

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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AUG 26 2014

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

**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

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**APPELLANTS' BRIEF**

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## STATEMENT OF ISSUES ON APPEAL

- I. **DID THE MASTER ERR IN MAKING A DIRECT TRANSFER TO SH OF THE REAL PROPERTY AT 1634 MAIN STREET, HH'S INTEREST IN THE LIMITED PARTNERSHIP, 1634 MAIN LP, AND HH'S INTEREST IN SH5, LLC WHEN THE DIRECT TRANSFER OF THESE PROPERTY INTERESTS VIOLATED APPLICABLE RULES, STATUTES, AND CONSTITUTIONAL PRINCIPLES INTENDED TO PROTECT THE INTERESTS OF JUDGMENT DEBTORS AND THE INTERESTS OF THIRD PARTIES IN THE PROPERTY TRANSFERRED?**
- II. **DID THE MASTER ERR IN AWARDING SANCTIONS AGAINST HH AND THE LIMITED PARTNERSHIP, 1634 MAIN LP, WHEN THERE WAS NO COMPLIANCE WITH KEY PROVISIONS OF S.C. CODE ANN. § 15-36-10 - THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT?**
- III. **DID THE MASTER ERR IN CONCLUDING THAT HE HAD PERSONAL JURISDICTION OVER HH AND 1634 MAIN, L.P. WHEN THE RULES TO SHOW CAUSE INITIATING THE SUPPLEMENTARY PROCEEDINGS WERE SERVED BY A PRIVATE PROCESS SERVER WHO WAS NEVER DESIGNATED BY ANY COURT TO SERVE THE RULES TO SHOW CAUSE?**

## STATEMENT OF THE CASE

This appeal arises out of supplementary proceedings commenced by Rules to Show Cause (R. pp. 23-28) in which Shirley Hammer (SH) sought to enforce Judgments in her favor and against Howard Hammer (HH) and 1634 Main, LP.<sup>1</sup> By Order of reference, the supplemental proceedings were referred to the master. *Id.*

At the initial hearing in this matter on June 4, 2013,<sup>2</sup> HH and 1634 Main, LP made Motions to Dismiss under Rule 12(b)(5) for insufficiency of service of process because the Rules

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<sup>1</sup> HH and SH were once married.

<sup>2</sup> Contrary to statement in the master's June 10, 2014 Order (R. pp. 4-8), no hearing was held on May 30, 2013. When the undersigned appeared with Motions to Dismiss, the court scheduled these Motions for June 4, 2013. The undersigned informed HH and 1634 Main LP that the hearing on June 4, 2013, was limited to the issues raised by the Motions to Dismiss and that it would not be necessary for HH to bring the documents described in the Rules to the June 4, 2013, hearing. The undersigned apologizes if he misunderstood the master's intentions but notes this matter in view of the master's June 10, 2013, Order placing blame on HH and 1634 Main LP for failure to produce documents at June 4, 2013 hearing.

to Show Cause were served by a private process server. (R. pp. 33-36) Neither the Rules to Show Cause nor the Orders of Reference made any designation allowing a person other than the Sheriff or his deputy or another law enforcement officer to make service of the Rules to Show cause as required by Rule 4(c) SCRCPP. The master denied these Motions by Order dated June 10, 2013. (R. pp. 4-8)

Additional hearings were held on August 12, 2013, and January 9, 2014. At the hearing on August 12, 2013, SH's counsel made a Motion requesting that the master order the transfer to SH of the following property owned by HH and 1634 Main, LP:

- all right, title, and interest of both HH and 1634 Main, LP in the real property known as 1634 Main Street;
- all right, title, and interest of HH in SH5, LLC (SH5);<sup>3</sup> and
- all right, title, and interest of HH in 1634 Main, LP.

HH and 1634 Main, LP made a joint Motion for Summary Judgment in which they asserted that SH was not entitled to a transfer of these properties as a matter of law. (R. pp. 39-40)

On January 21, 2014, the master entered a final Judgment. This final Judgment denied the Appellants' joint Motion for Summary Judgment and provided for a transfer by deed to SH of all of the real and personal property listed above (transferred property). (R. p. 19) The final Judgment also compelled HH and 1634 Main, LP to pay to SH the sum of \$55,385.70 as sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act (SCFCPSA) - S.C. Code Ann. § 15-36-10. (R. p. 18) On January 22, 2014, the master executed a deed making the transfers provided for in his final Judgment of January 21, 2014. (R. pp. 381-383)

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<sup>3</sup> SH5 was the general partner of 1634 Main, LP, and HH was the sole owner of SH5.

On February 3, 2014, HH and 1634 Main, LP filed a joint Motion to Alter or Amend under Rule 59(e) SCRPC. (R. pp. 41-47) In that Motion, HH and 1634 Main, LP raised the following points:

- that the master did not have authority to make a direct transfer of the transferred property under the statutes establishing the proper procedures for collecting on judgments;
- that the master failed to require SH to post a bond in an amount equal to two times the value of the property as a condition of transferring the property and as a condition of SH's right to sell the property as required by S.C. Code Ann. § 18-9-130(A)(2);
- that the master violated the due process clauses of S.C. Const. art. 1, § 3 and U.S. Const. amend. XIV, § 3 by making a direct transfer of the property because one of the minor children of HH and SH was a part owner (limited partner) of the limited partnership, 1634 Main L.P., and was never made a party to or represented in any way in these actions.; and
- that the master improperly awarded sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act (SCFCPSA) because - (a) the sanctions were awarded even though SH never filed a written sanctions motion after judgment had been rendered that specifically stated, for the benefit of the nonmoving party and the court, the conduct constituting a violation of the provisions of the section and never gave the basis for the requested potential sanctions as required by S.C. Code Ann. § 15-36-10(C)(1) and (D); and (b) the sanctions award was made without giving HH and 1634 Main, LP thirty days to respond to SH's sanctions claim as required by S.C. Code Ann. § 15-36-10(D).

By Order signed March 21, 2014, the master denied the joint Motion to Alter or Amend. (R. p. 22) HH and 1634 Main, LP received written notice of the March 21, 2014 Order on March 25, 2014. HH and 1634 Main, LP timely served Notices of Appeal on April 24, 2014.

### **STATEMENT OF THE FACTS**

On January 21, 2014, the master issued a final Judgment in supplementary proceedings that provided for a direct transfer of real property owned by HH and 1634 Main, LP to SH that had a stipulated value of \$900,000 to \$1,000,000. (R. p. 262, ll. 5-7; p. 369, ll. 19-23) Since the transfer of the real property, SH's counsel has represented to the master that, in fact, the real property recently appraised for \$1,475,000.00.

The aggregate amount of the judgments against both 1634 Main, LP and HH that is set forth in the Rules to Show Cause is \$157,375.45. (R. pp. 23-28) Subsequent to the issuance of the Rules to Show Cause, additional and separate judgments in the aggregate amount of \$177,793.31 were entered against the HH and 1634 Main, LP. (R. p. 10) No rules to show cause have ever been issued to bring these additional and separate judgments against HH and 1634 Main, LP before the master for collection.

SH presented no evidence of record of the additional judgments and made no request for judicial notice of the additional judgments. Property valued at up to almost \$1.5 million was transferred by Master's Deed to SH on her judgment of \$157,375.45. (R. pp. 23-28) One day after entry of his final Judgment, the master executed and delivered a Master's Deed making the real and personal property transfers. (R. pp. 381-383) The transfers were made without any bond even though the master's final Judgment ordered SH to sell the real property located at 1634 Main Street. (R. pp. 19-20)

The record shows that at the time of the first hearing in supplementary proceedings on June 4, 2013, SH and her counsel knew that HH and 1634 Main, LP owned real property located at 1634 Main Street with a value of \$900,000 to \$1,000,000, an amount more than sufficient to satisfy all judgments of SH. (R. p. 262, ll. 2-7) Therefore, a request for an execution against that property pursuant to S.C. Code Ann. §§ 15-39-310 et seq. could have been made at the June 4, 2013, hearing. If the request for an execution had been made at that time, further proceedings held in this matter would not have been necessary.

A child of HH and SH (minor child) owns a limited partnership interest in 1634 Main, LP. (R. p.331, l. 14-p. 332, l. 3) The only asset of 1634 Main, LP before its transfer to SH was the 1634 Main Street real property. As a result of transfer of all of 1634 Main, LP's right, title,

and interest in the 1634 Main Street real property, the minor child's limited partnership interest in 1634 Main, LP was made worthless. The minor child was never given notice of, made a party to, or given any opportunity to be heard in this case.

### STANDARD OF REVIEW

"Supplementary proceedings are equitable in nature." Ag-Chem Equipment Co. v. Daggerhart, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984) (citing Ex Parte Roddey, 171 S.C. 489, 172 S.E. 866 (1934)). In an action in equity referred to the master for final judgment, an appellate court "may view the evidence to determine facts in accordance with (its) own view of the preponderance of the evidence." Friarsgate, Inc. v. First Federal Savings & Loan of South Carolina, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995) (citing Tiger, Inc. v. Fisher Argo, Inc., 301 S.C. 209, 391 S.E.2d 538 (1989) (parenthetical added)).

An action for sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act (SCFCPSA) – S.C. Code § 15-36-10 – sounds in equity. Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997). "In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." Ex Parte Beard, 359 S.C. 351, 356, 597 S.E.2d 835, 838 (Ct. App. 2004). However, if "the appellate court agrees with the trial court's findings of fact (concerning SCFCPSA sanctions), it reviews the decision to award sanctions, as well as the amount of sanctions, under an abuse of discretion standard." Father v SCDSS, 353 S.C. 254, 261, 578 S.E.2d 11, 14 (2003) (parenthetical added).

An appellate court reviews a trial court's decision to exercise personal jurisdiction over a defending party under an abuse of discretion standard. Ex Parte South Carolina Department of Revenue, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002). A decision to exercise that

jurisdiction “will not be disturbed on appeal unless wholly unsupported by the evidence or manifestly influenced or controlled by an error of law.” Indus. Equip. Co. v. Frank G. Hough Co., 218 S.C. 169, 173, 61 S.E.2d 884, 885 (1950).

## ARGUMENT

### **I. THE MASTER ERRED IN MAKING A DIRECT TRANSFER TO SH OF THE TRANSFERRED PROPERTY BECAUSE THAT DIRECT TRANSFER VIOLATED APPLICABLE RULES, STATUTES, AND CONSTITUTIONAL PROVISIONS INTENDED TO PROTECT THE INTERESTS OF JUDGMENT DEBTORS AND THE INTERESTS OF THIRD PARTIES IN THE PROPERTY TRANSFERRED.**

#### **A. The South Carolina Rules of Civil Procedure**

Rule 62(a) SCRPC states that “no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.” This Rule establishes an automatic ten-day stay of all enforcement activity on a judgment. Gateway Enterprises, Inc. v. South Carolina Department of Revenue, 341 S.C. 103, 533 S.E.2d 896 (2000). The ten-day automatic stay applies only to judgments as defined in Rule 54(a) SCRPC. Gateway, 341 S.C. at 106, 533 S.E.2d at 898. Under Rule 54(a) SCRPC, a judgment “includes any decree or order which dismisses the action as to any party or finally determines the rights of any party.” Any enforcement action taken in violation of the ten-day stay is void. Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986) (clerk’s cancellation of lis pendens within ten days of order of cancellation void).

The master took enforcement action on his final Judgment one day after it was entered when he executed the Master’s Deed. (R. pp. 381 – 383). If the master’s final Judgment fits the definition of a judgment under Rule 54(a) SCRPC, then the master violated the automatic ten-day stay rule in Rule 62(a) SCRPC. The master’s final Judgment does fit the Rule 54(a) SCRPC definition of a judgment. That final Judgment finally determines the rights of HH and 1634

Main, LP in that it transfers all of their right, title, and interest in property with finality. (Master's final Judgment). The master violated the automatic ten-day stay rule in Rule 62(a) SCRPC by executing the Master's Deed one day after the entry of his final Judgment, and the Master's Deed should, therefore, be declared void by this Court.

**B. The South Carolina Code**

**1. Judgment Liens**

At common law, a judgment did not create a lien on a judgment debtor's real property. In re Hinson, 20 B.R. 753 (Bkrcty.D.S.C. 1982). Our General Assembly changed this rule in 1873 by enacting what is now S.C. Code Ann. § 15-35-810. That section states, in pertinent part, that "[f]inal judgments and decrees in any court of record in this state ... shall constitute a lien upon the real estate of the judgment debtor situate in any county in this state in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed ...." S.C. Code Ann. § 15-35-810 declares that judgment liens exist but gives no clear guidance on the question of their attributes.

A comprehensive description of the attributes of a judgment lien came in In re Hinson, supra, a federal bankruptcy case that analyzes the interests created by S.C. Code Ann. § 15-35-810. In In re Hinson, U.S. Bankruptcy Court Judge J. Bratton Davis observed that S.C. Code § 15-35-810 does not operate to transfer any interest in property and that "[s]uch a transfer can only be accomplished by sale pursuant to S.C. Code Ann. §§ 15-39-10 et seq." 20 B.R. at 757. Judge Davis then held that:

[a] judgment creditor has no estate or property interest in the land upon which the judgment has become a lien. He stands upon the law, which gives him a remedy for the collection of the debt by a sale of the land under execution.

20 B.R. at 757

In re Hinson dispels any notion that SH had any right to receive title to the transferred property by virtue of her status as a judgment lienholder. As a judgment lienholder, SH had no property interest in the transferred property. SH had no more than the right to force an execution sale of the transferred real property. SH cannot successfully justify the transfer of the property to her by invoking her limited rights as a judgment lienholder.

## 2. Executions against property

The pertinent definition of an execution in the context of this case is “the legal process of enforcing (a) judgment, usually by seizing and selling the property of the debtor.” Henry Campbell Black, Black’s Law Dictionary 510 (5th ed. 1979) (parenthetical added). The South Carolina Code provides for three types of executions on a judgment: “(a) against the property of the judgment debtor, (b) against his person, and (c) for the delivery of the possession of real property or such delivery with damages for withholding the property.” S.C. Code Ann. § 15-39-10.

In his final Judgment, the master’s analysis goes off track from its inception by virtue of his misreading of S.C. Code Ann. § 15-39-10(c). The master identifies S.C. Code Ann. § 15-39-10(c) as the source of his authority to transfer to SH the transferred property. That section authorizes execution by delivery of possession of real property. In his final Judgment, the master did not deliver possession of real property; he delivered title to real property. The very statutory provision that the master uses to justify his transfer of the transferred property to SH provides no support for that transfer.

The master’s actions can be justified, if at all, only as an execution against the property of the judgment debtor under S.C. Code Ann. § 15-39-10(a). The procedure for execution against property is set forth in S.C. Code Ann. §§ 15-39-610 et seq. “When any sheriff or other officer

shall take the lands ... and chattels of any person whatsoever by virtue of any execution and the owner of such lands ... 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 other officer shall and may sell by auction the lands ... and chattels so taken ... for the best price that can be got for them.”

S.C. Code Ann. § 15-39-610 (emphasis added). “In those counties in which the office of master exists the master shall make all sales ordered by the court in granting equitable relief.” S.C. Code Ann. § 15-39-630.

Under S.C. Code Ann. § 15-39-630 the master had the authority to sell the transferred property, and under S.C. Code Ann. § 15-39-610, the master had the duty to sell that property. By failing to sell the transferred property through the process of execution and instead transferring the property to SH, the master erred. This Court should reverse for the master’s failure to follow the mandatory procedure for executing against the transferred property by selling it at auction to the highest bidder.

### **3. Supplementary proceedings**

Even in supplementary proceedings, the master did not have authority to transfer to SH the transferred property. The master’s authority in supplementary proceedings is still limited to execution against the transferred property by selling it at auction to the highest bidder. S.C. Code Ann. §§ 15-39-310 et seq. set forth the procedures for supplementary proceedings and mark out the edges of the power of a judge presiding over supplemental proceedings. In supplemental proceedings, the presiding judge is given authority to undertake such proceedings “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 Ann. § 15-39-310 (emphasis added). The

upshot of this is that the power of the presiding judge in supplemental proceedings remains limited to execution on the judgment debtor's property.

In his final Judgment, the master went well beyond the power conferred on him by S.C. Code §§ 15-39-310 et seq. Rather than sell the property of HH and 1634 Main, LP as he was required to do under S.C. Code Ann. § 15-39-310 and S.C. Code Ann. § 15-39-610, the master made a direct transfer of that property to SH. By making this direct transfer of the judgment debtors' property, the master erred. The master compounded this error by utterly disregarding the minor child's limited partnership interest in 1634 Main, LP. According to S.C. Code Ann. § 15-39-460, "[i]f it appears that a person ... alleged to have property of the judgment debtor ... claims an interest in the property adverse to him ... such interest shall be recoverable only in an action against such person by the receiver."

As a limited partner of 1634 Main, LP, the minor child had an interest in the 1634 Main Street real estate that is adverse to both judgment debtors, HH and 1634 Main, LP. The minor child's interest is recoverable only by an action by a receiver. No action was ever brought to recover the minor child's interest in the 1634 Main Street real estate, and no receiver was ever appointed to bring this action. The master erred in not reckoning with the minor child's interest in the 1634 Main Street real estate as required by S.C. Code Ann. § 15-39-460, and this Court should reverse on that additional basis.

#### **4. Prejudice**

HH and 1634 Main have suffered prejudice caused by the master's Judgment because the provisions of the South Carolina Code cited in this section of this brief are not only intended to facilitate the collection of judgments but also intended to give important protections to judgment debtors. Execution requires a sale of items of the judgment debtor's property "for the best price

that can be got for them.” S.C. Code Ann. § 15-39-610. By contrast, the master’s Judgment only requires SH to “immediately ... market the assets in a commercially reasonable manner.” (R. p. 20)

The transfer also deprived HH and 1634 Main, LP of an important protection that they should have had against a short sale of the 1634 Main Street real property. According to S.C. Code Ann. § 18-9-130, “[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 amount of the value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale if the judgment is reversed.” (parentheticals added). The master’s Judgment requires no bond. (R. pp. 18-21) No bond has been posted in this case. In fact, no bond has been set. By making the direct transfer of the transferred property, the master bypassed the important protections afforded to HH and 1634 Main, LP by the bond requirement in S.C. Code Ann. § 18-9-130.

The reason for these protections is illustrated by what has in fact occurred in this case. After receiving the Master’s Deed in this case, SH immediately formed a limited liability corporation (two days after the deed was signed, one day after it was recorded, and well before ten days had expired following the entry of the master’s Judgment) and transferred title to the 1634 Main Street real estate to that corporation. (R. pp. 384-385) By making this transfer, SH instantly violated the only protection ostensibly conceded to HH and 1634 Main, LP in the master’s Judgment, specifically, the requirement that SH “immediately . . . market the assets transferred to her ... in a commercially-reasonable manner.” (R. p. 20)

In addition, SH, capitalizing on the carte blanche authority given to her by virtue of the direct transfer of the real and personal property, set about incurring thousands upon thousands in expenses. HH and 1634 Main, LP have every good reason to believe that SH will seek to have these expenses taxed against their interests in the transferred property unless the master's final Judgment is reversed.

Contrary to even the minimal protection afforded to HH and 1634 Main, LP in the master's Judgment, SH re-conveyed the assets to another entity of her own creation. By transferring the assets directly to SH, the master facilitated violation of the mandates of S.C. Code Ann. § 15-39-10, S.C. Code Ann. § 15-39-310 and S.C. Code Ann. § 15-39-610. These violations are especially prejudicial to HH and 1634 Main, LP because the Judgments in favor of SH are for amounts that are facially much smaller than the value of the 1634 Main Street real estate as stipulated by SH's own counsel in open court during the final hearing in this case.<sup>4</sup>

### **C. The South Carolina and United States Constitutions**

Both the United States and the South Carolina Constitutions prohibit deprivation of a property interest without due process of law. S.C. Const. art. 1, § 3 and U.S. Const. amend. XIV, § 3. The rights guaranteed by the due process clauses include procedural due process or fair procedures as a condition for deprivation of a property interest. See, U.S. v James Daniel Good Real Property, 510 U.S. 43, 114 S.Ct. 492 (1993) and Ross v Medical University of South Carolina, 328 S.C. 51, 492 S.E.2d 62 (1977). At a minimum, procedural due process requires reasonable notice and a meaningful opportunity to be heard. James Daniel, 510 U.S. at 48, 114 S.Ct. at 494; Ross, 328 S.C. at 66-67, 492 S.E.2d at 70-71.

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<sup>4</sup> The amounts of the underlying Judgments according to the master's Judgment were \$335,168.76. (Master's Judgment, p. 2). SH's counsel stated in open court that the 1634 Main Street real estate had a value of "\$900,000 to \$1,000,000." (R. p. 262, ll. 2-7)

The minor child, as a limited partner in 1634 Main LP, had a property interest at stake in this case, and he was, therefore, entitled under both the South Carolina Constitution and the United States Constitution to notice and a meaningful opportunity to be heard in these cases.<sup>5</sup> Since the minor child was not given notice of, made a party to, or given any opportunity to be heard in this case, the master could not make a direct transfer of the 1634 Main Street real property to SH without violating the minor child's procedural due process rights. The master violated the procedural due process rights of the minor child by making the direct transfer of the 1634 Main Street real estate to SH, and this Court should reverse on that basis.

**II. THE MASTER ERRED IN AWARDING SANCTIONS AGAINST HH AND 1634 MAIN LP, WHEN THERE WAS NO COMPLIANCE WITH KEY PROVISIONS OF S.C. CODE ANN. § 15-36-10 - THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT.**

The SCFCPSA requires a motion after judgment that notifies “the court and all parties of the conduct constituting a violation of the provisions of this section (S.C. Code Ann. § 15-36-10) and explain(s) the basis for the potential sanction imposed.” S.C. Code Ann. § 15-36-10(C)(1) and (D) (parentheticals added). Once the moving party serves its motion notifying the nonmoving party of the specific conduct violating the SCFCPSA and the basis for the sanction, the nonmoving party “has thirty days to respond to the allegations as that person considers appropriate .... S.C. Code Ann. § 15-36-10(D).

SH did not properly notify or in fact notify at all the master or HH and 1634 Main, LP of the conduct constituting an alleged violation of the provisions of the SCFCPSA. SH also did not provide an explanation of the basis of having potential sanctions imposed. The SCFCPSA

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<sup>5</sup> HH has standing to raise these constitutional arguments on behalf of the minor child. HH is the sole shareholder of SH5, which is the general partner of 1634 Main, LP. In that capacity, HH has a fiduciary duty to the minor child, who is a limited partner in 1634 Main, LP. Anthony v. Padmar, 320 S.C. 436, 450, 465 S.E.2d 745, 753 (Ct. App. 1995) (“By virtue of the general partner’s position, the limited partners must rely upon the general partner’s scrupulous performance of their duty to ... represent the limited partners to the best of their ability.”).

motion was made orally at the very end of the January 9, 2014, final hearing in this case, so HH and 1634 Main, LP also were not afforded the thirty days required by S.C. Code § 15-36-10 (D) to respond to SH's sanctions claim before the imposition of sanctions. Because of these defects in the procedure of handling SH's sanctions claim under the SCFCPSA, the master erred in awarding sanctions under the SCFCPSA, and this Court should reverse on that basis.

**III. THE MASTER ERRED IN CONCLUDING THAT HE HAD PERSONAL JURISDICTION OVER HH AND 1634 MAIN, L.P. WHEN THE RULES TO SHOW CAUSE INITIATING THE SUPPLEMENTAL PROCEEDINGS WERE SERVED BY A PRIVATE PROCESS SERVER WHO WAS NEVER DESIGNATED BY ANY COURT TO SERVE THE RULES TO SHOW CAUSE.**

Rule 4(c) SCRCP requires that service of all process other than a summons 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 years of age, not an attorney in or a party to the action." (emphasis added). "Rule 4 SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). If service of process is insufficient, the court never acquires personal jurisdiction over the defending party. Mull v Ridgeland Realty, LLC, 387 S.C. 479, 693 S.E.2d 27 (Ct. App. 2010). "[A] judgment is void ... if a court acts without [personal] jurisdiction." Ex Parte South Carolina Department of Revenue, 335 S.C. 404, 407, 566 S.E. 196, 198 (Ct. App. 2002) (quoting Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)).

The master erred in concluding that his court had personal jurisdiction over HH and 1634 Main LP. The service of the Rules to Show Cause did not comply with Rule 4(c) SCRCP because that service was made by a private process server who had never been designated by any court to serve the Rules to Show Cause. This service gave the Appellants notice, but it did not

give the master's court personal jurisdiction over HH and 1634 Main, LP. While the cases do not require exacting compliance with the service rules, they do not permit the outright and obvious noncompliance with those rules that occurred here. Since the master's court never acquired personal jurisdiction over HH and 1634 Main, LP, the Orders and final Judgment entered by the master as well as the master's Deed executed by the master are void. This Court should reverse the master's Orders and final Judgment and declare the Master's Deed void.

### CONCLUSION

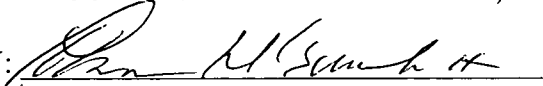
For the foregoing reasons, HH and 1634 Main, L.P. respectfully request that this Court reverse the master's Orders and the master's final Judgment from which they have appealed and declare null and void ab initio the Master's Deed purporting to convey outright the subject property.

Respectfully Submitted,

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Columbia, South Carolina

Dated: August 25<sup>th</sup>, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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,

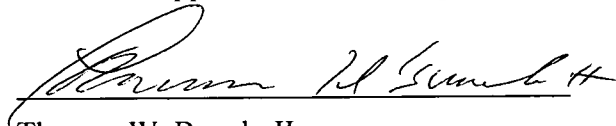
Respondent

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that this Final Appellants' Brief complies with Rule 211 (b), SCACR.



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August 25, 2014

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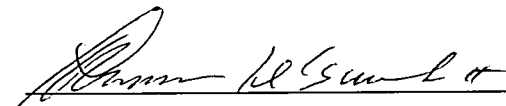
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**PROOF OF SERVICE**

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I do hereby certify that I have filed the Appellants' Final Brief and caused a copy to be served on opposing counsel by hand delivery on **August 26, 2014** to the following address:

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