a violation of the statute. The lower court failed to make any findings on the applicable elements.

Not only did the lower court err by awarding fee sanctions for Respondent simply engaging in supplementary proceedings, it erred by awarding fee sanctions when Respondent knew about the ownership, encumbrances and value of 1634 Main St. before she ever went to supplementary proceedings.

THE COURT: Now, list those assets again for me.

MS. BALLARD: He owns 1634 Main Street, unencumbered, the office building right over here.

THE COURT: How much is that worth?

MS. BALLARD: During the testimony in the trial before Judge James, the testimony was that it was worth between \$900,000 and a million dollars. There's no encumber, no mortgage or anything on it.

Transcript of August 12 hearing, p. 39, ll. 1-8, R. ____.

Further, Respondent knew the ownership of the property dating back to divorce proceedings between the parties (*Id.*, ll. 8-13, R. ____), and that the property had sufficient value to be sold and pay the judgments in full.

MS. BALLARD: ... but he owns it, the deed has been delivered to him. That 52.75 percent is probably sufficient to satisfy the

judgments, at least that Mrs. Hammer owns against Howard Hammer. Now, she also has judgments against 1634 Main, LP. It owns the remaining portion of that office building. And I think the quickest way to satisfy those judgments would be to, and we have in fact filed a motion to appoint a receiver, to take possession of 1634 Main, both the limited partnership and the real estate, and sell it, rent it out, do whatever it has to do,

Id., p. 39, l. 21 – p. 40, l.6, R. ____.

Respondent needlessly prolonged the supplementary proceedings when on day one, she could have presented these known facts to the master, had the property sold and been paid in full. Instead, Respondent dragged out the proceedings by presenting 180 superfluous written interrogatories, filing countless motions, and issuing irrelevant and pointless subpoenas.⁵ *Id.*, p. 11, l. 17 – p. 14, l. 12, R. ____ . On top of the unnecessary multiple hearings and filings in supplementary proceedings, Respondent then, instead of insisting that the property interests be sold at a judicial sale, urged the lower court to transfer ownership of the property interests when her counsel had no case authority to support such a transfer, and relied upon a statute that had never been interpreted to allow the transfer of ownership of real property to satisfy a judgment.

In addition to improperly awarding legal fees as sanctions for Respondent instituting then needlessly prolonging the supplementary proceedings, the lower court performed no analysis of any alleged fees incurred that might have been related to any conduct that could be sanctioned. In fact, the court could not have performed such an analysis of the alleged legal fees because Respondent never

⁵ The lower court quashed all subpoenas in the January 21 Order. "All subpoenas issued in this matter are hereby quashed, Rule 45, SCRCF." R. ____ .

provided the court or opposing counsel with any documentation or evidence of the alleged fees and a description of the services provided from which an amount or their reasonableness could be determined.

No sanctions should have been entered against Appellant Hammer. The order of the lower court awarding sanctions in Respondent's favor should be reversed.

C. Where process was not served in accordance with Rule 4, SCRCP, the lower court did not have jurisdiction over Appellants in the supplementary proceedings.

Rule 4(c), SCRCP, states:

Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.

One form of process is a rule to show cause. *Petroleum Transp., Inc. v. Public Service Commission*, 255 S.C. 419, 179 S.E.2d 326 (1971). The service of process is specifically governed by Rule 4, SCRCP. Respondent's contention that Rule 4, SCRCP, does not apply is erroneous. Rule 4 governs the procedure in all South Carolina Courts unless inconsistent with the Rules of the Magistrate's Probate and Family Courts. Rules 1 and 81, SCRCP. Therefore, Rule 4 applies to the supplementary proceedings which were instituted by Rule to Show Cause. In order to be effective, the Rules to Show Cause had to have been served by the "sheriff or his deputy or any other duly constituted law enforcement officer or

by any person designated by the court.” Rule 4(c). Since they were not properly served, the Master did not obtain jurisdiction over the person.

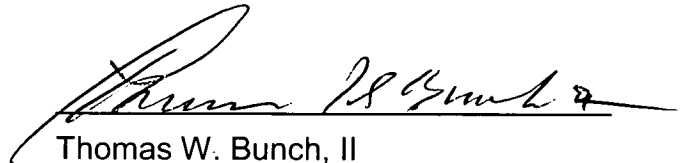
Respondent erroneously argues that *Everhart v. Everhart*, 261 S.C. 322, 325-26, 200 S.E.2d 87, 88 (1973), controls this issue. *Everhart* is readily distinguishable. The appellant in *Everhart* was a resident of Georgia and argued that he was not subject to personal jurisdiction in South Carolina. He did not argue that he was improperly served with process. The instant case presents a distinctly different situation. Upon proper service of process, Appellants in this case would have been subject to the lower court’s jurisdiction. The fact is, they were not properly served, and they timely preserved the error before ever appearing in the supplementary proceedings. To hold that they were properly served would nullify the clear mandate of Rule 4 (“service of all other process shall be made”

The question is not what type of proceeding this is and not whether it is supplementary to an existing proceeding as discussed in *Everhart* and argued by Respondent. That argument simply misses the point. The issue is compliance with and enforcement of a specific rule which requires that process be served in a specific manner. The rule could have easily been followed by Respondent. She elected to ignore it, and the lower court never acquired jurisdiction over Appellants for the supplementary proceedings.

III. CONCLUSION

The lower court erred by exercising jurisdiction over Appellants when they were incorrectly delivered the rules to show cause, and therefore not correctly

served with process. It erred in its application of the statutes governing supplementary proceedings, and the erroneous outright fee simple conveyance of Appellants' property. It erred by relinquishing control of a court proceeding and sale of property to Respondent. It erred by sanctioning Appellant Hammer for the Respondent pursuing her statutory remedy of supplementary proceedings where no statute or contract allowed for such sanctions. It compounded the error of erroneously awarding sanctions by not requiring a proper motion to be filed and by not taking evidence. In combination, all of these errors highlight the inequitable nature of these supplementary proceedings as conducted by the lower court, a court of equity. All of these errors, individually and collectively, create a wrongful taking of Appellants' property, and a violation of their due process rights. The lower court's order must be reversed, with instructions to cancel the deed and conveyance of property interests.



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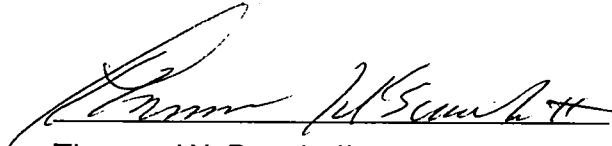
Shirley Hammer,

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PROOF OF SERVICE

I do hereby certify that I have filed the Appellants' Initial Reply Brief and Appellants' Reply Designation of Matter to be Included in the Record on Appeal and served opposing counsel by depositing a copy of it in the United State Mail, postage prepaid, on **August 11, 2014** addressed as follows:

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Thomas W. Bunch, II