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AUG 26 2014

S.C. Supreme Court

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

RECORD ON APPEAL
VOLUME 1

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendants

IN THE COURT OF COMMON PLEAS

CA# 2009-CP-40-05911

CA# 2010-CP-40-02889

**ORDER FOR SUPPLEMENTAL
PROCEEDINGS BY WRITTEN DISCOVERY**

RICHLAND COUNTY
FILED
2013 JUN 10 PM 2:43
JEANETTE M. BRIDE
C.C.P.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

1634 Main, LP

Defendant

THESE MATTERS came before the Court for hearing on May 30, 2013 pursuant to orders of reference and Rules to Show Cause executed by Judge Casey Manning on April 22, 2013 against debtors Howard Hammer and 1634 Main, LP (herein Mr. Hammer). The creditor, Shirley Hammer (herein Ms. Hammer) filed a motion to consolidate the matters for supplemental proceedings, I hereby GRANT the motion to consolidate.

The undersigned acknowledges that Mr. Hammer "took the fifth" and refused to answer certain questions. He is given leave to re-assert that privilege in accord with this order if necessary.

Prior to the hearing, Mr. Hammer filed motions to dismiss the proceedings against him and against 1634 Main, LP on the basis that this court lacks personal jurisdiction. Counsel for Mr. Hammer and Ms. Hammer appeared for the hearing, but Mr. Hammer did not. I instructed counsels for both parties to appear, with their clients, for hearing on these matters, including the motion to dismiss, on June 4, 2013.

At the hearing on June 4, Mr. Hammer asserted that by appearing he was not waiving his assertions that this court failed to obtain personal jurisdiction over him, individually or as an agent for 1634 Main, LP. Mr. Hammer claims that because the Rule to Show Cause was personally served upon him by a private detective, rather than by the sheriff or his deputy, the service is faulty and to go forward with the proceedings would violate his Constitutional Rights.

Counsel for Ms. Hammer argued this court has continuing jurisdiction over the debtors. Ms. Hammer also argued that the primary concern by the courts in reviewing procedural due process is the question of whether or not the defendant, or debtor in this case, had reasonable notice. Because Mr. Hammer was personally served with the Orders of Reference/RTSC and verified petition, he filed the motions to dismiss in advance of the hearing, had counsel attend the first hearing, and attended this hearing, Mr. Hammer clearly had notice. Service on Mr. Hammer, individually and as the registered agent for debtor 1634 Main LP, was proper under Rule 6(b), SCRCF because in these matters the RTSC is related to an ongoing action in which the debtors have already appeared.

This court has personal jurisdiction over Mr. Hammer and 1634 Main LLC for purposes

of supplemental proceedings. Further, Mr. Hammer's due process rights have not been violated.

Mr. Hammer's motion and 1634 Main LP's motion to dismiss pursuant to Rule 12(b)(2), SCRPC, are DENIED.

Mr. Hammer also made a motion to dismiss the supplemental proceedings for lack of subject matter jurisdiction. I entertained oral arguments on the matter, reviewed the order issued by the Supreme Court of South Carolina on September 7, 2012 that assigned oversight of the circuit court cases to Judge Barber, and reviewed the Rules to Show Cause and the Orders of Reference. The Court does have subject matter jurisdiction over these supplemental proceedings. Mr. Hammer's motions to dismiss these proceedings pursuant to Rule 12(b)(1), SCRPC, are DENIED.

The Rule to Show Cause and Order of Reference required Mr. Hammer, as an individual debtor, to bring with him to the hearing the following materials:

- a. All records, titles, etc., concerning any and all real estate, automobiles, trucks, trailers and other vehicles owned or being purchased by you or any corporations, partnerships or business in which you own an interest, or did so own, in the last year;
- b. All records concerning bank accounts owned by you, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements that have been prepared by or for you within the past five years.
- d. A list of current assets and their approximate market value;
- e. A list of any property owned by you that is in the hands of a third party;
- f. Transfers by you of any property, owned by you as business assets or personal

assets within the past five years;

- g. Withdrawals, in any form (including compensation, bonuses and loans) that have been made to you within the past five years; and
- j. Such other and further records as may disclose your assets and liabilities, or of any corporations, partnerships or business in which you own an interest.

Mr. Hammer did not bring to the hearing any of the above listed documents.

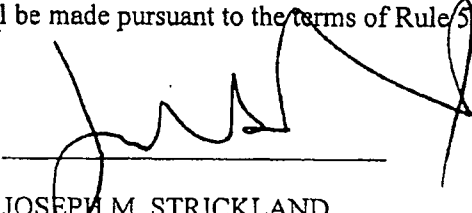
The Rule to Show Cause and Order of Reference required Mr. Hammer or other knowledgeable person as the agent of 1634 Main LP, debtor, to bring with him to the hearing the following materials:

- a. All records, titles, etc., concerning any and all real estate, contracts, leases, office equipment, furniture, or other property owned or being purchased by or for defendant, as well as any corporations, partnerships or business in which defendant holds an interest, or did so own in the last year;
- b. All records concerning bank accounts owned by, or used by, defendant, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements that have been prepared by or for defendant within the past five years.
- d. A list of current assets and their approximate market value;
- e. State and Federal Income Tax Returns for the years 2009, 2010, 2011 and 2012;
- f. A list of any property owned by defendant that is in the hands of a third party, including defendant's partners, managers, officers and/or agents;

- g. Copies of leases of any real or personal property leased by you, including the following information: name and address of landlord, amount of rental payments and date through which rent is paid;
- h. Transfers by defendant of any property, owned as business assets within the past five years;
- i. Withdrawals or disbursements, in any form, that have been made to any of defendant's officers, agents, directors, partners, or/and managers within the past five years; and
- j. Such other and further records as may disclose the assets and liabilities of the defendant partnership.

Mr. Hammer did not present to the Court any of the materials demanded and he was not prepared to answer questions related to his accounts, business relationships, assets, liabilities, and other related matters in detail sufficient to allow Ms. Hammer and this Court to discover an asset, or assets, by which Ms. Hammer's judgments could be satisfied. Therefore, it is hereby ORDERED that Mr. Hammer and 1634 Main, LP answer Interrogatories and Request for Production submitted to them, or their counsel, by Ms. Hammer pursuant to this order. Answers must be filed with this court and served on Ms. Hammer's counsel on July 8, 2013. In submitting the Interrogatories, Ms. Hammer shall not be limited by the terms of S.C.R.C.P. Rule 33(b) (9). Service of the discovery and its answers shall be made pursuant to the terms of Rule 5, SCRC.P. IT IS SO ORDERED.

June 10, 2013
Columbia, South Carolina


JOSEPH M. STRICKLAND

Richland County Master-In-Equity

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**

2014 JAN 21 AM 9:05
JEFFREY W. MCBRIDE
CLERK
RICHLAND COUNTY
FILED

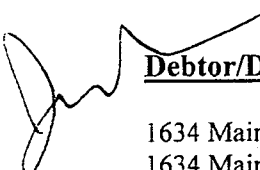
The matter before the court is a hearing in the nature of supplemental proceedings.

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.

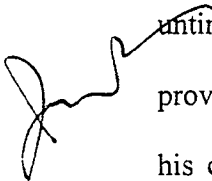
The Court granted Mrs. Hammer's request to continue the examination by written discovery. By order dated June 10, 2013, this Court ordered both Mr. Hammer and 1634 Main LP to answer questions via written interrogatories and requests to produce to enable the Court to determine what assets exist against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

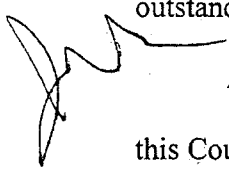
Neither Mr. Hammer nor 1634 Main LP has filed any responses to the written discovery served upon them, as they were required to do by this court's order dated June 10, 2013.

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.

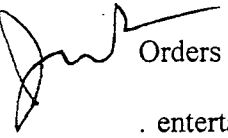
On September 9, 2013, the defendant debtors filed a motion for summary judgment alleging that transfer of the real property is beyond the power of this court, under S.C. Code §15-31-310, *et. seq.* A hearing was scheduled for January 9, 2014 for purposes of addressing all outstanding issues, and notice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

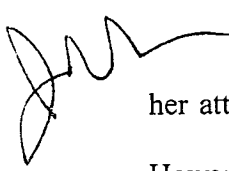
According to the evidence and documents of record, 1634 Main LP owns an unknown percentage of the real estate located at 1634 and 1632 Main Street, Columbia, SC, as described above.

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, SCRCF. 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, SCRCF.

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO.: 2009-CP-40-5911

Howard Hammer,)
)
)
Plaintiff,)
)
vs.)
Shirley Hammer a/k/a Shirley)
Grace Hightower,)
)
Defendant(s))

ORDER DENYING MOTION
OF HOWARD HAMMER TO
ALTER OR AMEND JUDGMENT

1634 Main, L.P.,)
)
Plaintiff,)
vs.)
)
Shirley Hammer a/k/a Shirley)
Grace Hightower,)
)
Defendant,)
vs.)
)
Howard Hammer,)
Additional Defendant on)
Counterclaim)

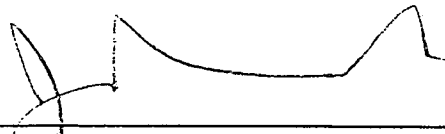
CASE NO: 2010-CP-40-02889

ORDER DENYING MOTION OF
HOWARD HAMMER AND 1634
MAIN, LP TO ALTER OR AMEND
JUDGMENT

The matter before the Court is the Motion of Howard Hammer to Alter or Amend Judgment and the Motion of Howard Hammer and 1634 Main, L.P. to Alter or Amend Judgment.

The motions are denied.

It is so Ordered.



Joseph M. Strickland, as
Master in Equity for Richland County

Columbia, South Carolina
March 21, 2014.

114
\$98.00
4/11/11
SS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendants

IN THE COURT OF COMMON PLEAS

J.R. 2009-CP-40-05911

2010-CP-40-02889

**RULE TO SHOW CAUSE AND
ORDER OF REFERENCE AS TO
HOWARD HAMMER**

Judgments having been rendered, and executions issued, with *nulla bona* returns made to said executions, the Plaintiff having moved for an examination of the Defendant Howard Hammer pursuant to the provisions of S.C. Code Ann., Section 15-39-310, et seq. (S.C. Code 1976), as amended, and an Order of Reference having been issued, it is therefore,

ORDERED that the within matter is hereby referred with finality to the Honorable Joseph M. Strickland, Master-in-Equity for Richland County. It is further

ORDERED that the Defendant Howard Hammer, DO APPEAR before the Master in Equity for Richland County at the Richland County Judicial Center, Courtroom 2D, located at 212 Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 30 day of May, 2013 at 2:00 o'clock in the P.m. to answer under oath questions concerning your assets; TO SHOW CAUSE why your property should not be applied toward satisfaction of the judgments set out in the Petition; and TO SHOW CAUSE why a Receiver of your property should not be appointed, pursuant to the provisions of S.C. Code Ann., Section 15-39-430 (S. C. Code 1976).

The Master-in-Equity shall have the authority to enter final judgment, and an appeal, if

any, must be made directly to the South Carolina Supreme Court. Pursuant to S.C. Rules of Civil Procedure, Sections 14-11-90 and 15-39-390 (1976, as amended) and to Rule 53, S.C. Rules of Civil Procedure, the Master shall entertain and rule upon all motions necessary to dispose of this matter, to include but be not 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 the Plaintiff's debt.

IT IS FURTHER ORDERED that you are hereby **restrained** of disposing of any assets which are the subject of this Judgment.

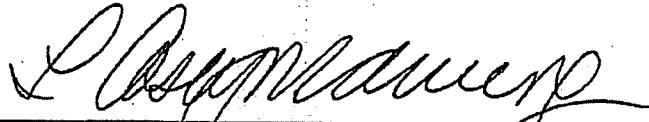
YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING THE FOLLOWING:

- a. All records, titles, etc., concerning any and all real estate, automobiles, trucks, trailers and other vehicles owned or being purchased by you or any corporations, partnerships or business in which you own an interest, or did so own, in the last year;
- b. All records concerning bank accounts owned by you, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements that have been prepared by or for you within the past five years.
- d. List of current assets and their approximate market value;
- e. List of any property owned by you that is in the hands of a third party;
- f. Transfers by you of any property, owned by you as business assets or personal assets within the past five years;
- g. Withdrawals, in any form (including compensation, bonuses and loans) that have

been made to you within the past five years; and

- j. Such other and further records as may disclose your assets and liabilities, or of any corporations, partnerships or business in which you own an interest.

IF YOU DO NOT APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE and/or JAIL SENTENCE.



The Honorable DeAndrea G. Benjamin *L. Casey Manning*
Chief Administrative Judge for
Court of Common Pleas, Fifth Judicial Circuit

April 18, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

J.R. 2010-CP-40-02889

Shirley Hammer)

Plaintiff,)

vs.)

1634 Main, LP)

Defendant)

RULE TO SHOW CAUSE AND
ORDER OF REFERENCE AS TO
1634 MAIN, LP

2013 APR 22 AM 11:43
FILED
RICHLAND COUNTY
CLERK OF COURT

Judgment having been rendered, and execution issued, with *nulla bona* return made to said execution, the Plaintiff having moved for an examination of the Defendant 1634 Main, LP, by or through its agent(s), pursuant to the provisions of S.C. Code Ann., Section 15-39-310, et seq. (S. C. Code 1976 as amended) and an Order of Reference having been issued, it is therefore,

ORDERED that the within matter is hereby referred with finality to the Honorable Joseph M. Strickland, Master-in-Equity for Richland County. It is further

ORDERED that the 1634 Main, LP, by and through one or more of its partners, agents, officers or managers that would have knowledge of the subjects herein, DO APPEAR before the Master in Equity for Richland County at the Richland County Judicial Center, Courtroom 2-D, located at 212 Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 30 day of May, 2013 at 2:00 o'clock in the P.m. to answer under oath questions concerning its assets; TO SHOW CAUSE why the defendant's property should not be applied toward satisfaction of the judgments set out in the Petition; and TO SHOW CAUSE why a Receiver of its property should not be appointed, pursuant to the provisions of S.C. Code Ann., Section 15-39-430 (S. C. Code 1976).

The Master-in-Equity shall have the authority to enter final judgment, and an appeal, if

any, must be made directly to the South Carolina Supreme Court. Pursuant to S.C. Rules of Civil Procedure, Sections 14-11-90 and 15-39-390 (1976, as amended) and to Rule 53, S.C. Rules of Civil Procedure, the Master shall entertain and rule upon all motions necessary to dispose of this matter, to include but be not 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 the Plaintiff's debt.

IT IS FURTHER ORDERED that defendant 1634 Main, LP is hereby **restrained** of disposing of any assets which are the subject of this Judgment.

DEFENDANT IS FURTHER ORDERED TO BRING TO THE HEARING THE FOLLOWING:

- a. All records, titles, etc., concerning any and all real estate, contracts, leases, office equipment, furniture, or other property owned or being purchased by or for defendant, as well as any corporations, partnerships or business in which defendant holds an interest, or did so own in the last year;
- b. All records concerning bank accounts owned by, or used by, defendant, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements that have been prepared by or for defendant within the past five years.
- d. List of current assets and their approximate market value;
- e. State and Federal Income Tax Returns for the years 2009, 2010, 2011 and 2012;
- f. List of any property owned by defendant that is in the hands of a third party, including defendant's partners, managers, officers and/or agents;
- g. Copies of leases of any real or personal property leased by you, including the

following information: name and address of landlord, amount of rental payments and date through which rent is paid;

- h. Transfers by defendant of any property, owned as business assets within the past five years;
- i. Withdrawals or disbursements, in any form, that have been made to any of defendant's officers, agents, directors, partners, or/and managers within the past five years; and
- j. Such other and further records as may disclose the assets and liabilities of the defendant partnership.

IF A KNOWLEDGABLE REPRESENTATIVE DOES NOT APPEAR ON BEHALF OF DEFENDANT 1634 MAIN, LP, AS ORDERED, THE DEFENDANT MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE and/or OTHER PUNITIVE JUDGMENT.


The Honorable DeAndrea G. Benjamin
Chief Administrative Judge for *Lacey Manning*
Court of Common Pleas, Fifth Judicial Circuit 

April 17, 2013
Columbia, South Carolina

2010CP4002889

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

1634 Main, LP

EXECUTION AGAINST
PROPERTY

PLAINTIFF

VS.

Shirley Hammer, a/k/a Shirley Grace Hightower

DEFENDANT

VS.

Howard Hammer

THIRD-PARTY DEFENDANT

TO THE SHERIFF OF THE COUNTY OF RICHLAND, GREETINGS

WHEREAS judgment was rendered in the above entitled action on the 3rd day of June, 2013 in favor of the Defendant Shirley Hammer against the Plaintiff 1634 Main, LP for the sum of \$102,032.87 as appears to us by the Judgment Roll filed in the office of the aforesaid Court

AND WHEREAS there is actually now due on the said judgment thus docketed in your County on the 6th day of June in the year 2013 the principal sum aforesaid, with interest thereon from the date of the said judgment

THEREFORE, WE COMMAND YOU that you satisfy the said judgment including principal, interest, costs and your fees out of the personal property of the said judgment debtor in your county, belonging, if sufficient personal property cannot be found, then out of the real property in your county belonging to the said judgment debtor on the day when the said judgment was docketed in your county, or at any time thereafter, in whosever hands the same maybe, and that you duly return this execution according to law to this Clerk of the said Court

WITNESS, Jeanette W. McBride as Clerk of aforesaid County, this the 25 day of

June, 2013

ATTEST

Jeanette W. McBride
Clerk of Court

Stephen W. Wason
Defendant (attorney for)

Exec. 9/5/83
Book 111, Page 111
Number 31201304351
County of Contra Costa
Richmond County Sheriff's Department

Return to Clerk
Natalia Bona
SHERIFF'S OFFICE
COUNTY OF CONTRA COSTA
9/21/83

Natalia Bona

2009CP4005911

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Howard Hammer

EXECUTION AGAINST
PROPERTY

PLAINTIFF

VS.

Shirley Hammer, a/k/a Shirley Grace Hightower

DEFENDANT

TO THE SHERIFF OF THE COUNTY OF RICHLAND, GREETINGS.

WHEREAS Judgment was rendered in the above entitled action on the 3rd day of June, 2013 in favor of the Defendant against the Plaintiff for the sum of \$60,744.50 as appears to us by the Judgment Roll, filed in the office of the aforesaid Court.

AND WHEREAS, there is actually now due on the said judgment thus docketed in your County on the 6th day of June in the year 2013 the principal sum aforesaid, with interest thereon from the date of the said judgment.

THEREFORE, WE COMMAND YOU, that you satisfy the said judgment, including principal, interest, costs and your fees out of the personal property of the said judgment debtor in your county belonging; if sufficient personal property cannot be found, then out of the real property in your county belonging to the said judgment debtor on the day when the said judgment was docketed in your county, or at any time thereafter, in whosever hands the same maybe, and that you duly return this execution according to law to this Clerk of the said Court.

WITNESS: Jeanette W. McBride as Clerk of aforesaid County this the 25 day of

June, 2013.

ATTEST

Jeanette W. McBride
Clerk of Court

Shirley Hammer
Defendant (attorney for)

Entered at 3/25/13
Book 111 Page 11
Number 122,204,51
Leon J. Smith
Florida County Sheriff's Department

Return to Clerk
Nelle Bona
LEON COTT
SHERIFF C.S.D.
31-25-008

Leon J. Smith

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

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

) **MOTION OF HOWARD HAMMER**
) **TO DISMISS SUPPLEMENTAL**
) **PROCEEDINGS**
)

TO: ALL OTHER COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Defendant, Howard Hammer, hereby moves, in accordance with Rule 12(b)(5) SCRPC, to dismiss the supplemental proceedings commenced by the Defendant in the above captioned case. The general grounds for this Motion are that the service of the Order and Rule commencing the supplemental proceedings is insufficient. The specific grounds for this Motion are as follows:

1. that the Order and Rule were served on Howard Hammer by a private process server;
2. that Rule 4(c) SCRPC 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 the eighteen (18) years of age, not an attorney in or a party to the action;" and
3. that, therefore, the Defendant's attempted service of the Order and Rule is insufficient for this Court to acquire jurisdiction over Howard Hammer.

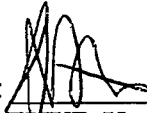
WHEREFORE, Howard Hammer prays that this Court dismiss the pending supplemental proceedings for insufficiency of service of the Order and Rule.

Respectfully Submitted,

(SIGNATURE ON THE FOLLOWING PAGE)

RICHLAND COUNTY
FILED
2013 MAY 30 PM 1:24
JEANETTE W. McBRIDE
C.C.P. & G.S.

AIKEN & HIGHTOWER, P.A.

By: 

ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, South Carolina 29205

Tel. 803-799-5205

Fax 803-799-5206

Email art@aikenandhightower.com

ATTORNEYS FOR HOWARD HAMMER

May 30, 2013

Columbia, South Carolina

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

) Case No.: 2010-CP-40-2889

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**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP TO DISMISS
SUPPLEMENTAL PROCEEDINGS**

W. McBRIDE
C.C.P. & G.S.

2013 MAY 30 PM 1:28

RICHLAND COUNTY
FILED

TO: ALL OTHER COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Defendant, Howard Hammer, and the Plaintiff, 1634 Main, LP (1634 Main), hereby move, in accordance with Rule 12(b)(5) SCRPC, to dismiss the supplemental proceedings commenced by the Defendant, Shirley Hammer, in the above captioned case. The general grounds for this Motion are that the service of the Order and Rule commencing the supplemental proceedings is insufficient. The specific grounds for this Motion are as follows:

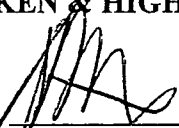
1. that the Order and Rule were served on Howard Hammer and 1634 Main by a private process server;
2. that Rule 4(c) SCRCF requires that service of all process other than a summons be "made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less the eighteen (18) years of age, not an attorney in or a party to the action;" and
3. that, therefore, the Plaintiff's attempted service of the Order and Rule is insufficient for this Court to acquire jurisdiction over Howard Hammer and 1634 Main.

WHEREFORE, Howard Hammer prays that this Court dismiss the pending

supplemental proceedings for insufficiency of service of the Order and Rule..

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

By: 

ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, South Carolina 29205

Tel. 803-799-5205

Fax 803-799-5206

Email art@aikenandhightower.com

**ATTORNEYS FOR HOWARD HAMMER AND
1634 MAIN, LP**

May 30, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff,

vs.

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

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

HOWARD HAMMER'S MOTION
TO QUASH SUBPOENA ISSUED
TO BERNARD N. ACKERMAN,
CPA

RICHLAND COUNTY
FILED
2013 JUL 23 AM 11:39
JEANETTE W. MURPHY
C.C.P. & G.

TO: ALL OTHER COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Howard Hammer, hereby moves, in accordance with Rule 45 SCRPC to quash the June 12, 2013 Subpoena issued to Bernard N. Ackerman, CPA (Ackerman) in the above captioned case. The grounds for this Motion are:

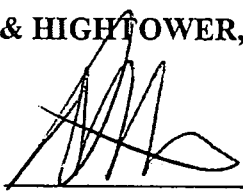
1. that the Subpoena fails to state the court from which it is issued as required by Rule 45(a)(1)(A) SCRPC;
2. that the Subpoena fails to state the name of the court in which the action is pending as required by Rule 45(a)(1)(B); and
3. that service of the Subpoena on Ackerman was insufficient because the return receipt was signed by a person who is not authorized by Ackerman to accept service of subpoenas.

WHEREFORE, Howard Hammer prays that this Court quash the June 12, 2013 Subpoena issued to Ackerman in this case.

Respectfully Submitted,

(SIGNATURE ON THE FOLLOWING PAGE)

AIKEN & HIGHTOWER, P.A.

By: 

ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, South Carolina 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
July 22, 2013

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

) HOWARD HAMMER'S MOTION
) FOR SUMMARY JUDGMENT ON
) SHIRLEY HAMMER'S CLAIM
) FOR TRANSFER OF OWNERSHIP
) OF ASSETS
)

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

**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP FOR
SUMMARY JUDGMENT ON
SHIRLEY HAMMER'S CLAIM
FOR TRANSFER OF OWNERSHIP
OF ASSETS**

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

**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP FOR
SUMMARY JUDGMENT ON
SHIRLEY HAMMER'S CLAIM
FOR TRANSFER OF OWNERSHIP
OF ASSETS**

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

**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP FOR
SUMMARY JUDGMENT ON
SHIRLEY HAMMER'S CLAIM
FOR TRANSFER OF OWNERSHIP
OF ASSETS**

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

**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP FOR
SUMMARY JUDGMENT ON
SHIRLEY HAMMER'S CLAIM
FOR TRANSFER OF OWNERSHIP
OF ASSETS**

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

**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP FOR
SUMMARY JUDGMENT ON
SHIRLEY HAMMER'S CLAIM
FOR TRANSFER OF OWNERSHIP
OF ASSETS**

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

**MOTION OF HOWARD HAMMER
AND 1634 MAIN, LP FOR
SUMMARY JUDGMENT ON
SHIRLEY HAMMER'S CLAIM
FOR TRANSFER OF OWNERSHIP
OF ASSETS**

2018 SEP 18 AM 11:04
FILED
JENNIFER W. MOSE
CLERK
U.S. DISTRICT COURT
NORTH DAKOTA
FBI
HARRISBURG
ARDHAMMER
0-2889
ON PLEA
CIRCUIT

39

entitled to judgment as a matter of law on this claim. The specific grounds for this Motion are that a naked transfer of ownership of the above assets is beyond the power of this Court to order under S.C. Code §§ 15-39-310 et seq.

WHEREFORE, Howard Hammer and 1634 Main, LP pray that this Court grant them summary judgment on Shirley Hammer's claim that she is entitled to transfer of ownership of the subject assets in this supplemental proceeding.

Respectfully Submitted

AIKEN & HIGHTOWER, P.A.

By: 

ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, South Carolina 29205

Tel. 803-799-5205

Fax 803-799-5206

Email art@aikenandhightower.com

ATTORNEYS FOR JUDGMENT DEBTORS

September 12, 2013
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant on Counterclaim

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

) **MOTION OF HOWARD HAMMER**
) **TO ALTER OR AMEND**
) **JUDGMENT WITH ANNEXED**
) **MEMORANDUM IN SUPPORT**
)

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

) **MOTION OF HOWARD HAMMER**
) **AND 1634 MAIN, LP TO ALTER**
) **OR AMEND JUDGMENT WITH**
) **ANNEXED MEMORANDUM IN**
) **SUPPORT**
)

MOTION

The Plaintiff/Third-Party Defendant, Howard Hammer (HH) and the Plaintiff, 1634 Main, LP (1634 Main) (collectively moving parties) hereby move, in accordance with Rule 59(e) SCRPC, to alter or amend and for reconsideration of this Court's Order in supplemental proceedings, which transferred certain real and personal property from the moving parties to SH. The subject Order was filed with the Clerk on January 21, 2014, and the moving parties' counsel received written notice of the entry of the Order by mail on January 22, 2013.

The moving parties base their Motion on the general grounds that, in the Order, this Court erred in its application of the law to the facts and that the Order does neither raises nor rules upon significant arguments made by the moving parties' counsel in opposition to the relief granted to the Defendant, Shirley Hammer (SH) in the subject Order. For specific grounds for this Motion, the moving parties rely on the issues raised in the Memorandum in Support annexed to this Motion.

WHEREFORE, the moving parties prays that this Court alter the Order to rule upon all issues raised and argued in opposition to the relief granted in the Order, reconsider that Order and amend that Order to deny the relief granted in that Order.

MEMORANDUM IN SUPPORT

ARGUMENT

I. INTRODUCTION

The above are actions in which SH sought supplemental 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). 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).¹ On January 22, 2014, this Court executed a Master's Deed making these transfers.

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.

II. THE PURPOSES FOR A MOTION UNDER RULE 59(e) SCRCP

A motion under Rule 59(e) SCRCP serves two purposes. First, the motion must be made to preserve for appellate review arguments of the moving party that were made to the trial court but were not explicitly addressed in the trial court's order. Elam v SCDOT, 361 S.C.9, 602 S.E.2d 772 (2004). Second, the motion may be made in an effort to convince the trial court to reconsider the result reached in its order and rule in favor of the moving party. Elam, supra. Barr make his Rule 59(e) SCRCP Motion for both of these purposes.

III. THIS COURT SHOULD ALTER THE SUBJECT ORDER TO RULE EXPLICITLY ON SEVERAL ARGUMENTS THAT COUNSEL FOR THE MOVING PARTIES RAISED DURING THE HEARINGS.

The moving parties raised the following arguments at the hearings that are neither raised in nor ruled upon in the subject Order:

- that this Court was without authority to make a naked transfer of the transferred property under the Order and the Master's Deed according to S.C. Code §§ 15-39-310 et seq.;
- that if this Court ordered a sale of the transferred property, which it did, the order would have to set, as a condition of the sale, a requirement that SH post a bond in an amount equal to two times the value of the property all of which is required by S.C. Code § 18-9-130(A)(2);
- that this Court was without authority under the due process clauses of S.C. Const. art. 1, § 3 and U.S. Const. amend. XIV, § 3 to make a naked transfer of the transferred property because one of the minor children of HH and SH was a part owner of 1634 Main and was never made a party to or represented in any way in these actions; and
- that this Court could not order sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act (SCFCPSA) because SH did not comply with the procedural requirements for pursuing a claim under that the SCFCPSA; namely, that a motion must be filed giving the nonmoving party notice of the conduct alleged to violate the SCFCPSA, S.C. Code § 15-36-10(C)(1) and (D), and that the nonmoving has thirty (30) days to respond to any sanctions motion under the SCFCPSA, S.C. Code §15-36-10(D).

This Court should amend its Order to raise and rule upon these important arguments.

IV. THIS COURT SHOULD RECONSIDER ITS DECISION, ALTER ITS ORDER AND DENY THE RELIEF GRANTED IN THE SUBJECT ORDER.

A. This Court exceeded its authority in making the naked transfer of the property transferred under the subject Order.

In supplemental proceedings, the supervising court has the authority to undertake 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 § 15-39-310 (emphasis added). On the return of an execution, the “sheriff...shall and may sell (the judgment debtors’ property), by auction.” S.C. Code § 15-36-610 (parenthetical added).

The language underlined above indicates that the General Assembly intended to give to the supervising judge in supplemental proceedings only those powers conferred upon the sheriff on the return of an execution, the power to sell the property of the judgment debtor. In other words, this Court had authority to order the sale of the transferred property but no authority to order a naked transfer of that property.

This Court exceeded its authority as supervising judge in supplemental proceedings by ordering a naked transfer of the transferred property. For this reason, this Court should alter the subject Order to deny SH the relief of a naked transfer of the subject property.

B. HAVING ORDERED AN EVENTUAL SALE OF THE PROPERTY, THIS COURT HAD TO REQUIRE SH TO POST A BOND IN AN AMOUNT EQUAL TO TWO TIMES THE VALUE OF THE PROPERTY.

“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 § 18-9-130 (parentheticals added). This Court should alter the subject Order to impose the bond requirement as a condition of any sale of the transferred property.

C. THIS COURT EXCEEDED ITS AUTHORITY IN GRANTING A NAKED TRANSFER OF THE PROPERTY, BECAUSE A PART OWNER OF 1634 MAIN, A MINOR CHILD OF HH AND SH, WAS NEVER MADE A PARTY TO AND WAS NEVER REPRESENTED IN ANY WAY IN THESE ACTIONS.

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 right guaranteed by these due process clauses includes 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, 126 L.Ed.2d 490 (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.

The minor child as a partial owner of 1634 Main was entitled to notice and a meaningful opportunity to be heard in these cases. Since the minor child was never made a party or given any opportunity to be heard in these actions, this Court did not have authority to make a naked transfer of 1634 Main to SH. This Court should alter the subject Order to deny the naked transfer of the transferred property.

D. SH DID NOT COMPLY WITH THE PROVISIONS OF THE SCFCPSA.

The SCFCPSA requires a motion that notifies “the court and all parties of the conduct constituting a violation of the provisions of this section and explain(s) the basis for the potential sanction imposed.” S.C. Code § 15-36-10(C)(1) and (D). Once the moving party served 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.” S.C. Code § 15-36-10(D) This Court’s Order violates both of these statutory provisions, and this Court should amend the subject Order to deny sanctions under the SCFCPSA.

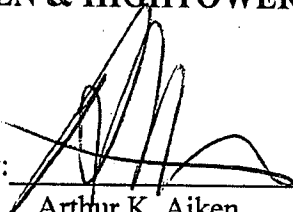
CONCLUSION

This Court should reconsider its decision and enter an amended order denying SH the relief granted to her in the subject Order. Short of that, this Court should alter or amend its Order to address explicitly the important arguments set forth above.

Respectfully submitted,

(SIGNATURE ON THE FOLLOWING PAGE)

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

**ATTORNEYS FOR THE JUDGMENT
DEBTORS**

Columbia, South Carolina
February 3, 2014

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

**MOTION FOR CONTEMPT
AGAINST
HOWARD HAMMER**

TO: HOWARD HAMMER, Defendant

YOU WILL PLEASE TAKE NOTICE, Defendant Shirley Hammer (herein, Ms. Hammer), by and through her attorneys, Desa Ballard and Stephanie Weissenstein, will move this Honorable Court on August 12, 2013, for an Order holding Howard Hammer in criminal contempt of court based upon the following:

This motion is made pursuant to this Court's prior order and the common law applicable to criminal contempt. In support of her Motion for a finding of criminal contempt against Mr. Hammer, Ms. Hammer states as follows:

1. On or about June 10, 2013, Judge Strickland, issued an Order GRANTING Ms. Hammer's motion to consolidate the referenced actions, DENYING Mr. Hammer's motions to dismiss based on personal jurisdiction and subject matter jurisdiction. The same ORDER further ordered Mr. Hammer and 1634 Main, LP to answer written discovery, said discovery not to be limited by the terms of SCRCP Rule 33(b)(9). On information and belief, this order followed several hours of non-productive questioning of Mr. Hammer in which Mr. Hammer was deliberately evasive, and refused to provide any substantive information in response to proper questioning by Mrs. Hammer's counsel.
2. On June 11, 2013, Ms. Hammer served Interrogatories and Requests to Produce both for Howard Hammer individually and as Registered Agent for 1634 Main, LP. The Interrogatories and Requests for Production were served via US Certified Mail, Return Restricted Delivery, Return Receipt and was contemporaneously sent to Arthur K. Aiken, Counsel for Howard Hammer.
3. Proof of service of the discovery requests identified in Paragraph 2 above was filed on or about June 14, 2013.
4. Pursuant to the Order of Judge Strickland of June 10, 2013, the Answers to this discovery was due July 8, 2013.
5. To date, no Answers to either set of Discovery has been received and no other responsive pleading has been filed¹

¹Mr. Hammer wrote a letter to our Forensic Accountant Mara Ballard on June 13, 2013, and we filed it with the Richland County Clerk of Court's office on or about June 21, 2013. Mr. Hammer's letter was copied to Judge Strickland and the Clerk of Court, Ms. McBride, and indicated that he had not been served with a copy of Judge Strickland's order by the Clerk of Court, as required by his understanding of Rule 77 of the SCRCP. We do not know if Mr.

6. On June 14, 2013, Ms. Hammer served subpoenas upon Howard Hammer individually, as well as Registered Agent for D&M Chateau, Grand Fountain, LLC, 1634 Main, LP, Hammer & Hammer, LLC, SH3, LLC, SH4, LLC and SH5, LLC via Craig Zenger a Process Server for Byrd Investigations with a copy of the subpoenas contemporaneously sent to Arthur K. Aiken, attorney for Howard Hammer.
7. Proof of Service in the form of Mr. Zenger's affidavit was filed with the Richland County Clerk of Court on June 24, 2013.
8. To date, no Answers or other responsive pleadings to any of the Subpoenas has been received.
9. Ms. Hammer is informed and believes that the following examples of Mr. Hammer's conduct in refusing to respond to discovery and in interfering with discovery from third parties, is knowing and intentional, and that a finding of contempt therefore is warranted:
 - A. Howard Hammer's willful refusal to provide any responses, much less full and complete responses to Ms. Hammer's Interrogatories and Requests for Production to Howard Hammer which was served upon Howard Hammer and filed with this Court on or about June 11, 2013.
 - B. Howard Hammer's willful refusal to provide any responses, much less full and complete responses, to Mrs. Hammer's Interrogatories and Requests for Production to 1634 Main LP, which were served upon him in his representative

Hammer ever received a copy of Judge Strickland's order from the Clerk of Court's office, but we served him, pursuant to Rule 5(b), SCRCP, as a professional courtesy with a copy of the order and filed a certificate of service for that mailing on or about June 28, 2013.

capacity as an agent of 1634 Main LP and filed with this Court on or about June 11, 2013; and

- C. Howard Hammer's willful refusal to provide any responses, much less full and complete responses, to a subpoena served upon him in his capacity as an agent of 1634 Main LP on or about June 14, 2013;
- D. Howard Hammer's willful refusal to provide any responses, much less full and complete responses, to a subpoena served upon him in his capacity as an agent of SH3 LLC, served on or about June 14, 2013;
- E. Howard Hammer's willful refusal to provide any responses, much less full and complete responses, to a subpoena served upon him in his capacity as an agent of SH4, LLC served on or about June 14, 2013;
- F. Howard Hammer's willful refusal to provide any response, much less a full and complete response, to a subpoena served upon him in his capacity as an agent of SH5, LLC, served on or about June 14, 2013;
- G. Howard Hammer's willful refusal to provide any response, much less a full and complete response, to a subpoena served upon him in his capacity as an agent of Hammer & Hammer LLC, served on or about June 14, 2013;
- H. Howard Hammer's willful refusal to provide any response, much less a full and complete response, to a subpoena served upon him in his capacity as an agent of D&M Chateau, served upon him on or about June 14, 2013;
- I. Howard Hammer's willful refusal to provide any response, much less a full and complete response, to a subpoena served upon him in his capacity as an agent of Grand Fountain, LLC, served upon him on or about June 14, 2013;

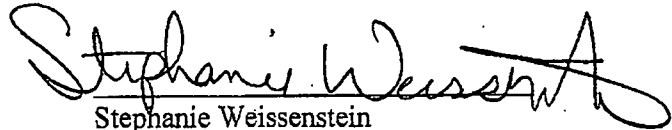
- J. Howard Hammer's acts, on information and belief, to prevent third party-witness Debra Covington from responding to a subpoena lawfully served upon her on or about June 17, 2013;
- K. Howard Hammer's acts, on information and belief, to prevent third party-witness Bernard Ackerman from responding to a subpoena lawfully served upon him on or about June 13, 2013.
- L. Howard Hammer's acts, on information and belief, to prevent third party-witness SYNOVUS Financial Corporation from responding to a subpoena lawfully served upon it on or about June 17, 2013.
10. Counsel for Ms. Hammer believes that these actions by Mr. Hammer are simply another delay tactic for which he has become infamous and that there is no basis for withholding the information requested by Ms. Hammer.
11. Ms. Hammer is informed and believes that Mr. Hammer's conduct has been intentional, callous, deliberately intended to interfere with the legitimate process of the court, interposed for delay, and to further cause expense to Ms. Hammer; the circuit court has already found that Mr. Hammer was attempting to bankrupt Mrs. Hammer and awarded sanctions against him for doing so.
12. Ms. Hammer and Counsel further believe Mr. Hammer's conduct in refusing to respond to discovery, and in interfering with discovery from third parties, as set forth above, is knowing and intentional and therefore must be met with a finding of criminal contempt with an appropriate period of incarceration enforced against him as punishment for his contemptuous conduct.
13. This severe sanction is particularly appropriate, considering Mr. Hammer has been:

- i. Suspended by the Supreme Court of South Carolina based, at least in part, on his abuse of the discovery process in prior civil proceedings, In re: Hammer, 395 S.C. 385, 718 S.E.2d 442 (2011).
- ii. Sanctioned by the circuit court in the instant proceedings for abuse of process against Ms. Hammer (Order of Judge James); and
- iii. Found by the Supreme Court to have abused the judicial system, warranting extraordinary procedural intervention by that Court to even get these (and other) matters heard (Order of Supreme Court dated September 7, 2012).

Ms. Hammer respectfully request that thus court impose a finding of criminal contempt of court against Mr. Hammer and that the Court impose a period of incarceration not to exceed six-months incarceration as punishment for Mr. Hammer's intentional and knowing misconduct in ignoring the prior order of this Court and the legitimate discovery issued in this case issued under the authority of this Court. Ms. Hammer's reason for requesting incarceration rather than a monetary sanction is dual: (1) Prior warnings and sanctions against Mr. Hammer have accomplished nothing; and (2) Monetary sanctions for contempt would interfere with her ability to collect the judgments she already holds and which she is attempting to collect in these proceedings. Ms. Hammer does not request civil contempt, from which Mr. Hammer could purge himself through one or more actions. Only punishment by incarceration can be appropriate in light of Mr. Hammer's blatant, repeated, and calculated efforts to avoid legitimate discovery in theses supplementary proceedings.

WHEREFORE, Plaintiff Shirley Hammer, requests that this Court enter an order finding Howard Hammer to be in criminal contempt of court based upon the acts and omissions set forth herein, and to impose an appropriate punitive sanction, including a period of incarceration in the

Richland County Detention Center, not to exceed six months. She further requests that he be taken into immediate custody and, if he is not present in court when the order is issued, that a bench warrant be issued for his arrest.



Stephanie Weissenstein

Ballard Watson Weissenstein

P.O. Box 6338

West Columbia, South Carolina 29171

Telephone: 803-796-9299

Facsimile: 803-796-1066

E-mail: stephanie@desaballard.com

COUNSELS FOR PLAINTIFF

August 2, 2013

I, **Mara Ballard**, an employee of the Ballard Watson Weissenstein certify that I have this date served a copy of **Motion For Contempt Against Howard Hammer** on Howard Hammer and Art Aiken by depositing a copy properly addressed, with sufficient First Class postage affixed, to each, in the United States Mail.

Date: 8.2.13 Signed: Mara Ballard

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Shirley Hammer)
Plaintiff,)

2009-CP-40-05911

2010-CP-40-02889

vs.)

Howard Hammer,)

Defendant)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT

OF

BERNARD N. ACKERMAN, CPA

1634 Main, L.P.)

Plaintiff,)

vs.)

Shirley Hammer,)

Defendant)

vs.)

Howard Hammer,)

Additional Defendant)

on Counterclaim.)

PERSONALLY APPEARED BEFORE ME Bernard N. Ackerman, CPA, who being duly sworn, deposes as follows:

1. I am competent to make this affidavit.
2. The matters stated herein are based upon my personal knowledge.
3. I am over eighteen (18) years of age.
4. I am a Certified Public Accountant practicing accounting under the laws of the State of South Carolina since 1976.
5. I practice accounting in Rock Hill, South Carolina under the firm name of Bernard N. Ackerman, CPA, employing twelve other accountants in my accounting firm. My curriculum vita is attached.

6. I am aware of an affidavit signed by Mara T. Ballard, CFE, CMA. As I understand the affidavit, Mara T. Ballard says she is not an attorney.
7. Even though she is not an attorney I have seen a letter from her to a Judge on the Ballard Law Firm stationary asking the Judge to put her affidavit in his records.
8. The affidavit says that when she spoke to me I told her that Howard Hammer was my attorney; this is absolutely **incorrect, false and untrue**. I told her that Art Aiken, Esquire was the attorney for Howard Hammer and for me in the matter.
9. I am Howard Hammer's accountant. I am aware that Howard Hammer is not and has not been practicing law for a long time. He is not now nor has he ever been my attorney, nor have I ever told anybody that he is my attorney.
10. I did receive a subpoena from Ms. Ballard's office sometime, I think, in June. However I understood from Arthur K. Aiken, Esquire that the subpoena was subject to a Motion to have it put aside. I am not sure of the reasons for the Motion.
11. I do know that in the past Ms. Ballard has caused to be served on me subpoenas that were not properly issued and not in accord with legal requirements according to lawyer friends I spoke to in Rock Hill. I also know that Ms. Ballard acknowledged that the subpoenas were not proper.
12. The letter of July 15, 2013, referred to in Ms. Ballard's affidavit, contained threats made against me which I felt were for the purpose of intimidation.
13. At the time of the letter it is my understanding the propriety of the subpoena had not been determined and a Motion was pending before a Judge about the subpoena.
14. Some time ago Ms. Ballard's law firm required me to give a deposition on a Friday afternoon about a case involving 1634 Main L.P., that lasted well into the evening. Ms.

Ballard's law office has not paid my bill as an expert witness for that deposition, even though I have requested payment from her office.

FURTHER YOUR AFFIANT SAYETH NOT:

Bernard N. Ackerman



Date: 10-8-13

Sworn to before me this 8th day

of October, 2013

Leslie C. Westmoreland

Notary Public for South Carolina

My Commission Expires: 5-24-2020

Bernard N. Ackerman, CPA/PFS, CFP, CDFA
President

Bernie graduated from Emory University in December, 1973 with a BBA in Business. He was employed with Deloitte from graduation until December, 1977 at which time he started Bernard N. Ackerman, CPA, P.A. Bernie has been a certified public accountant in South Carolina since January, 1976 and in North Carolina since November, 1977. In addition to being a CPA, Bernie is also a Certified Financial Planner and a Certified Financial Specialist - a designation awarded by the American Institute of CPA's. In 2008, he received the designation Certified Divorce Financial Analyst by the IDFA. Bernie has served as president of the Rock Hill Rotary Club, treasurer of the Rock Hill United Way, the Board of the Museum of York County, past treasurer of the York County Regional Chamber of Commerce, and was past chairman of The York County Community Foundation. He currently is on the Carolina Thread Trails Board and the South Carolina Bank and Trust of the Piedmont Community Board. Bernie and his wife Teri live in Fort Mill and have two sons, Jason and Adam.

Bernard N. Ackerman, CPA, PA is a full service accounting firm with 12 CPA's, technologist, 2 para professionals and 2 administrative.

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

2009-CP-40-05911

2010-CP-40-2889

**AFFIDAVIT OF
SHIRLEY HAMMER**

Personally appeared before me, Shirley Hammer who on oath deposes and states as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters set forth herein, except as to those matters stated on information and belief, and as to those, I have a good faith belief that they are true. I am the plaintiff in these actions.

2. On or about July 28, 2013 I was in conversation with Howard Hammer when he stated that he was "having a little fun" with my attorneys. He said it laughing and in my opinion

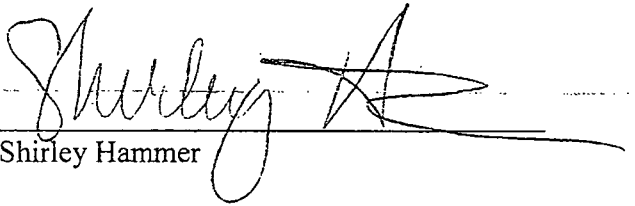
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in a way that meant he was playing games, wasting every one's time and causing me to incur substantial legal fees.

3. Howard has known what his summer schedule with the boys would be for several months. He began his period of unsupervised visitation with the boys on July 28, 2013.

He picked the boys up in Columbia, South Carolina at approximately 2:30 p.m. on July 28, 2013.

4. Further Deponent sayeth not.


Shirley Hammer

August 9, 2013

SWORN and subscribed before
me this 9 day of Aug 2013


Notary Public for South Carolina
My Commission Expires: 11.28.17

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

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

Shirley Hammer)
)
Plaintiff,)

vs.)

Howard Hammer)
)
Defendant.)
_____)

**AFFIDAVIT OF
MARA T. BALLARD**

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Shirley Hammer)
)
Plaintiff,)

vs.)

1634 Main, LP)
)
Defendant.)
_____)

Personally appeared before me, Mara T. Ballard, CFE, CMA, who on oath deposes and states as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters set forth herein, except as to those matters stated on information and belief, and as to those, I have a good faith belief that they are true. I am not an attorney in, or a party to, this action.

msb

2. On June 12, 2013 I did cause a subpoena to be served upon Mr. Bernard "Bernie" N. Ackerman, CPA in the above referenced matter. The subpoena requested a response by June 26, 2013.

3. Service upon Mr. Ackerman was via certified US Mail, first class, return receipt, restricted delivery.

4. On June 18, 2013 I received the Domestic Return Receipt (Green Card) for Mr. Ackerman's subpoena via return US Mail. Said Return Receipt indicated delivery of the Subpoena to Mr. Ackerman's address on June 13, 2013. Despite my request for restricted delivery, the Return Receipt indicates the Subpoena was signed for by someone other than Mr. Ackerman.

5. On June 26, 2013 I prepared an Affidavit of Service for all the subpoenas I had mailed out for which Return Receipt cards had been received, of which Mr. Ackerman's was one. The Affidavit of Service was filed by the Richland County Clerk of Court's office on June 27, 2013.

6. On July 15, 2013 I assisted Ms. Weissenstein with the mailing of a letter to Mr. Ackerman, pursuant to SCRCF Rule 11, requesting a response to the previously issued subpoena by July 25, 2013.

7. On or about July 23, 2013 our office received Howard Hammer's Motion to Quash Subpoena issued to Bernard N. Ackerman, CPA from Attorney Arthur K. Aiken dated July 22, 2013.

8. On July 29, 2013 I was requested to call Mr. Ackerman to request status of his response to our subpoena.

9. On July 29, 2013 I telephoned Mr. Ackerman and spoke directly with him.

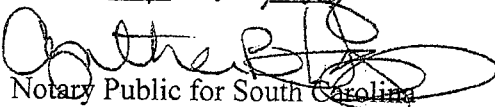
10. Upon asking if he planned to respond to the subpoena, he stated that he had turned it over to his attorneys and he understood it had been quashed. I asked who his attorneys were and he stated in this matter it would be Howard Hammer. I verified that he did not plan to answer the subpoena and again verified that his attorney was Howard Hammer. I then terminated the phone call.

11. Further Deponent sayeth not.


Mara T. Ballard, CFE, CMA

August 9, 2013

SWORN and subscribed before
me this 9 day of Aug 2013


Notary Public for South Carolina

My Commission Expires: 2.11.2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Shirley Hammer,)
)
)
Plaintiff(s),)
)
)
vs.)
)
Howard Hammer,)
)
)
)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2009-CP-40-5911

SUMMONS AND ORDER
OF
APPOINTMENT
Status Conference

JEANETTE W. McBRIDE
C.C.P. & G.S.

2013 SEP 25 PM 4:03

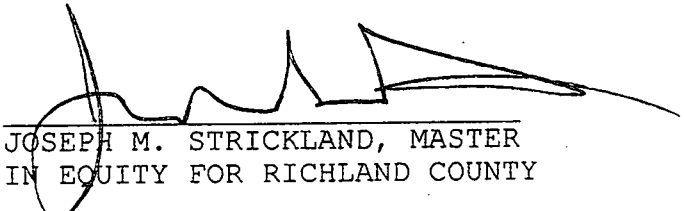
FILED

BY VIRTUE of the Order of Reference filed in the above entitled case, **I have appointed November 27, 2013 at 2:00 o'clock p.m.** to Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, SC, as the time and place for holding a hearing at which time and place all interested parties will appear. Continuance of this hearing will be granted only upon strict compliance with Rule 40(c), SCRCP.

Upon receipt of this Summons and Order, the Plaintiff(s) or moving party will notify this office immediately of any persons entitled to notice who have not been mailed a copy of this Summons and Order. All parties will please take notice of Rule 5(d), SCRCP.

If unliquidated damages are sought against a Defendant in Default, Plaintiff must give notice of time and place of this hearing pursuant to Rule 55, SCRCP. Additionally, it shall be the responsibility of the Plaintiff or moving party to comply with Rule 6, SCRCP. A copy of this notice must be filed with the Court by the date of the hearing.

AND IT IS SO ORDERED.


JOSEPH M. STRICKLAND, MASTER
IN EQUITY FOR RICHLAND COUNTY

CC:
Arthur K. Aiken, Esq.
Howard Hammer, Esq.
Desa Ballard, Esq.
Stephanie Weissenstein, Esq.

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

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2010-CP-40-2889

AMENDED
SUMMONS AND ORDER
OF
APPOINTMENT

Merits Hearing

RICHLAND COUNTY
FILED
2013 NOV -7 PM 1:25
JANETTE W. MCCOY
C.C.P. & G.S.

BY VIRTUE of the Order of Reference filed in the above entitled case, **I have appointed January 9, 2014 at 9:30 o'clock a.m.** to Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, SC, as the time and place for holding a hearing at which time and place all interested parties will appear. Continuance of this hearing will be granted only upon strict compliance with Rule 40(c), SCRCP.

Upon receipt of this Summons and Order, the Plaintiff(s) or moving party will notify this office immediately of any persons entitled to notice who have not been mailed a copy of this Summons and Order. All parties will please take notice of Rule 5(d), SCRCP.

If unliquidated damages are sought against a Defendant in Default, Plaintiff must give notice of time and place of this hearing pursuant to Rule 55, SCRCP. Additionally, it shall be the responsibility of the Plaintiff or moving party to comply with Rule 6, SCRCP. A copy of this notice must be filed with the Court by the date of the hearing.

AND IT IS SO ORDERED.


JOSEPH M. STRICKLAND, MASTER
IN EQUITY FOR RICHLAND COUNTY

CC:
Arthur K. Aiken, Esq.
Howard Hammer, Esq.
Desa Ballard, Esq.
Stephanie Weissenstein, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SOUTH CAROLINA COURT OF COMMON PLEAS

Case No.: 2010-CP-40-20889 & 2009-CP-40-05911

Shirley Hammer, , Plaintiff,

vs.

Howard Hammer, , Defendant,

AFFIDAVIT OF PERSONAL SERVICE

I HEREBY CERTIFY that on **04/29/2013** at **8:24 am**, the undersigned deponent, who being duly sworn, says that he served the following and that the deponent is not a party to this action.

Rule to show cause and order of reference as to Howard Hammer, Verified Petition

IN THE WITHIN ACTION BY DELIVERING COPIES THEREOF TO:

Person served: **Howard Hammer**

Address served: **1609 Catawba Street, Columbia SC 29205**

The undersigned swears that the above information is true and accurate.

(Process Server) Craig Zenger

(Print Name) Craig Zenger

Byrd Investigations, Inc.
1924 Barnwell Street • Columbia, SC 29201
(803) 741-5001

Clarence Byrd

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 12 29 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SOUTH CAROLINA COURT OF COMMON PLEAS

Case No.: 2010-CP-40-20889

Shirley Hammer,

, Plaintiff,

vs.

1634 Main, LP,

, Defendant,

AFFIDAVIT OF PERSONAL SERVICE

I HEREBY CERTIFY that on **04/29/2013 at 8:24 am**, the undersigned deponent, who being duly sworn, says that he served the following and that the deponent is not a party to this action.

Rule to show cause and order of reference as to Howard Hammer, Verified Petition

IN THE WITHIN ACTION BY DELIVERING COPIES THEREOF TO:

Person served: **Howard Hammer as agent for 1634 Main, LP.**

Address served: **1609 Catawba Street, Columbia SC 29205**

The undersigned swears that the above information is true and accurate.

(Process Server)

Craig Zenger

(Print Name)

Craig Zenger

Byrd Investigations, Inc.
1924 Barnwell Street • Columbia, SC 29201
(803) 741-5001

Leander Byrd

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 12/28/2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff,

v.

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

1634 Main, L.P.
Plaintiff,

vs.

Shirley Hammer, a/k/a
Shirley Grace Hightower,
Defendant/Third-Party Plaintiff,

vs.

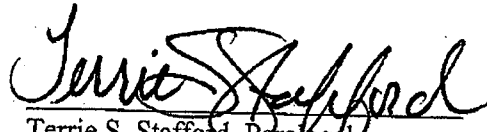
Howard Hammer,
Additional Defendant
On Counterclaim.

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-40-05911 and
2010-CP-40-2889

CERTIFICATE OF SERVICE

The undersigned certifies that she, on June 18, 2013, served, as a professional courtesy, a copy of *Judge Strickland's Order* dated June 10, 2013, by regular U.S. mail delivery, depositing in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Howard Hammer, Esquire
1609 Catawba Street
Columbia, South Carolina 29205


Terrie S. Stafford, Paralegal

June 26, 2013

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

2009-CP-40-05911

2010-CP-40-2889

**AFFIDAVIT OF SERVICE
OF**

NOTICE OF HEARING

ON

HOWARD HAMMER

2013 AUG -8 AM 11:16

RICHLAND COUNTY
FILED

MAFITE M. McBRIDE
C.P. & G.S.

Personally appeared before me, Mara T. Ballard, CFE, CMA, who on oath deposes and states as follows:

1. I am over the age of eighteen years and am not an attorney in or a party to this action.

2. On July 10, 2013 I did cause to be served upon Howard Hammer and Arthur K. Aiken the attached Notice of Hearing (Exhibit A) via US Mail, First Class, with sufficient postage prepaid.

3. On July 10, 2013 I did cause a Certificate of Service to be filed and served via US Mail, First Class, with sufficient postage prepaid which contained clerical errors.

4. On July 10, 2013 I did E-mail a courtesy copy of the aforementioned documents to both Mr. Aiken and Mr. Hammer attached (Exhibit B)

5. On August 1, 2013 I discovered the clerical errors in the Certificate of Service dated July 10, 2013 and filed an Amended Certificate of Service stating the correct date with a copy to

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

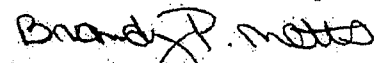
and

Howard Hammer
1609 Catawba Street
Columbia, South Carolina 29205

6. The Amended Certificate of Service was filed by the Richland County Clerk of Court on August 2, 2013 (Exhibit C).


Mara T. Ballard, CFE, CMA

SWORN and subscribed before
me this 8th day of Aug 2013


Notary Public for South Carolina
My Commission Expires: 12/20/17

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SOUTH CAROLINA COURT OF COMMON PLEAS

Case No. 2009-CP-40-05911

Case No. 2010-CP-40-2889

Shirley Hammer,

Plaintiff,

vs.

Howard Hammer,

Defendant,

AFFIDAVIT OF PERSONAL SERVICE

I HEREBY CERTIFY that on 08/07/2013 at 10:48am, the undersigned deponent, who being duly sworn, says that he served the following and that the deponent is not a party to this action. Investigators arrived at Mr. Hammer's home. Mr. Hammer would not come to the door, but Investigators seen Mr. Hammer in the window as well as hear him talking. Mr. Hammer's keys were in the door. (SEE ATTACH PHOTO) Investigators announced he was being served and place papers on his door.

Cover Letter

Motion of Contempt

Notice of Hearing

IN THE WITHIN ACTION BY DELIVERING COPIES THEREOF TO:

Person served: Howard Hammer

Address served: 1606 Catawaba Street, Columbia, SC 29205

The undersigned swears that the above information is true and accurate.

(Process Server) Craig Zenger
(Print Name) [Signature]

Byrd Investigations, Inc.
1924 Barnwell Street • Columbia, SC 29201
(803) 741-5062

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 2/20/20

Byrd Investigations

1924 Barnwell Street, Columbia, SC 29201

803-741-5001

Affidavit of Craig Zenger

Friday June 14th, 2013 at 9:49am I Craig Zenger served Mr. Howard Hammer at 1609 Catawba street, Columbia, South Carolina 29205. When I arrived at Mr. Hammers house there was a maid waiting for him at his door way. The maid rang the door bell, once he answered he told her to come in and I stepped in front of her stating his name, he replied to this saying yes and asked what I was trying to hand him. I said I don't know at this point he tried to shut the door so I threw the papers in to his house before he shut the door completely. At this point I returned to my car and left the residence.

Affidavit- I, Craig Zenger, being duly authorized state that the above report is accurate to the best of my knowledge.

Sworn and subscribed before me this

14th day of June, 2013

Notary public for South Carolina

Commission Expires: 12/28/2014

Rebecca Byrd

Craig Zenger

Craig Zenger

[Signature]

RECEIVED JUN 24 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer,

Plaintiff,

v.

Shirley Grace Hightower,

Defendant.

Shirley Hammer,

Plaintiff,

vs.

1634 Main, LP

Defendant.

IN THE MASTER IN EQUITY COURT

Case No. 2009-CP-40-05911 and
2010-CP-40-2889

AMENDED
CERTIFICATE OF SERVICE
NOTICE OF HEARING

The undersigned certifies that she, on July 10, 2013, caused to be served a copy of the Notice of Hearing, for August 12, 2013 hearing, beginning at 10:00 a.m., on all parties in this matter by regular U.S. mail delivery by depositing all in the 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

Howard Hammer, Esquire
1609 Catawba Street
Columbia, South Carolina 29205


Mara T. Ballard, CMA, CFE, FA

August 1, 2013

STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: D&M Chateau, LLC c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME AM

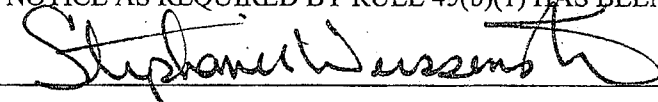
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

for all records for the past five years reflecting loan proceeds, income, rental, distributions, shares/stocks, payments, property transfers, disbursements, cash or other value of any kind tendered or conveyed to or borrowed by Howard Hammer or any entity in which he holds or previously held an ownership, management, or agent status including but not limited to the following company: **D&M Chateau LLC**

PLACE Ballard Watson Weissenstein - 226 State Street West Columbia, South Carolina 29169	DATE AND TIME June 27, 2012 at or before 4:30 PM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



DATE **June 13, 2013**

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE June 13, 2013	FEES AND MILEAGE TO BE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$0.00
	PLACE 1609 Catawba St. Columbia SC 29205	

STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: Grand Fountain, LLC c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME AM

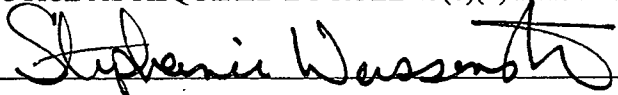
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

for all records for the past five years reflecting loan proceeds, income, rental, distributions, payments, property transfers, disbursements, cash or other value of any kind tendered or conveyed to or borrowed by Howard Hammer or any entity in which he holds or previously held an ownership, management, or agent status including but not limited to the following company: **Grand Fountain, LLC**

PLACE Ballard Watson Weissenstein - 226 State Street West Columbia, South Carolina 29169	DATE AND TIME June 27, 2012 at or before 4:30 PM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 DATE **June 13, 2013**
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE June 13, 2013	FEES AND MILEAGE TO BE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$0.00
	PLACE 1609 Catawba St. Columbia, SC 29205	
SERVED ON Howard Hammer as registered agent for Grand		MANNER OF SERVICE: Process Server

Fountain, LLC	
SERVED BY Byrd Investigations	TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on:

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: 1634 Main, LP c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME AM

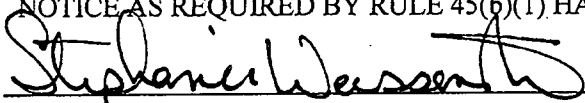
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

for all records for the past five years reflecting loan proceeds, income, rental, distributions, stock/shares, payments, property transfers, disbursements, cash or other value of any kind tendered or conveyed to or borrowed by Howard Hammer or any entity in which he holds or previously held an ownership, management, or agent status.

PLACE Ballard Watson Weissenstein - 226 State Street West Columbia, South Carolina 29169	DATE AND TIME June 27, 2012 at or before 4:30 PM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



DATE June 13, 2013

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE June 13, 2013	FEES AND MILEAGE TO BE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$0.00
	PLACE 1609 Catawba St. Columbia SC 29205	

SERVED ON Howard Hammer as registered agent of 1634 Main, LP	MANNER OF SERVICE: Process Server
SERVED BY Byrd Investigations	TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on: 06-13-2013

SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: Hammer & Hammer, LLC c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME AM

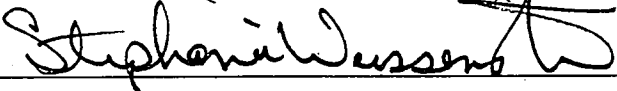
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

for all records for the past five years reflecting loan proceeds, income, rental, distributions, shares/stocks, payments, property transfers, disbursements, cash or other value of any kind tendered or conveyed to or borrowed by Howard Hammer or any entity in which he holds or previously held an ownership, management, or agent status including but not limited to the following company: **Hammer & Hammer, LLC**

PLACE Ballard Watson Weissenstein - 226 State Street West Columbia, South Carolina 29169	DATE AND TIME June 27, 2012 at or before 4:30 PM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



DATE **June 13, 2013**

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE June 13, 2013	FEES AND MILEAGE TO BE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$0.00
	PLACE 1609 Catawba St. Columbia SC 29205	

SERVED ON Howard Hammer as registered agent for Hammer & Hammer, LLC	MANNER OF SERVICE: Process Server
SERVED BY Byrd Investigations	TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on: _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: SH3, LLC c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME AM

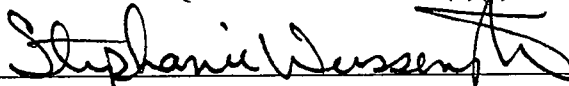
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

for all records for the past five years reflecting loan proceeds, income, rental, distributions, shares/stocks, payments, property transfers, disbursements, cash or other value of any kind tendered or conveyed to or borrowed by Howard Hammer or any entity in which he holds or previously held an ownership, management, or agent status including but not limited to the following company: SH3, LLC

PLACE Ballard Watson Weissenstein - 226 State Street West Columbia, South Carolina 29169	DATE AND TIME June 27, 2012 at or before 4:30 PM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 DATE June 13, 2013
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE June 13, 2013	FEES AND MILEAGE TO BE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$0.00
	PLACE 1609 Catawba St. Columbia SC 29205	

SERVED ON Howard Hammer as registered agent for SH3, LLC	MANNER OF SERVICE: Process Server
SERVED BY Byrd Investigations	TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on: _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: SH4, LLC c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME AM

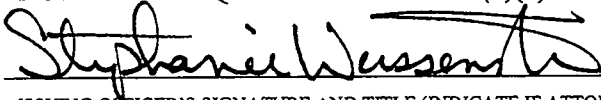
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PLACE Ballard Watson Weissenstein - 226 State Street West Columbia, South Carolina 29169	DATE AND TIME June 27, 2012 at or before 4:30 PM

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I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



DATE **June 13, 2013**

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE June 13, 2013	FEES AND MILEAGE TO BE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$0.00
	PLACE 1609 Catawba St. Columbia SC 29205	

SERVED ON **Howard Hammer as registered agent for SH4, LLC**

MANNER OF SERVICE: Process Server

SERVED BY Byrd Investigations

TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on: _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

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(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
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STATE OF SOUTH CAROLINA

ISSUED BY THE MASTER-IN-EQUITY COURT IN THE COUNTY OF RICHLAND

Howard Hammer, Plaintiff

SUBPOENA

v.

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

Case Number: 2009-CP- 40-0511

TO: SH5, LLC c/o Howard Hammer, 1609 Catawba St. Columbia, SC 29205

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

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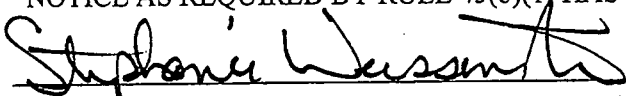
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Howard Hammer,) CASE #: 2009-CP-40-5911
Plaintiff,)
v.)
Shirley Hammer, et al.,)
Defendant.)

1634 Main, LP,) CASE #: 2010-CP-40-2889
Plaintiff,)
v.)
Shirley Hammer, et al.,)
Defendant.)

HEARING

Tuesday, June 4, 2013
9:32 a.m. to 2:35 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 4th day of June, 2013, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

APPEARANCES

Arthur K. Aiken, Esquire

Reeves, Aiken & Hightower, LLP
2231 Devine Street, Suite 201
Columbia, South Carolina 29205
Attorney for the Plaintiff

Stephanie Weissenstein, Esquire

Desa Ballard, Esquire

Ballard Watson Weissenstein
226 State Street
West Columbia, South Carolina 29169
Attorneys for the Defendants

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EXHIBITS

Court's Exhibit Number One	118
(Supreme Court Order)	
Court's Exhibit Number Two	118
(5/2/13 Ballard E-mail)	

1 **THE COURT:** This is Civil Action Number 2009-CP-40-5911,
2 Howard Hammer against Shirley Hammer and others.
3 And this is also Civil Action Number 2010-CP-40-
4 2889, 1634 Main, LP versus Shirley Hammer and
5 others. What we have in this case are two judgments
6 obtained after a counterclaim was successfully
7 prosecuted I guess is one way of putting it. Is
8 that accurate, everyone's on the same page?

9 **MR. AIKEN:** That is correct, Your Honor.

10 **THE COURT:** Today we're here for supplemental proceedings
11 with regard to judgment. I know everybody's either
12 represented by counsel or a lawyer themselves, but I
13 always give a little short statement before we start
14 supplemental proceedings. In South Carolina, when
15 somebody sues you and wins a money judgment against
16 you, you can bring them back to court, put them
17 under oath and ask questions. The purpose is to
18 determine whether or not there's money or property
19 that can be used to pay the judgment. This is not
20 an appeal, it's not a new trial, it's not a chance
21 to fight the case again on the merits. It's simply
22 a remedy that creditors have. I generally do this a
23 lot more informally than a normal court proceeding,
24 so everyone can stay seated right where they are for
25 note taking purposes and also for consultation

1 purposes. And again, Mr. Hammer, you understand
2 that they're going to be asking you questions. And
3 like most people in supplemental proceedings, they
4 get very, very irritated because some of the
5 questions don't seem to be relevant or make any
6 sense. And I always tell the witness that in this
7 type of proceeding the petitioner can find out a lot
8 of things that won't necessarily do them any good as
9 far as collecting on the judgment. Any questions
10 before we get started, from either side? Yes, sir.

11 **MR. HAMMER:** Your Honor, I would like for the record to
12 show that I have not waived, and do not waive, the
13 objection to jurisdiction on either of the cases.
14 And I also would like to show, Your Honor, you had
15 said this is two cases. This is ... I don't know
16 that it's two cases. If you're combining two cases,
17 you're combining a corporate case with an individual
18 case, and I personally would object to that, even if
19 I were under the proper jurisdiction. And again, I
20 would like to declare that we do not waive, by being
21 here, our objection to jurisdiction in that there
22 was no service of process by the sheriff as required
23 under the Rules for a Rule to Show Cause. And I add
24 to that, Your Honor, if I may.

25 **THE COURT:** Yes, sir.

1 **MR. HAMMER:** That I'm concerned that this procedure, with
2 the failure of jurisdiction, could have the result
3 of spending a lot of court time, ending up in some
4 sort of further request for remedy and delay. And
5 would hope that Your Honor would consider requiring
6 that the service be done properly. Service is a
7 fundamental due process right, whether a person
8 knows about the ... and what I say to you is, Your
9 Honor, I say it very ... as a courtesy and not as
10 part of any appearance. It is a fundamental right.
11 If I know that someone is suing me and they come up
12 to me and they say, Mr. Hammer, we're suing you,
13 here are the papers.

14 **THE COURT:** Yes, sir.

15 **MR. HAMMER:** And they don't serve me properly, they don't
16 have jurisdiction over me.

17 **THE COURT:** Okay.

18 **MR. HAMMER:** And so that is what's happened in this case,
19 the sheriff has not served me in this case.

20 **THE COURT:** I guess technically you're asking that this
21 proceeding be dismissed for lack of personal
22 jurisdiction?

23 **MR. HAMMER:** Yes, sir. And that it should be ... that
24 they should be required to follow the letter of the
25 law as far as personal jurisdiction. It is

1 important for that. The rules for the family court
2 appreciably changed, but not for the circuit court
3 and not for the administrative court and not for the
4 master-in-equity and not for proceedings such as
5 we're in here today about. And that requires, under
6 Rule Four, that all process be served by the
7 sheriff. And there area I believe numerous cases
8 that support that. And it would seem to me to be
9 unfortunate if we go through all of this process and
10 then we end up in some sort of further proceedings
11 to have to determine whether or not there's any
12 jurisdiction.

13 **THE COURT:** Mr. Hammer, how'd you find out about this?

14 **MR. HAMMER:** I was served improperly. I was served by a
15 non-sheriff's deputy. I was served by a Byrd
16 Investigations, an investigator who was not a
17 sheriff's deputy. I was aware of the law. I
18 assumed that they would serve me properly. It would
19 be just like any other piece of paper that I would
20 receive, or that when I was practicing law a client
21 would receive. If he had received a piece of paper
22 from his newspaper and it hadn't ben filed, or
23 someone had left it on the street and, or given it
24 to his next door neighbor and his next door neighbor
25 had said, gee, somebody came over here and served a

1 piece of paper and here, I'm giving it to you,
2 Howard, I would have told my ... or, I'm giving it
3 to you, John, I would have told my client, well,
4 there's a procedure, there's a rule for service.
5 You have not been served, you have not received
6 proper notice; I will go to the court, I will let
7 the Court know that you have not been served in
8 accordance with the requirements of law. It may
9 seem as though it's an exercise in futility, but it
10 ... be whether it's an exercise in futility or not,
11 it is the underpinning of our system, due process
12 and notice. And proper notice. And so that's what
13 I would have done. I do not deny that I got this.
14 I just deny that it was done properly, and I think
15 that their procedure is for proper notice. Improper
16 notice is no notice at all.

17 **THE COURT:** All right. Ms. Weissenstein, any response?

18 **MS. WEISSENSTEIN:** Yes, Your Honor. We would ... we
19 acknowledge Mr. Hammer's position and the wording of
20 Rule Four. However, what we would show is that in
21 this particular case the Rule to Show Cause that was
22 served upon Mr. Hammer was not served in place of a
23 summons, it would be treated more as if it were a
24 motion and it would be served under the notice
25 requirements that would be ... as would be a motion

1 under Rule Six. And the reason I say that is
2 because Mr. Hammer and 1634 Main, LP are already
3 under the jurisdiction of this Court through an
4 ongoing action that is pending and based on the fact
5 that the judgments were issued by this Court and
6 have not been ... jurisdiction has not necessarily
7 been released by this Court. So we would show that
8 the supplemental proceeding aspect of this, you
9 know, is very much just a motion. And I would like
10 to cite, if you please, Everhart v. Everhart for the
11 proposition that this Court has specifically held
12 that where a court of equity has assumed
13 jurisdiction of a cause, it will retain such
14 jurisdiction to dispose of all issues within the
15 scope of the pleadings, including the granting of
16 whatever auxiliary and supplementary relief may be
17 required to render the judgment effective. And, you
18 know, what we're here today essentially is just to
19 continue the proceedings already before this Court
20 in order to glean information about the assets of
21 Mr. Hammer and 1634 Main, LP and its agents in order
22 to determine how we may achieve the conclusion of
23 the judgments that were won on Mrs. Hammer's behalf.
24 So we would respectfully request that this Court
25 deny Mr. Hammer's motion and find that you do have

1 jurisdiction and we may go forward today. In the
2 alternative, if this Court determines that he was
3 not properly served under Rule Four, we'd ask that
4 these proceedings be dismissed without prejudice so
5 that the Court may issue a new Rule to Show Cause
6 that specifies that the manner in which service
7 needs to be affected so that we may come back here
8 again in a couple weeks. Thank you.

9 **THE COURT:** Mr. Hammer, your objection's overruled and
10 your motion's denied. Please raise your right hand.

11 **(Witness is sworn.)**

12 **THE COURT:** All right. You may proceed. Again, everyone
13 stay seated right where they are for consultation
14 purposes and accurate note taking.

15 **MR. HAMMER - DIRECT EXAMINATION BY MS. WEISSENSTEIN:**

16 Q: Mr. Hammer, Mr. Aiken, as you know, we are here today
17 because there have been two judgments entered, and
18 under the petition there's a judgment that was
19 entered on February 6th, 2013, for the amount of
20 \$80,000 and there was a judgment entered on February
21 6th, 2013, in the Main Street action in the amount
22 of \$75,000. And we've had the sheriff attempt to
23 execute the judgments and they were returned nulla
24 bona. As far as the 1634 Main case, we also have
25 the judgment in the amount of \$25,000 that was

1 entered on February 6th, 2013, and you're here today
2 as the agent of 1634 Main, LP. Again, it shows
3 executed ... or, attempted to execute the judgments
4 and it was found to be nulla bona. So what we're
5 here today is basically we want to talk about some
6 information that we might be able to use to scoot
7 this forward. And essentially I would just like to
8 start by discussing some of the various business
9 entities in which we've discovered you may have an
10 interest. The first one I'd like to discuss is D&M
11 Chateau, LLC. You are listed as the registered
12 agent in the domestic LLC that was filed on November
13 27, 2007. Are you familiar with D&M Chateau, LLC,
14 sir?

15 **MR. HAMMER:** Your Honor, may I ask a question?

16 **THE COURT:** Sure.

17 **MR. HAMMER:** I don't know whether this is ... you said we
18 could stay seated.

19 **THE COURT:** Yes, sir.

20 **MR. HAMMER:** I didn't know whether this was a procedure
21 combining the 1634 Main and the other. I had not
22 heard a ruling on that yet, and would object to
23 there being a combination and would point out that
24 there is a, that there is a potential conflict
25 between the two.

1 **THE COURT:** So what you prefer, Mr. Hammer, is that she
2 ask the questions about the 2009 case, and then when
3 that's finished ask questions regarding the 2010
4 case?

5 **MR. HAMMER:** Yes, sir, I think they need to be separated.
6 We have two separate records with the ...

7 **THE COURT:** All right, does that make it easier for you to
8 answer, to do it separate like that?

9 **MR. HAMMER:** I think that would make it, you'll find that
10 it would make it easier for the Court, yes, sir.

11 **THE COURT:** Do you object to that, Ms. Weissenstein?

12 **MS. WEISSENSTEIN:** Your Honor, I don't necessarily
13 understand why it would be, you know, easier for the
14 Court. We do have pending a motion to consolidate
15 that has not necessarily been addressed. And the
16 reason that we filed that motion to consolidate,
17 sir, was because the same questions would be asked
18 at both proceedings of the same agent, the same
19 individual, at both proceedings. And it's a matter
20 of judicial, you know, timing, equity. We would
21 just ask that we go ahead and proceed today and the
22 information would apply as to both judgments.

23 **THE COURT:** Okay. First of all, we've blocked off the
24 whole day, the whole rest of the day for these
25 proceedings. And, Mr. Hammer, it's not unusual if

1 you have several judgments against one individual to
2 have only one set of questions be asked. So I'll
3 note your objection, and your objection's overruled.
4 Please answer the questions the best you can.
5 **MR. HAMMER:** Your Honor, you understand that this is not
6 against ... this is against an LLC?
7 **THE COURT:** Yes, sir.
8 **MR. HAMMER:** This is quite different than one individual.
9 I am acting as one individual in one case; I'm
10 merely a representative of the LLC in the other.
11 **THE COURT:** Right.
12 **MR. HAMMER:** So it's two different entities.
13 **THE COURT:** Yes, sir. And we note that but, again, answer
14 the questions.
15 **MR. HAMMER:** Thank you, Your Honor.
16 **THE COURT:** You're welcome. Please proceed. You may
17 proceed.
18 **MS. WEISSENSTEIN:** Thank you, Your Honor.
19 **Q:** We were discussing D&M Chateau, LLC, a domestic LLC
20 incorporated in South Carolina in 2007. Mr. Hammer,
21 are you a member of this LLC?
22 **A:** I have no knowledge of DM ... DM what?
23 **Q:** D&M Chateau, LLC.
24 **A:** No, I'm not a member of that.
25 **Q:** Are you the registered agent of D&M Chateau, LLC?

1 A: I don't recall. If the records show that I am, then I
2 am.

3 Q: Are you familiar with the property located at 1634
4 Main Street, South Carolina, Suite 201?

5 **MR. AIKEN:** Your Honor, there have been certain allegations
6 concerning tax improprieties involving 1634 Main,
7 LLC. And I've advised Mr. Hammer to assert his
8 Fifth Amendment privilege as to all questions
9 concerning 1634 Main, LLC.

10 **THE COURT:** Let me ask you, is that privilege applicable
11 in this type proceeding?

12 **MR. AIKEN:** Yes, sir, it is. The United States Supreme
13 Court has held that Fifth Amendment privilege is
14 applicable in both civil and criminal proceedings.
15 Now, there is a provision of our Code that says that
16 if there is a claim of fraud you're required to
17 answer the question but what you say cannot be used
18 against you. The problem with that, Your Honor, is
19 that has no impact on certain potential federal
20 criminal consequences. These have to do with
21 alleged income tax improprieties involving 1634
22 Main, LLC. And because of concerns about the
23 potential for a subject matter waiver of the Fifth
24 Amendment privilege by answering questions
25 concerning 1634 Main, I've advised Mr. Hammer to

1 assert his Fifth Amendment privilege as to questions
2 concerning 1634 Main. And, Your Honor, there have
3 been very specific allegations concerning alleged
4 representations, allegedly false, to the IRS
5 concerning 1634 Main, and that's the reason why I've
6 advised him to assert his Fifth Amendment privilege
7 as to these questions.

8 **THE COURT:** All right. Ms. Weissenstein, any response?

9 **MS. WEISSENSTEIN:** Your Honor, the supplemental proceedings
10 here today are in order to glean information. I'm
11 not looking for Mr. Hammer to admit or deny any
12 particular allegation, I just want to know whether
13 or not he is familiar with the assets of the various
14 entities in which he is involved and/or is the
15 registered agent, as well as his knowledge of the
16 value of any real property, either personal property
17 that any of these entities might hold claim to and a
18 percentage of which the ownership belongs to him as
19 a member of the LLC. We're not interested in
20 helping the IRS proceed against Mr. Hammer. I'm not
21 familiar with this action to which they are
22 referring. We would concede that if we get too
23 close to guilt or innocence in terms of defrauding
24 the IRS and not paying taxes, or whatever these
25 claims might be, you know, we'll certainly see how

1 we can work around that. But we would say, Your
2 Honor, that Mr. Hammer is obligated to answer these
3 questions as candidly and as truthfully as possible.
4 For example, right now we're discussing D&M Chateau,
5 LLC, which as far as I know has absolutely no
6 bearing on 1634 Main, LLC, except for perhaps they
7 have the same physical address.

8 **THE COURT:** Generally speaking, in these type proceedings
9 I do allow the privilege that's been asserted by a
10 witness. Now, sometimes it gets ridiculous. We had
11 a witness once, we asked his name, he took the
12 Fifth. That type of thing. But in this case, with
13 regard to questions involving 1634 Main, you need to
14 point out that Mr. Hammer is asserting his privilege
15 under the Fifth Amendment. Now, you might want to
16 preserve ... you might want to give us ... you can
17 certainly ask the question, and I'll understand that
18 if it's related to 1634 Main Mr. Hammer's not going
19 to answer. But we are making a record here, and
20 your questions, you know, need to be preserved. So
21 ... the information you're trying to get needs to be
22 preserved. So you may go ahead and ask the
23 questions, and the Court will honor the privilege as
24 asserted by Mr. Hammer.

25 **MS. WEISSENSTEIN:** Okay. Thank you, Your Honor.

1 **THE COURT:** Yes, ma'am. You may proceed.

2 Q: Mr. Hammer, are you familiar with an office that
3 physically exists at the address of 1634 Main Street
4 in Columbia, South Carolina?

5 A: On the advice of counsel, I refuse to answer any
6 questions concerning 1634 Main based on my right
7 under the Fifth Amendment in the United States
8 Constitution and the South Carolina Constitution as
9 I understand it.

10 Q: Okay. Regarding this D&M Chateau, LLC, for which you
11 are the registered agent, am I understanding
12 correctly that you have no recollection of being the
13 agent of this property?

14 A: I don't deny that I'm the agent. And you're asking me
15 whether I remember what was filed in 2007? I don't
16 know what was filed, I don't have the records in
17 front of me. You say that I was filed as the
18 registered agent, I would not dispute that.

19 Q: Are you familiar with real property located at 236
20 Chateau in Columbia, South Carolina?

21 A: I don't know that the ... the address does not ... I
22 cannot tell you what the address is that I'm
23 familiar with Chateau properties on.

24 Q: Regarding the membership if D&M Chateau, LLC, who are
25 the members of that organization?

1 A: D and what?
2 Q: D&M, as in Dog and Mouse, Chateau, LLC.
3 A: I am the registered agent. I cannot tell you without
4 documents in front of me who the, all the registered
5 ... who all of the members are at the present time.
6 Q: Mr. Hammer, you were required today, pursuant to a
7 Rule to Show Cause, to bring with you any and all
8 information about your various assets and
9 liabilities. Did you come today with the
10 documentation, as required under the Rule to Show
11 Cause?
12 A: I do not have any documents in front of me. I had
13 understood from my lawyer that I would not need
14 documents today.
15 Q: Mr. Hammer, do you know or do you have any knowledge
16 as to whether or not you have such documentation,
17 records, titles, etcetera, concerning any and all
18 real estate, contracts, leases, office equipment,
19 furniture or other property owned or being purchased
20 by you, as well as for any corporations,
21 partnerships or business in which you hold an
22 interest?
23 A: You've asked a question which is broad and includes
24 1634 Main. Under advice of counsel, I'll ...
25 Q: I'm not asking about 1634 Main ...

1 **THE COURT:** Hold on ...

2 Q: ... Street. I'm asking about you ...

3 **THE COURT:** Ms. Weissenstein, hold on a second. He didn't

4 finish his answer, so.

5 **MS. WEISSENSTEIN:** I apologize.

6 **THE COURT:** Please be patient.

7 A: You've asked a question that is broad and includes

8 matters, in my mind, involving 1634 Main. And I

9 refuse to answer on advice from counsel based upon

10 my rights under the Fifth Amendment of the

11 Constitution.

12 **THE COURT:** Now, let me ask. Is there any way to maybe

13 produce ... you said includes information regarding

14 1634 Main, so your answer wouldn't be ... not all of

15 the information that she seeks is covered by your

16 privilege, is that what you're saying?

17 **MR. HAMMER:** If she asks me specific questions as to a

18 specific piece of furniture, as to whether or not

19 this is 1634 Main, if it's not, then of course I

20 would answer it; if it is, then of course I would

21 not. I just need her to be specific for me to be

22 able to do that, to ask me what ... all the personal

23 property that I own, that includes ... that may

24 include matters involving 1634 Main.

25 **THE COURT:** Ms. Weissenstein ...

1 **MR. HAMMER:** And it's not ... excuse me, that our old ...
2 that will require the subpoena. If I understood her
3 correctly. She said, do you understand the subpoena
4 required certain things, and that's the ... that is
5 my answer. Maybe I misunderstood her question.

6 **THE COURT:** Well, if the petitioner can produce a list
7 maybe, or an inventory of things she wants to ask
8 about, and you and Mr. Aiken can sit down and decide
9 which ones you are going to assert privilege as to
10 and which ones you're not, would that be helpful?
11 Ms. Weissenstein, would that be helpful to you and
12 your client, produce a schedule of what you think he
13 has and he's going to have to, you know, with his
14 attorney, determine which ones are privileged and
15 which ones are not, would that help you a little
16 bit?

17 **MS. WEISSENSTEIN:** For purposes of these proceedings and
18 moving forward, I would be glad, Your Honor, to
19 avoid reference to 1634 Main, the LLC or the
20 physical address, as it may apply to any and all
21 questions that I might ask about any and all other
22 entities, personal property, or real property.
23 We're willing to pretend like they don't exist at
24 this time so that we can go ahead, sir, and get this
25 done.

1 **THE COURT:** Okay. Now, I warned Mr. Hammer that he's
2 going to get irritated by some of the questions, and
3 it sounds like you're on the verge of being
4 frustrated already by some of the answers, so.

5 **MR. HAMMER:** I'm not irritated, Your Honor, and I will say
6 this. That there's ... that I don't mean ... it's
7 hard for me not to stand up, and I apologize to you.

8 **THE COURT:** You may stand up. I'm just saying you don't
9 ...

10 **MR. HAMMER:** I feel better doing that in respect to the
11 Court, if you don't mind.

12 **THE COURT:** Yes, sir.

13 **MR. HAMMER:** Your Honor, my assertion of the 1634 Main
14 Street privilege involves tax maps. I filed one tax
15 return. I am responsible for a second tax return.
16 Those tax returns are interrelated. The 1634 Main
17 tax return is interrelated with a personal tax
18 return, so it's going to be very difficult to
19 separate on any of the questions. I will do the
20 best I can, Your Honor.

21 **THE COURT:** All right. All right, thank you. Please
22 proceed.

23 **Q:** Mr. Hammer, are you the 100 percent ownership of ...
24 do you hold 100 percent of the ownership or
25 membership in the LLC called D&M Chateau, LLC?

1 A: No, ma'am. I think I can answer that question, that I
2 am the registered agent and that I don't have any
3 ownership in that at all. Any direct ownership in
4 that at all.

5 Q: Are you familiar with the real property at 202 Chateau
6 in Columbia, South Carolina?

7 A: I am familiar with real property at Chateau. I do not
8 know the address of a particular piece of property.
9 I'm sorry.

10 Q: Can you describe for me please, in general terms, the
11 property at Chateau?

12 A: It's an apartment.

13 Q: Are these apartments that you own, are they apartments
14 that you rent? Or I'll rephrase. Are these
15 apartments that D&M, LLC own or rent?

16 A: Which apartment are you referring to? I'm not sure
17 what you're ... you've asked me about 202 and you've
18 asked me about one other one, and I ...

19 Q: 202, 236, 125.

20 A: I cannot tell you which is which. I do not know the
21 numbers offhand.

22 **MR. HAMMER:** May I, Your Honor?

23 **THE COURT:** Yes, sir.

24 A: I do know that one of the ... that D&M has a Chateau
25 apartment. I do not know the number of it, nor do I

1 know the number of any other apartments that are
2 owned by any other entities, nor can I give you the
3 number of the apartment that ...
4 Q: Mr. Hammer, are you familiar with a domestic, South
5 Carolina domestic LLC under the name of Grand
6 Fountain, LLC?
7 A: What ... I'm ... I believe that that is something that
8 goes back to 2005. You'd have to refresh me just a
9 little bit to help me on that please.
10 Q: Grand Fountain, LLC is a domestic property. It's an
11 at-will, registered in South Carolina on October
12 20th, 2006. Are you the registered agent of this
13 LLC?
14 A: At the time of the ... in 2006 was I the registered
15 agent, is that what you're asking? That's what I
16 understand the question to be. If I've
17 misunderstood it, please let me know.
18 Q: To your knowledge, who are the members of Grand
19 Fountain, LLC?
20 A: In 2006?
21 Q: Now.
22 A: I don't know who the members are now.
23 Q: Are you a member of Grand Fountain, LLC?
24 A: Ma'am, I thought that the ... I, I don't recognize
25 Grand Fountain. I thought I recognized ... I

1 thought there was a property called Grand Maple or
2 Grand Devine. Are you referring to a Grand Maple
3 property? Or Grand Devine property?

4 Q: There's a real property we're informed called Grand
5 Devine, which there's a Unit C-102. Are you
6 referring to that, sir?

7 A: I don't know. I don't know the number. Ma'am, I
8 don't know ... I cannot keep up with a phone number
9 practically. I say that facetiously, but I can't
10 tell you the number of any particular apartment. If
11 you're asking me whether there was an apartment, if
12 you give me some location of the apartment I'll be
13 glad to try to do the best I can to help you with
14 that and to answer your questions. And the time
15 frames that you're talking about, I will do
16 everything I can to answer the questions.

17 Q: As of today, are you familiar with the ownership or
18 the assets of Grand Fountain, LLC?

19 A: As of today? I don't know of Grand Fountain, LLC. I
20 am not familiar as of today of the ownership. Let
21 me put it this way. I am not familiar with what the
22 records ... what the ... when you ask for it, you're
23 asking for the technical record. I don't know what
24 the technical records show in the courthouse as the
25 ownership of whatever that, the Grand Devine or

1 Grand Fountain, I don't know which one you referred
2 to, or Grand Maple. I don't know the technical
3 order of that as of this date.

4 Q: As to each and every question that I ask from
5 henceforth, Mr. Hammer, you may assume I'm not
6 referencing any specific document or any specific
7 record filed anywhere. I am only seeking your
8 general knowledge of the assets, real properties or
9 other information regarding the following LLCs.

10 A: Thank you very much for that.

11 Q: Are you familiar with an LLC, incorporated in South
12 Carolina, in the name of H, period, Prop, LLC? Prop
13 is spelled P-R-O-P.

14 A: I have no recollection of H. Prop, LLC, as we sit
15 here today, without any type of documentation to
16 refresh my memory.

17 MS. WEISSENSTEIN: Your Honor, may I show Mr. Hammer
18 certain printouts from the Secretary of State's
19 website in order to refresh his recollection?

20 THE COURT: That's fine.

21 Q: This is a printout from the South Carolina Secretary
22 of State's website referencing H, period, Prop, LLC.
23 It lists Alvin Hammer as the registered agent of
24 this property, or of this LLC. Are you familiar
25 with this corporation, sir?

1 A: It says Alvin Hammer. I'm not Alvin Hammer, and I'm
2 not familiar with this.

3 Q: Are you familiar with a gentleman by the name of Alvin
4 J. Hammer?

5 A: Sure, he's my brother.

6 Q: Do you have any membership or ownership interest in H.
7 Prop, LLC?

8 A: If I do, I'm unaware of it.

9 Q: I'd like to ask you about an at-will entity, Hammer
10 and Hammer, LLC; are you familiar with this entity,
11 sir?

12 A: Hammer and Hammer, LLC?

13 Q: Uh-huh (affirmative response).

14 A: I know that there used to be an entity called Hammer
15 and Hammer, LLC. I don't think one exists anymore.

16 Q: Were you or are you now the registered agent of Hammer
17 and Hammer, LLC?

18 A: You've asked me two questions. You've asked me was I
19 the registered agent when it existed, is that your
20 first question?

21 Q: Yes, sir.

22 A: I have no recollection whether I was or I was not.

23 Q: Are you now the registered agent of Hammer and Hammer,
24 LLC?

25 A: It is my understanding that Hammer and Hammer, LLC no

1 longer is a existing entity.

2 Q: I have here a printout dated May 29th, 2013, from the
3 Secretary of State's website. I'd like to show it
4 to you to refresh your recollection. Based on this,
5 it does not appear to have been dissolved. There's
6 no date indicating that Hammer and Hammer, LLC has
7 been dissolved. Does this document ...

8 A: I would say this document is incorrect based on the
9 information I have.

10 Q: What information do you have, sir, related to Hammer
11 and Hammer, LLC that leads you to believe that the
12 Secretary of State's records are incorrect?

13 A: No tax returns have been filed for that. And based
14 upon information ... without waiving any privileged
15 information that I may have with any attorney, that
16 would be based upon information that I would have
17 received from a professional.

18 Q: When ... based on your ...

19 A: And may I add to that, I did not ... when I received
20 such information, I did not go back behind and check
21 to see whether they'd given me accurate information
22 or non-accurate information. I take the information
23 that they give me as being accurate. I depend upon
24 it, and that's the information that I have. Now,
25 whether it's accurate or not, I don't know. I can

1 only tell you the information. You've asked my
2 belief. Based upon information that I have, Hammer
3 and Hammer, LLC is ... does not exist.

4 Q: To the best of your knowledge, when Hammer and Hammer,
5 LLC did exist, what percentage of membership did you
6 own?

7 A: I have no ... I don't know what time period you're
8 talking about, and I have no recollection I think of
9 ... I doubt that I would have a recollection if you
10 gave me the time periods.

11 Q: To the best of your recollection, when Hammer and
12 Hammer, LLC was dissolved, what percentage of
13 ownership did you hold?

14 A: I don't recall. Sorry.

15 Q: To your knowledge, did Hammer and Hammer, LLC own or
16 hold any real property?

17 A: To the best of my recollection, they did not, although
18 I cannot ... I would not be able to tell you whether
19 they, for an absolute certainty, whether they did or
20 they did not. Other people handled that for me, and
21 I did not ... without the documents from them, I
22 would not have any idea.

23 Q: Who would I call, or to whom would I send
24 correspondence in order to obtain documentation or
25 other information about Hammer and Hammer, LLC?

- 1 A: I'm not sure of the year that it was dissolved so I
2 could not ... I don't recall who might have, who you
3 might be able to get information from. There would
4 be several people, and I do not know.
- 5 Q: Can you please go ahead and give me those people's
6 names and contact information to the best of your
7 knowledge?
- 8 A: Let me give some thought to that for just a moment. I
9 don't remember her name. She was in our office. I
10 am sorry, I had someone in my office deal with with
11 that, and I do not know ... she was ... the first
12 person, that would be the first person I would
13 contact, and I cannot remember her name. She left
14 my office in 2008, and I don't recall her name. We
15 had 15 people in the office at the time I think. Or
16 12. I don't even know how many we had, but I cannot
17 recall her name. I'm sorry.
- 18 Q: Mr. Hammer, you made reference to the fact that other
19 people handle these types of matters for you, as to
20 Hammer and Hammer, LLC. Who would have handled that
21 matter for you?
- 22 A: And in what respect are you talking ... I don't ... I
23 ...
- 24 Q: Maintenance, corporate books, records.
- 25 A: Well, we ... I don't think ... that corporation

1 unfortunately was not, probably was not formed in
2 ... according to Hoyle, and I don't think that we
3 ever had any corporate books or things of that sort.
4 I don't ever recall ever having any corporate notes
5 or corporate meetings or anything of that sort, so I
6 don't ... I would be very surprised if there were
7 any books at all.

8 Q: When you reference we, sir, to whom are you referring?

9 A: I'm not sure what you're ...

10 Q: You said, We would not have had corporate books,
11 corporate records, etcetera.

12 A: I was referring to Hammer and Hammer.

13 Q: Who is the membership of Hammer and Hammer? Who was
14 the membership of Hammer and Hammer? To the best of
15 your knowledge, at any point in time.

16 A: I don't recall whether it was me and my father, me and
17 other lawyers who may have been in the office at the
18 time. I cannot tell you. I'm sorry. I don't
19 believe that we had any type of ... I don't recall
20 ... unfortunately, the shoemaker's children
21 sometimes run with bare feet. I'm probably
22 misquoting the little saying, but I do not recall
23 that we had ... we may have had some sort of form,
24 articles or something. I don't know whether I ever
25 saw them. I don't know where they are. And I can't

1 tell you who would have possession if they do exist.

2 Q: Okay, so ...

3 A: I do know that the corporation was dissolved and ...
4 or I've been told that, and I would assume that all
5 the records have been destroyed or put into a box
6 and are in the basement of our ... of the building.
7 I say our; I withdraw that. Of a building. You're
8 welcome to look through the basement of the
9 building.

10 Q: Thank you. I would like to move on now to a domestic
11 LLC, at-will. It was incorporated September 4th,
12 2009, and it's called HASCI, LLC. Are you familiar
13 with this entity?

14 A: I have heard of it.

15 Q: Are you familiar with registered agent Alvin Hammer?

16 A: He's my brother.

17 Q: Is he still alive today?

18 A: Yes.

19 Q: May he be reached at 68 Lenwood Boulevard in
20 Charleston, South Carolina?

21 A: I don't know.

22 Q: Do you have any membership or other holding in HACSCI,
23 LLC (sic)?

24 A: I think that I did until a certain period of time. I
25 do not think that I have any ownership in that at

1 this time, although I do not know officially whether
2 I do or I do not. I know that I had debts which I
3 couldn't pay, and I do not know what the bylaws are
4 of the corporation, minutes or whatever, I do not
5 know the impact that that had on the debts that I
6 didn't pay for several years.

7 Q: To the best of your knowledge, in the last five years
8 what was your percentage of ownership in the entity?
9 Prior to that time in which you think your
10 membership may have been dissolved.

11 A: I'm sorry, I ... that was something that was formed,
12 not by me, that was formed during a period when I
13 was involved in a rather heated domestic matter and
14 much of my attention was focused on my children and
15 ... the welfare of my children, and much of my
16 business matters were handled not by me.

17 Q: Who handled your business matters during this time
18 that you were involved in the domestic matter?

19 A: Do you know who the incorporators are for H-whatever
20 it is that you just now mentioned?

21 Q: HASCI, LLC.

22 A: Whoever incorporated that or whoever handled that
23 would be the person that, and I don't know who that
24 is, would be the person who might have the
25 information that you asked about percentage

1 ownerships.

2 Q: Do you know what the letters H, A, S, C, I stand for,

3 in the name of this entity?

4 A: I do not.

5 Q: Are you familiar with a corporation by the name of

6 Heart of Columbia, Inc.?

7 A: That was a corporation that I believe my father and my

8 uncle formed in the 1950's. . .

9 Q: Who is Isadore Bernstein?

10 A: Isadore Bernstein is the father of Beth Bernstein of

11 Blessed Memory.

12 Q: And who is Beth Bernstein?

13 A: Beth Bernstein is a lawyer here in town and a ...

14 she's a lawyer here in town.

15 Q: Is there any familial relationship between you and

16 Beth or between you and Isadore Bernstein?

17 A: Isadore Bernstein of Blessed Memory has passed away

18 some three years ago I believe.

19 Q: Are you related to Isadore Bernstein?

20 A: He passed away three years ago.

21 Q: I understand that, sir, but he still would have been

22 your relation. I'm asking ...

23 A: Was I related?

24 Q: ... was there ever a familial relationship between ...

25 A: Begging the question, you're asking was I ever

1 related? Of course, when he was alive I was
2 related.

3 Q: What was the manner of that relationship?

4 A: He was my uncle.

5 Q: In what manner are you related to Beth Bernstein?

6 A: She's my cousin.

7 Q: To your knowledge, is Heart of Columbia, Inc. still
8 operating?

9 A: I have no idea at all.

10 Q: Do you have any ownership interest in Heart of
11 Columbia, Inc.?

12 A: I ... if I do, it's unbeknownst to me. And let me
13 say, and let me clarify that, when I say unbeknownst
14 to me, I would have no recollection without any
15 documentation in front of me. As of right now, I
16 don't know, I can't remember whether I ever did or
17 whether ... I don't even know whether that is in
18 existence now, so. Sorry I can't help you with
19 that.

20 Q: Are you familiar with a domestic at-will LLC filed in
21 or around October of 2009 by the name of One RS,
22 LLC? And that is the spelling out of one, O-N-E,
23 the letter R, the letter S, LLC.

24 A: Who is the registered agent of that, if you don't
25 mind? It might help me.

1 Q: Knowleton D. Sanders.
2 A: Can you give me a little more information on that?
3 Q: Knowleton D. Sanders is the registered agent at the
4 fifth floor of 1501 Main Street in Columbia, South
5 Carolina. This is a for-profit organization in good
6 standing in South Carolina.
7 A: And what is your question?
8 Q: My question is, do you have any membership or
9 ownership interest in the LLC known as One RS, LLC?
10 A: I don't think that exists at the present time.
11 Q: During the time in which you believed it did exist,
12 just prior to the time in which you believe it may
13 not ... have ended its business, what ownership, if
14 any, did you hold?
15 A: Could you give me specific times that we're talking
16 about?
17 Q: Last week.
18 A: I don't think it existed.
19 Q: A month ago.
20 A: I don't think it existed.
21 Q: Six months ago.
22 A: That would be in 2012? I don't think it existed.
23 Q: One year ago.
24 A: That would be 2012, I don't think it existed.
25 Q: A year and a half ago.

1 A: Still in 2012, I don't think it existed.
2 Q: Two years ago.
3 A: In 2011? I don't know whether it existed in 2011 or
4 not.
5 Q: If it existed in 2011, what percentage of ownership,
6 if any, would you have held in One RS, LLC?
7 A: I'm unable to answer a hypothetical question.
8 Q: It's not a hypothetical question, sir. It's based on
9 your recollection.
10 A: You asked me if it existed. I couldn't tell you ...
11 Q: 2010, sir?
12 A: And what are you asking me in 2010?
13 Q: I'm asking you now.
14 A: What is the question?
15 Q: My question is, in 2010 what, if any, ownership
16 interest did you hold in One RS, LLC?
17 A: I don't know that it existed in 2010.
18 Q: In October of 2009, what ownership interest, if any,
19 did you hold in One RS, LLC?
20 A: When was that incorporation? Is that a corporation?
21 Q: It's an LLC, sir.
22 A: Would you help me by telling me when it was formed?
23 Q: It was formed on October 2nd, 2009, as an at-will
24 entity.
25 A: Somewhere in 2009, after it was formed, and I'm ...

1 but I'm glad to answer this question. I owned ... I
2 was a member of that LLC.

3 Q: What percentage of membership did you hold?

4 A: I'm not sure, but I'm pretty sure that it was a
5 majority membership.

6 Q: Were you the sole member of One RS, LLC?

7 A: I would have to defer to whatever the records in the
8 ... the Secretary of State might show. I don't know
9 whether there was another member or not. I don't
10 recall there being another member, but I cannot tell
11 you for sure that there was not.

12 Q: To the best of your recollection, why was One RS, LLC
13 formed?

14 A: Why was it formed?

15 Q: Yes.

16 A: It was formed in order to establish an LLC entity for
17 the purposes that you have named.

18 Q: What purposes, to the best of your knowledge, would
19 those be?

20 A: I don't recall. Whatever you ... didn't you read me
21 something for the reason that it was formed?

22 Q: No, sir.

23 A: Is there something ... is there a document that you
24 have that would tell when it was formed so I don't
25 have to rely upon my recollection back to 2009?

1 Q: We'll get to that. What I'm just trying to do right
2 now is just establish your base knowledge of these
3 various entities which we believe you have had or
4 have some ownership interest.

5 A: I don't want to guess at that, and I can, if you would
6 help me a little bit by telling me what the ... what
7 your records show that it was formed, then I can
8 confirm or deny that that is ... that conforms with
9 my recollection.

10 Q: All right. We'll come back to that one. I'm going to
11 ask you now about SH3, LLC. That is the letter S,
12 the letter H, and numeral 3, LLC. And it is a for-
13 profit domestic LLC, created in 2000, in South
14 Carolina. Are you familiar with this LLC?

15 A: In 2000?

16 Q: It was created in 2000. That's just for your
17 information. I will ... according to the Secretary
18 of State, it's still active.

19 A: I'm sorry, I ... you're asking me to try to remember
20 something that was created in 2000, and I'm unable
21 to do that. What are you asking me again?

22 Q: Are you the registered agent of SH3, LLC?

23 A: If it is in existence and if the records of the
24 Secretary of State show that I am, I guess I am. I
25 don't have any recollection of that particular LLC.

1 I will reiterate an answer that I gave you earlier.
2 Very often LLCs were formed unfortunately without
3 ... or with form records, and the form records were
4 put who knows where, and I don't know where they are
5 now, and I cannot tell you whether tax returns have
6 been filed with those or not. I haven't filed any
7 tax returns, that I'm aware of, for SH what?

8 Q: SH3, LLC.

9 A: I have not filed any tax returns for SH3, LLC, that
10 I'm aware of.

11 Q: Would anyone have filed tax returns for SH3, LLC?

12 A: I have no idea what anyone else would have done.

13 Q: Are you a member of SH3, LLC?

14 A: Apparently I was a member in 2000. As of right now,
15 I cannot tell you based on my recollection whether
16 I'm a member or not a member or who the members are.

17 Q: To the best of your knowledge, what would SH stand
18 for?

19 A: I ... I am sorry, I ...

20 Q: I'm going to ask you now about SH4, LLC. It is a
21 domestic for-profit entity that was ...

22 A: May I ...

23 Q: ... begun in South Carolina in December of 2000. Are
24 you familiar with this entity?

25 **THE COURT:** Ms. Weissenstein, I get the feeling the

1 witness wanted to keep talking about another
2 question.

3 **MR. HAMMER:** That's all right, Your Honor.

4 **MS. WEISSENSTEIN:** Oh, I'm sorry, I didn't hear.

5 **MR. HAMMER:** That's all right, Your Honor. I should have
6 spoken up a little louder, I'm sorry.

7 A: What is your question?

8 Q: I was asking if you're familiar with SH4, LLC.

9 A: In the year 2000?

10 Q: Now, sir.

11 A: I have ... I'm not sure what you mean by familiar. If
12 you're asking me whether the record ... I will tell
13 you this, if the records show that there was an LLC
14 formed in 2000, I wouldn't deny it. If you're
15 asking me whether I have any independent
16 recollection of that, 13 years ago, I will tell you
17 no. If you're asking me whether I have any records
18 on that that I would be able to put my hands on,
19 that I would be able to find, that I would be able
20 to locate, I would tell you I doubt it.

21 Q: To the best of your knowledge, who would have records
22 pertaining to SH4, LLC?

23 A: I would have no idea.

24 Q: To the best of your knowledge, what ownership interest
25 did you have in SH4, LLC?

1 A: I don't know what SH4, LLC owned, I don't know what it
2 was formed for. I know that in ... I know that I
3 have over the years had numerous LLCs formed. Some
4 of them were formed and nothing was ever done with
5 them, they were just formed and that was the end of
6 it. A checking account was opened, and then a
7 checking account was closed, and \$100 was put in and
8 nothing happened. So I can't tell you whether this
9 was one of those or not. I notice you have a 3 and
10 a 4. I don't know whether there's a 1 through 10.
11 You're talking about the year 2000, and I just do
12 not have a recollection, nor do I have any records.
13 And I will tell you that many of these were just
14 opened up probably for purposes of potential
15 investments or potential use and maybe were never
16 used at all, so I cannot differentiate one from the
17 other. I'm sorry. If you could give me a little
18 more information or help me with it a little bit
19 further, I ... it may jog my memory.

20 Q: I'm going to move away from going through these LLCs
21 then for now, and I'm going to ask you, sir, to just
22 very briefly, or not briefly, please just describe
23 to me, to the best of your knowledge, the various
24 real property that you may presently hold interest
25 in.

1 A: For the reasons that have been earlier stated, I'm
2 unable to completely answer that question and
3 therefore I, under advice of counsel, assert my
4 Fifth Amendment privilege under the Constitution not
5 to answer.

6 Q: Completely discounting the real property at 1634 Main
7 Street in Columbia, or any real property that might
8 be owned by 1634 Main, LLC, you individually as
9 Howard Hammer is what I'm interested in right now.
10 So as an individual person, Howard Hammer, what real
11 property exists in which you have some ownership
12 interest?

13 A: As I understand, this first hearing is the 1634 Main,
14 LP hearing. And in view of that, I will assert my
15 privilege under the Fifth Amendment on advice of
16 counsel.

17 **THE COURT:** Hold on a second. I guess I should clarify
18 for the record, I don't think Mr. Hammer waives his
19 right to assert the privilege for other questions,
20 but I think he specifically asked that he assert the
21 privilege, that I recognize that he's asserting the
22 privilege as far as 1634 Main, LP. But that doesn't
23 mean he can't assert the privilege for other
24 questions as well. Mr. Aiken, is that your
25 understanding as well?

1 **MR. HAMMER:** Yes.

2 **MR. AIKEN:** Yes, sir, that is.

3 **THE COURT:** Mr. Hammer, is that your understanding?

4 **MR. HAMMER:** Yes, sir. And, as I understand it, you had
5 related or indicated that the ... at the first of
6 this, that we had all day. And I thought that we
7 were starting with the 1634 Main, and that's what
8 she started talking about, so that's what I am
9 understanding we're having the hearing on.

10 **THE COURT:** No, we didn't ... I don't think I agreed to
11 bifurcate it. I think we agreed to go forward, and
12 I think you ... and you informed the Court you were
13 going to assert your privilege as to any questions
14 related to 1634 Main. So I'm sorry for the
15 confusion, but ...

16 **MR. HAMMER:** Did Your Honor differentiate between the two?
17 And that is the reason that I asked Your Honor to do
18 it, because maybe there would be some questions that
19 I could answer if they are not combined. If they
20 are combined it makes it more difficult.

21 **THE COURT:** I apologize for the confusion. I denied that
22 motion.

23 **MR. HAMMER:** Okay. I'm sorry.

24 **THE COURT:** And I understood from you that you were going
25 to assert the privilege with regard to 1634 Main.

1 My comments just a minute ago were that that didn't
2 mean you waived the privilege for any other
3 question.

4 **MR. HAMMER:** Yes, sir, as long as they're together and
5 they're interrelated, I believe I ...

6 **THE COURT:** She may ask you a question that's not related
7 to 1634 Main, and you can still ... and you may want
8 to assert the privilege in that case. That's what
9 I'm driving at. I'm sorry if I confused the issue,
10 but ... I mean, is that what you understood, Ms.
11 Weissenstein? I mean, it doesn't mean he can't
12 assert the privilege for other questions, even
13 though he's made it clear that he's going to assert
14 the privilege for any questions related to 1634
15 Main.

16 **MR. HAMMER:** And ...

17 **THE COURT:** Have I confused everybody now?

18 **MR. HAMMER:** Yes, sir.

19 **MR. AIKEN:** What the judge is saying, Howard, is that just
20 because you've asserted, you've invoked the
21 privilege as to 1634 Main, it doesn't mean you're
22 precluded from invoking it on other issues from
23 which you might have some other form of privilege.
24 That's my understanding.

25 **THE COURT:** Yes. That's a more artful way of putting it.

1 Ms. Weissenstein, you understand that?

2 **MR. HAMMER:** Your Honor, all of it would be tax-related; I
3 filed only one tax form, so that's ... the reason
4 that, while it may seem separated, it's not.

5 **THE COURT:** All right. You may proceed.

6 Q: Howard, are you familiar with real property located at
7 One Rice Court in Columbia, South Carolina?

8 A: Stephanie, I am ... and I appreciate you calling me
9 Howard, and you don't mind if I call you Stephanie?

10 Q: Of course.

11 A: Am I familiar? I'm not sure what you mean by familiar.
12 Do I know where One Rice Court is? Yes, I know
13 where One Rice Court is.

14 Q: As to the best of your knowledge, is One Rice Court a
15 residential property?

16 A: To the best of my knowledge, it's a residential
17 neighborhood. And I would have no way of knowing
18 what period of time you're talking about, but I'm
19 assuming that you're talking about right now. I
20 have no way of knowing that it's anything other than
21 a residential, but that does not mean that it's not.

22 Q: At one point, prior to November of 2008, did you own
23 all or part of One Rice Court?

24 A: I thought that my former wife had owned that, but I am
25 not sure.

1 Q: I want to show you a copy of a deed in which you are
2 identified as the grantor. It appears from this
3 deed that you sold this property to James Daniel and
4 Angela Daniel on or around November 25th, 2008, for
5 \$330,000. Does this refresh your memory as to your
6 prior ownership of the property at One Rice Court?

7 A: It doesn't refresh my memory at all. However, I do
8 have a recollection of this matter, be glad to try
9 to help you with it if you have any questions about
10 it.

11 Q: Thank you.

12 A: As a matter of fact, I'll advise you that I never made
13 a personal delivery of that deed to the named
14 individuals on the deed. It's my understanding that
15 the law of real estate, and I'm not an expert in the
16 law of real estate, but the law of real estate
17 requires a personal delivery. There was never a
18 personal delivery of that deed made to me, nor was
19 there ever personal delivery of that deed made by me
20 to the grantees in the deed.

21 Q: Did you attend the closing of this real property
22 transfer?

23 A: I was in the office. I don't know whether I went in
24 to ... I don't recall.

25 Q: Do you recall that there was an attorney other than

1 you involved in the transfer of that property at One
2 Rice Court?

3 A: Yes, the deed was delivered to that attorney. That was
4 not my attorney, that was the attorney for the
5 adverse party. My attorney never received, nor did
6 I ever receive the deed, so the deed was never
7 delivered to me.

8 Q: Who was your attorney at the time?

9 A: I do not know. It's possible that I didn't have an
10 attorney. Lee Holloway was the attorney for the
11 purchasers, and the deed was ... although the deed
12 was supposed to be delivered to me, there was never
13 a delivery of that deed to me. It's my
14 understanding from property law that a transfer of
15 property requires a delivery, and without a delivery
16 there is no valid transfer. There was never a valid
17 transfer ... there was never a valid delivery of the
18 deed to me, nor was there a valid ... nor did I
19 deliver the deed to the purchasers. The deed was
20 delivered to the purchasers' attorney, who was
21 adverse to my interest, not to me, and he asked me
22 to sign it. I signed it, and he delivered it. So
23 the requirement of delivery was twice not made in
24 that connection, so ...

25 Q: So ...

1 A: That's all I can tell you.

2 Q: Legal technicalities aside, did you ever hold yourself
3 out as being the owner of One Rice Court in
4 Columbia, South Carolina?

5 A: I thought I was going to receive a deed. In
6 contemplation of receiving a deed, I tried to enter
7 into negotiations. That deed was never delivered to
8 me. I have some correspondence someplace, if I
9 could find it, with Mr. Holloway confirming that
10 that never occurred.

11 Q: Answering yes or no, did you ever hold yourself out as
12 owning the real property located at One Rice Court
13 in Columbia, South Carolina?

14 A: I did not intentionally hold myself out. I don't know
15 what others may have understood from my
16 conversations with them. However, their lawyer
17 would have information that the deed was never
18 delivered to me, because their lawyer would have
19 been able to have done a title check and would have
20 seen that during any time ... and I assume you're
21 talking about did I hold myself out to the
22 purchasers, correct?

23 Q: To the general public, to the family court, to the
24 purchasers.

25 A: Well, I don't know about the family court. I don't

1 ever recall telling the family court that I received
2 the deed. The purchasers, I have no idea what they
3 thought. I can only tell you what I believe they
4 should have thought. That is, they had an attorney
5 who did a title check, and the title check would
6 have shown that the deed was not of record in my
7 name. And they would have been told that by, I
8 assume, their lawyer. I cannot assume otherwise.
9 He's a competent lawyer, and why would he not tell
10 them? The deed was delivered to him, so I cannot
11 ... if they ... if anybody took it that I was
12 holding myself out, they took it contrary to what
13 the facts were of record.

14 Q: In regard to the transfer or, I guess, strictly
15 related to this deed that was executed in November
16 of 2008 that sets forth that consideration was paid
17 to you, as grantor, \$330,000, did you receive
18 payment of \$330,000 by or on behalf of James Daniel
19 and/or Angel Daniel?

20 A: I could not recall that. If I did, it would not be
21 technically as a ... it would not meet the technical
22 requirements of the delivery of the deed, and I
23 believe I subsequently asked Mr. Holloway to cure
24 that. I don't know whether that was ever cured or
25 whatever happened with that.

1 THE COURT: Let me ask ...

2 Q: Do you recall receiving ...

3 THE COURT: Excuse me. Where was this property located,
4 in Richland County, in Lexington County, or where?

5 MS. WEISSENSTEIN: I'm sorry, sir?

6 THE COURT: Where is this property located?

7 MS. WEISSENSTEIN: The property is located in Richland
8 County.

9 THE COURT: Okay. Thank you.

10 MS. WEISSENSTEIN: Sure.

11 A: And I might add, the property that you're talking
12 about, a deed was supposed to have been delivered by
13 my former wife. She did not deliver that deed to
14 me. I repeat, the deed was delivered some six
15 months after it was supposed to be, or five months,
16 or whatever, to the adverse attorney. Not to me.
17 He had no authority to act on my behalf, no
18 authority to receive a deed on my behalf. It was
19 not received by me. Moreover, there was an
20 outstanding mortgage on that property. While I did
21 not have ownership of the property, I believe my
22 name, as a courtesy to my former wife, was put on
23 the mortgage. My former wife had not paid the
24 mortgage for some six months, and I was obligated to
25 pay off that mortgage. Without ownership of the

1 property.

2 Q: Do you recall ever receiving \$333,000 (sic) in or

3 around November or December 2008?

4 A: No, I don't recall.

5 Q: In what bank did you hold accounts for deposit in

6 2008?

7 A: I ... I can't tell you which banks I've dealt with.

8 Probably every bank in town.

9 Q: At what bank do you presently hold a checking account?

10 A: At what banks? Or bank? I know that I have a

11 checking account at NBSC.

12 Q: Do you have a checking account at any other bank or

13 credit union?

14 A: I don't know whether I have a checking account or not.

15 Q: Do you have any account in which you may make deposits

16 at any bank or credit union?

17 A: That I may personally make deposits?

18 Q: Or someone on your behalf.

19 A: Are you talking about the government?

20 Q: I'm talking about anybody.

21 A: Would the government ... I'm trying to find out, do

22 you consider the government to be an entity included

23 in your question?

24 Q: How many checking accounts do you own?

25 A: I do not know.

1 Q: Please identify for me, to the best of your knowledge,
2 every checking account that you own.

3 A: The only checking account that I can recall is called
4 ... at NBSC with 30 cents in it I think the last
5 time I checked. I own a checking account at NBSC
6 that probably has \$200 in it maybe, if all the
7 checks have gone through. There's one other one,
8 and I don't think there's more than maybe ... and
9 the last time I checked there was some \$200 in it
10 maybe.

11 Q: Was that third checking account also at NBSC?

12 A: Yes.

13 Q: Do you have a checking account at any other bank
14 besides NBSC?

15 A: I don't know whether I have any active checking
16 accounts at any other bank other than NBSC at this
17 time.

18 Q: Do you have any checking accounts at any credit union?

19 A: I don't know whether it's a checking account or a
20 savings account.

21 Q: Please identify ...

22 A: And I believe that there ... I believe that it is a
23 type of checking account. I don't know that I have
24 ever gotten a checkbook, don't think I have, and I
25 think that it is primarily a savings account.

1 Q: And where is that account?

2 A: At ... it's a credit union. Columbia Credit Union or
3 Columbia Palmetto Credit Union, or something of that
4 sort. It's an account ... it's a direct deposit
5 account for Social Security, which is my sole source
6 of income right now.

7 Q: Do you own any savings accounts?

8 A: I believe that there's ... as I said, I don't know
9 whether this is a savings account or a checking
10 account at this Columbia Credit Union or Columbia
11 Palmetto Credit Union, or whatever it's called.
12 Citizens Credit Union.

13 Q: Palmetto Citizens First?

14 A: Citizens Credit Union. I'm not sure of the name of
15 it.

16 Q: Okay. Other than that account, do you have any other
17 savings account?

18 A: Not that I'm aware of.

19 Q: Do you have access to any savings account that may not
20 be in your name?

21 A: I don't think so. I would have no way of, I have no
22 way of ... I have no recollection of any that I
23 would ... of any.

24 Q: Do you have access to any checking account that may
25 not be solely in your name?

1 A: I don't think that I have access to any checking
2 accounts not in my name. I don't ... I can't give
3 you an absolute on that, but I don't think I do.
4 Q: Do you own any certificates of deposit at present?
5 A: Not that I can recall or that I am aware of.
6 Q: To the best of your recollection, have you owned any
7 certificates of deposits in the last three years?
8 A: Not that I'm aware of.
9 Q: Do you hold any money market accounts?
10 A: I don't have any personal money market accounts that
11 I'm aware of.
12 Q: In the last three years have you owned any personal
13 money market accounts?
14 A: I believe at one time I owned a personal money market
15 account, but I don't know whether that was over
16 three years ago or not.
17 Q: To the best of your knowledge, what happened to the
18 funds in that money market account that you owned at
19 one time?
20 A: They were withdrawn to pay off debts.
21 Q: Do you have access to the funds deposited in a money
22 market account that is not in your name?
23 A: Not that I am aware of. Are you talking about in
24 another individual's name? No, I wouldn't have
25 anything in ... a right to collect monies from

1 another individual.

2 Q: Do you hold ownership over any government bonds?

3 A: Not that I'm aware of. I'd like to say that I don't,
4 but I have no recollection of it or awareness right
5 now that I do. And I don't think that I do.

6 Q: Do you have young children, Mr. Hammer?

7 A: Yes, I have two beautiful young children.

8 Q: To the best of your knowledge, are there any accounts
9 at any financial institution that have been
10 established in their names?

11 A: I'm certain that Shirley has established some. I think
12 she has one that she ... at some place that she's
13 supposed to turn over, some six months ago, not six
14 months ago, sometime in February, which I haven't
15 received. So, yes, I'm aware of that.

16 Q: Have you opened or established any account for the
17 benefit of your children?

18 A: I've established accounts for the benefit of my
19 children, of course.

20 Q: Then where are those accounts?

21 A: Various banks.

22 Q: And what is the nature of that account?

23 A: Accounts for the children.

24 Q: Is it a savings account?

25 A: They are for saving purposes, yes.

1 Q: Is it a savings account by the general definition of a
2 savings account?
3 A: May I confer with my lawyer for a moment?
4 Q: Yes.
5 **MR. AIKEN:** Judge, the questions that are now being asked,
6 about accounts belonging to the children, those are
7 clearly not subject to levy in this particular
8 circumstance. I just don't see how that's relevant
9 at all.
10 **THE COURT:** I think I said at the outset that witnesses
11 tend to get irritated because there are a lot of
12 things that the petitioner can find out about that
13 won't necessarily do them any good as far as
14 collecting is concerned. So my response is simply
15 to bear with us and bear with the creditor in this
16 case. Again, she's asked questions. You all's
17 obligation is, Mr. Hammer, as you know, is to give a
18 truthful answer. And you can tell her things that
19 she may not be able to do anything about. But you
20 need to answer the questions. Now, I understand
21 this gets pretty emotional, when you're talking
22 about children it gets pretty emotional. Would you
23 rather do it a different way? For example, would
24 you rather maybe submit a list of questions in
25 writing and have Mr. Hammer respond in writing, or

1 do you think everyone can handle it live and in a
2 courtroom? I mean, you don't have to do it here.
3 You can do it through a list of interrogatories I
4 guess, or requests to produce or some other way.
5 Would that be better for both parties, if you could
6 do it maybe in writing outside of court? Or do you
7 want to just tough it out today and do it?

8 **MR. HAMMER:** May I have a moment?

9 **THE COURT:** Yes, sir.

10 **MR. HAMMER:** Your Honor, if I may, I do not know that ...
11 she's asking questions about my children. I do not
12 handle a lot of the affairs for my children. It's a
13 fishing expedition, which may be used, possibly be
14 used adversely to my children, and I'm hesitant to
15 answer questions that may be used adversely to my
16 children.

17 **THE COURT:** Okay.

18 **MR. HAMMER:** And I think if they're irrelevant, and since
19 they may be used adversely to my children, that this
20 is not the appropriate forum to do that. She has
21 other forums and other ... family court, she
22 certainly can do it in that forum if she sees fit.
23 But this is not the appropriate forum to do that.

24 **THE COURT:** All right, let me ... I'll just be blunt. I'm
25 not a mind reader, but I assume, Ms. Weissenstein,

1 you're trying to find out if he has money that he's
2 put somewhere where he thinks it can't be touched.
3 Mr. Hammer, now your reputation as a lawyer is
4 exemplary, and I think that's what she's driving at,
5 she's trying to find out if you have money that can
6 be used to pay this debt and if you've hidden it
7 somewhere. And that's what she's driving at. She
8 may be able to find out about all of the accounts,
9 accounts that are set up for your children, but she
10 may not necessarily be able to attach them. But the
11 problem is, we can't, for both parties, we can't get
12 past the emotion. I'm willing to keep the record
13 open if you want to serve interrogatories or
14 requests for production about this, as opposed to
15 doing it now. I don't know, I haven't ... I haven't
16 been asked to rule on anything yet. I don't know,
17 Mr. Hammer, if she can reach that money or not,
18 quite frankly. But, you know, the bottom line,
19 she's trying to find out if you can pay the
20 judgment. The judgment is roughly, for both cases,
21 about \$155,000 or so? My math's not good. Does
22 that sound right?
23 **MS. WEISSENSTEIN:** It's over ... it's around \$100,000 in
24 judgments.
25 **MR. HAMMER:** And I would state to the Court that the ...

1 any monies in the children's name are in the
2 children's name. And I would be committing a breach
3 of fiduciary relationship, not to mention a
4 violation of the criminal laws, to touch any of that
5 money. And I certainly would not touch any of that
6 money, and she certainly could not reach it.

7 **THE COURT:** Now, let me ask you a question, and remember
8 it's coming from me and not the other side.

9 **MR. HAMMER:** Yes, sir.

10 **THE COURT:** Just out of curiosity, are you trustee for any
11 trusts in favor of your children? Are you the one
12 that's actually managing the accounts for your
13 children?

14 **MR. HAMMER:** I'm not trustee on any of the accounts for my
15 children, no sir. All of the accounts are under the
16 Uniform Gift to Minors Act. And under the Uniform
17 Gift to Minors Act, I have no authority to take that
18 money and use it for my own purposes. The Uniform
19 Gift to Minors Act specifically requires that they
20 be used for the purposes of the children, and I will
21 relate to the Court that those monies have not been
22 touched, even for purposes of the children when they
23 have come up ... when instances have come up that
24 the children needed money, they were not withdrawn
25 from those accounts for any purposes. And I have no

1 intention of ever taking those monies out. Once
2 they're put in, they're put in for the children,
3 period.

4 **THE COURT:** All right. And the question's going to be
5 from Ms. Weissenstein, where'd the money come from
6 to go in those accounts?

7 **MR. HAMMER:** If she wants to ask any of those questions,
8 certainly.

9 **MS. WEISSENSTEIN:** Your Honor, based on the ... what we've
10 established so far, which is, you know, I mean no
11 offense, Mr. Hammer has claimed essentially no
12 knowledge at this time of any of his ownership
13 assets, accounts, or otherwise. We would certainly
14 consent to submitting the remainder of our questions
15 pursuant to interrogatories and requests for
16 production, provided that we would not be limited by
17 the Rules of Civil Procedure in terms of the number
18 of interrogatories or requests for production that
19 are set forth. I mean, obviously there might be
20 more than 50, given the number of entities that
21 we're dealing with here and the number of different
22 accounts. This has been, as Howard said, driving on
23 since about 2005, not as Shirley's ... that's
24 neither here nor there. We would also request that
25 if we adjourn today, it'd be with leave to come back

1 to follow up. We would request that there be a
2 reminder from the Court that Mr. Hammer is not to
3 dispose of, transfer, or otherwise do anything to
4 any of the assets that he might have. And we would
5 request that we be given an expedited amount of time
6 by which to expect our responses from the typical 30
7 days to 15 days.

8 **THE COURT:** Okay.

9 **MR. HAMMER:** We would object to that, Your Honor, on
10 several grounds. First of all, Your Honor, when we
11 adjourn here ... you've set aside an entire day. We
12 are prepared for whatever it is. When we adjourn
13 here, Your Honor, I expect that I will confer with
14 my attorneys and I expect that there will be a
15 potential ... a motion for reconsideration on your
16 ruling of jurisdiction and thereafter a ... which
17 will put that on hold, and also there's a potential
18 for an appeal, which would put it on hold. So I
19 would suggest that we would object to that, and I
20 would suggest that if we don't do that now it's
21 going to just complicate matters from a procedural
22 standpoint.

23 **THE COURT:** Well, let me ... I know neither lawyer appears
24 before me very often, but one of the benefits of
25 appearing before the master-in-equity is that we

1 have a lot of flexibility. We have complete control
2 of our own schedule, and everything we do is a date
3 certain. So as far as scheduling is concerned,
4 that's not a problem. I just think, I think this is
5 very, very tough on both parties. I can see it in
6 your face, in both your faces. And I think Ms.
7 Weissenstein's suggestion is well-taken, and I'll
8 certainly give her leave to exceed the minimum
9 number of questions and basically ask whatever needs
10 to be asked, to do it in writing, and giving ... I
11 think you can respond in 15 days from today. That's
12 two weeks from the time you receive it, you and Mr.
13 Aiken together can probably respond in two weeks.

14 **MR. HAMMER:** There's no way that I'm going to be able to
15 respond, Your Honor. I'm preparing for the bar
16 mitzvah of my son. There are other litigatory
17 matters that I expect to come up. There's no way
18 that I could respond; his bar mitzvah is on the
19 22nd. I am deeply involved in getting that done,
20 and that is taking up a good bit of my time. We
21 would object strenuously to a ... a expansion of the
22 rules. We know of nothing in the rules that would
23 allow an expansion giving the circumstances we have
24 here today. We are here today, she's answering
25 questions, Your Honor has put forth the entire day,

1 and I am not at all bothered by her questions to the
2 least, and would ask that Your Honor continue this
3 in order to avoid a considerable amount of other
4 motions and other problems that I think will be
5 attendant procedural problems, that will be
6 attendant to this if we adjourn at this point.

7 **THE COURT:** Okay. Well, the judgments are good for ten
8 years, as the lawyers know. And also, I forgot to
9 introduce Mr. Johnson, he's a rising second year
10 student over at Charleston Law School, and I am
11 learning from the younger generation. I asked him
12 to go look up something, and he looks at his phone
13 and has the information on his phone. So he's
14 already exceeded my expertise as far as technology's
15 concerned. I'm willing ... I understand how
16 important a bar mitzvah is and I'm willing to push
17 the date for production back. Now, Mr. Hammer, what
18 do you do for a living nowadays?

19 **MR. HAMMER:** I collect Social Security, Your Honor.

20 **THE COURT:** You don't work at all?

21 **MR. HAMMER:** No, sir.

22 **THE COURT:** And, of course, we know that Social Security
23 payments are exempt from attachment, they can't get
24 that. And that's what you live on, Social Security?

25 **MR. HAMMER:** Yes, sir.

1 **THE COURT:** That's how you pay your light bill, your water
2 bill?

3 **MR. HAMMER:** And I owe somewhere in the neighborhood of
4 maybe \$600,000 to \$800,000.

5 **THE COURT:** Including these judgments?

6 **MR. HAMMER:** Over and above these judgments. Before these
7 judgments were put on.

8 **THE COURT:** Your bottom line after all this is over is
9 going to be that you don't have the money to pay
10 these judgments?

11 **MR. HAMMER:** Your Honor, I've paid Ms. Hammer close to \$3
12 million since 2008.

13 **THE COURT:** No, we're talking about these that are before
14 us today.

15 **MR. HAMMER:** I have one piece of property, it's under a
16 tax lien, that they haven't asked about, that they
17 might be able to use. Other properties are, are ...
18 are under receivership, so.

19 **THE COURT:** Well, I mean, my suggestion that it be done in
20 writing was meant to basically make life easier for
21 you and Mrs. Hammer.

22 **MR. HAMMER:** It won't make it easier for me. It would
23 make it more difficult for me, so I would like to
24 continue today. We're here for that purpose, and I
25 would strongly object to ... first of all, I renew

1 my objection ... we are here only ... without
2 waiving our right on jurisdiction.

3 **THE COURT:** Yes, sir.

4 **MR. HAMMER:** Once we leave here, Your Honor, I believe
5 that we have the right to pursue that question. So,
6 if we leave here and she hasn't asked all her
7 questions, then we have an incomplete record to
8 pursue, which complicates matters even further. And
9 so if an appeal is filed when we leave here, this
10 Court loses jurisdiction. And her rights to do
11 anything are hindered. I would prefer to have a
12 complete record so that if there is an appeal filed
13 on the jurisdictional question, at least the
14 appellate court will have that. And that's not
15 something that they would have once we get up and
16 leave here today.

17 **THE COURT:** All right. And, again, your argument is that
18 the Court lacks personal jurisdiction over you, not
19 ...

20 **MR. HAMMER:** Yes, sir. Contrary to what Stephanie has
21 said, this was a Rule to Show Cause, it was a signed
22 Rule to Show Cause. And a Rule to Show Cause
23 requires a sheriff serve the Rule to Show Cause.
24 There's no if's, and's, or maybe's about it. It is
25 the law of this state. And there is no going around

1 it. There is no jurisdiction. We are here. If the
2 Court decides that this is their opportunity to at
3 least get some information, they may get enough
4 information today to decide, you know, that an
5 appeal is not worth pursuing. And I made an offer
6 to them, long ago I made an offer to my former wife
7 concerning the one piece of property I had. So
8 that's where we are.

9 **THE COURT:** As you probably know, I get appealed quite a
10 bit. Every judge does. But I don't see how you're
11 prejudiced by answering questions in writing and ...
12 I was going to postpone the response date until
13 sometime beyond the 22nd of June.

14 **MR. HAMMER:** Yeah, prejudiced ... oh, I'm sorry.

15 **THE COURT:** I don't understand how that's a problem. For
16 example, if you're required to respond say the first
17 week of July or the second week of July, I don't see
18 how that ...

19 **MR. HAMMER:** I have ...

20 **THE COURT:** ... interferes with your private life at all.

21 **MR. HAMMER:** Well, I have limited time with my children
22 this summer. I have four weeks with my children.
23 They begin in July.

24 **THE COURT:** Okay.

25 **MR. HAMMER:** So that's going to cut in to a lot of time.

1 I have ... I just received a note from ... I have
2 had some medical issues, that they're aware of, and
3 I received a letter yesterday requesting that I make
4 an appointment for ... to be seen again in July. I
5 don't know how I'm going to ... I'm trying to figure
6 out when I'm with the children and when I can be
7 seen up there. So ... and this ... I believe my
8 time with my children start from July and they go
9 through sometime in August, they're various dates.
10 And I am going to be in New York with the medical
11 during part of that time. So July, starting July
12 1st to August 15th, it will be very difficult for me
13 to be able to answer any of the questions. And,
14 Your Honor, with all due respect, it's not totally a
15 question of prejudice. It's a question of due, of
16 due process. And while I'm here to answer the
17 questions, I realize that there's tremendous
18 practicality in the law, and in view of that
19 practicality, while ... once an appeal is filed,
20 that would end their right to ... in view of the
21 technicality first, that would end their right to
22 have any questions answered. In view of the
23 practicality, although I may have a right to appeal
24 immediately at the end of ... the adjournment of
25 this hearing on jurisdictional grounds, after she

1 asks all her questions today, then I may decide ...
2 or, she may decide there's no need to pursue this
3 any further. So that's what that ... as a practical
4 matter, I would urge that we continue today. As a
5 technical matter, I would point out that the
6 question would have to be resolved as to whether or
7 not an appeal would be filed. And if so, if an
8 appeal was filed, it would immediately end the
9 jurisdiction of this Court and would cut off any
10 right to any ... answer any interrogatories. And
11 furthermore, even if that did not happen, as I've
12 outlined to Your Honor, there is a problem between
13 now and really the middle of August for me getting
14 an opportunity to give her appropriate answers.

15 **THE COURT:** Well, you know, I apologize, and maybe ... I
16 pride myself on not being an activist judge. I
17 thought I was making life easier for both of you
18 because I could see both of you, you and your former
19 wife, getting a little emotional when you started
20 talking about the children and money that's put
21 aside for them and whether or not you're actually
22 hiding funds by using your children, hiding behind
23 your children or something like that. And ...
24 because again, we don't have anything else scheduled
25 for today, and I have to be here so it doesn't

1 bother me to stay the rest of the day. Ms.
2 Weissenstein, what does your client want to do?

3 **MS. WEISSENSTEIN:** If I might just very briefly touch on
4 some of the statements that Mr. Hammer made. First
5 of all, the history of this litigation will show
6 that there have been mysterious doctor's
7 appointments that may need to be scheduled in the
8 future, used to delay hearings on multiple times ...

9 **MR. HAMMER:** I'm going to object to that ...

10 **THE COURT:** I'll give you a chance to respond, Mr. Hammer.

11 **MR. HAMMER:** Your Honor, that's an improper statement. It
12 should not be made. It violates the rules of court
13 and the rules of civility. There is no, there is no
14 basis for that. And I would appreciate Your Honor
15 cautioning her, and unless she's able to come up
16 with some proof of that, because I'm glad, I am very
17 glad to have reports from the doctor concerning
18 that. But unless she's able to come up with proof
19 of that, that Your Honor, that it would be on Your
20 Honor ... that Your Honor would have an obligation
21 under the canons of ethics as to judges to make a
22 report on her for violation of any ethics code.

23 **THE COURT:** And I think you point out correctly, we do
24 have a civility oath that we all take, and I'll give
25 you a chance to respond. I mean, Mr. Hammer, you've

1 been around long enough, I'm sure this is ... when I
2 was clerking for Judge Perry, some of the younger
3 lawyers would get upset when the other side got a
4 little too zealous as far as some of their
5 arguments, and I was going to say, and I always say
6 to lawyers, don't take things personally even though
7 something like this obviously has to be taken
8 personally. But Ms. Weissenstein's just
9 representing her client zealously. I don't think
10 she means to imply that you're dishonest or you
11 would say something about a doctor's appointment
12 and, you know, and I was going to ask you off the
13 record if it was a life-threatening situation, just
14 in general terms, not ...
15 **MR. HAMMER:** I'll be glad to come up to you right now and
16 tell you what it's about.
17 **THE COURT:** Well, I mean, I was going to have you do it
18 openly but not on the record.
19 **MR. HAMMER:** Yeah. No, I wouldn't want to put this on the
20 record.
21 **THE COURT:** Okay. All right. But go ahead, I'm sorry.
22 He objected and I ... I'll have to hear what she
23 says before I rule on your objection. I think it's
24 not going to be necessary. Go ahead, Ms.
25 Weissenstein.

1 **MS. WEISSENSTEIN:** Your Honor, I do apologize if that came
2 across as being uncivil. The point I was trying to
3 make is that we are under Supreme Court order to
4 expedite this matter. We do have communications
5 with Judge James for prior hearings, and then in
6 cases before that, regarding Mr. Hammer's statements
7 that he might be scheduling an appointment within a
8 range of time that would affect his ability to come
9 to court. And we would just show that unless such
10 appointment has been made, it is not equitable to
11 ask the Court and Mrs. Hammer, Shirley, to work
12 around the hypothetical doctor's appointment.

13 **THE COURT:** So if the ...

14 **MS. WEISSENSTEIN:** In addition, addressing his renewed
15 argument for due process, I might have
16 misunderstood. I thought the Court had already
17 ruled on that motion and determined that we were
18 properly here and that there was jurisdiction over
19 Mr. Hammer. And I would again point out that these
20 are supplemental proceedings. This Rule to Show
21 Cause was not filed asking, you know, Mr. Hammer be
22 put in contempt. They are proceedings for him to
23 come and just demonstrate why a receiver should not
24 be appointed to undertake possession of his assets
25 for purposes of distributing a judgment. So

1 essentially what we're here today, Your Honor, is on
2 a motion and there's ... South Carolina law is
3 replete with instances that indicate that a Rule to
4 Show Cause vis-a-vis a supplemental proceeding would
5 be used as that. Now, in terms of Mr. Hammer's
6 statement, you know, we're here all day, let's just
7 go ahead and go forward, I would like to respond
8 with that ... Mr. Hammer clearly has not come
9 prepared to answer questions today. We would be
10 moving to leave these proceedings open, regardless
11 if we leave now or at the end of the day, because
12 we've already established that there's a great deal
13 of information that he cannot address today that we
14 believe we do have a valid right. As to the issue
15 of 1634 Main and the potential for implications, we
16 would be willing to limit our written questions and
17 written requests for documentation to the judgments
18 against Howard Hammer individually only, and with
19 leave to come back and address the 1634 Main
20 judgment of \$25,000 later. But for purposes of
21 proceeding ...

22 **(Off the record interruption.)**

23 **THE COURT:** I'm sorry. Please proceed.

24 **MS. WEISSENSTEIN:** So, you know, in that vein, we
25 understand that the Court's time is valuable and

1 you're stuck here all day, but there's I'm sure
2 plenty of mountains of paperwork that you can do.
3 We understand that the bar mitzvah is
4 extraordinarily important, but as Mr. Hammer said,
5 he's retired. So I find it difficult to believe
6 that he would not be able to answer questions about
7 his personal assets and holdings within a two-week
8 period of time. And, you know, we'll go forward
9 based on the Court's decision. As I said, as far
10 as, you know, if we do decide to proceed on written
11 paper, obviously we would request that ... we would
12 renew our request that we be given more than the
13 standard amount set forth in the Rules on the number
14 of questions that can be asked. And again, we will
15 restrict those questions to information about the
16 individual holdings of Mr. Hammer, by and through,
17 personally and through other entities, excluding
18 1634 Main, LLC.

19 **THE COURT:** All right. This is unusual, at least in
20 supplemental proceedings, because the respondent is
21 usually the one that wants to postpone it as long as
22 possible, but the judgment is good for ten years.
23 And of course, for clarity of the record again, I
24 think the lawyers know this, but the judgment would
25 be a lien against any real property that Mr. Hammer

1 owns. And that's, that's ... both sides would agree
2 with that, I mean, is that ... I mean, Mr. Aiken,
3 you're inclined to agree with that as well?

4 **MR. AIKEN:** If he is the owner in fee simple absolute of a
5 piece of real property, and there are no other
6 interests involved, then I would agree that the
7 judgment would be a lien on the property.

8 **THE COURT:** Okay. Well, for qualification, I don't
9 necessarily agree with your characterization.

10 **MR. AIKEN:** I understand, Your Honor.

11 **THE COURT:** Okay. And, Mr. Hammer, you wanted to respond
12 to what was said earlier?

13 **MR. HAMMER:** The only thing that seems to me is first, I
14 am not upset at all. You can tell from my voice.
15 The recording would show that my voice never rose
16 when she asked about the children. I never raised
17 an issue about that. It seems odd to me that on the
18 one hand they complain that there have been doctor's
19 appointments, which I have no control over the
20 scheduling, that have interfered with the scheduling
21 of matters. And on the other hand, today, when I
22 don't have a doctor's appointment and we can
23 proceed, then they don't want to proceed. It would
24 seem strange to me, and actually a problem with a
25 ... another technical problem, which has not been

1 raised, that she would claim that this has to be
2 expedited. I don't know under what authority she's
3 claiming that. But if she's claiming that it has to
4 be expedited, I'm guessing that she's claiming it
5 under an order which we would have some technical
6 matters to take up with the Court. But if she's
7 claiming it has to be expedited, by the same token,
8 if that order is in effect, that order is ...
9 anything that has occurred is a nullity because that
10 order required that all matters be assigned by Judge
11 Barber, the assignment for the ... at least I
12 received nothing, and I'm sure there were no ex
13 parte communications. There was no assignment on
14 this to Judge Benjamin. So her ... and in addition
15 to the problem with the, with the jurisdiction, if
16 there is an order that requires that the subject
17 matter of this case be handled with Judge Barber and
18 it was not, then there would be a subject matter
19 question, which may or may not come into play later
20 on. There are a lot of technical issues, which I
21 suggest to Your Honor are going to end up, if we ...
22 are going to end up interfering with the ability to
23 go forward, possibly interfering, because no one
24 knows what the law's going to ... what we will
25 determine from the law, but I can see that ... and

1 she just said she's fine with going forward now, so
2 I would suggest we go forward now.

3 **THE COURT:** Okay. Now, now, she did say that a lot of
4 things they asked to see as far as documentation and
5 everything, you weren't able to produce that and ...

6 **MR. HAMMER:** I don't ...

7 **THE COURT:** Is that an accurate characterization of ...
8 Ms. Weissenstein, is that ... was that your comment,
9 that a lot of things y'all need just aren't
10 available today?

11 **MS. WEISSENSTEIN:** Yes, sir.

12 **MR. HAMMER:** Your Honor, I don't know that I would ever be
13 able to produce any of the things that she's asked
14 for. I don't think I have them.

15 **THE COURT:** Okay.

16 **MR. HAMMER:** I haven't gone over the entire list, but I
17 don't think that I have them. She's asked questions
18 and I've given answers to questions. She's had
19 documents, and I had those documents to review. So
20 I ask that we continue on. If you want to put aside
21 the children's matter and simply ask questions about
22 that, have written questions about that, we have no
23 problem with that. That would solve all of the
24 problems. We had no problem until we got to the
25 children.

1 **THE COURT:** All right. And that was really ... I guess I
2 have to be more artful. That was really my intent,
3 to diffuse any emotional stress quite frankly with
4 both parties, regarding questions about the
5 children. And again, the issue ... you know what
6 she's driving at, she's trying to prove ... find out
7 if you use the children to hide assets. And so I'm
8 ... is that okay with your client, to submit written
9 questions about the children's assets, or at least
10 Mr. Hammer's relationship with the children's
11 assets, and then proceed with other questions today?
12 I don't mind doing that.

13 **MS. WEISSENSTEIN:** Your Honor, in regard to questions
14 about the children, the intent behind that was
15 because, for example, we've got this payment of
16 \$300,000 that was made regarding the transfer of
17 property. Mr. Hammer says he has no recollection of
18 ever receiving that money, he doesn't think it's in
19 any of this three checking accounts, etcetera. We
20 are investigating whether or not accounts have been
21 established under the names of third parties, which
22 would include the children, or other entities in
23 which Mr. Hammer's personal assets have been
24 deposited in an attempt to veil them from Mrs.
25 Hammer's collection of the judgments. I'm not

1 trying to rob their children of anything. I'm just
2 trying to get an understanding of how the financial
3 picture surrounding Mr. Hammer's life has been. You
4 know, he's made some comments about attorney's fees
5 and his assets being restricted to Social Security
6 and, you know, we have information that there is the
7 availability of other income. You know, this case
8 has cost Mrs. Hammer over \$900,000 to litigate,
9 based in part largely because of Mr. Hammer's
10 activities. And we just, you know, we just need to
11 kind of figure out what's going on here.

12 **MR. HAMMER:** And, Your Honor, the ... Mrs. Hammer would
13 still have \$2,100,000 because she's been given \$3
14 million from me. So she still would have
15 \$2,100,000. Put that aside because it's irrelevant.
16 The fact of the matter is, if they are interested in
17 the children I'm glad to answer questions about the
18 children in writing. I think that would solve all
19 of the problems and we can go on here today.

20 **MS. WEISSENSTEIN:** In response to that comment, sir, I
21 have a follow-up question to Mr. Hammer.

22 **Q:** In reference to the \$1 million-plus that you purport
23 to have given to Shirley, from whence did that money
24 come?

25 **THE COURT:** Actually it was \$3 million I think.

1 A: It was closer to \$3 million.

2 Q: Where did you find \$3 million to purportedly tender
3 those funds to Mrs. Hammer?

4 A: In 2008, I sold a piece of beach property, two pieces
5 of beach property. I had, I believe at that time,
6 but I don't know exactly what my ... what I had, but
7 I had some savings that were used. I borrowed money
8 from my brother, which I still owe, to the tune of
9 some \$400,000 or \$500,000 I believe. I don't know
10 the exact amount right now, couldn't tell you.
11 Somewhere, let's call it somewhere between \$250,000
12 and \$350,000. I don't keep up with it because it
13 changes on a monthly basis. I can't keep up with it
14 exactly because it changes on a monthly basis. But
15 those properties came from properties that I owned
16 prior to the marriage, that were non-marital
17 properties, that I sold in order to pay Mrs. Hammer
18 off. I also gave Mrs. Hammer, paid off a mortgage
19 on a house that at the time was worth approximately
20 \$800,000, at the time. And transferred one-half
21 interest in that house to Mrs. Hammer. I took on a
22 mortgage of I think \$200-and-something ... maybe
23 \$300-and-something, I don't recall, on Rice Court,
24 which I paid off. Mrs. Hammer got jewelry which she
25 had valued somewhere around \$180,000, I believe

1 that's ... the amount of that jewelry is closer to
2 some \$300,000. Mrs. Hammer got personal property of
3 mine which has never been returned and which was ...
4 which included, I say never has been returned, she
5 was kind enough to give me back three of the some
6 20-odd paintings that I had been collecting since
7 1985. She has silver sets that my mother had given
8 her. I just gave her \$200,000 in February. So I
9 could go on and on, but I think that you'll see that
10 all of that approximates \$3 million.

11 Q: The \$200,000 that you purportedly tendered to Mrs.
12 Hammer in February, was that in relation at all to
13 the judgments about why we're here today?

14 A: It wasn't any purported. There was a cash payment to
15 Mrs. Hammer of \$200,000 in return for which Mrs.
16 Hammer was supposed to do some things that haven't
17 yet been accomplished.

18 Q: From where did you obtain that \$200,000 cash?

19 A: That \$200,000 was obtained from a, a ... I believe it
20 was from an IRA, which will require me to pay taxes
21 on that money, which I don't have. It was ... I was
22 required to take a distribution of \$200,000 from an
23 IRA, which would not have been subject to any
24 judgment, but I took that because it's the only
25 money I had.

1 Q: Mr. Hammer, would I be correct in stating that these
2 transfers of property, personal property and other
3 financial assets, these transfers were all addressed
4 in a family court order? In other words, were you
5 ordered by the family court to make these transfers
6 to Mrs. Hammer?

7 A: Mrs. Hammer and I had what was purported to be an
8 agreement. Mrs. Hammer, Mrs. Hammer did not live up
9 to her portion of the agreement. I pursued legal
10 remedies and would have further legal remedies in
11 family court I believe based upon the orders that
12 have been handed down. I've chosen not to pursue
13 those remedies in family court because of the impact
14 that may have on my children at the present time
15 and, therefore, have paid Mrs. Hammer \$200,000 and
16 dismissed the appeals which I had, which I think
17 were ... which not only I think, but the very
18 imminent lawyers that I had at the time who filed
19 the appeals have testified and ... have certified, I
20 don't know whether they've testified, at least one
21 has testified, that she thought it was a very strong
22 appeal and, I don't know whether she used strong or
23 whether she used the word that it had substantial
24 merit or merit, I'm not exactly sure what the
25 wording was.

1 Q: Mr. Hammer, how old are you?
2 A: I just had a birthday yesterday.
3 Q: Happy birthday.
4 A: Thank you. And I thank Shirley for having the
5 children call me for the birthday.
6 Q: And what did we celebrate yesterday?
7 A: We celebrated my birthday.
8 **THE COURT:** No, how old are you?
9 **MR. HAMMER:** Oh, I'm over ... I'm 39.
10 Q: Are you over the age of 65?
11 A: Yes. Even though I don't look it. Or act it.
12 Q: I'm going to kind of go back to some of the real
13 property that we were discussing. Are you familiar
14 with a piece of real property located at 210 South
15 Waccamaw Avenue in Columbia?
16 A: Yes.
17 Q: To your knowledge, did you own any interest in that
18 property in 2011?
19 A: No.
20 Q: To your knowledge, who held ownership over the
21 property located at 210 Waccamaw?
22 A: I believe it was a partnership.
23 Q: Do you recall which partnership?
24 A: I couldn't give you the name of the partnership. I
25 don't know who the partners would have been, that

1 would have been between them at the time.

2 Q: Do you recall whether or not a ...

3 A: Let me ...

4 Q: ... entity called HAS may have had ownership interest

5 in the property?

6 A: When the property was first purchased it was HAS. You

7 asked me at the time of 2011. In 2011, I cannot

8 tell you ... I don't know what the partners would

9 have done at that time, if they continued to call it

10 HAS, whether they called it AS, whether they called

11 it HA, whether they called it HS, whether they

12 called it 201 ... what was the name ... 201 ...

13 Q: 210 Waccamaw.

14 A: 210 South Waccamaw. I couldn't tell you what they

15 called it.

16 Q: Were you ever a member of HAS?

17 A: I was a member, I had partnership interest, yes.

18 Q: And what was your partnership interest?

19 A: It varied. At one time I believe it was ... at one

20 time ... this is going back to 1983.

21 Q: You don't need to go back that far, sir. How about

22 we go back to 2010.

23 A: In 2010, I don't think that I had a partnership

24 interest in it at that point. I believe my

25 partnership interest had ended.

1 Q: How was your partnership divested? How did you ... by
2 what manner did you give up your interest in HAS?

3 A: By agreement between me and the partners.

4 Q: Do you have any recollection of when this might have
5 occurred?

6 A: I don't know if it was 2010 or 2011. I couldn't tell
7 you the exact date.

8 Q: Do you recall whether or not you were bought out of
9 your interest?

10 A: No, I was not bought out.

11 Q: Did you ...

12 A: In the traditional terms of bought out, you mean was
13 I paid money, cash in hand? No, I was not paid any
14 money cash in hand.

15 Q: Were you given any ... was there any like-kind
16 exchange in consideration of you giving up or
17 divesting of your partnership interest?

18 A: There was no 1033 or 1031 like-kind exchange.

19 Q: What was the consideration given to you in exchange
20 for your giving up your partnership interest in HAS?

21 A: I received no consideration in terms of payments, if
22 that's what you mean by consideration. I'm not sure
23 ...

24 Q: I mean any consideration, love and affection, interest
25 in another LLC or entity?

1 A: No, I received nothing, no love and affection, no
2 interest in any other LLC. I received no other ...
3 received, nothing was given to me. There was
4 nothing received by me in terms of other property,
5 if I understand your question correctly.

6 Q: Did you give up your ownership interest in HAS ... why
7 did you give it up?

8 A: Why did I give up my ownership interest in HAS?

9 Q: Yes, sir.

10 A: Because I could not afford to have the ownership
11 interest in HAS because of debts.

12 Q: Did HAS require you to make any sort of regular
13 payment to the entity?

14 A: HAS was a partnership. It was formed in 1983 under
15 the old partnership laws, and so there was not a
16 requirement that ... there was not any type of what
17 we might have today. I think what you're asking me
18 is how did I lose my interest in HAS, rather than
19 what I received for it. Is that what you're asking?

20 Q: Yes.

21 A: I owe debts, and those debts were used ... I paid
22 those debts by transferring my interest in HAS.

23 Q: What debts were paid off or to which debts did you
24 apply your interest in HAS?

25 A: To debts to my brothers.

1 Q: And in what amount were those debts?

2 A: Let me go back for just a moment and tie things
3 together. I gave you a, I guess it's a ... it used
4 to be called something, brasso summation (ph.) or
5 something. I gave you just a, kind of a brief
6 outline, skipping from one point to the other, about
7 the \$3 million, without being able to give you the
8 exact numbers that I mapped out from each, from each
9 of ... or from anybody. My brothers had loaned me,
10 both of them had loaned me considerable amounts,
11 which were over the amount that ... and I used those
12 amounts to partially pay off debts to them by
13 transferring my interest in HAS to them.

14 Q: In what account did you deposit the monies loaned to
15 you by your brothers?

16 A: I don't think they were deposited in any account. I
17 think they were transferred directly to Shirley. I
18 don't remember exactly how it is, she demanded it,
19 she received \$1,250,000 within a week of May 8th,
20 and she got the \$1,250,000 within a week of May 8th,
21 and I spent the rest of the summer and the rest of
22 the next five years selling properties, paying taxes
23 on properties that I had to sell in order to ... I
24 paid ... I had to pay ... I had a debt of I think
25 \$250,000 or \$300,000 for the other properties that

1 were sold in order to give Shirley \$1,250,000, which
2 was the initial payment, due in a week.

3 Q: What ...

4 **THE COURT:** Let me interrupt here. We've been going at it
5 intensely since about 9:30 this morning. I think
6 everybody I guess is in agreement that we should
7 probably press on today and finish as much as we can
8 today. And so I think I need a lunch break though.
9 I think we should stand in recess until 1:00, an
10 hour and 15 minutes from now. We'll resume, and I
11 think both sides agree that questions regarding the
12 children will be submitted in writing. And I will
13 grant Ms. Weissenstein's request that there be no
14 limit on questions. Under the Rules I can give
15 leave to do that. You object to that, Mr. Hammer,
16 but ... yes, sir?

17 **MR. HAMMER:** May I ask, Your Honor, I believe the Rules
18 are 30 interrogatories.

19 **THE COURT:** I understand that.

20 **MR. HAMMER:** I would ask that Your Honor limit it to 50 to
21 begin with. And if she needs more than 50, then we
22 come back and discuss it. But I don't ... she's
23 liable to give me 200 interrogatories and then we'll
24 have to come before Your Honor and say here's 200,
25 or 2000, or whatever it is. So I would ask that

1 Your Honor give some ...

2 **THE COURT:** If it's obviously abusive, we'll have to deal

3 with that at the time. But your request now is

4 denied.

5 **MR. HAMMER:** Thank you, Your Honor.

6 **THE COURT:** All right. Yes, sir.

7 **MR. HAMMER:** May I ...

8 **THE COURT:** Yes, sir?

9 **MR. HAMMER:** May we have a sidebar off the record on

10 another matter?

11 **THE COURT:** Sure.

12 **MS. WEISSENSTEIN:** Well, just very quickly, I wanted to

13 clarify that these proceedings will be held open.

14 And also, the due date for the responses would be 15

15 days after he's received them. And then does Your

16 Honor want me to prepare an order upon ...

17 **THE COURT:** Let's hold that in abeyance until after lunch.

18 Now, do you want to talk about something off the

19 record?

20 **MR. HAMMER:** Yes, sir.

21 (Off the record from 11:45 a.m. to 1:13 p.m.)

22 **THE COURT:** All right, you may proceed.

23 **MS. WEISSENSTEIN:** Your Honor, prior to recessing for

24 lunch, we had been passing back and forth regarding

25 various assets and entities that we believe Mr.

1 Hammer has ownership. We discussed some real
2 properties. And he has answered these questions
3 claiming he doesn't recall or he doesn't have
4 knowledge of a lot of these ... of this information.
5 And, you know, one of the purposes under the Rule to
6 Show Cause is for the debtor to show cause to the
7 Court why a receiver should not be appointed to
8 essentially look into the assets of the debtor and
9 initiate any proceedings to, you know, satisfy the
10 judgments. And I think that we've established today
11 that he's ... Mr. Hammer has failed to show cause
12 why we should not go ahead and appoint a receiver
13 who might have better luck at obtaining the
14 information about his assets than he personally
15 recalls.

16 **THE COURT:** Mr. Aiken, Mr. Hammer, any response?

17 **MR. AIKEN:** Yes, sir. When asked about specific
18 properties, Mr. Hammer did describe what ownership
19 interest he once had, and for example, One Rice
20 Court. And the LLCs she asked about, most of which
21 ... most of those LLCs no longer operate as a
22 business. Mr. Hammer gave specific information
23 about his LLC HAS and indicated that he had
24 relinquished his interest in exchange for
25 forgiveness of debt that he owed to his brothers.

1 So, I mean, we are giving specific information about
2 specific pieces of property and specific entities.
3 And I see no reason to cut this proceeding short and
4 just immediately throw in the towel and say now it's
5 time to appoint a receiver. I think ... I think Mr.
6 Hammer has given detailed information about the
7 pieces of property that were specifically asked
8 about.

9 **THE COURT:** Ms. Weissenstein, what can a receiver do that
10 he can't do as a lawyer for Mrs. Hammer? Because
11 receivers are expensive, and they get paid. I mean,
12 they get paid from somebody. And the ones that work
13 for me usually get paid fairly promptly. Of course,
14 a receiver would be a drastic remedy. Let me ask
15 you this, if I did grant your motion to appoint a
16 receiver, what would the receiver have to do; would
17 he have to do an investigation or do you already ...
18 or have you already identified things that he should
19 take over, he or she should take over?

20 **MS. WEISSENSTEIN:** We have information about ownership
21 interest in various real properties that Mr. Hammer
22 has. We believe the receiver would be able to
23 initiate proceedings to dissolve, I guess, that
24 interest. Some of these properties are owned by
25 other LLCs, and Mr. Hammer has interest in all or

1 part of that property or the membership in that LLC.
2 And again, you know, this was just another effort to
3 not prolong these matters beyond necessary. I mean,
4 we're happy to go forward with questioning today.

5 **THE COURT:** Uh-huh (affirmative response).

6 **MS. WEISSENSTEIN:** We're happy to, as we discussed before
7 lunch, reduce our questions and requests for
8 information to writing ...

9 **THE COURT:** Uh-huh (affirmative response).

10 **MS. WEISSENSTEIN:** ... to include in the record. You
11 know, we will ... we will act according to the
12 Court's wishes.

13 **THE COURT:** Well, let me ask, is there any one piece of
14 property that would satisfy this judgment? Is there
15 a house or a lot or something, a condominium or
16 something that would satisfy this judgment?

17 **MS. WEISSENSTEIN:** We are informed and believe that there
18 actually is an IRA that would satisfy the judgment.

19 **THE COURT:** Now ...

20 **MS. WEISSENSTEIN:** And that's something that we would
21 question the debtor about.

22 **THE COURT:** But now, as you know, the IRA would be exempt
23 from attachment under a ...

24 **MR. AIKEN:** It's not alienable under the tax code, Judge.

25 **THE COURT:** Well, that's another issue, and I'm not up to

1 speed on the tax law.

2 **MR. AIKEN:** Yes, sir.

3 **THE COURT:** But I am up to speed on the homestead
4 exemptions.

5 **MR. AIKEN:** Yes, sir.

6 **THE COURT:** I think that's one of the things that
7 creditors can't reach is someone's IRA, except in
8 very narrow circumstances, if I read the order the
9 way I read it. So it ...

10 **MS. WEISSENSTEIN:** Your Honor, my understanding under 15-
11 39-410 was essentially that any property could
12 attach with the exception of the income received by
13 the debtor's services.

14 **THE COURT:** Uh-huh (affirmative response).

15 **MS. WEISSENSTEIN:** He's over 65 years old, so the tax
16 penalties that would typically apply to reducing an
17 IRA should not apply in this regard. And I know of
18 no law that would prevent us from attaching our
19 judgment to that IRA. But under the, you know, ...
20 again, I would welcome any cause that Mr. Hammer can
21 provide to us as to why we should not attach our
22 judgments to his IRA.

23 **THE COURT:** Well, I'm looking at ... I admit, I haven't
24 looked today to see what the new homestead exemption
25 law looks like, but what I'm familiar with kind of

1 specifies what you can't get if you're a creditor.
2 For example, if he was getting veteran's benefits,
3 you can find out about it but you can't get to it.
4 Social Security benefit, unemployment compensation,
5 local public assistance, and all that stuff, the
6 creditors can't do anything about. And they have a
7 whole paragraph talking about IRAs. And again, I
8 have to go back and look to make sure it's ... the
9 law today is the same as it was yesterday, or
10 recently. And one of the things that is exempt from
11 attachment is the debtor's right to receive
12 individual retirement accounts, as described in
13 sections 408 and 408(a) of the Internal Revenue
14 Code, and they go on. Now, if there's a fraudulent
15 conveyance that you ... it's a ... then you're in
16 business. But I haven't heard an allegation of
17 fraudulent conveyance or ... and certainly, if you
18 have the allegation you have to have evidence for us
19 to get around the Homestead Exemption. You think
20 he's ... Mr. Hammer has made a fraudulent conveyance
21 to the IRA, or you don't know?

22 **MS. WEISSENSTEIN:** I don't know.

23 **THE COURT:** You don't?

24 **MS. WEISSENSTEIN:** I'm not making that allegation today.

25 **THE COURT:** You're not going to say that, okay. So I

1 think ... now, I had ... I've had fairly
2 unsophisticated debtors; even though they know that
3 the IRS is exempt from attachment, they're willing
4 to satisfy the judgment out of their IRA. I mean, I
5 can't make him take the exemption. So if he decides
6 that he has enough money to satisfy the judgments,
7 the Court is not going to keep him from doing it
8 even though, again, you can't force him to do that.
9 So you're saying the receiver, that's what you want
10 the receiver to get is that IRA? I ... again,
11 that's very expensive. It's usually ... and I'm not
12 very helpful. But what you do know is that that's
13 the only asset that you know that could be used to
14 satisfy this judgment, at least ... it's not? Okay,
15 what else ...

16 **MS. WEISSENSTEIN:** No. We are ... we believe that there
17 are assets wrapped up in various real properties and
18 various LLCs and entities that would satisfy those
19 judgments as well.

20 **THE COURT:** That are not exempt?

21 **MS. WEISSENSTEIN:** So we're happy to continue in the
22 questioning about those assets. I just ... part of
23 my concern about continuing this line of questioning
24 again is Mr. Hammer clearly did not come prepared to
25 answer questions that's specific the accounts,

1 specific to the LLCs, the memberships, you know,
2 except for vague recollections. And that kind of
3 defeats the purpose of the proceedings here today.
4 Now, obviously we do not want to waive any right.
5 We'll proceed today, leave it open and we'll come
6 back for more information. We're here at the, you
7 know, the Court's grace.

8 **THE COURT:** Okay. Let me ask Mr. Aiken and Mr. Hammer.
9 Do y'all know of any assets that Mr. Hammer has that
10 are not exempt from attachment, that can be used to
11 satisfy this judgment, or these judgments I guess I
12 should say? Mr. Hammer, do you want to respond to
13 that, or do you want to ...

14 **MR. HAMMER:** I don't think that there are any assets that
15 are lien-free that would respond to any judgment.

16 **THE COURT:** No, I didn't say lien-free, but I mean that
17 are exempt from attachment. Do you have any that's
18 not exempt from attachment? Maybe I'm not artful in
19 my question. There are certain things that a
20 petitioner can find out about that won't do her any
21 good because under state law it's exempt from
22 attachment. And I'm simply asking is there anything
23 you own ...

24 **MR. HAMMER:** Any property that I own in my own name that I
25 don't think is exempt from attachment or has liens

1 that would be subject ... I have priority, I can
2 think of none right now.

3 **THE COURT:** Now, if there are liens involved, that's kind
4 of the creditor's problem. That's not going to be
5 your problem. You say I have an asset that has
6 liens on it, but ...

7 **MR. HAMMER:** Mortgages.

8 **THE COURT:** Mortgages?

9 **MR. HAMMER:** Prior mortgages.

10 **THE COURT:** Uh-huh (affirmative response). That's still
11 ... that's not your problem. They can choose to
12 foreclosure their lien, and then have to deal with
13 ...

14 **MR. HAMMER:** I would be delighted to have them foreclose
15 their lien and pay off my mortgage.

16 **THE COURT:** Right. That's what I'm saying. They take it
17 subject to any senior ...

18 **MR. HAMMER:** Yes. I'm delighted to have them do that.

19 **THE COURT:** Well, could you ... do you have an inventory
20 or can you tell them ...

21 **MR. HAMMER:** Well, I don't think ... I only have one piece
22 of property in my name.

23 **THE COURT:** And which is that?

24 **MR. HAMMER:** Two pieces of property in my name.

25 **THE COURT:** Which are what, sir?

1 MR. HAMMER: A home, which has of course a homestead ...
2 MR. AIKEN: Exemption.
3 MR. HAMMER: ... exemption.
4 THE COURT: Of \$50,000.
5 MR. HAMMER: Right. And a \$200-some-odd-thousand,
6 \$250,000 mortgage.
7 THE COURT: Uh-huh (affirmative response).
8 MR. HAMMER: And the house is appraised at some \$300,000
9 or somewhere in that area.
10 THE COURT: All right. And this judgment does attach as
11 lien, it attaches to your real property. You
12 understand that?
13 MR. HAMMER: Sure. If they want to sell that piece of
14 property, that house, let them have at it.
15 THE COURT: All right. Have y'all already discussed this
16 house?
17 MS. WEISSENSTEIN: No. We haven't, sir.
18 THE COURT: Okay. So that's news, Mr. Hammer. What's the
19 address of this house?
20 MR. HAMMER: Sir?
21 THE COURT: What's the address?
22 MR. HAMMER: 1609 Catawba Street.
23 THE COURT: In Columbia?
24 MR. HAMMER: Yes, sir.
25 THE COURT: The zip code is?

1 **MR. HAMMER:** 29205. And when I say let them have at it,
2 let them go through whatever procedure they want to
3 go through. I will raise the appropriate ... or
4 have my lawyers raise the appropriate responses,
5 objections, and whatever needs to be done.

6 **THE COURT:** Of course, in South Carolina a foreclosure is
7 in fact a lawsuit. You'd have to sue him in
8 foreclosure and then arguably ... sometimes there's
9 a fight over this, whose lien takes priority. If
10 there are other ... you already said there's a
11 mortgage on the property.

12 **MR. HAMMER:** Yes, sir.

13 **THE COURT:** Okay.

14 **MR. HAMMER:** The other property that I would have are all
15 under receivership.

16 **THE COURT:** Already?

17 **MR. HAMMER:** Yes, sir.

18 **THE COURT:** Now, a receiver appointed by a state court or
19 by bankruptcy court?

20 **MR. HAMMER:** By you.

21 **THE COURT:** By me?

22 **MR. HAMMER:** Yes, sir.

23 **THE COURT:** Okay, state court.

24 **MR. HAMMER:** Yes, sir.

25 **THE COURT:** Who were the receivers that we appointed, do

1 you recall?

2 **MR. HAMMER:** I don't recall because it's been 18 months or

3 something, and I haven't had anything to do with it.

4 **THE COURT:** Have they made reports to the Court that

5 you're aware of?

6 **MR. HAMMER:** They haven't provided me with any reports.

7 **THE COURT:** Now, this was here, not family court?

8 **MR. HAMMER:** This was here.

9 **THE COURT:** Okay. I'd have to go look that up. If it's

10 been 18 months, I need to have my recollection

11 refreshed. I didn't remember that. Was it me or

12 some other state court judge? Are you pretty sure

13 it was me?

14 **MR. HAMMER:** I'm pretty sure it was you.

15 **MR. AIKEN:** It was you, Judge.

16 **THE COURT:** Okay.

17 **MR. AIKEN:** It was you.

18 **THE COURT:** That was 18 months ago?

19 **MR. AIKEN:** Approximately.

20 **THE COURT:** Okay. Do you ... okay, I'll get it straight

21 then. I apologize for having forgotten, but. So

22 you're saying ... do you object to a receiver in

23 this case then?

24 **MR. HAMMER:** Yes, sir.

25 **THE COURT:** Okay. But the other receivers are still in

1 place? I'd have to check because typically the
2 order requires they make reports. I don't recall
3 seeing a report from any receiver, lately, let's put
4 it like that. So I'll ... we'll get that straight.

5 **MR. HAMMER:** And it's in litigation. It's highly
6 contested, but there's a receiver appointed.

7 **THE COURT:** Involving other pieces of property, not one of
8 ...

9 **MR. HAMMER:** Involving other pieces of property and ...
10 that would be in my name.

11 **THE COURT:** Okay. So it almost seems as if, Ms.
12 Weissenstein, it almost seems as if a new receiver
13 would be ...

14 **MS. WEISSENSTEIN:** I'm sorry, sir?

15 **THE COURT:** A new receiver wouldn't help me very much if
16 what he has is already ... you say it's in
17 receivership. That just means a receiver had to be
18 a ... has authority to control it.

19 **MR. HAMMER:** Yes, sir.

20 **THE COURT:** What you need to do I think, in my opinion, is
21 subpoena those receivers because I suspect they're
22 ... you know, that they have to ... obviously, the
23 first responsibility is to their own creditor, the
24 creditor that asked for them to be appointed. But
25 ...

1 **MS. WEISSENSTEIN:** Your Honor, I have ... I don't have any
2 knowledge of a receiver being put in place as to any
3 of these properties, and none of that information
4 has really come to our findings. When we researched
5 all these properties I'm aware that there were four
6 properties for Chateau, Deville, that at some point
7 ...

8 **THE COURT:** Uh-huh (affirmative response). If they ...

9 **MS. WEISSENSTEIN:** ... had some debt against them. But my
10 understanding, those were all cleared in November of
11 2009. If there's a receiver in place, I would
12 request a brief recess so that I can run down to the
13 clerk of court's office and kind of get to the
14 bottom of what's going on there.

15 **THE COURT:** Before you go down to the clerk's office, let
16 me go look and see what my records show. I can be
17 back in about 15 minutes or so.

18 **MS. WEISSENSTEIN:** Okay. Thank you, sir.

19 **THE COURT:** You're welcome.

20 (Off the record from 1:29 p.m. to 1:51 p.m.)

21 **THE COURT:** Okay. What was signed ... of course, you know
22 the case we're on today, this was a case called
23 Chateau Deville Association against Howard Hammer,
24 and there was a consent order signed appointing a
25 receiver for two units, Unit 125 and Unit 202, that

1 were owned by Mr. Hammer. And there is a receiver
2 in place, William Fowler of the Fowler Company, Inc.
3 I tried to reach somebody by phone. I left a voice
4 message for Mr. Fowler to give me a call either on
5 my cell phone or on the phone at my desk because I
6 don't see anywhere in the file that there's been a
7 report from the receiver. Mr. Aiken, do you know if
8 the receiver has prepared a report or ...

9 **MR. AIKEN:** I have not seen one, Your Honor.

10 **THE COURT:** Yeah, yeah. And this is a little less
11 detailed than most receiver orders we appoint, but
12 there is one in place for these two particular
13 properties. And, Mr. Hammer, you say you object to
14 one being appointed for the hearing today, the
15 supplemental proceeding, simply because there's
16 already one in place? Is that your position?

17 **MR. HAMMER:** That's not my only position. My only
18 position is that they have not shown any ... they
19 have not laid the basis for having a receiver
20 appointed.

21 **THE COURT:** Okay. Would you object to Mr. Fowler taking
22 over this case as well?

23 **MR. HAMMER:** Absolutely. I object to any receiver being
24 appointed in this case at all.

25 **THE COURT:** Okay.

1 MR. HAMMER: They have not laid a basis ... they have not
2 ...

3 THE COURT: Hadn't found anything for him to, for him to
4 manage?

5 MR. HAMMER: Sir?

6 THE COURT: I'm sorry. I cut you off. But I believe you
7 were going to say they hadn't found anything for him
8 to manage, right? Is that what you were going to
9 say, or ...

10 MR. HAMMER: That's part of it, but the other part is that
11 they haven't shown that they ... they're here asking
12 to foreclose on property.

13 THE COURT: No. This is a supplemental proceeding.

14 MR. HAMMER: They're here asking to ... asking for
15 information about property, and they're getting
16 information. And there's no basis for a receiver.
17 There's a question of jurisdiction, there are two
18 questions of jurisdiction, and there's been no order
19 issued, no written order in connection with that.
20 Of course, we're here ... in respect to Your Honor,
21 and out of high respect to Your Honor, but an order
22 is not an order until it's reduced to writing. And
23 there's been no order reduced to writing, which I am
24 going to ask either I be allowed or Mr. Aiken be
25 allowed to prepare at the end of this hearing in

1 connection with the jurisdictional issues that I'd
2 like to put in the record. But I'm perfectly
3 willing, reserving those rights as I understand Your
4 Honor has allowed, correct, for jurisdiction?

5 **THE COURT:** Well, yeah, only for personal jurisdiction,
6 obviously you made clear you're not waiving your
7 right to that, and your appearance doesn't waive
8 that. And, but I was going to ask you about that.
9 You bring that up. A lot of times ... you're saying
10 that we shouldn't have these proceedings because you
11 weren't served by a duly authorized law enforcement
12 officer? Is that what you want? You want to have
13 the police to come to your house and serve your
14 papers or ... I mean, that ... and the point is, we
15 just start all over again if it was served in the
16 way that you desire.

17 **MR. HAMMER:** That may be the point, but the other point is
18 this, Your Honor. As a practical matter, I had
19 written Your Honor some courtesy letters setting
20 forth some matters that were going on. This ...

21 **THE COURT:** Which I have not read, just to be honest about
22 it. I haven't read them.

23 **MR. HAMMER:** All right. But the fact is that this case,
24 the judgment was entered, a motion for a new trial
25 was made, a ... I think a judgment was some 40 pages

1 and included some 133 different findings. There was
2 a motion for a new trial by all three of the ...
3 there were three different entities, three different
4 lawyers because there were two ... there was one
5 suit by 1634 against my former wife, and there was
6 one suit by my former wife and her attorneys against
7 me in connection with abuse of process. There was
8 another suit by me personally against my former wife
9 for declaratory judgment. There were numerous
10 counterclaims filed on that, and the only one that
11 went to ... that went to judgment was a counterclaim
12 based on abuse of process, with a finding that the
13 abuse of process was ... that there was abuse of
14 process based upon the filing of a lis pendens,
15 which we had thought was something that was a
16 privilege. But notwithstanding, there was a
17 finding of abuse of process based on filing of the
18 lis pendens and based upon damages for frustration
19 in the face of a withdrawal of any emotional ... any
20 damage for emotional distress. Without saying more,
21 obviously that clearly raises quite an issue if
22 there's a finding ... if the plaintiff or the
23 counterclaim defendant, my former wife, gets up and
24 says I withdraw all of my claim for emotional
25 distress, and then on the other hand the judge says

1 I find for frustration, which is a ... Your Honor
2 would have to decide, but I know of nothing that ...
3 and it's nothing ... I found no cases that say it's
4 anything but emotional distress. In any event,
5 there's a serious ... a motion for a new trial
6 pending. And part of the correspondence, which I
7 had done as a courtesy correspondence without making
8 an appearance, was to not only point out the fact of
9 the technical problem, but the fact that there is a
10 motion for new trial pending. And it seemed to me
11 as a practical matter that it might be prudent to
12 have that determined before proceeding with this.
13 But Ms. Ballard wanted to proceed with this on two
14 grounds. One, she claimed that it was ... that
15 there was some order, and I'd like to know which
16 order they're claiming it on and I'd like to have
17 that introduced into the record, that there was an
18 order that required this be done expeditiously and
19 that the order also required that Judge Barber
20 handle it.

21 **THE COURT:** Uh-huh (affirmative response).

22 **MR. HAMMER:** Do you want to introduce that into the
23 record?

24 **MS. WEISSENSTEIN:** That's the order.

25 **MR. HAMMER:** Well, I'm ... if you ... if she wants to

1 introduce it in the record, that'd be fine.

2 **THE COURT:** Just let me look at it.

3 **MR. HAMMER:** If ... Your Honor, I'd like it to be put in

4 the record.

5 **THE COURT:** One moment please. Just give me a minute. Do

6 you want ... this order, I mean, I can take judicial

7 notice of it. It's signed by Justice Toal on

8 September 7, 2012. And we can make copies for

9 everybody. Do you have a copy of it, Mr. Hammer?

10 **MR. HAMMER:** I don't have one with me, but I would like it

11 marked as an exhibit for the record.

12 **THE COURT:** Okay. So do you mind if we copy this? Mr.

13 Johnson is going to copy it.

14 **MR. HAMMER:** We don't have to do it right now, Your Honor.

15 I ...

16 **THE COURT:** Oh, no. He's okay.

17 **MR. HAMMER:** But I would have ... if now is the time to

18 raise it, I would have some issues to raise over

19 that. If you want to go ahead and proceed with

20 whatever we're proceeding with and have me raise it

21 later on, I'll be glad to do that. Whatever Your

22 Honor's pleasure is.

23 **THE COURT:** Okay. Let's flesh out this jurisdictional

24 issue a little bit more. You're claiming that the

25 Court ... well first of all, Master in Equity is a

1 division of Circuit Court, and it's not unusual for
2 circuit judges to refer these to us, and that's how
3 I gain jurisdiction, through an order of reference.
4 You weren't ... your allegations are you weren't
5 served properly. And I know you ... and you want to
6 make it clear, and I think it is clear for the
7 record, that you're not waiving any right to move to
8 dismiss or ... for lack of personal jurisdiction
9 because you weren't served. But you know, a lot of
10 times they say you waive it be showing up. In your
11 case you showed up but you're not waiving it, and
12 that's pretty clear. Due process, procedural due
13 process, as we all remember from school, is notice
14 and a hearing. And from where I sit, you got notice
15 and you're having a hearing, on the supplemental
16 proceedings, because a judgment has already been
17 entered. You know, ...

18 **MR. HAMMER:** But the ...

19 **THE COURT:** Substantive due process is fundamental
20 fairness. And if I remember everything right from
21 school, you don't mean to say you're being treated
22 unfairly by having to come and respond to
23 supplemental proceedings because you have two
24 judgments against you.

25 **MR. HAMMER:** What I'm saying, Your Honor, is this. That

1 substantive due process requires that the Rules of
2 Court be followed in order to give notice. If she
3 called me on the telephone and told me I had ...
4 that a hearing was being held, or if you called me
5 on the telephone and said there was hearing that was
6 being held, or the Chief Justice called me and told
7 me there's a hearing being held, I would know that a
8 hearing was being held. But that did not meet the
9 requirements of substantive due process. Because
10 substantive due process requires service. And
11 service requires certain ... for service to be
12 effected, it has to be done in a certain manner.
13 For instance, for service to be effective on a
14 complaint, it has to be served with the person or
15 the head of the household, or in other matters. For
16 service to be effective on a Rule to Show Cause,
17 which is what this is, at the top, for service to be
18 effective on a Rule to Show Cause, and it's signed
19 as a Rule to Show Cause, ordered that you move to
20 show cause, for service to be effective and for
21 substantive due process to be met the Rules have to
22 be complied with. Not the question of whether I
23 have notice or whether I know about it, it's whether
24 or not I have legal notice, and it weren't met with.
25 Moreover, and this is the other issue I think that

1 you ... if you're asking me to go through it now,
2 I'm glad to in connection with that order. If not,
3 I won't ... wait until later. Now?

4 **THE COURT:** Well, let me ask you, Mr. Hammer, if I grant
5 your motion, what relief do you want? Do you want
6 them to just serve you a different way and have the
7 police come to your house and serve you? I mean,
8 ... and maybe I'm jumping to conclusions. I don't
9 understand what you have to gain by asking them to
10 serve you again and start these proceedings over. I
11 really don't understand.

12 **MR. HAMMER:** Well, I wrote you the practical matter, that
13 we don't know what's going to happen with the new
14 trial. And as a practical matter, it seems to me
15 that, if we all agree to it, that we wait until we
16 have the final ruling on the new trial and any
17 59(e)'s and anything else that would be raised on
18 that, so that we know that we have a judgment. And
19 at that point, then we come together, we agree to a
20 time. And certainly, I would say fine. We agree to
21 a time to come to your office and get a time that's
22 convenient for everybody, and I say fine, that's the
23 time it should be. But there is another issue that
24 is collateral and ... not only collateral, but
25 interconnected to this issue. And that issue is the

1 order that you hold. And that issue raises a
2 question of subject matter jurisdiction, which I now
3 raise. And that issue is raised on these grounds.
4 In all due respect to the Supreme Court, I have the
5 highest respect for the Supreme Court and for the
6 Chief Justice and all the members. I have known the
7 Chief Justice since the time she was a legislator
8 and thought very highly of her then, think that she
9 has done a fine job with our Supreme Court, as we
10 all do. However, everybody may at some time make a
11 substantive error. And I believe that that has been
12 made in this case ...

13 **THE COURT:** Okay. Make sure I'm hearing you, you're
14 saying this Court doesn't have subject matter
15 jurisdiction?

16 **MR. HAMMER:** For this reason.

17 **THE COURT:** Okay.

18 **MR. HAMMER:** This ... for two reasons. If you'll note on
19 that order, it references 1634 Main Street.

20 **THE COURT:** Uh-huh (affirmative response).

21 **MR. HAMMER:** At the time of the order, that case was still
22 pending ... that's a September order; is that
23 correct? The September order ...

24 **THE COURT:** Yes, sir. .

25 **MR. AIKEN:** September 7.

1 MR. HAMMER: September 7th.

2 THE COURT: You can have it back.

3 MR. AIKEN: Here ... we've got a copy.

4 MR. HAMMER: On September 7, 2012, 1634 Main, referenced
5 in this order, the case that we're here about today
6 ... I can't find it ... that's Howard Hammer versus
7 Shirley Hammer ... 1634 Main versus Howard Hammer
8 was pending in this court. It was waived for trial
9 in the circuit court. There had been no appeal.
10 There had been no application. There had been
11 nothing presented in the Supreme Court in connection
12 with this case. Likewise, in the case ... and I'm
13 not sure which is the number, I think it's 28 ...
14 it's ... I think it's 05911, Howard Hammer versus
15 Shirley Hammer, on September 7th that case was still
16 in the Court of Appeals ...

17 THE COURT: Uh-huh (affirmative response).

18 MR. HAMMER: ... awaiting decision, if I'm correct. And
19 likewise, there would have been no subject matter
20 jurisdiction. Furthermore, assuming that there was,
21 even for the sake of discussion, that there was
22 subject matter jurisdiction on these two cases that
23 are here before you today, there was no ... excuse
24 me. Even assuming that there was subject matter
25 jurisdiction for the purposes of discussion here

1 today, that subject matter jurisdiction would have
2 ended in February of this year because all the cases
3 that are attached to this were dismissed by consent.
4 In February there was a consent order for dismissal
5 of all the cases, two days or a day prior to the ...
6 to that dismissal, two of the cases were dismissed.
7 I think unbeknownst to us at the time, we had the
8 order dismissing all of them. So if a case is
9 dismissed in the Supreme Court, that ends all the
10 orders of the Supreme Court. The order from the
11 Supreme Court for a case dismissed can't follow and
12 be ... at least, I would urge that you cannot have a
13 case, an order attached to a case, assuming that you
14 have jurisdiction in the first place, which I
15 explained where I ... you would not, that you can't
16 have an order attached to a case and dismiss the
17 case by consent of the parties without abolishing
18 and dismissing all of the orders. The orders don't
19 follow through, the order don't carry through. For
20 either of those two reasons, there would be no
21 subject matter jurisdiction. Now, assuming that I
22 am wrong on both of those counts, there would be
23 improper subject matter ... improper ... there would
24 be ... this ... the Rule to Show Cause in this case,
25 not only on the jurisdictional grounds would be

1 improper, but assuming for the sake of discussion
2 that my ... the two reasons I've given you a moment
3 ago are incorrect, and assuming that the order has
4 efficacy, and assuming that there was jurisdiction
5 even though the cases were in other courts, and
6 assuming that the order was proper, and assuming
7 that it was due ... that it was a ... that it was
8 made in compliance with due process and in
9 compliance with requirements of subject matter
10 jurisdiction, which we contest both, we contest
11 both. We say there's ... there would be no due
12 process and the lack of due process would give rise
13 to a lack of subject matter jurisdiction in this
14 case or vice versa. But assuming all of that to be
15 correct, the order that you have requires for Judge
16 Barber to initiate anything in this case. Judge
17 Barber did not initiate any orders, did not initiate
18 any order referring this case to Judge Manning to
19 sign a Rule to Show Cause. It is my understanding
20 that they simply went over to Judge Manning and got
21 this signed. Now, if Judge Barber did issue an
22 order, I was not, my lawyers were not, and I was a
23 pro se litigant at the time, all of us should have
24 gotten that. So for any or all of those reasons,
25 for technical reasons, which I raise here now today,

1 there's the subject matter jurisdiction, a question
2 of subject matter ... of ... you all right?

3 **MR. AIKEN:** Yeah, I'm okay.

4 **MR. HAMMER:** There's a question of jurisdiction. There's
5 a practical question as far as the underlying
6 matter, which I don't think had been explained to
7 Your Honor before today. So for all of those
8 reasons, I had suggested that it would be judicious
9 not to go ahead with the hearing scheduled today, to
10 wait until we ... wait until things settle and wait
11 until we were able to make a determination. But
12 we're here today.

13 **THE COURT:** Uh-huh (affirmative response).

14 **MR. HAMMER:** And I am now been in a position ... I'm now
15 in a position where I have no choice but to raise
16 this issue, and so now we have a subject matter
17 jurisdiction issue raised in connection with all of
18 it, and I don't know anything ... my suggestion
19 would still be to allow to continue this hearing.
20 If she wants to ask more questions, I'm here for
21 that purpose. But my suggestion would be that court
22 time would better be utilized by continuing this
23 hearing, continuing all proceedings, until we get a
24 final order from the Court, that we all come for a
25 status conference without regard to waiver or ...

1 and reserving all of our rights, and see whether we
2 can come to an agreement either ... if we're not
3 able to come to an agreement as to settlement, to
4 come to an agreement as to whether or not an order
5 needs to be prepared for the hearings that are going
6 on here today and appeal needs to be taken from
7 that, or whether we come to an agreement that both
8 ... neither party wants to pursue that and we want
9 to set a time sometime after ... sometime after the
10 summer in August to sit down and settle this,
11 depending on whether or not ... what has happened.
12 So that would be my proposal.

13 **THE COURT:** All right. Mr. Hammer, let me look at the
14 Rule to Show Cause. Do you have a copy of that in
15 front of you?

16 **MR. HAMMER:** Yes, sir.

17 **THE COURT:** Okay. I'll hand it right back to you. Okay.
18 It was ... all right, the Rule to Show Cause ...
19 what it says is Rule to Show Cause and Order of
20 Reference as to 1634 Main, LP. And as we all know,
21 that's how Master's in Equity get cases, we have to
22 have it referred to us by a circuit court judge.
23 And that was referred by a circuit court judge. And
24 the fact that it was Judge Manning instead of Judge
25 Barber makes no difference. Any circuit court judge

1 can refer a case to me. Now, if you have a quarrel
2 it's not with me, it's with Justice Toal, because if
3 she specified that Judge Barber should hear it, and
4 Judge Morris in family court should also hear it in
5 family court, I think your quarrel is with Justice
6 Toal. And you are correct that you can raise the
7 issue of subject matter jurisdiction at any time.
8 In fact, even on appeal you can raise that the first
9 time. But based on what's been done here in this
10 proceeding, I don't agree. I don't see any problem
11 with subject matter jurisdiction, or personal
12 jurisdiction in that regard as well. Now, earlier
13 today we were, we were going to continue this and
14 you objected, Mr. Hammer.

15 **MR. HAMMER:** I didn't want to ... we're here. I'm happy
16 to go ahead with it. I merely gave you a background
17 ...

18 **THE COURT:** Yes, sir.

19 **MR. HAMMER:** ... as to what I thought would have been ...
20 and I didn't realize Your Honor had not perused over
21 that. I thought Your Honor had perused over that
22 ...

23 **THE COURT:** I think there was a protest. Ms. Ballard was
24 concerned about the e-mails, and I ... my response
25 is just not to read them. I mean, they're there in

1 my mailbox I'm sure, but.

2 **MR. HAMMER:** I didn't see any protest. I saw that she
3 sent e-mails in response to the e-mails I sent.
4 Then I saw she sent e-mails to Judge Barber asking
5 him to ... in fact, she sent an e-mail to Judge
6 Barber which said that I'm ... that I realize that I
7 have mistakenly overlooked the order of the Supreme
8 Court in not having you involved. So essentially
9 that's what she said. I don't happen to have the e-
10 mail with me right now I don't believe, but
11 essentially that's what she said. In other words,
12 I've done this wrong, which is what I said to begin
13 with. On Thursday, May 2nd, she wrote, I realize
14 the Supreme Court also raises the supplementary
15 proceedings. I realize I should have gone through
16 you to initiate these proceedings. So we have all
17 of those things, and I ask that this be marked as an
18 exhibit also.

19 **THE COURT:** Have you seen this?

20 **MS. WEISSENSTEIN:** I'm not sure which letter he is
21 referring to.

22 **THE COURT:** It's dated Thursday, May 2nd, 2013, from ...
23 signed by Ms. Ballard.

24 **MS. WEISSENSTEIN:** It's fine, sir. But I would like to
25 quickly respond to some of the arguments that Mr.

1 Hammer has made.

2 **THE COURT:** Uh-huh (affirmative response).

3 **MS. WEISSENSTEIN:** If I might?

4 **THE COURT:** Yes, ma'am. Go ahead.

5 **MS. WEISSENSTEIN:** Okay.

6 **THE COURT:** Do you want to mark this as ... let's mark

7 this first.

8 **MS. WEISSENSTEIN:** That's fine.

9 **THE COURT:** My court reporter does double duty as the

10 clerk and as court reporter. One moment please,

11 we'll mark this an exhibit. Make it court exhibit.

12 **(Court's Exhibit Number Two was marked and entered into**

13 **the record.)**

14 **MR. HAMMER:** So that would be Number 2, Exhibit Number 2?

15 **THE COURT:** I'm not ... I don't think we've marked any

16 other exhibits today.

17 **MR. HAMMER:** You didn't mark the Supreme Court order?

18 **MS. WEISSENSTEIN:** No, we did not.

19 **THE COURT:** We did not, but we can.

20 **MR. HAMMER:** Okay. If you don't mind, I'd like to mark

21 that also. He brought me an extra one.

22 **THE COURT:** Okay. We can use that then.

23 **(Court's Exhibit Number One was marked and entered into**

24 **the record.)**

25 **MR. HAMMER:** I may have to get copies of both of them.

1 **THE COURT:** That's fine. That's fine. Just one second.
2 All right. You know, the bottom line is, Mr.
3 Hammer, as you know, and I think Ms. Weissenstein
4 knows, the bottom line is this is an effort to find
5 out if you have anything that the petitioner can
6 find that's not exempt from attachment, if you had
7 anything that can be used for judgments. That's
8 really what this all is about. And as I said at the
9 outset, she's going to find out all sorts of things
10 that she can't do anything about. Social Security,
11 she can't touch that, and things like that. So, I
12 mean, if the petitioner is finished with the
13 questions, aside from the ones we're going to do in
14 writing, that's fine. But I think you have some
15 other questions, is that correct?

16 **MS. WEISSENSTEIN:** Your Honor, essentially, in light of
17 the last ... for example, hour and 20 minutes we've
18 spent arguing all manners of the law, it's this kind
19 of thing that makes me more and more attracted to
20 the idea of reducing these proceedings to written
21 questions and requests for production. And the
22 information I'm seeking I believe can be gleamed
23 through this information. I would like to reduce
24 this to an order so that it is clear that there's
25 subject matter jurisdiction or personal jurisdiction

1 giving you the ability to order Mr. Hammer to answer
2 the questions and produce the documentation to the
3 best of his ability that are, you know, related to
4 these supplemental proceedings, and within a certain
5 time frame. I would like to also request that we go
6 ahead and schedule a date certain for a follow-up
7 hearing. I'm sure we'll need to be issuing
8 subpoenas to Mr. Hammer's family members and other
9 members of these organizations who might have more
10 knowledge than Mr. Hammer claims he has or has
11 access to, so I want to be able to give them plenty
12 of notice as well. But I think that for everyone's
13 sake, concluding the oral examination now, with
14 leave to come back assuming that the written
15 questions aren't successful, we can go.

16 **THE COURT:** Okay. Mr. Hammer?

17 **MR. HAMMER:** Your Honor, we'd like to ask before anything
18 else is done that we receive a written order on the
19 jurisdictional issues, both jurisdiction ... both
20 the subject matter and personal jurisdiction issues,
21 a written order of that before any other orders are
22 written, before any other orders are issued.

23 **THE COURT:** Actually, I disagree. I think we will deal
24 with those issues in one order. Let me ask, Mr.
25 Hammer, you have to be out of town for medical

1 reasons, you've made that clear, and that's all I
2 need to know. Do you know now about when you'll be
3 back in town or how much time we have before you
4 have to go out of town?

5 **MR. HAMMER:** Here's my schedule. For the rest of June I'm
6 going to be occupied. And while I am retired from
7 the practice of law, I am not retired. I go in and
8 I have tons of paperwork that I am active with every
9 day, usually having to do with things evolving with
10 these proceedings and other proceedings like this
11 that the ... I've pointed out the complexity of the
12 motions that are pending. That are some other
13 potential motions that maybe have to be made. There
14 are other potential actions. It may be pro se, or I
15 may want to do some research on them myself to then
16 determine whether I want to engage counsel. So
17 having said that, between now and the ... and June
18 27th, I don't think I have any time. There is one
19 week between June 27th and July 30th that I will
20 then be preparing for my ... part of my visitation
21 with my sons. I will have visitation with them for
22 I think the first and/or second week in July and
23 then ... I know it's the last two weeks in ... the
24 first two weeks in ... the last two weeks in ...
25 first two weeks in August and maybe the last week of

1 July. I'm not sure exactly how that works, so
2 somewhere between the 14th of July, I think, and the
3 ... whenever I'm supposed to have the children,
4 whether it's the 28th of July or the 24th or
5 whatever, whenever it starts, but those three weeks
6 or two weeks, I'll either have the children for one
7 of those weeks, or I will not have the children for
8 one of those weeks, and one of those two weeks I
9 will be up in New York. I don't know which one of
10 those two weeks I will be up in New York. I know it
11 won't be obviously for the first week in July, which
12 goes through I think the 1st through the 9th or
13 something of that sort. I know that I have a
14 visitation with the children ... or at least a
15 summer visitation that's scheduled with the children
16 ... I have some summer visitations which are
17 scheduled which are not clear, and I think there's
18 some motion pending on that too. So, I would say
19 that July would be very difficult for me to ... for
20 me to give you an exact date. I know that the
21 children will be back in school on the 15th, I
22 think, of August. I may be off a little bit of
23 time. I know that I am supposed to have them for
24 the last ... at least the last two weeks before
25 they're in school. Is that correct, Shirley, the

1 last two weeks before they're in school?

2 **MS. HAMMER:** I believe so.

3 **MR. HAMMER:** The last two weeks before they're in school,
4 and Shirley and I haven't worked out whether it's
5 going to be the last two weeks or the last three
6 weeks of ... and I'm not very clear on that. But if
7 it was the last three weeks, then it would be ... it
8 would go into July ... to August 15th. If it wasn't
9 the last three weeks, it would be August whatever it
10 is to August 15th, and then I would have them one
11 other week in July, and I don't know what week that
12 would be.

13 **THE COURT:** So what you're going to have to do though, I'm
14 looking at the office calendar, and I may be tied up
15 myself a big chunk of the month of August. So,
16 quite frankly, we have a tight schedule, we would
17 come back, if we need to come back, late August.

18 **MR. HAMMER:** That would be fine with me.

19 **MS. WEISSENSTEIN:** Your Honor, just to address one thing
20 in reference to Mr. Hammer's time. He has the
21 children every other weekend for the month of June.
22 The bar mitzvah is on June 22nd. I understand that
23 Mrs. Hammer is assisting in the preparation for
24 that. And it sounds like we're looking at now
25 sometime in September before we can get the answers

1 to these questions or documents. And quite frankly,
2 Your Honor, I'm just going to have to object to that
3 on the basis that people with children and families
4 and church and camps and vacations deal with court
5 process all the time. This is not information
6 that's completely foreign to Mr. Hammer that we're
7 seeking. It's information about his livelihood. I
8 cannot see any good reason why he should not be able
9 to answer questions and produce documents or produce
10 the identification of people who would have custody
11 of documents within two weeks. And outside of some
12 sort of extraordinary circumstances, I don't
13 understand why we would wait. The Supreme Court has
14 made it clear, as Mr. Hammer has announced himself,
15 the abuse of process is not something unusual. And
16 I can't help but feel that that's what we're dealing
17 with again today. More delay, more delay, more
18 delay. And quite frankly, my client can't afford it
19 anymore. All we're trying to do is find the assets
20 to satisfy the judgments that have already been
21 achieved. So again, I renew my request that we ...
22 that Mr. Hammer be given until ... two weeks. I
23 could have him the questions and requests for
24 production by Friday the 7th. And, you know, I'll
25 give him even until Tuesday the 25th to provide me

1 with the answers.

2 **THE COURT:** How about this, I'm looking at a calendar ...
3 yes, sir, Mr. Hammer?

4 **MR. HAMMER:** Not misstating what Stephanie has to say, I
5 am trying to help him prepare for that bar mitzvah.
6 There is ... the summer vacation is not every other
7 week. The summer vacation is quite different. And
8 there is a motion, I understand, pending or being
9 made in connection with that. The summer vacation
10 would involve Thursday, Friday, and the weekends.
11 Mrs. Hammer is not a member of the synagogue. Mrs.
12 Hammer does not speak Hebrew. Mrs. Hammer is unable
13 to help him with his bar mitzvah preparation, not
14 only the Hebrew part, but the speeches that he had
15 to give. He came to me, and I have spent a total of
16 six hours so far helping him with his speeches. And
17 there ... there's a lot more that needs to be done
18 in terms of that preparation. So it's not a like
19 matter, as Ms. Hammer and they seem to think it is.
20 It's ... should give it a year of preparation. This
21 child has not had a year of preparation because he's
22 missed a lot of that. And he's missed a lot of that
23 for reasons we don't have to go into here, but he
24 wasn't under my care when he missed it. So the fact
25 of the matter is that he is going to have ... that

1 he has a lot to do, that I have a lot to do with
2 him. And that it's at the 27th. After that, I'm
3 not going to have time to gather all of this stuff
4 and go on vacations and plan the vacations with
5 these boys that I don't know when they're going to
6 be or how they're going to be, and I don't know the
7 exact dates. And until I know those exact dates, I
8 can't make a final date in July. I don't know how
9 long the doctor will want to see me, whether it will
10 be one day or two weeks.

11 **THE COURT:** All right. Now, well, Mr. Hammer, you ... Mr.
12 Aiken's going to be working with you all this time
13 though, he's not going to ...

14 **MR. HAMMER:** Sir?

15 **THE COURT:** Mr. Aiken is not going to abandon you? My
16 first thought was that ... and I know you've been in
17 the legal profession for a long, long time, and it's
18 very, very hard to just kind of shrug and let your
19 attorney handle everything. I'm sure you've
20 probably told clients that before that ... and I'm
21 thinking, with Mr. Aiken's assistance you could
22 probably hopefully get ... and it's not requiring
23 you to be physically in Columbia. But you could
24 probably get some interrogatories ... and again, we
25 don't know yet how many, but you can get them done

1 with his assistance I would hope by say the first of
2 July, if in fact you got served just later this
3 week.

4 **MR. HAMMER:** And there'd be no way for me to get them done
5 by the first of July. There's no possible way for
6 me to get them done by the first of July. It is an
7 absolute impossibility. I don't know what their
8 interrogatories are, but she says more than 30 for
9 the children. There is no possible way for me to
10 get that done. It's going to have to ... first, I'm
11 going to have to see what ... if I can find any
12 records.

13 **THE COURT:** Uh-huh (affirmative response).

14 **MR. HAMMER:** Then I'm going to have to figure out what
15 records what goes to. There's no possible way that
16 I can get that done. And so what I ask is that Your
17 Honor issue the new order that Your Honor was going
18 to issue. That Your Honor ... that if Your Honor is
19 going to issue that order, then I suspect it's going
20 to be ... I'm going to look into it, but asserting
21 we have grounds for appeal on that order, then that
22 would take care of the matter. If we don't appeal,
23 I'm asking that Your Honor, for the reasons that I
24 have set forth, and not the reasons that she said,
25 oh, well maybe Mr. Hammer can do it. I'm giving you

1 reasons, substantial reasons why I cannot do it.
2 She's saying, oh, well yeah, he'll be able to do it.
3 Well, I can't do it. I can't do it with Mr. ...
4 with Aiken's help or otherwise. I suggested that we
5 do this. We haven't gotten an order that's come
6 down yet.

7 **THE COURT:** Now, and we don't know for sure when we're
8 going to get the order, right?

9 **MR. HAMMER:** We don't know. So what happens if we get
10 that order and it says, I reverse my ... I grant a
11 new trial. And we go on through all of this, and
12 I've had to go through whatever I've had to go
13 through to answer questions when, if we were simply
14 to wait until August, and there's not going to be
15 any change between July ... June, July, and August,
16 Ms. Hammer doesn't ... is not going to be able to
17 collect anything at this point anyway.

18 **THE COURT:** Does the Rule to Show Cause have a restraining
19 order in it? A lot of times we get them with
20 restraining orders in them, you know, to make sure
21 that no assets are disposed of.

22 **MR. AIKEN:** It does say that, Your Honor. And I'm trying
23 to find it. Oh, on the second page, Judge.

24 **THE COURT:** Uh-huh (affirmative response).

25 **MR. AIKEN:** It says, It is further ordered that the

1 defendant, 1634 Main, and the one for Howard Hammer
2 says the same thing.
3 **THE COURT:** Uh-huh (affirmative response).
4 **MR. AIKEN:** Is hereby restrained from disposing of any
5 assets which are the subject of this judgment.
6 **THE COURT:** And that's signed by?
7 **MR. AIKEN:** It's signed by Judge Manning.
8 **THE COURT:** Okay.
9 **MR. HAMMER:** So there's no prejudice to them at all.
10 **MR. AIKEN:** And here's the Rule as to Howard Hammer, and
11 it has the same ...
12 **THE COURT:** The same language?
13 **MR. AIKEN:** Yes, sir.
14 **THE COURT:** Okay. And Mr. Hammer can live up to that
15 order?
16 **MR. HAMMER:** Of course, Your Honor.
17 **MS. WEISSENSTEIN:** Your Honor?
18 **MR. HAMMER:** That's an order of the court.
19 **MS. WEISSENSTEIN:** And this is probably my fault. I'm not
20 seeing the order of restraint against Mr. Hammer
21 individually. Never mind. I'm sorry. I do see it.
22 **MR. AIKEN:** Yeah. There are two orders in the Rules. You
23 got it?
24 **MS. WEISSENSTEIN:** But again, you know, Your Honor, I
25 would point out, as far as the timing of all of this

1 goes, Mr. Hammer has supervised visitation with his
2 children every other weekend for the month of June,
3 no overnights. You know, I recognize the bar
4 mitzvah is something going on. But again, you know,
5 this is information that we believe that he should
6 have. He should have access to it. It's
7 information that he was supposed to bring here today
8 and did not even though, you know, he should have
9 been notified last week that ... to bring this
10 information today. And I just cannot ask Shirley to
11 wait until the middle of July or wait until ... I
12 mean, you know, this has been going on essentially
13 since 2005.

14 **MR. HAMMER:** Your Honor, excuse me. This has been going
15 on since two weeks ago, since whenever this was ...
16 this has been going on since Thursday, when you
17 heard the motion. So it hadn't been going on since
18 2005, A. And B, there is not order for visitation,
19 and that's an incorrect statement in terms of the
20 summer visitation. That has not been addressed by
21 the court..

22 **THE COURT:** All right. This is what we're going to do.
23 We're going to stand in recess, and we can reconvene
24 if we need to. Certain interrogatories will be
25 served on the respondent no later than Friday, June

1 7th. I think you said you can get them together by
2 Friday?

3 **MS. WEISSENSTEIN:** Uh-huh (affirmative response).

4 **THE COURT:** And Mr. Hammer, you need to file a response by
5 Monday, July 8th. Okay. Now, all attorneys
6 understand, if you can't live up to that deadline
7 you need to petition the Court for an extension, and
8 we'll deal with it at that time. Hopefully by then,
9 that's more than a month from now, hopefully you'll
10 know what your schedule is as far as travel and
11 everything else is concerned. So that's what we're
12 going to do, and that's going to be part of an
13 order. And also the order denying the request to
14 dismiss for lack of personal jurisdiction and the
15 lack of subject matter jurisdiction, both of those I
16 would certainly not agree with you on either of
17 those. And again, if you have a problem meeting
18 that deadline, let me know. And don't let me know
19 that day, let me know in time for us to have a
20 hearing if we need to. Yes, sir?

21 **MR. HAMMER:** I can tell you right now I'm going to have a
22 problem because, at the outset, I don't know when
23 I'm going to receive your order. Obviously the
24 order ... that the time be measured, you've given a
25 month to answer essentially, to give the questions

1 and answer, I ask that the time of a month be given
2 from the time we get your order because there may be
3 some question for reconsideration on your order,
4 there may be some question of ... there may be some
5 other questions on your order.

6 **THE COURT:** Right.

7 **MR. HAMMER:** So I would ask for that.

8 **THE COURT:** The petitioner represented, counsel for the
9 petitioner represented that she could have it served
10 by the 7th, which is this Friday. And I'm going to
11 be around every day. And again, if you can't meet
12 the July 8th deadline, you can petition the Court
13 for relief. You may or may not agree with me, but I
14 need you to just do your best. I know it's
15 difficult. Stuff ... especially, you know, if you
16 don't see your children every day. But I think also
17 we need to put this behind us.

18 **MR. HAMMER:** What I'm asking for, Your Honor, is the ... a
19 written order ...

20 **THE COURT:** Yes, sir.

21 **MR. HAMMER:** ... before the ... is she saying by this
22 Friday she's going to have a written order on the
23 jurisdiction and ... on both issues of jurisdiction?

24 **THE COURT:** That's what I understood.

25 **MR. HAMMER:** Okay. Well, if we have that on ... by this

1 Friday, that will take care of everything. May we
2 have a copy of that order before you sign it, Your
3 Honor?

4 **THE COURT:** Yes, sir.

5 **MS. WEISSENSTEIN:** I'll be happy to e-mail it to everyone
6 at the same time.

7 **MR. HAMMER:** And would Your Honor give us an opportunity
8 of ... when are you planning to ... today is
9 Tuesday. When are you planning to e-mail it?

10 **MS. WEISSENSTEIN:** Tomorrow.

11 **MR. HAMMER:** All right. If Your Honor will give us a ...
12 over the weekend to look at it and respond ...

13 **MS. WEISSENSTEIN:** Objection, Your Honor.

14 **THE COURT:** Well, hold on a second. At that ... of
15 course, you know, back to civility, in some states
16 they probably laugh at me because I don't ... but I
17 don't ... that's the way we normally do business.
18 On the other hand, Mr. Hammer, it's not going to be
19 more than a day or two, you need to respond as
20 quickly as possible. I have someone ... again, I
21 was crying about not being up on technology. I
22 don't even read e-mails; I'm trying to change that
23 habit by reading e-mails first thing every morning.
24 So if you can have the e-mail tomorrow, hopefully
25 you can respond by tomorrow afternoon I guess, or

1 the day after.

2 **MR. HAMMER:** Should I respond to Your Honor?

3 **THE COURT:** Yes, sir. Yes, sir. And, you know, copy to

4 everybody.

5 **MR. HAMMER:** Right.

6 **THE COURT:** And I'll read these e-mails that you sent,

7 I'll read the others that you sent. But if today is

8 the 4th of June, we'll get something by the 5th.

9 And hopefully, I'll have it signed. If not, no

10 later than the 7th, after hashing out any problems

11 that you may have. And again, you need to respond

12 by July 8th with answers to those questions.

13 **MR. HAMMER:** But if Your Honor doesn't ... and that's

14 assuming Your Honor signs this on the 7th. If it

15 takes you a little longer, I'm assuming Your Honor

16 is not ...

17 **THE COURT:** I'm going to commit to having it signed by the

18 end of the week, and I have Mr. Johnson here as my

19 witness to remind me.

20 **MR. HAMMER:** Good. All right. Thank you very much, Your

21 Honor.

22 **THE COURT:** Anything else today?

23 **MS. WEISSENSTEIN:** These proceedings are being held open?

24 **THE COURT:** Yes, ma'am. Yes, ma'am.

25 **MS. WEISSENSTEIN:** Awesome.

1 **THE COURT:** The judgments are good for ten years. And Mr.
2 Hammer, as you know, they can bring you back for the
3 next ten years of they need to. Hopefully this will
4 be resolved fairly quickly.
5 (There being nothing further, the hearing was concluded at
6 2:35 p.m.)

CERTIFICATE

I certify that the foregoing transcript, consisting of 135 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on June 4, 2013, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

January 8, 2014

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

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

Howard Hammer,) CASE #: 2009-CP-40-5911
Plaintiff,)
v.)
Shirley Hammer, et al.,)
Defendant.)

1634 Main, LP,) CASE #: 2010-CP-40-2889
Plaintiff,)
v.)
Shirley Hammer, et al.,)
Defendant.)

HEARING

Monday, August 12, 2013
10:02 a.m. to 10:59 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 12th day of August, 2013, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
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224

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1 **THE COURT:** This is Civil Action Number 2009-CP-40-5911 and
2 also Civil Action Number 2010-CP-40-2889. Are we
3 all on the same page?
4 **MS. WEISSENSTEIN:** Yes, sir.
5 **MR. AIKEN:** Yes, sir.
6 **THE COURT:** All right. Before we get started, just for
7 clarity of the record, these two cases were combined
8 and supplemental proceedings were scheduled. And as
9 we all know, in South Carolina when someone wins a
10 money judgment from someone else or a business they
11 have the right to bring them back to court and ask
12 questions of them to see if they have assets,
13 meaning money and property that can be used to pay
14 the judgment. It's not an appeal, it's not a new
15 trial, it's not a new chance to fight the case on
16 the merits; it's just a remedy that the creditors
17 have. In this case I believe that, Mr. Aiken, your
18 client actually sued his ex-wife?
19 **MR. AIKEN:** That's correct.
20 **THE COURT:** And she counterclaimed and actually won?
21 **MR. AIKEN:** Correct.
22 **THE COURT:** And that's where the judgments came from?
23 **MR. AIKEN:** Correct.
24 **THE COURT:** Now, before we get started, Ms. Weissenstein or
25 Ms. Ballard, who's going to ...

1 MS. BALLARD: Your Honor, I'll address you at least
2 initially.

3 THE COURT: Well, let me ask you some questions.

4 MS. BALLARD: Yes, sir.

5 THE COURT: What's the total debt at this point?

6 MS. BALLARD: The total debt at this point is, with
7 interest and against both Howard Hammer and 1634,
8 with interest through today, the total amount is
9 \$351,629.33. That's including the interest at the
10 rate assessed by the Supreme Court in its January
11 2013 interest order.

12 THE COURT: What your fees and costs for bringing this
13 action?

14 MS. BALLARD: The fees and costs for bringing this action,
15 this motion, we've not calculated the fees for the
16 total supplementary proceedings, ...

17 THE COURT: Right.

18 MS. BALLARD: ... but for the action bringing the motion
19 for contempt, our fees are \$21,460.

20 THE COURT: Okay. \$21,460 in attorneys' fees?

21 MS. BALLARD: \$21,460 attorneys' fees and costs for the
22 motion for contempt, yes, sir.

23 THE COURT: That's just the motion for contempt ...

24 MS. BALLARD: Yes, sir.

25 THE COURT: ... not the whole thing?

1 **MS. BALLARD:** No, sir, not for the whole thing. We've not
2 tried to calculate the whole thing yet.

3 **THE COURT:** Okay. I'm sure the attorneys for both sides
4 have things they want to bring to my attention, but
5 let me tell you what troubles me. We were here
6 before, I think originally we were scheduled to be
7 here in May and then we came back in June, and I
8 determined that instead of questioning Mr. Hammer
9 under oath in the courtroom, which I think we were
10 here a good part of the day, Mr. Hammer of course,
11 as Mr. Aiken remembers, of course took the Fifth and
12 was actually fairly evasive and uncooperative. In
13 fact, for example we couldn't even nail him down as
14 to how old he was. But he did indicate that his
15 total income was Social Security benefits that he
16 received and that's what he was living on, which is
17 all well and good. We determined that, and I think
18 also, again for clarity of the record, the parties
19 got a little emotional, you know, and a little
20 agitated when we were talking about the children.
21 Apparently some of the assets involved are actually
22 owned by the children, and he works for the trustee.
23 Does that sound accurate, Mr. Aiken?

24 **MR. AIKEN:** That's not exactly right.

25 **THE COURT:** Okay. Tell me what ...

1 **MR. AIKEN:** Well, there is an asset that is owned by the
2 children, and that's involved in another case.
3 Interestingly enough, Judge, it's before you. It
4 involves a D&M Chateau, LLC, which owns either one
5 or two units. I thought it was two but I heard this
6 morning that it was one, at Chateau Deville, which
7 is a condo/apartment kind of development. And it's
8 my understanding, that's the one asset of the
9 children that has been ... has been discussed in the
10 context of this supplemental proceeding. I believe
11 that's correct. I'm sure if I'm wrong Ms. Ballard
12 will correct me, but I think that's right.

13 **THE COURT:** And what's Mr. Hammer's relationship, is he the
14 trustee or whatever?

15 **MR. AIKEN:** I'm not entirely sure exactly what his role is.
16 I know it's not an expressed trust. I know it's an
17 LLC. It may be that either Mr. Hammer or another
18 LLC of Mr. Hammer's is in some way managing or
19 looking after that property. I'm just not sure, and
20 I hesitate to say exactly if I don't know for sure.

21 **THE COURT:** Well, the reason I asked, I did sign a consent
22 order appointing a receiver in that particular case
23 and I guess the order was inartful, I guess. I'm
24 not sure the receiver we appointed ... it was a
25 consent order. The receiver was Mr. Will Fowler of

1 the Fowler Company. I'm not sure he understood what
2 a receiver is supposed to do. I'm not sure if the
3 order was artfully drafted, and I think I may have
4 to maybe revise that. But he never made it any
5 reports to me, and the receiver works for the Court.
6 And I called him up after our last hearing and he
7 indicated that his company was already managing the
8 property but that as of that phone conversation
9 they'd already pulled out, they weren't managing the
10 property anymore, so that made me think maybe we
11 needed a different receiver. He did offer to me or
12 sent to me in the mail a document I think both of
13 you have.

14 **MR. AIKEN:** Yes, sir.

15 **THE COURT:** Both you and Ms. Weissenstein have. And maybe
16 I just don't understand it and, Ms. Trotter, that's
17 why I asked you to stay here. The document he gave
18 me is styled, Owner's Statement, 3600 Chateau Drive,
19 A-202; Owner's Statement, 3600 Chateau Drive, P-125;
20 and Owner's Statement, 3600 Chateau Drive, B-236.
21 And I looked at this and not only does he not make
22 any reports to me, he was actually making reports to
23 Mr. Hammer and indicates that money was being paid
24 to Mr. Hammer. He gave a statement that covered the
25 months of October 2012 to June 2013, November 2012

1 to June 2013, October again until June 2013. And I,
2 you know, haven't done the math precisely but it was
3 a significant amount of money that was paid to Mr.
4 Hammer. Now, Ms. Trotter, I understand that you can
5 address that. Can you explain to me whether or not
6 he was getting the money or you were?

7 **MS. TROTTER:** Yes, Judge. Ms. Weissenstein called me I
8 think two weeks ago and we looked into my client's
9 records and the reports from Ms. Ballard. To
10 confirm one thing that Mr. Aiken said, there's only
11 one of those units that's owned by D&M Chateau and I
12 apologize, I don't know which one it is off the top
13 of my head. The other two that he gave you the
14 reports for are owned by Mr. Hammer individually. I
15 think that Mr. Fowler's reports are just not
16 accurately styled in his accounting software,
17 because the money is not going to Mr. Hammer. The
18 checks are going to the Association. So I can see
19 on Mr. Fowler's statement where he says he kept \$75
20 as his receiver fee, and I think it would be \$675.
21 And then I can see on Chateau's statement where that
22 particular account is credited for \$675. I think
23 Mr. Fowler is cutting the checks to himself as
24 receiver for Howard Hammer, and so I think that's
25 why it says that it's Howard Hammer that's getting

1 the money. I think the missing link is when the
2 check goes from the receiver account to Chateau
3 Deville Association. But as far as I can see, and
4 Stephanie and I went over it several times, the
5 money is going from Fowler Company to Chateau
6 Deville Association to pay down the regime fee
7 balance on all three units, but yes, specifically on
8 D&M Chateau.

9 **THE COURT:** Okay. Now, Mr. Fowler characterizes under his
10 remarks statement, remarks column, he calls it owner
11 draw, which you don't know what that means?

12 **MS. TROTTER:** Again, I think that what he's doing is he's
13 using his ... the Fowler Company has two different
14 divisions. They have a division where they manage
15 community associations, and then they have a
16 division where they manage rental property. And I
17 think what he's done is opened up an account in his
18 rental property software, and they're using the
19 fields or the names that are sort of hard coded in
20 there. But as far as I can see, I can look and see
21 where Will cuts a check for X amount of dollars, and
22 then I can see where the new management company for
23 Chateau Deville Association gives that particular
24 account the exact amount of credit for that check.
25 So based on the limited information that I had when

1 they called and asked, I could see ... I didn't have
2 a perfect paper trail, it's not the kind of
3 accounting I would like, but I feel confident in
4 saying that Mr. Hammer is not getting any money ...
5 he's not receiving any checks or any cash from the
6 receiver, instead he's receiving credit for those
7 payments on his various accounts in Chateau Deville.

8 **THE COURT:** Okay. Ms. Ballard, any response?

9 **MS. BALLARD:** Your Honor, obviously I'm not involved in
10 that case and I'm not aware of it, but it seems to
11 me that that ... regardless of how it's
12 characterized, it is income to Mr. Hammer. And
13 without deposing Mr. Fowler and getting more
14 information about that, I think that the report that
15 the Court has reflects income to Mr. Hammer. What
16 that income is being used for is a separate issue,
17 but clearly he has income from sources other than
18 Social Security.

19 **THE COURT:** Okay. Also, and of course, I guess for clarity
20 of the record, Mr. Hammer isn't here today, and
21 there's nothing special about that. I think he's on
22 a trip with his children?

23 **MR. AIKEN:** That's correct, Your Honor.

24 **THE COURT:** Okay. And that's fine. But what concerns me
25 though was when we were last here I think both sides

1 agreed that Mr. Hammer would answer interrogatories
2 to avoid coming having to come back to court, and he
3 was supposed to finish that exercise on July 8,
4 2013. Now, Mr. Aiken, has he done anything, has he
5 partially finished, or done part of it and needs an
6 extension, or has he done anything?

7 **MR. AIKEN:** I prepared some Answers to Interrogatories for
8 1634 Main, Responses to Request to Produce for 1634
9 Main, and Answers to Interrogatories for Howard
10 Hammer. Now, I objected on the 1634 Main
11 interrogatories on the basis of the Fifth Amendment
12 privilege. I objected to the requests to produce
13 from 1634 under the Fifth Amendment privilege. I
14 answered the interrogatories to Howard Hammer as
15 best I could.

16 **THE COURT:** Okay.

17 **MR. AIKEN:** And supplied all of that to Ms. Ballard today.
18 And let me just ... let me just give you an idea of
19 how this whole thing with the interrogatories and
20 the requests to produce came about.

21 **THE COURT:** Yes, sir.

22 **MR. AIKEN:** First of all, we didn't receive those until
23 June the 11th and so the due date was July the 8th,
24 which is less than a month. Now, the
25 interrogatories to 1634 were not that extensive, nor

1 were the requests to produce. The real problem was
2 the interrogatories to Mr. Hammer because there are
3 52 interrogatories, but if you added up the subparts
4 it's closer to 180 interrogatories to be answered in
5 less than 30 days. And another important thing
6 about the situation is, Your Honor, and, you know,
7 perhaps I have not rendered the most effective
8 service as his attorney, but let me just tell you
9 what my situation was during this period of time.
10 First of all, I take one week's vacation a year. I
11 work 51 weeks, 13 hours a day most of the time. I
12 take one vacation. The end of my vacation was the
13 8th. of July. And then when I came back after my
14 vacation, and you know from having been in private
15 practice, you come back from vacation and it's like
16 walking into a hurricane. Well, the problem was I
17 had a murder trial on the 29th of August, and I'm
18 defending a man in a murder where another man was
19 tried twice for the same murder. Two week-long
20 trials, so I had two transcripts about this high
21 that I had to review between the 8th and the 29th,
22 and I had to do everything else that needed to be
23 done to get ready for that murder trial. So up
24 until the 29th I had the decks cleared and I was
25 working on that murder trial, which I am doing on

1 behalf of the State of South Carolina and the County
2 of Richland. And I don't object to that because
3 that's my public service.

4 **THE COURT:** Yes, sir. That was July the 29th?

5 **MR. AIKEN:** July the 29th. Yes, sir.

6 **THE COURT:** Okay.

7 **MR. AIKEN:** Well, that case got continued, all right, right
8 at the last minute. So, then I'm in a situation
9 where I haven't been able to do any work on any of
10 my cases for three weeks after just having come back
11 from vacation.

12 **THE COURT:** Yes, sir.

13 **MR. AIKEN:** And I'm working as hard as I can to ... it's
14 kind of like the man that's got the sticks with the
15 plates on top and you shake the stick and the plate
16 spins. Well, if you don't shake the stick enough
17 the plate falls off. So I'm running around shaking
18 the sticks on all of these plates.

19 **THE COURT:** Mr. Aiken, did you tell the Court that you
20 needed an extension ...

21 **MR. AIKEN:** No, sir, I did not.

22 **THE COURT:** ... or talk to the other side about getting any
23 more time?

24 **MR. AIKEN:** No, sir, I did not. And that's the first thing
25 I should have done.

1 **THE COURT:** Okay.

2 **MR. AIKEN:** But I didn't do it. I didn't do it. So I'm
3 working as hard as I can to get all of this squared
4 away. In the meantime, I'm getting from Ms.
5 Ballard's office five and six filings a day; wanting
6 subpoenas here, all kinds of filings coming in. And
7 I'm doing what I can under the circumstances.

8 **THE COURT:** Okay.

9 **MR. AIKEN:** And I've done the best I can to get something
10 to them as quickly as I can and, unfortunately, I'm
11 here today bringing it to them at the last minute,
12 but I did what I could, Judge.

13 **THE COURT:** Okay. Let me ask you though, and this is kind
14 of cutting to the chase, how can Mr. Hammer afford a
15 trip to Jamaica if he's living on Social Security
16 and nothing else?

17 **MR. AIKEN:** Actually he's not ... he didn't go to Jamaica,
18 he went to the Bahamas.

19 **THE COURT:** Okay. Sorry.

20 **MR. AIKEN:** The trip was purchased by Mr. Hammer's mother.

21 **THE COURT:** Okay.

22 **MR. AIKEN:** As a bar mitzvah present for Mr. and Mrs.
23 Hammer's 13-year-old son, David. And it was a trip
24 for Howard Hammer and David Hammer and David's
25 brother, Michael, to go to the Bahamas. And that

1 was purchased by Howard's mother, and not by Howard.

2 **THE COURT:** Ms. Weissenstein?

3 **MS. WEISSENSTEIN:** If I might briefly address this first,
4 Your Honor.

5 **THE COURT:** Yes, ma'am.

6 **MS. WEISSENSTEIN:** Howard has also appeared in this matter
7 pro se, so the burden cannot lie entirely at Mr.
8 Aiken's feet. I'd also like to remind the Court
9 that this action and Judge Manning's Rule to Show
10 Cause requiring the production and all of this
11 information was issued in April. We appeared on May
12 30th, he was supposed to bring all of that stuff
13 with him and he didn't show up. We appeared on June
14 4th, he was supposed to bring all of that stuff with
15 him and answer these questions and he did not come
16 prepared. So the reason we went through with the
17 written requests and the reason it was allowed to do
18 it in under the 30 days was because this material
19 was already two or three months late. He was
20 allowed to have produced this information in the
21 regular course of business. It would not have
22 required a whole lot of extra investigation; this is
23 information that he should have had as a matter of
24 his personal finances. And until today we had not
25 actually received any formal responses. We have

1 received a letter from Mr. Hammer objecting, based
2 on some technicality I suppose, and then, you know,
3 in order to also help out here to get information
4 we've asked our parties for this information, and
5 Howard has actively fought our gathering of this
6 information. So I would just show that Mr. Aiken's
7 inability to help Howard so much of this discovery
8 process is a minor thing.

9 **THE COURT:** All right. Now, are the third parties here
10 that you subpoenaed?

11 **MS. BALLARD:** Your Honor, we subpoenaed documents from
12 about 20 different individuals pretrial to try to
13 obtain documents.

14 **THE COURT:** But who are they?

15 **MS. BALLARD:** I can give you the names of them. Beth
16 Bernstein, Alvin Hammer, Lowell Bernstein, Deborah
17 Covington, Mr. Jim Daniel, Synovus Bank, Milton
18 Sanders, South Carolina Bank and Trust, several
19 different LLCs which we believe are owned by Mr.
20 Hammer; he was the registered agent for those LLCs,
21 and we served all of those. In response to all of
22 those subpoenas we received nothing. Mr. Hammer has
23 interfered with mail that was ... we were taking to
24 deliver to Deborah Covington, who used to be an
25 employee of his and has signed a number of

1 affidavits of service on his behalf throughout these
2 proceedings. He took letters addressed to her and
3 sent them back to us and said don't serve her at
4 this address. And he, of course, sent a letter to
5 Your Honor that Your Honor has, and we have a
6 handwritten copy of it, where he says she does not
7 receive mail at this address. Well, we had already
8 been mailing her at that address. With Mr. Ackerman
9 for instance, Mr. Ackerman is his accountant. We've
10 spoken to Mr. Ackerman, Mr. Ackerman says his
11 attorney, Howard Hammer, tells him not to respond so
12 he's not responding.

13 **THE COURT:** Mr. Hammer's not ...

14 **MS. BALLARD:** Not licensed to practice law, no, sir. Ms.
15 Ballard in my office, Laura Ballard in my office has
16 filed an affidavit based on her conversations with
17 Mr. Ackerman. We know Mr. Ackerman because we had
18 deposed him during the civil litigation, and we know
19 that he has Mr. Howard Hammer's personal tax returns
20 as well as the tax returns for various companies.
21 Ms. Ballard, at my direction, called Mr. Ackerman
22 when we did not receive his responses, and he told
23 Ms. Ballard from my office that he had turned it
24 over to his attorney. When she inquired who his
25 attorneys were, he advised that this attorney was

1 Howard Hammer and that his attorney Howard Hammer
2 had advised him not to produce the documents. Now,
3 Your Honor, we'll see of record that Mr. Hammer and
4 Mr. Aiken both filed motions to quash the subpoena
5 to Mr. Ackerman, so we subpoenaed Mr. Ackerman to
6 appear today. He's not here. I checked in the
7 hallway, unless he's just shown up the last few
8 minutes he's not appeared. Deborah Covington
9 initially responded to us by letter saying
10 essentially Mr. Hammer told her since she was a
11 third party ... she is here, all right. But she
12 initially responded to us, saying that her personal
13 finances were none of our business and have a nice
14 life, and we had to communicate with her numerous
15 times. Again Mr. Hammer interfered with our
16 communication, so we subpoenaed her to come today
17 too. What we've been trying to find out from her is
18 the source from which she is receiving income from
19 Mr. Hammer, or has in the past received income from
20 Mr. Hammer. But we are informed and believe that
21 Mr. Hammer has interfered with our ability to
22 discover information from her. And I did want to
23 respond to the discovery that was handed to me this
24 morning by Mr. Aiken when he walked in the door.
25 The 1634 Answers to Interrogatories are two

1 paragraphs long, and they basically say we're not
2 giving you anything. The 1634 Request to Produce
3 are the same thing, two paragraphs long, we're not
4 giving you anything. And the Howard Hammer Answers
5 to Interrogatories are seven pages long, but
6 essentially we're not giving you anything. So when
7 Mr. Aiken stands before you and says that he has
8 responded in part, that's just not true. Mr. Hammer
9 has ignored these proceedings from day one. Mr.
10 Hammer did not show up as Judge Manning ordered on
11 May 30th. He did not show up as Your Honor ordered
12 on June 4th. Well, he did show up but he didn't
13 bring any documents. As Your Honor has indicated,
14 hours and hours of testimony accomplished absolutely
15 nothing, to the point that this Court said, you know
16 what, the best way to do it is to do
17 interrogatories. So we served those interrogatories
18 immediately. Your Honor's order was signed June
19 10th, we served interrogatories on June 11th, and we
20 properly served them. And Mr. Hammer sent a letter
21 back saying, oh, I don't have the order yet so I'm
22 not really required to answer them, and he sent
23 another letter, which has been filed with the Court,
24 saying well, I really object to the order so I'm not
25 going to answer the interrogatories. In his June

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1 20th letter to Your Honor, he did finally admit that
2 he had properly been served with the order and he
3 did properly admit that he had been served with the
4 interrogatories. June 20th. So that's about two
5 months ago that he acknowledged that he'd been
6 served with the interrogatories and with the order
7 and we have, despite Mr. Aiken's suggestion that he
8 has served us responses, we have absolutely nothing.
9 One of the people that we served with a document for
10 subpoenas was Alvin Hammer, who is listed as the
11 registered agent for a number of the corporations
12 that we have deeds showing that Howard Hammer,
13 Stanley Hammer and Alvin Hammer conveyed real
14 property in 2009 into these various corporations.
15 Mr. Alvin Hammer sent an objection via fax, which of
16 course is not proper service, so Mr. Alvin Hammer
17 did not respond at all as far as ...

18 **MR. AIKEN:** He's right there.

19 **MS. BALLARD:** ... that's concerned. I'm aware that he's
20 right there.

21 **THE COURT:** He's right here?

22 **MS. BALLARD:** Right here. And so we subpoenaed him to
23 appear today for two reasons. Number one, to give
24 us the documents that we've asked for, but number
25 was two to explain to you why he ignored the

1 subpoenaeas that were properly served upon him. And
2 we had hoped to find some information from Mr.
3 Ackerman about income to Mr. Hammer. We hoped to
4 find information from Alvin Hammer about income to
5 Mr. Hammer. We hoped to find information from Ms.
6 Covington and Bernie Ackerman about sources from
7 which Mr. Hammer flies to New York and flies to the
8 Bahamas and manages to live in a \$400,000 house
9 despite the fact that he claims to have income only
10 from Social Security. Your Honor knows as well as I
11 do that Mr. Hammer lies to this Court, he ignores
12 this Court, he has absolutely no respect for the
13 orders of this Court as demonstrated by the fact
14 that he apparently scheduled a vacation with his
15 children for the purpose of not being here today.
16 He had Susan Lipscomb, his attorney in another
17 proceeding, e-mail us about two weeks ago and say he
18 won't be available until after the 19th of August.
19 And he had had notice of this hearing. Your Honor,
20 I just, I am beside myself with the complete
21 disrespect of the Court that Mr. Hammer has shown.
22 And Your Honor knows that we have filed a motion for
23 criminal contempt against Mr. Hammer. And I e-
24 mailed Your Honor and Mr. Aiken and Mr. Hammer some
25 law last night that addresses the issue of criminal

1 contempt and civil contempt. And as I was drafting
2 a proposed order for Your Honor, which I did to
3 bring with me today, I thought about all of this and
4 I said, you know, Mr. Hammer is doing exactly what
5 Mr. Hammer always does, which is causing these legal
6 proceedings to multiply, to be delayed, to drag out.
7 And his goal, as he's told Mrs. Hammer, is that
8 she's not going to get a dime. He's told her that.
9 And he's accomplishing it. That's what irritates me
10 so much, he's accomplishing it.

11 **THE COURT:** Well, let's stop for a second. Contempt, it is
12 a matter for the Court to deal with.

13 **MS. BALLARD:** Yes, sir.

14 **THE COURT:** And remember that even though Mr. Hammer may
15 not have a law license at this time, he did ...

16 **MS. BALLARD:** Yes, sir.

17 **THE COURT:** ... and I just want to admonish everybody in
18 the courtroom to remember our civility oath.

19 **MS. BALLARD:** Yes, sir.

20 **THE COURT:** And try not to take it too personally. I know
21 it's hard not to in certain cases.

22 **MS. BALLARD:** Well, I stand before you today, having
23 conducted discovery since April, having nothing.
24 Mr. Hammer has won.

25 **THE COURT:** Well ... hold on a second, Mr. Aiken.

1 MR. AIKEN: Yes, sir.

2 THE COURT: All right. Ms. Covington?

3 MS. COVINGTON: Yes, sir.

4 THE COURT: All right. What's your involvement in this?

5 MS. COVINGTON: I work on a part-time, temporary basis for
6 Mr. Hammer.

7 THE COURT: Okay.

8 MS. COVINGTON: And I have no idea what my involvement is
9 except that Ms. Ballard wanted me to present copies
10 of my checks that I received from Mr. Hammer. And
11 also, when I received the first subpoena to that
12 effect I simply objected, according to the Rules of
13 Civil Procedure or whatever, I objected. And then I
14 got a motion for, I don't remember what it was, a
15 motion to produce or whatever.

16 MS. BALLARD: It's a motion to compel, Your Honor.

17 MS. COVINGTON: A motion to compel. And, you know, with
18 all kind of stuff in it. And so I called Ms. Mara
19 Ballard and spoke to her about it, and I never said
20 have a nice day, this doesn't mean a thing to me or
21 anything. This is very ... I would never be so rude
22 as to say something like that. I'm, you know, I
23 brought what I have. I mean, it's just a few checks
24 that I've copied and, you know, stuff like that.
25 Which, to me, I have no idea why I'm involved.

1 **THE COURT:** Okay. Are you an attorney, Ms. Covington?
2 **MS. COVINGTON:** No. No, sir.
3 **THE COURT:** What do you do for Mr. Hammer?
4 **MS. COVINGTON:** Type, basically.
5 **THE COURT:** And he does pay you?
6 **MS. COVINGTON:** He does, yes, sir.
7 **THE COURT:** Does he make ... is he current on his payments
8 to you, does he make payroll every pay day, or do
9 you know what I'm talking about?
10 **MS. COVINGTON:** I don't do any of his book work or
11 anything, if that's what you're asking.
12 **THE COURT:** Well, I mean, but you haven't had any trouble
13 getting paid by him?
14 **MS. COVINGTON:** Oh, no, sir. No, sir. I don't get paid a
15 lot, you know, I get paid hourly.
16 **THE COURT:** Okay. And what did you bring today?
17 **MS. COVINGTON:** What they asked me to bring was copies of
18 either my check stubs, and I didn't have copies of
19 check stubs because I'm just paid by a check. But
20 some of this I have copies of and I'll give you. So
21 of it, I don't. And I don't have access to a copier
22 that I would use for personal use so I'm not turning
23 over these unless, you know, I can go to someone's
24 office and copy them. These I do ... I will turn
25 over, these are copies of checks. And this stuff

1 I'll, you know, I'll be glad to go to someone's
2 office and copy it.

3 **THE COURT:** And we can certainly make copies here.

4 **MS. COVINGTON:** But also ...

5 **THE COURT:** Yes, ma'am.

6 **MS. COVINGTON:** You know, like I said, I'm an hourly
7 employee, I'm not sure why I'm here. But in
8 whatever I was served they said that I may have to
9 pay court costs and, really, I feel like I should be
10 getting paid for being here on their behalf because,
11 you know, I'm losing money standing here talking
12 about this nonsense.

13 **THE COURT:** Yeah. Let me explain to you what's going on,
14 Ms. Covington. As I said at the outset for clarity
15 of the record, in South Carolina when somebody has a
16 money judgment against you they can bring you back
17 to court and put you under oath and ask questions.
18 The purpose is to see if you have money or property
19 that can pay the judgment. It's not a new trial,
20 it's not an appeal, and it's certainly not nonsense,
21 quite frankly. It's just a remedy that creditors
22 have to see if there's money to pay the judgment.
23 The reason you were subpoenaed is that apparently
24 you're getting money from him, and of course you
25 don't know where his money comes from. All right.

1 Mr. Hammer was here some time ago and testified
2 under oath that he lives on Social Security, that's
3 his total income. Is that true as far as you know,
4 or you don't know?

5 **MS. COVINGTON:** Yes. As far as I know, yes, sir.

6 **THE COURT:** So you get a part of his Social Security check,
7 what he pays you he's taking out of his Social
8 Security check?

9 **MS. COVINGTON:** That or from family or friends. I have no
10 idea. I know when I was unemployed I had friends
11 and family that also helped me out, so it could be
12 anything.

13 **THE COURT:** Okay. And you said you're losing money by
14 being here. Do you have another job besides working
15 for Mr. Hammer?

16 **MS. COVINGTON:** I do.

17 **THE COURT:** Okay. All right. We can, if you don't mind
18 sitting around a few more minutes, certainly we'll
19 make a copy of the documents you brought with you.
20 Ms. Ballard, do you have any other questions, any
21 other need for Ms. Covington based on what she's
22 said here today?

23 **MS. COVINGTON:** No, sir.

24 **THE COURT:** No, I was asking Ms. Ballard.

25 **MS. BALLARD:** Your Honor, the only thing I would request of

1 her is whether she's aware of the sources for which
2 he receives income. Mr. Alvin Hammer, for instance,
3 has indicated that he pays a lot of Mr. Hammer's
4 bills. So having worked in Mr. Howard Hammer's
5 office, I would assume she has some knowledge of the
6 sources of his money for his trips to New York and
7 his trips to the Bahamas and the other places that
8 he goes. I would simply inquire of that.

9 **THE COURT:** Now, Mr. Aiken, is there any privilege as far
10 as that's concerned? I know that Mr. Hammer's
11 claimed that he's potentially going to be prosecuted
12 by the federal government.

13 **MR. AIKEN:** That has to do with matters dealing with 1634
14 Main, but otherwise there's no privilege.

15 **THE COURT:** Okay. Ms. Covington, you heard Ms. Ballard's
16 statement. Do you have any answer to her question?
17 Do you want to restate your question, Ms. Ballard?

18 **MS. BALLARD:** Yes. My question is, as a result of working
19 for Mr. Hammer do you have any knowledge of the
20 sources from which he obtains money, whether it's
21 income or loans or dividends from corporate entities
22 or family or any other source?

23 **MS. COVINGTON:** No. I know that he ... that I typed a
24 couple letters about the trip, requesting time off
25 way back when to be with his children. And he

1 stated in there that he did ... the trip that he's
2 on was being ... is a gift from his mother. As far
3 as .if he has investments or anything like that, I
4 don't have any clue. I've never seen or deposited
5 money for him or anything else. All I do as far as
6 money goes is, when I give him my time sheet he
7 gives me a check. And I don't ...

8 **THE COURT:** The checks are all good?

9 **MS. COVINGTON:** Yes, sir.

10 **THE COURT:** Ms. Covington, you've never had a check bounce,
11 paycheck bounce or anything?

12 **MS. COVINGTON:** No, sir.

13 **THE COURT:** Okay.

14 **MS. BALLARD:** What bank does he use to pay you?

15 **MS. COVINGTON:** NBSC.

16 **MS. BALLARD:** Your Honor, we've subpoenaed Synovus, which
17 is the successor-in-interest, and they are one of
18 the entities against whom we have a motion to
19 compel.

20 **THE COURT:** All right. Thanks, Ms. Covington, please stick
21 around and we'll make a copy those documents. Mr.
22 Aiken, any response?

23 **MR. AIKEN:** Yes, sir. And I promise not to call anybody a
24 liar or a thief. It's important to note that on the
25 1634 Main, LP Answers to Interrogatories, the reason

1 why they are so short is because that is the area in
2 which we contend Mr. Hammer has privilege against
3 self-incrimination and so does 1634 Main, and that's
4 the reason why they're so short. And I explained in
5 detail why he makes that assertion, which is, Your
6 Honor, in written submissions Ms. Hammer's attorneys
7 have accused him essentially of filing fraudulent
8 tax returns. And that is more, I mean, doing
9 criminal defense and having that intersection of
10 criminal and civil, in my view that is more than
11 enough to support the assertion of the Fifth
12 Amendment privilege. So it's not as if we just
13 thumbed our nose at them and said we're not going to
14 answer. I mean, this is a legitimate and viable
15 Fifth Amendment privilege. And, Your Honor,
16 obviously Mr. Hammer means no disrespect by not
17 being here. He felt it was so very important for
18 him to go with his sons to the Bahamas. It was
19 David's bar mitzvah present from his grandmother.
20 David was going to do something that he has told his
21 parents he's wanted to do for years, swim with the
22 dolphins. So that's why Mr. Hammer's not here, Your
23 Honor. It's not because he wants in any way to
24 suggest that he has any kind of anything other than
25 the utmost respect for the Court.

1 THE COURT: All right. Now, Mr. Hammer's brother is here?
2 MR. AIKEN: Yes, sir.
3 MR. HAMMER: I'm Alvin Hammer. How are you doing?
4 THE COURT: All right. Are you a member of the bar as
5 well?
6 MR. HAMMER: Yes, sir.
7 THE COURT: All right. And tell me what's going on. How
8 does your brother live? As Ms. Ballard has pointed
9 out, he seems to live at a fairly high level. He's
10 said under oath here that his only income is Social
11 Security.
12 MR. HAMMER: Your Honor, I don't know how he lives. I was
13 subpoenaed to tell you what my involvement here is.
14 THE COURT: No, you said you don't know how your brother
15 lives?
16 MR. HAMMER: I don't know where his source of income is.
17 THE COURT: Okay.
18 MR. HAMMER: I'll tell you what I do know.
19 THE COURT: Yes, sir.
20 MR. HAMMER: I know I was served with a subpoena. I know I
21 responded to the subpoena.
22 THE COURT: Yes, sir.
23 MR. HAMMER: Actually, I was served with three subpoenas,
24 and I'll explain them to you.
25 THE COURT: Okay.

1 **MR. HAMMER:** Did you get my letter last week by any chance?
2 I sent it to Ms. Weissenstein and copied you?
3 **THE COURT:** I think there was one where you said you wanted
4 to be before the Master in Charleston County?
5 **MR. HAMMER:** Right. But I have not gone before the Master
6 because they hadn't made a motion, but in that
7 letter ...
8 **THE COURT:** One moment, please, sir. Let me read your
9 objection.
10 **MR. HAMMER:** Okay.
11 **THE COURT:** Is this for me?
12 **MR. HAMMER:** Yeah, that's fine.
13 **THE COURT:** Okay. I was going to staple them without ...
14 **MR. HAMMER:** You're welcome to do whatever you need to do
15 with them.
16 **THE COURT:** Okay. Have y'all seen this?
17 **MS. BALLARD:** We have, Your Honor. After we received that
18 we re-served subpoenas on him, and we received no
19 response for those.
20 **THE COURT:** Okay. But quite frankly, Mr. Hammer, if you
21 say you don't know where he gets his income from,
22 that's kind of all we need.
23 **MR. HAMMER:** Your Honor, here's what ... I want to get this
24 ... I don't want to be coming back here six times so
25 I want to get it straight with the Court.

1 **THE COURT:** Yes, sir.

2 **MR. HAMMER:** Number one, they subpoenaed records from a
3 single-member LLC that I am the only one involved
4 with. Howard Hammer has no involvement with it.
5 It's called H. Prop. He's never gotten a dime from
6 that. And I explained to them and the objection
7 that I had. First of all, the subpoena didn't give
8 enough time. But I said, subject to that, H. Prop
9 is unaware of any records that are responsive to
10 this subpoena because there aren't any records in
11 response to the subpoena. So I just wanted to get
12 that one out of the way. There's an LLC called
13 HASCI, which doesn't have a bank account, doesn't
14 have any accounts, all it is is some property, and I
15 don't even know which one it is because I didn't do
16 it, I had some lawyer do it when I was handling my
17 father's estate. There were certain pieces of
18 property my father owned with various other people,
19 and I don't know exactly ... he owned a piece of
20 this and a piece of that, there were about five
21 pieces, four or five apiece. So all of those were
22 transferred to my brothers and me, and we put all
23 that into one company called HASCI. The property, I
24 don't even know where it is, it's just been sitting
25 there. And I don't get anything from it, and to my

1 knowledge Howard doesn't get anything from it. So
2 that's number two piece of property.

3 **THE COURT:** Yes, sir.

4 **MR. HAMMER:** Number three is they asked of me for any
5 monies that Howard Hammer might have borrowed from
6 me over the last five years. And I've got
7 checkbooks. I've got, you know, every year I do my
8 checkbooks. And I have made payments, and I
9 explained that to them, to other people or as a loan
10 to Howard for different things. And, you know,
11 Howard owes me that money. So I don't know how that
12 can possibly be an asset to Howard. It's a debt to
13 me.

14 **THE COURT:** All right. How much is it?

15 **MR. HAMMER:** It's a lot of money.

16 **THE COURT:** How much, sir?

17 **MR. HAMMER:** I don't know exactly. I would say probably
18 somewhere in the neighborhood of \$200,000 or maybe
19 more. Part of that is I am paying all expenses for
20 my mother, and some point he owes me money for that.

21 **THE COURT:** Do you have any idea of how much?

22 **MR. HAMMER:** That I pay for my mother?

23 **THE COURT:** Or that he owes you for that?

24 **MR. HAMMER:** Probably close to 100.

25 **THE COURT:** A hundred?

1 **MR. HAMMER:** I haven't gone through and figured it out.
2 This has been the last four or five years. But,
3 Judge, this is, you know, it has nothing to do with
4 anything that Howard Hammer is actually getting.

5 **THE COURT:** Yes.

6 **MR. HAMMER:** He hasn't gotten a dime of this. So I can't
7 ... I don't give Howard Hammer money. I don't lend
8 him money. He doesn't want it from me. All I do is
9 if there are certain debts that he has, you know, I
10 might help him with and pay those directly. And I
11 do pay for my mother's expenses directly. So, you
12 know, that's all ... and I'm glad to go try and
13 figure out what all that is, but it's really a big
14 burden on me. I've got a busy law practice, I came
15 up here for the day. This, really, the motion to
16 compel is supposed to be in Charleston. I wrote to
17 them and explained that to them, but here we are and
18 I want to get this thing behind me. I don't want to
19 be involved in this thing. I'm not asking to be
20 involved. I haven't been involved the whole time.
21 I've tried to do what I can to try and get this
22 situation between Howard Hammer and his ex-wife
23 ameliorated as much as I can do it. It's not good
24 for me. It's not good for his children. It's not
25 good for both families. So, you know, not on a

1 legal basis or anything else, but it's on a ... on a
2 personal basis it's very upsetting to me, and I'd
3 like to get it done. Nobody's ever come to me. If
4 they want to try and get the whole thing worked out,
5 if they want to come talk to me about it, I'll be
6 glad to talk to them about it and make a reasonable
7 loan to Howard to get it done, if ... I don't know
8 where all these fees are, but I'm not willing to get
9 involved to that extent. But if they want to come
10 and talk to me about what it takes to get this case
11 resolved, I'm glad to do it.

12 **THE COURT:** Well, what if I ordered that your brother make
13 monthly payments towards satisfying the judgments?
14 Ms. Ballard, has he made any kind of payment at all?

15 **MS. BALLARD:** No, sir.

16 **THE COURT:** Since the judgment was entered?

17 **MS. BALLARD:** No, sir.

18 **THE COURT:** Okay. If he could make a reasonable monthly
19 payment towards resolving this, would you be willing
20 to help him out?

21 **MR. HAMMER:** If we could have a resolution, I'll be glad to
22 pay it on a monthly basis but consider that a loan
23 to Howard, however it is. But I need to have a
24 resolution. I'm not going to get involved in this
25 thing ...

1 **THE COURT:** No, I understand.

2 **MR. HAMMER:** ... if it's not resolved. Because it's not
3 emotionally okay to me to just make payments and let
4 this thing be sitting around somewhere. If it's not
5 going to get fully resolved, and I'm talking about
6 everything getting fully resolved, I'm not
7 interested in getting involved with it.

8 **THE COURT:** Okay. What we do, Mr. Hammer, is the case is
9 settled. In supplemental proceedings it's settled,
10 however, if the person, the debtor, for whatever
11 reason can't live up to a settlement order, then we
12 might come back and the person can be held in
13 contempt of court. But otherwise we certainly are
14 open to having it settled.

15 **MR. HAMMER:** Judge, if the settlement is that I'm going to
16 make loans to make payments, I'll live up to that
17 order. I'm not ... you don't have to worry about
18 that.

19 **THE COURT:** Oh, I understand.

20 **MR. HAMMER:** Okay. So there won't be any problem with
21 that. But somebody's got to come talk to me about
22 what it is, because I can't just say I agree to a
23 settlement when I don't know what they want to do.

24 **THE COURT:** I understand. I understand.

25 **MR. HAMMER:** So if somebody wants to talk to me, I'm glad

1 to talk to them. That's all I know about the case.

2 So, you know, ...

3 **THE COURT:** So you're saying you're up here for the day?

4 **MR. HAMMER:** Well, I'm up here ... I came here today
5 because I was subpoenaed to come here.

6 **THE COURT:** The reason I say that though, if y'all need
7 time today to talk, I don't know if you can go back
8 to their office or we can get a conference room ...

9 **MR. HAMMER:** I'd rather do it at a different time. I'm not
10 going to do it all myself because I'm not, you know,
11 I'm going get a lawyer or somebody to help me with
12 this.

13 **THE COURT:** Yes, sir.

14 **MR. HAMMER:** I don't represent myself. I came up here
15 today. I was going to have somebody come but they
16 were busy. But, you know, I can handle something
17 like this but I don't think it's a good idea for me
18 to represent myself.

19 **THE COURT:** Okay.

20 **MR. HAMMER:** So, you know, I'm here for this. I hope that,
21 you know, I'd like to be excused from the subpoena
22 and go back to Charleston as soon as I can.

23 **THE COURT:** Okay. One moment, please. Ms. Ballard, is
24 there anything you'd like or that you and your
25 client can live with?

1 **MS. BALLARD:** Yes, sir. We've served Mr. Alvin Hammer with
2 subpoenas regarding HASCI. We know all of the
3 property that was inherited by him and his two
4 brothers through their father's estate was
5 transferred into a corporation called HASCI, LLC for
6 which Mr. Alvin Hammer is the registered agent.
7 We're providing the Court with the exhibits which
8 reflect the deeds of multiple pieces of property on
9 Assembly Street and Main Street in Columbia. Mr.
10 Alvin Hammer says he doesn't even know what that
11 property is; well, I do. The deeds reflect that
12 it's rather significant pieces of property in the
13 area where the old Heart of Columbia Hotel used to
14 be. And if it's non-productive assets, it can
15 certainly be applied to Mrs. Hammer's judgments. If
16 HASCI, if Mr. Hammer's interest, Mr. Howard Hammer's
17 interest in HASCI is non-productive it can be
18 transferred to Mrs. Hammer and applied toward the
19 judgment. Mr. Alvin Hammer has given me nothing,
20 and I've had no obligation to talk with him because
21 I don't have any judgments against him. It would be
22 fairly presumptuous of me to call him and say do you
23 want to pay your brother's debts. I have judgments
24 against Mr. Howard Hammer, and Mr. Howard Hammer has
25 assets that can pay those judgments.

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

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

4 **THE COURT:** How much is that worth?

5 **MS. BALLARD:** During the testimony in the trial before
6 Judge James, the testimony was that it was worth
7 between \$900,000 and a million dollars. There's no
8 encumber, no mortgage or anything on it. And what
9 happened with that property, Your Honor, is as part
10 of the domestic settlement Mrs. Hammer agreed to
11 transfer ... she owned 52.75 percent of that real
12 estate unencumbered, and she transferred that to Mr.
13 Howard Hammer. The deed for that was sent to Mr.
14 Howard Hammer's attorney, Tom Pope, in March of this
15 year. But the deed has not been recorded, so
16 according to the public records in Richland County
17 the 52.75 percent of the real estate still belongs
18 to Shirley Hammer and to 1634 Main, a Limited
19 Partnership.

20 **THE COURT:** So ...

21 **MS. BALLARD:** ... but he owns it, the deed has been
22 delivered to him. That 52.75 percent is probably
23 sufficient to satisfy the judgments, at least that
24 Mrs. Hammer owns against Howard Hammer. Now, she
25 also has judgments against 1634 Main, LP. It owns

1 the remaining portion of that office building. And
2 I think the quickest way to satisfy those judgments
3 would be to, and we have in fact filed a motion to
4 appoint a receiver, to take possession of 1634 Main,
5 both the limited partnership and the real estate,
6 and sell it, rent it out, do whatever it has to do,
7 similar to the way was being with the Chateau
8 Deville properties. Mr. Hammer has debts, he's got
9 real estate, he's got income that can be used to
10 satisfy these judgments, and he simply doesn't want
11 to.

12 **THE COURT:** Now ...

13 **MS. BALLARD:** So I'm requesting ... I'm sorry.

14 **THE COURT:** This is on a building.

15 **MS. BALLARD:** Yes, sir.

16 **THE COURT:** And receivership, as you know, receiverships
17 are extraordinary.

18 **MS. BALLARD:** Yes, sir.

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

23 **MS. BALLARD:** I'm fine with that. If we can transfer all
24 of Mr. Hammer's interest in 1634 Main, LP and all of
25 his interest in 1634 Main, the building, because

1 it's divided, he owns 1635. Now, in order to do
2 that we'd also need to transfer his interest in SH5
3 because he owns SH5, LLC individually, and it is the
4 general partner of 1634 Main, LP. All of that is
5 spelled out in Judge James' orders.

6 **THE COURT:** All right. Are there any tenants in the
7 building?

8 **MS. BALLARD:** There are some tenants in the building. Mr.
9 Hammer is the primary tenant, yes, sir. There's a
10 property manager named Turbeville, who has been
11 managing the property for some number of years, he
12 testified at our trial before Judge James in
13 January. He says that the building needs a little
14 bit of work in order to sell it but it's very
15 marketable. And the simple way, and I agree with
16 Your Honor, the simple way is to simply transfer Mr.
17 Howard Hammer's ownership in SH5, 1634 Main, Limited
18 Partnership, and the dirt at 1634 Main to Mrs.
19 Hammer for her to sell and satisfy the judgment.
20 And if there are any excess proceeds, they can be
21 paid to the court.

22 **THE COURT:** Okay. Mr. Aiken, how does that sound?

23 **MR. AIKEN:** Well, Judge, that's the first I've ever heard
24 of that as a potential resolution for this case, so
25 I have no authority. I have no idea whether that

1 would do it. And I hesitate to state a position
2 without having some pretty clear lines of authority
3 on something as important as that.
4 **THE COURT:** And, Mr. Hammer, do you have any objection,
5 anything to say?
6 **MR. HAMMER:** I don't know anything about that. I'm not
7 involved in that. So, you know, but all I'm saying
8 is ... here's what I don't understand.
9 **THE COURT:** Yes, sir.
10 **MR. HAMMER:** And I'm glad to try and do what I can to get
11 this thing worked out, as I said.
12 **THE COURT:** Yes.
13 **MR. HAMMER:** But if there is an asset and if there's a
14 judgment, there's a procedure in South Carolina to
15 foreclose on the judgment, whatever it is. I don't
16 do that kind of work, but there is some procedure.
17 And it doesn't seem like it would be necessary to go
18 get me to do a whole bunch of work and look at all
19 my records for that last five years and get
20 everything, if there's already an asset available.
21 You know, it's just burdensome for me and not
22 something that I would like to be required to do.
23 **THE COURT:** Okay.
24 **MS. BALLARD:** Can I respond to that, Your Honor?
25 **THE COURT:** Oh, yes, ma'am.

1 **MS. BALLARD:** Your Honor, what we were attempting to do
2 with our discovery is locate all assets so that this
3 Court could make an intelligent decision as to what
4 asset, if any, should be transferred to Mrs. Hammer
5 to satisfy the judgments that she holds against
6 Howard Hammer and 1634. We know he owns the
7 property by virtue of the deeds and things that
8 we've found of record. So what we were trying to do
9 is find a variety of sources from which the judgment
10 could be, the judgments, plural, could be satisfied.
11 But we can't. So I think 1634 is our only source.

12 **THE COURT:** And that would settle both judgments in both
13 cases?

14 **MS. BALLARD:** Yes, sir, it would. And part of the reason
15 I was looking for other assets is because I thought
16 perhaps there would be other assets that would
17 approximate the value of the judgments that would
18 not necessitate the sale of a \$1 million building.
19 But Mr. Hammer has made it pretty impossible for us
20 to find those other assets, so I think a sale of
21 that building would certainly be appropriate. Now,
22 again, it's got to be the interest in SH5, which is
23 the general partner of 1634 Main, a limited
24 partnership. It's got to be Mr. Hammer's interest
25 in 1634 Main. I believe he testified he has one

1 percent interest in that limited partnership, and
2 the 52.75 percent of the dirt that Mrs. Hammer
3 transferred to him as part of the settlement, Your
4 Honor. And we have the deed that we sent to Mr. Tom
5 Pope, and we ran a title search on that on Friday
6 and that deed has not been recorded. But, of
7 course, it has been delivered. So ownership of that
8 52.75 percent of the dirt is in Mr. Hammer, and
9 simply transferring that back to Mrs. Hammer and
10 letting her sell the property would solve an awful
11 lot of problems and would probably make Mr. Alvin
12 Hammer not have to come back again.

13 **THE COURT:** Okay. Mr. Aiken, when is Mr. Howard Hammer
14 going to be back in town?

15 **MR. AIKEN:** He is scheduled for return on the 19th.

16 **THE COURT:** That's a week from today?

17 **MR. AIKEN:** Sir?

18 **THE COURT:** That's a week from today?

19 **MR. AIKEN:** Yes, sir. A week from today.

20 **THE COURT:** Ms. Ballard, why don't you prepare a proposed
21 order regarding ownership of that building?

22 **MS. BALLARD:** Yes, sir.

23 **THE COURT:** You already have it?

24 **MS. BALLARD:** I have an order appointing a receiver and
25 the sale of the building, but I can revise it.

1 THE COURT: Please do.

2 MS. BALLARD: Yes, sir.

3 THE COURT: I think if we ... as you pointed out,
4 typically what I do is I tell people to go ahead and
5 foreclose their lien and go through the foreclosure
6 process.

7 MS. BALLARD: Yes, sir.

8 THE COURT: Of course, that's another lawsuit and it's
9 more expense and everything else for everybody
10 involved. If y'all could settle this by
11 transferring that property, so be it. On the other
12 hand, if you can't settle it I may get involved
13 myself and try to craft some kind of a resolution.
14 But that would be a settlement on the judgments in
15 both these cases. Also, you know, with the
16 provision that each side bear their owns costs and
17 fees.

18 MS. BALLARD: I'll prepare an order to that effect, Your
19 Honor, and have it to you.

20 THE COURT: Okay. Now, if Mr. Howard Hammer's not going
21 to be back until Monday, obviously he won't, you
22 know, won't be able to make a decision. I'm willing
23 to give a deadline for y'all reporting back to me,
24 let's see, today's the 12th so we're talking about
25 ... let's say September 9th. If you can't settle we

1 may have another hearing, we may not and I'll just
2 make a decision and craft an order that I understand
3 may be appealed by either side. Or both sides.
4 I've had that happen before, as well. So you'll get
5 back to me, both parties, get back to me by
6 September 9th.

7 **MR. AIKEN:** Yes, sir.

8 **MS. BALLARD:** Is that a hearing scheduled for September
9 9th?

10 **THE COURT:** No. Just a deadline to respond as to whether
11 or not y'all agreed to this particular revision.
12 Yes, sir, Mr. Hammer?

13 **MR. HAMMER:** Your Honor, I was going to tell you, in the
14 meantime if they do want to get in touch with me I'm
15 glad to talk to them about a full resolution,
16 however they want to do it. If they don't, I
17 understand that.

18 **THE COURT:** Now, in what capacity? You're not
19 representing your brother?

20 **MR. HAMMER:** I'm not representing him. If they want to
21 talk to me, I'll get a lawyer and I'll see whether I
22 can make a loan to Howard that will satisfy them,
23 that will end everything.

24 **THE COURT:** Okay.

25 **MR. HAMMER:** And if they don't want to do that, that's

1 fine. But that's ... I'm just offering as a
2 brother, as a family ... uncle of two children
3 really more than as a brother.

4 **MS. BALLARD:** We're delighted to have that offer.

5 **MR. HAMMER:** I'm more concerned about these two boys than
6 I am about these two parties. They are grownups and
7 know what they're doing. The boys need some help.

8 **THE COURT:** Okay.

9 **MS. BALLARD:** We'd be happy to talk to Mr. Alvin Hammer
10 about that. That's the first opportunity we've had
11 to know that he's interested in assisting us in any
12 way.

13 **THE COURT:** All right. And with regard to the other
14 people that were subpoenaed today, we'll hold those
15 issues in abeyance. And I think one of them, Beth
16 Bernstein's a member of the bar as well?

17 **MS. BALLARD:** Yes, sir. And she called us and indicated
18 that she was going to be providing some documents,
19 but she did not.

20 **THE COURT:** Okay. Let's hold all that in abeyance and in
21 the meantime, Ms. Covington, until we've copied your
22 documents. You don't mind waiting, I think my court
23 reporter can take care of getting those copied. Mr.
24 Hammer?

25 **MR. HAMMER:** May I be excused?

1 **THE COURT:** Any objection to Mr. Alvin Hammer being
2 excused?

3 **MS. BALLARD:** Do you have any documents in response ...

4 **MR. HAMMER:** I don't have any documents. I don't have any
5 documents. All I have is my checkbook, and it's not
6 compiled, it's not in that form. I don't keep my
7 checkbook loans to Howard. I don't have a separate
8 checkbook for that.

9 **THE COURT:** Okay. Anything further?

10 **MS. BALLARD:** Your Honor, I think I can get what I need
11 through Mr. Ackerman, who we still have a motion to
12 compel against. So ...

13 **THE COURT:** If needed.

14 **MS. BALLARD:** If needed. No objection to him being
15 excused.

16 **THE COURT:** Mr. Aiken, you don't mind?

17 **MR. AIKEN:** No, not at all.

18 **THE COURT:** All right. Thank you, sir.

19 **MR. HAMMER:** Thank you.

20 **THE COURT:** Okay, Ms. Covington, if you'll wait, we'll
21 copy these and get them back to you. Yes, ma'am?

22 **MS. COVINGTON:** I should be at a another job right now.
23 Is it going to take a long time? Or I can ...

24 **THE COURT:** No, ma'am, we'll do it right now.

25 **MS. BALLARD:** Your Honor, I also have some proposed orders

1 on the motion to compel against Synovus, who has not
2 appeared today although they had notice of this
3 hearing.

4 **THE COURT:** Hold on to it. I'll hold that in abeyance.

5 **MS. BALLARD:** Okay.

6 **THE COURT:** With the understanding we may be able to
7 settle this fairly soon.

8 **MS. BALLARD:** All right, sir. Thank you.

9 **THE COURT:** Remind me that we held those motions in
10 abeyance.

11 **MS. BALLARD:** I will. Yes, sir.

12 (There being nothing further, the hearing was concluded at
13 10:59 a.m.)

CERTIFICATE

I certify that the foregoing transcript, consisting of 49 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on August 12, 2013, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

January 8, 2014

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

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

Howard Hammer,) CASE #: 2009-CP-40-5911
Plaintiff,)
v.)
Shirley Hammer, et al.,)
Defendant.)

1634 Main, LP,) CASE #: 2010-CP-40-2889
Plaintiff,)
v.)
Shirley Hammer, et al.,)
Defendant.)

HEARING

Thursday, January 9, 2014
9:58 a.m. to 12:15 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 9th day of January, 2014, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
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274

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EXHIBITS

Court's Exhibit Number One	81
(Ballard Ltr re: Conversation with Judge)	
Exhibit One Withdrawn	91
Exhibit One Re-entered	93
Court's Exhibit Number Two	88
(Weissenstein Ltr re: 1/9/14 Hearing)	
Exhibit Two Withdrawn	91
Exhibit Two Re-entered	92
Court's Exhibit Number Three	106
(Ackerman Affidavit)	
Certificate	107

1 **THE COURT:** I'm hoping this is the last time we come to
2 court on these particular cases. As you can see, I
3 had my staff bring it in, this is one of the cases
4 and this is the other case. And I know this is
5 probably aggravating to both sides to have to come
6 back and forth. We had supplemental proceedings.
7 We had a hearing sometime before, and something I
8 wanted to address before we get started, Mr. Hammer,
9 would you please raise your right hand, sir?

10 **MR. HOWARD:** (Complies.)

11 (Mr. Hammer is sworn in.)

12 **MR. HAMMER:** Your Honor, you recall that I am here as ...
13 Mr. Aiken is here representing ... there are two
14 parties involved.

15 **THE COURT:** Yes, sir.

16 **MR. HAMMER:** Mr. Aiken is here representing one side, I'm
17 here representing myself pro se.

18 **THE COURT:** Okay.

19 **MR. HAMMER:** So may I ask why I'm being sworn and no one
20 else is?

21 **THE COURT:** Oh, well I was going to ask you some
22 questions. Mr. Aiken, though, what he just said,
23 who are you representing?

24 **MR. AIKEN:** I represent 1634 Main.

25 **THE COURT:** Okay.

1 **MR. AIKEN:** And the partnerships. And I also represent
2 Mr. Hammer, and Mr. Hammer is my co-counsel on his
3 claim on Howard Hammer.
4 **THE COURT:** Okay.
5 **MR. HAMMER:** There are two different claims ... there are
6 two different cases.
7 **THE COURT:** I understand.
8 **MR. HAMMER:** 1634 versus Howard ... versus ...
9 **THE COURT:** Shirley.
10 **MR. HAMMER:** ... Shirley versus Howard. He represents me
11 in that one. And then there's Shirley versus
12 Howard, and unfortunately there is potential
13 conflict so I have to represent myself in that one.
14 So if ...
15 **THE COURT:** Well, the reason you're before me is because
16 there's a judgment entered in favor of Mrs. Hammer.
17 **MR. HAMMER:** Yes.
18 **THE COURT:** And she's trying to collect, to make it as
19 simple as possible.
20 **MR. HAMMER:** I just was curious as to why, since I'm here
21 representing myself, why you're asking that I'm
22 being sworn and nobody else.
23 **THE COURT:** Oh, because I'm going to ask you some
24 questions, so I want to make sure that we have a
25 record that's clear and complete. At the last

1 hearing there were some representations made by the
2 other side that people who were subpoenaed for the
3 last hearing were told not to come. And the
4 representation, as I understand it, was that you
5 told them not to come. I don't know if that was
6 true or not; that's what I was going to ask you,
7 particularly one attorney apparently was told not to
8 come, allegedly was told not to come.

9 **MR. HAMMER:** Who?

10 **THE COURT:** And also your accountant, who allegedly was
11 told not to come. And apparently, according to Ms.
12 Ballard, again, this is representation, he refused
13 to come on the advice of his attorney. And he said
14 you were his attorney. So I want to get to the
15 bottom of all that. Did you tell people not to obey
16 subpoenas to come to court last time?

17 **MR. HAMMER:** Absolutely not, Your Honor. I would ask
18 this. Anybody who is representing to you that that
19 has been said, then I ask that they be called here
20 into court and that they be sworn ... put under oath
21 and that you obtain from them any information in
22 that regard. Mr. Ackerman was represented by Mr.
23 Aiken.

24 **THE COURT:** Yes, sir.

25 **MR. HAMMER:** Mr. Ackerman, there's an affidavit in the

1 file that was filed by Mrs. Ballard. That
2 affidavit, Mr. Ackerman has informed me that he not
3 only represented ... Mr. Aiken has informed me that
4 he not only ... that he represented Mr. Ackerman at
5 the time that he was called by Mrs. Ballard's
6 office.

7 **THE COURT:** Right.

8 **MR. HAMMER:** Now, I need not go through the fact that when
9 an attorney represents a client, the opposing
10 counsel has no right to call them. That is a
11 violation of the ethical rules, correct?

12 **THE COURT:** I don't know. Because it obviously depends on
13 the context that you're contacting them. You're
14 saying, your point is that Ms. Ballard should not
15 have called him because he's represented by Mr.
16 Aiken; she should have called Mr. Aiken?

17 **MR. HAMMER:** That's correct. That's number one. Number
18 two, Mr. Aiken informs me that in response to a
19 affidavit that was filed with Your Honor that said,
20 by Mrs. Ballard, that said that Mr. ... that upon
21 this improper call, that Mr. Ackerman said that I
22 represented him. Then Mr. Ackerman gave an
23 affidavit that said no such thing happened, that I
24 did not tell Mrs. Ballard that I represented him.

25 **THE COURT:** They didn't show up. That's the proper

1 question. Now, I don't know ...

2 **MR. HAMMER:** I did not ... and there ... I did not advise
3 him anything. I've looked at the subpoena and the
4 subpoena is improper, and I'm informed by Mr. Aiken
5 that Mr. Aiken had made a motion to quash that
6 subpoena. And I'm assuming that that was ... I
7 don't know whether that was heard or that wasn't
8 heard, but if it was an improper subpoena I assume
9 that there ... I don't know what kind of
10 communications, and I certainly don't know that Mr.
11 Aiken can say what communications they had because
12 Mr. Ackerman is not here, he's not subpoenaed here,
13 but I would assume, Your Honor, that if there was an
14 improper subpoena and Mr. Aiken made a motion to
15 quash, then Mr. Aiken would have given him, I don't
16 know this, but I know what I would have done. Mr.
17 Client, Mr. Ackerman, we'll take up the question of
18 whether or not it's a proper subpoena, and after
19 that ...

20 **MR. AIKEN:** Mr. Hammer, I think since you're discussing me
21 and Mr. Ackerman, it might be better for me to
22 address that.

23 **THE COURT:** And, Mr. Hammer, I just want to know if that
24 were true. You've just ...

25 **MR. HAMMER:** No, it's ...

1 **THE COURT:** You said it's not true, so that's ...

2 **MR. HAMMER:** Not only is it not true, but it brings up a
3 matter that, Your Honor, I believe should be
4 inquired into, as to why anyone would make those
5 allegations. They're absolutely not true. They're
6 absolutely false. They are apparently causing this
7 Court a lot of extra, unnecessary time. There are
8 subpoenas that were issued that people did not show
9 up for, that I have no knowledge about.

10 **THE COURT:** Okay.

11 **MR. HAMMER:** But I certainly made no such ... I made no
12 such representation. He is not my client. I did
13 not represent him, and he has affirmed that I do not
14 represent him. Mr. Aiken represented him.

15 **THE COURT:** All right. Mr. Aiken ...

16 **MR. HAMMER:** And I ...

17 **MR. AIKEN:** I'd like to note, just to hopefully clear this
18 up, Mr. Ackerman was subpoenaed ... let me see if I
19 can find that subpoena, there are so many of them in
20 this case.

21 **MS. WEISSENSTEIN:** If I might. This might just make
22 things easier. Your Honor, I have prepared for you
23 a package of materials related to the August 12th
24 hearing and the matters that are before you today.
25 You'll find a subpoena to Mr. Ackerman at tab 11.

1 **THE COURT:** Okay. That's not really the issue. I was
2 hoping just to get an affirmation or denial from Mr.
3 Hammer. And he's denied that he told anybody, and
4 that's all I need.

5 **MR. AIKEN:** Okay. That's fine. I'll ... there's no need
6 for me to go any further.

7 **THE COURT:** Now, at the last hearing Mr. Hammer's brother
8 came. And there was actually, at the end of the
9 meeting, I thought, at least a glimmer of hope that
10 the matter could be settled. And apparently that
11 didn't happen, or ... and apparently not going to
12 happen, unless y'all think it's worth investing some
13 more time. We've blocked out the whole day for this
14 hearing.

15 **MR. AIKEN:** Yes, sir.

16 **THE COURT:** And if you think it's worth investing some
17 time in negotiating, we could do that. Ms.
18 Weissenstein's shaking her head no.

19 **MR. AIKEN:** We'll be happy to discuss any potential
20 settlement. That's fine with us.

21 **THE COURT:** Ms. Weissenstein seems like it's futile, that
22 you talk. I don't know.

23 **MR. AIKEN:** Well ...

24 **THE COURT:** The issue is a building that Mr. Hammer owns.
25 And I think, if I've got it straight, Mrs. Hammer

1 had an interest in the building at one time and, I
2 don't know if she ... does your client still have an
3 interest in that building?

4 **MS. WEISSENSTEIN:** Right. Your Honor ...

5 **THE COURT:** But does she have an interest in the building
6 now?

7 **MS. WEISSENSTEIN:** Right. Where we left it in August was
8 essentially, for the sake of ease I'll just use
9 their first names, Alvin said that he would be
10 willing to discuss with us possible settlement on
11 behalf of his brother Howard. And you had also
12 instructed that maybe we discuss the transfer of the
13 real property of 1634 Main Street to Mrs. Hammer as
14 a manner of settlement. Now, I had conversations
15 with Alvin, and it was essentially concluded that
16 that just wasn't going to happen.

17 **THE COURT:** Okay.

18 **MS. WEISSENSTEIN:** So that was off the table. And then
19 the negotiations to transfer the real property at
20 1634 Main Street to Mrs. Hammer, to put the title in
21 her name, those failed and a motion for summary
22 judgment was filed, I'm sorry, I don't recall, by
23 either Mr. Aiken or Mr. Hammer.

24 **MR. AIKEN:** It was me.

25 **MS. WEISSENSTEIN:** A motion for summary judgment was filed

1 claiming essentially that such a, just a transfer
2 like that could not happen under the South Carolina
3 Code. And so essentially in that regard, settlement
4 discussions failed. Of course, we are still willing
5 to discuss with them the transfer of that real
6 property, but if it's ... if that's not possible,
7 then we'll need to proceed with this ...
8 **THE COURT:** Let's make the record clear as well. The
9 transfer of the property would satisfy the judgment
10 ...
11 **MS. WEISSENSTEIN:** It would.
12 **THE COURT:** ... in the case and this would all be over.
13 **MR. AIKEN:** Almost nine times over, Judge.
14 **THE COURT:** Okay. Nine times over?
15 **MR. AIKEN:** Just about.
16 **MS. WEISSENSTEIN:** Yes. The ...
17 **THE COURT:** How much is the property worth?
18 **MR. AIKEN:** I've heard various numbers. Howard can
19 probably ...
20 **MR. HAMMER:** This ...
21 **THE COURT:** Yes, sir, Mr. Hammer?
22 **MR. HAMMER:** Mrs. Ballard represented to you that the
23 property was worth somewhere between \$900,000 and \$1
24 million. Mrs. Weissenstein has represented to you
25 that we're here on \$150,000. In that regard, Your

1 Honor, this is supplementary proceedings. The
2 purpose, as I understand the supplementary
3 proceedings, is to find out assets sufficient enough
4 to pay the debt. After supplementary proceedings
5 and they find out matter ... and property or assets
6 sufficient enough to pay the debtor are found,
7 there's a procedure to ... there are various
8 procedures to go through from that point.

9 **THE COURT:** I think before we discuss that, there's also a
10 possibility of her just simply foreclosing, you
11 know.

12 **MR. HAMMER:** Well, that ... if I ...

13 **MR. AIKEN:** They have brought a foreclosure action on the
14 judgment lien, so.

15 **MR. HAMMER:** And that's what I was trying to finish and
16 say, Your Honor.

17 **THE COURT:** I'm sorry.

18 **MR. HAMMER:** We came here for supplementary proceedings.
19 Supplementary proceedings have been answered. There
20 have been a lot of collateral matters that would
21 probably have ... that probably are collateral. The
22 focus of this, rather than ... no use for anyone to
23 start throwing spitballs at anybody. The focus of
24 this is to find out what assets the ... I have. And
25 whatever there were assets to cover \$150,000, which

1 is what is before you.

2 **THE COURT:** No, no. Actually I think it was a little ...

3 the debt's a little higher than that. Ms.

4 Weissenstein, wasn't it?

5 **MS. WEISSENSTEIN:** Yes. If I might just ...

6 **MR. HAMMER:** Your Honor, if I may.

7 **THE COURT:** I'll give you a chance to finish. Go ahead.

8 Just to clarify.

9 **MS. WEISSENSTEIN:** All right. Essentially, Your Honor,

10 this is what ... this is kind of where we are. We

11 submitted a proposed order requesting that

12 effectively Shirley be appointed receiver, that she

13 be transferred title to the property at 1634 Main,

14 where that property would then be marketed. Now,

15 obviously any proceeds from the sale of that

16 property would then be deposited into the court and

17 the various judgments would be paid. Any excess

18 funds, of course, would be surplus, and those funds

19 would be litigated in the normal course of

20 procedure.

21 **THE COURT:** What's the amount of the judgment figure?

22 **MS. WEISSENSTEIN:** Now, the amount of the judgments right

23 now, Your Honor, with interest, it's \$355,168.76.

24 We would also ask that due to the unusual nature

25 which these proceedings have gone, Shirley has

1 incurred substantial attorneys' fees and costs
2 related to these supplemental proceedings, in the
3 amount of \$55,385.70, which we would ask also be
4 attached to whatever proceeds are derived from the
5 sale of that real property. Now, both of these
6 gentlemen have made reference to the fact that I've
7 filed a foreclosure matter. That matter is not on
8 the table today. I've actually kind of notified all
9 the other parties and attorneys that we're not
10 discussing that. And the reason why I believe that
11 we don't necessarily even need to approach that
12 situation today regarding the property at 1634 Main
13 Street is because under the statutes you're entitled
14 to execute against that property by virtue of 15-39-
15 10, 15-39-410 and, you know, either we can appoint a
16 receiver to take that property and market it. If
17 you don't want to appoint Mrs. Hammer, I've got the
18 resume of Mara Ballard who is a forensic accountant
19 and office management person, we would propose that
20 she could be appointed receiver. Or you could have
21 the sheriff execute against the property and put it
22 up for judicial sale pursuant to ...

23 **THE COURT:** Well, I'm only anticipating that the property
24 be transferred and the case be over, as far as we're
25 concerned. As the owner, Mrs. Hammer could do what

1 she wanted to with it. But so, but everything else
2 I guess is a possibility, but that's not what I was
3 hoping to do. Mr. Hammer, you wanted to respond?

4 **MR. HAMMER:** Yes, sir. You know, we have gone through and
5 we keep getting representations from the other side.
6 We're here in a court of law, and a court of law has
7 rules. And what we are here about is what they
8 filed about. I enter into evidence their verified
9 petition ... we're not here for \$350,000. I enter
10 into evidence ... I'm going to ask that this be
11 entered, but I be permitted to make a copy of it.
12 This is the only copy we have.

13 **THE COURT:** Okay. What is that?

14 **MR. HAMMER:** This is the verified petition showing what
15 we're here about.

16 **THE COURT:** Okay.

17 **MR. HAMMER:** And may I read it into the record?

18 **THE COURT:** I think it's already part of the record, but
19 ...

20 **MR. HAMMER:** I'd like it to be part of ... I'd like for it
21 to be a ...

22 **THE COURT:** Well ...

23 **MR. HAMMER:** I'm introducing it into evidence at this
24 hearing.

25 **THE COURT:** It's a matter of public record. We can make

1 it an exhibit, but I think the bottom line is you're
2 saying that the petition, as far as supplemental
3 proceedings in both cases, lists the total amount
4 due as \$155,000?

5 **MR. HAMMER:** No, sir, it's a little more.

6 **THE COURT:** Okay.

7 **MR. HAMMER:** There are two petitions. There's one for 155
8 and there's one for 25.

9 **THE COURT:** Okay. Can you pay that, those ...

10 **MR. HAMMER:** Your Honor, I'd like to finish if I may,
11 please.

12 **THE COURT:** All right.

13 **MR. HAMMER:** If I may.

14 **THE COURT:** Well, usually when people start arguing about
15 the amount, they're in a position to pay.

16 **MR. HAMMER:** Your Honor?

17 **THE COURT:** Yes, sir. Go ahead.

18 **MR. HAMMER:** My point here is, and I certainly don't mean
19 to be evasive with the Court, but if we're going to
20 follow the Rules, then we need to do that. If we're
21 going to get off and we're going to have a situation
22 where someone says it's 350 and we want a receiver
23 appointed, and they're going to say that they're
24 entitled to that, we need to follow the law on what
25 that is, and there is law on that. So I'd like to

1 start with this, to what they're actually ... what
2 is before you. And what is before you, and I point
3 this ... and I ask that this be marked into evidence
4 and allow me to make another copy.

5 **THE COURT:** Hold on a second. Hold on. We're kind of
6 jumping ahead of ourselves. But let me state, maybe
7 diffuse the situation, the representations were made
8 in open court and/or by letter. If I got a phone
9 call from an attorney I said, listen, memorialize
10 that and make sure everybody has a copy. But it
11 wasn't, you know, they're just not wild allegations
12 that I got off the street. I mean, they were stated
13 in court.

14 **MR. HAMMER:** That's the problem, Your Honor.

15 **THE COURT:** Yeah.

16 **MR. HAMMER:** They're making an ... they just now said that
17 we're here about 350. Yes, the judgment is 350.
18 But what the proceedings are here about are 180.
19 That's what the proceedings are here about. Period.
20 And, and, if I may, Your Honor, as far as the ...
21 I'd like to introduce these two in evidence because
22 they're directly contradictory to representation
23 that she has made.

24 **THE COURT:** Let me ask you to hold off on introducing
25 exhibits and things like that. Just remind me that

1 we have to get them in.

2 **MR. HAMMER:** All right.

3 **THE COURT:** You know, I understand ... take them back with
4 you to the table, and ...

5 **MR. HAMMER:** I'm going to put it on this table. And, Your
6 Honor, if I may finish, please.

7 **THE COURT:** Yes, sir.

8 **MR. HAMMER:** We are here, supplementary proceedings.

9 Supplementary proceedings are to find out what
10 assets there would be to cover \$180,000 because
11 that's all we're here about today. Now, they have
12 another judgment; they're welcome to find that out,
13 or they're welcome to have just said, well, we found
14 out more than 150, we don't need to bring any
15 further supplementary proceedings. That's up to
16 them. But they have found out sufficient for their
17 180 and sufficient for their 350, and they have
18 admitted it in the transcript.

19 **THE COURT:** All right ...

20 **MR. HAMMER:** If I may finish, Your Honor.

21 **THE COURT:** Yes, sir.

22 **MR. HAMMER:** They've admitted it in the transcript. Now,
23 what they have done is they have brought a
24 foreclosure action. They have a right to bring a
25 foreclosure action. They've filed a foreclosure

1 action in circuit court. That foreclosure action is
2 pending. Contrary to what the ... you know, I hope
3 that these representations are just made out of,
4 accidentally out of ... inadvertently made. But
5 it's false representation that you have before you
6 officially 350. You have before you 180 and this
7 350. It's false that they ... it's false that a
8 foreclosure action has not been filed. A
9 foreclosure action has been filed. It is false that
10 the reason that the action ... you've received a
11 letter on this. It is false that the letter that
12 you received, that the reason that they were
13 withdrawing any motion that they might have made for
14 foreclosure was because ... to give more time.
15 That's false. The reason that they're withdrawing
16 it is because they have filed another action. Mr.
17 Tommy Bunch is representing me in that other action.
18 Mr. Tommy Bunch has accepted service in that other
19 action as of ... I don't know when the action was
20 filed, but it was ...

21 **MR. AIKEN:** December 30th acceptance.

22 **MR. HAMMER:** As of December 30th, the action was filed
23 before then. But Mr. Bunch, there was a problem
24 with, apparently there was a problem with ...

25 **THE COURT:** Let ...

1 **MR. HAMMER:** But the problem is this. There is another
2 action pending. It is black letter law that when
3 there is an action pending for a foreclosure, and
4 there is another action pending in another court for
5 foreclosure, that a second court can't take up where
6 an action that's already ... a matter in an action
7 already filed. So that's ... we're here. We've
8 found out what they needed to find out. They've
9 filed their foreclosure action. And it's ...

10 **THE COURT:** Well ...

11 **MR. HAMMER:** I don't know what else there is about it.

12 **THE COURT:** All right. Mr. Hammer, let me tell you a
13 little background. At the last hearing, you were
14 out of the country it turns out when we had the last
15 hearing. I wanted to address something that I
16 thought you said the first time you were here, that
17 your total income is Social Security; you had no
18 other assets and that you lived off Social Security.
19 And I wanted to found out if that ... if I
20 misunderstood what you said or if that's in fact
21 true, or what. So I was going to ask you that too.
22 What ...

23 **MR. HAMMER:** I have no other ... I receive no income; I'm
24 not allowed to practice law. And if I need to go
25 into that.

1 **THE COURT:** All right, that's fine. And, in fact, your
2 brother, I asked him the same question. He said he
3 had no idea how much money you had or ...

4 **MR. HAMMER:** I have ... we've answered this numerous
5 times. I answered this at the very first hearing.
6 That the properties that I own, that I had, were the
7 two properties that they asked me about the
8 properties at Chateau. Those properties are worth
9 somewhere about \$75,000 apiece, I guess. That's
10 what they are on the books. They may be worth 50,
11 they may be worth 60, but somewhere in that area.

12 **THE COURT:** Uh-huh (affirmative response).

13 **MR. HAMMER:** Those properties, as Your Honor knows, there
14 are two of them. I've got the numbers now, 202 and
15 125.

16 **THE COURT:** Okay.

17 **MR. HAMMER:** Those properties are in the, and I'm speaking
18 as a lawyer right now, as my ... pro se right now.
19 Those properties are in the, and I'll be glad to
20 testify to this if you want to put me under oath,
21 but I've already filed answers to interrogatories.
22 I've already answered this under oath, but just to
23 refresh, those properties are in receivership that
24 Your Honor has ... has ... that is before Your
25 Honor. So there is a property. They asked about

1 the SH's and all of that. We gave them the answers
2 to all of that. There is a property ... they've
3 foreclosed on every piece of property that I have.
4 Now, that foreclosure action needs to go forward.
5 In the meantime, I guess what they haven't brought
6 up, Your Honor, is that in the foreclosure action
7 there's going to be ... there are motions that are
8 going to be made, there are certain things that are
9 required in the foreclosure action under 18-whatever
10 it is. I'm sure Your Honor's familiar with it. And
11 I'm sure that that will come up in the foreclosure
12 action. This process is to the point where, in all
13 due respect, Your Honor, we are taking up your time
14 unnecessarily. We are ... we have found out what
15 they need ... the purpose was to find out what they
16 needed to find out, whether I had assets. They knew
17 that from the very get-go. They knew that I owned
18 that building. They knew that from the very
19 beginning. Now they have decided to bring a
20 foreclosure action on that building, and it should
21 proceed from that point. They have an action
22 pending. They have a lawsuit pending to foreclose,
23 and that would go through a normal process. And in
24 the meantime, Your Honor, there is an appeal
25 pending, so. And there ... so we have done what

1 this Court was charged to do and what this
2 proceeding was charged to do about it. And that is
3 discover assets enough to pay the judgments.

4 **THE COURT:** Now ...

5 **MR. HAMMER:** And we have. And to answer your question
6 again, so I am not receiving any rents because the
7 ... the ... I think that that was clear enough at
8 the last hearing because I read it in the
9 transcript. Mrs. Trotter came here, and Mrs.
10 Trotter verified that the rents from the two
11 apartments were going to the receiver. The receiver
12 was sending them to Ms. Trotter, I think. Correct?

13 **THE COURT:** That was explained because the paperwork
14 submitted by the receiver, who I think if I hadn't
15 signed an order yet I'm going to sign it soon
16 relieving him as receiver and get somebody else.
17 Because he didn't do some of the things he was
18 supposed to do.

19 **MR. HAMMER:** Correct. He did a lot of ... so, so the
20 receiver has ... I haven't done anything, I haven't
21 received any money. I am receiving Social Security.
22 As my brother told you, he has made some loans to
23 me. My mother has made some loans to me. And
24 that's where we are.

25 **THE COURT:** Okay.

1 **MR. HAMMER:** And I live very frugally. This is a coat
2 that I bought from Lourie's before I was married. It
3 is torn on the inside, it is patched, but it looks
4 nice. This is a shirt, as you see. Want to look at
5 the collar?

6 **THE COURT:** No.

7 **MR. HAMMER:** This is a shirt that's probably ... that I
8 had before I was married. I'm wearing shoes that I
9 got when I was married. Those are over ten years
10 old. I don't have any income. I pay \$1100 a month
11 based upon a calculation that I was earning four
12 percent on some amounts of money ... and this is a
13 matter for family court, and we have to go back to
14 that. So, Your Honor, I have ... I'm living ... if
15 you'd like to come over to my house, I have a hole
16 in my ceiling that I cannot repair from water
17 damage. So I'm not living high on the hog. I've
18 gone to New York because of, of, of medical problems
19 and because of a doctor who's seeing me up there, a
20 doctor who's called me back there several times.
21 I've borrowed money to go to New York, all right? I
22 told you off the record what my condition was last
23 time, at the first hearing, and that's continuing.
24 So the bottom line, Your Honor, is this. They have
25 found out what I have, they have subpoenaed all

1 types of people that ... I don't know whether
2 they're asking you now for contempt against those
3 people who didn't show up. I would hope that Your
4 Honor would say that this hearing, we've had enough.
5 I would hope that Your Honor would say that we have
6 found out that Mr. Hammer has an income from Social
7 Security, period. You know that what you're getting
8 out of that income from Social Security. You know
9 that Mr. Hammer has a tax lien because you've gone
10 to the records, that he has a federal tax lien. And
11 I would hope that Your Honor would say, okay, this
12 proceeding, we don't need to go any further. I
13 would hope that Your Honor would say, we need to
14 have this determined in a foreclosure proceeding.
15 And if the foreclosure should ... if it's
16 appropriate for a foreclosure, then the court that's
17 handling it, if it comes to Your Honor, will handle
18 the foreclosure in due course.

19 **THE COURT:** All right. Are you going to have any
20 questions for Mr. Hammer today?

21 **MS. WEISSENSTEIN:** I don't have any questions for Mr.
22 Hammer today. No.

23 **THE COURT:** Okay.

24 **MS. WEISSENSTEIN:** I would like to qualify that answer
25 with, as Mr. Hammer has pointed out, the point of

1 these supplementary proceedings was, number one, to
2 ascertain what assets he has. And then number two,
3 ascertain whether or not any of those assets could
4 be used through the Court's power to execute the
5 judgments to satisfy these judgments. And I'm not
6 going to go through the recitation of how difficult
7 it's been to get any information about those assets.
8 I will point out that we still have our motion for
9 contempt pending against Mr. Hammer. We would say
10 that that motion is still pending. We would request
11 that the relief sought in that motion be granted.

12 **THE COURT:** All right. For clarity of the record, please
13 recite what your motion is.

14 **MS. WEISSENSTEIN:** Right. But ...

15 **THE COURT:** No, no. Please say for the record what the
16 motion for contempt is all about.

17 **MS. WEISSENSTEIN:** I'm sorry?

18 **THE COURT:** Please say what the motion for contempt is
19 about.

20 **MS. WEISSENSTEIN:** The motion for contempt is on the basis
21 that Mr. Hammer was ordered by this Court on several
22 occasions to answer candidly questions involving his
23 assets, liabilities, and to show cause why the
24 property that he owns should not be used to satisfy
25 Mrs. Hammer's judgments. He has not answered those

1 questions. He has not provided the documentation
2 that he was ordered by this Court to provide. He
3 was ordered to submit discovery responses. The
4 discovery responses that he submitted were basically
5 objections, there were no ... there was no
6 substantive information provided. So we would show
7 that he has ... he's still in contempt of court for
8 the various orders of this Court to participate in
9 these proceedings. Regarding the foreclosure
10 matter, if I might very briefly touch on that.

11 **THE COURT:** Yes, ma'am.

12 **MS. WEISSENSTEIN:** We filed that action against Mr.
13 Hammer. And basically because of his staunch
14 refusal to participate in these proceedings, we
15 filed that action based on our own investigation,
16 anything and everything that we could find in order
17 to satisfy Mrs. Hammer's judgment. I have not
18 withdrawn anything. I'm not sure what he was
19 talking about there. But I would like to go back
20 and to point out that supplementary proceedings are
21 not just a question and answer session. They're
22 also a discover the assets and then execute against
23 those assets. And we would again point out that we
24 have discovered that there is an asset located at
25 1634 Main Street, in Columbia, South Carolina. That

1 asset is most likely at a value that will satisfy
2 any judgments that Mrs. Hammer has. Those judgments
3 have all been enrolled. We have executions against
4 the property ...

5 **THE COURT:** Let me stop you here. For clarity of the
6 record again, she has more than one judgment against
7 Mr. Hammer?

8 **MS. WEISSENSTEIN:** Yes. Mr. Hammer is pointing out the
9 two verified petitions were based on judgments that
10 were enrolled in February. And since that time, on
11 June 25th the additional two judgments were
12 enrolled. And as Your Honor has pointed out,
13 throughout the entirety of these proceedings we have
14 represented to the Court and to the parties that we
15 were seeking satisfaction of judgments in the
16 principal amount of \$317,777.17. And then you add
17 the interest to that at the judicial rate is where
18 the \$355,168.76 comes from. What we would show is
19 that in these proceedings, without a separate
20 foreclosure matter, without any other additional
21 matters, in these proceedings this Court has the
22 ability, and I'm sure Your Honor's well aware of
23 this, but I took the liberty of printing it out for
24 you.

25 **THE COURT:** Thank you.

1 MS. WEISSENSTEIN: These are the statutes that address
2 executions against property. And under 15-39-10,
3 when a judgment holder can, through the court,
4 execute against any property, and that includes,
5 subsection C, delivery of possession of real
6 property, which is where my original claim of
7 transfer the deed over and then we can market and
8 sell the property, deposit the funds into the court,
9 if there's any surplus after the judgments have been
10 satisfied then that can be litigated. Under 15-39-
11 310, in a rule to show cause hearing, the
12 application of the property towards satisfaction of
13 the judgment may be had. And 15-39-410, any
14 property may be applied. So what we would show Your
15 Honor is right now, today, you can order that either
16 they transfer the title to that property to the
17 judgment holder, Mrs. Hammer, or you can order that
18 that property be executed for judicial sale by the
19 sheriff's department. And we're okay with either
20 one of those options, Your Honor. The ... if that
21 were the case, then the foreclosure matter that has
22 been filed, but the answer period has not even
23 lapsed at this point yet, can be dismissed because
24 we don't need anything else. We won't need any
25 other property because we're informed and believe,

1 based on our own investigation, without any
2 participation from Mr. Hammer in these supplemental
3 proceedings, that the property located at 1634 Main
4 Street will satisfy Mrs. Hammer's judgments. You
5 know, we would also ... again, as I pointed out,
6 Your Honor, we believe that these proceedings and
7 some of the activities that we've heard today, Mr.
8 Hammer's failure to participate in these proceedings
9 and answer to the orders by this Court, dated April
10 22nd, May 30th, and June 10th, we believe that he
11 can be found in criminal contempt. We believe that
12 the case of Miller versus Miller, a copy of which
13 I'm handing up to you, supports our request that
14 this Court find Mr. Hammer in criminal contempt.
15 And we would also show that under the statute 16-9-
16 330, that Mr. Hammer's refusal or willful failure to
17 obey the subpoenas, refusal to take oath, and
18 refusal to answer questions by being present before
19 the Court, and he refuses to answer questions
20 required, he could be found guilty of a misdemeanor.
21 And, you know, Your Honor, we would show that he
22 hasn't answered the questions. He hasn't produced
23 the information required of him by the Court orders
24 regarding his various assets and liabilities. His
25 answers to everything was, I don't know, or, I plead

1 the Fifth. And so we would request, Your Honor,
2 that you find Mr. Hammer in contempt of court. We
3 would ask that you transfer, either transfer the
4 real property at 1634 Main Street to Shirley Hammer
5 or to a receiver, or that you have a sheriff execute
6 against that property and put it up for judicial
7 sale, as is in your inherent power in this action.
8 Thank you.

9 **THE COURT:** All right. You're welcome. All right, Mr.
10 Aiken, any response?

11 **MR. AIKEN:** Yes, sir. I think it's important to note that
12 we have a piece of property that they've known about
13 from the very beginning. They knew about it from,
14 about the ownership from the underlying lawsuits.
15 We've known about that from the beginning. And it
16 just seems to me that we've gone far afield when we
17 didn't have to, because it was clear to us, it was
18 clear to Mr. Hammer, it was clear to them because
19 Mr. Hammer testified to it at the trials; Ms. Hammer
20 testified to it at the trials; this asset was
21 available, that it was an asset that was in part
22 owned by Mr. Hammer and in part owned by 1634 Main,
23 Limited Partnership. So rather than focus this
24 matter on that asset, we've gone way far afield,
25 talking about limited liability companies that

1 haven't existed in ten years.

2 **THE COURT:** Mr. Aiken, now, I just ... again, for clarity
3 of the record, you know, in supplemental
4 proceedings, I wasn't aware of the property. And
5 Mr. Hammer's testimony, you know, that he didn't
6 have anything but for Social Security, I mean ...

7 **MR. AIKEN:** But ...

8 **THE COURT:** If that's all I know, I can't make a decision
9 on ...

10 **MR. AIKEN:** I understand, Your Honor. I understand. But
11 he wasn't asked directly that question about
12 ownership. And not only that, they knew about it.
13 All they had to do was inform you or get a copy of
14 the transcript, which we have from the underlying
15 trials because of the appeals, and supply the
16 transcript testimony to Mr. Hammer about ownership
17 of 1634. And Ms. Hammer knew it and testified to it
18 herself. So the ... what we've got here is we've
19 got, we've got inquiry into all sorts of matters
20 that really don't make any difference because we
21 have this asset that everybody knows about, that's
22 worth, you know, multiples of the judgment amounts.
23 Now, as far as the answers to the written discovery,
24 I supplied answers on August 12th of 2013, which was
25 the day of the hearing that we had.

1 **THE COURT:** And they were due on July 8th.

2 **MR. AIKEN:** I'm sorry?

3 **THE COURT:** They were due July 8th.

4 **MR. AIKEN:** That's correct. That's correct. And I went
5 through my file very carefully, Your Honor. Went
6 through my emails, went through my file because I
7 wanted to make sure I'm right about this. And, you
8 know, I don't pretend to be infallible, and I'm sure
9 if I'm wrong Ms. Weissenstein will correct me, but I
10 didn't see any letters, I didn't see any emails, I
11 didn't see any motions saying your responses are
12 woefully inadequate, you have to supplement them.
13 Now, I fully intended to provide amended answers and
14 amended responses to the requests to produce, but at
15 the conclusion of the hearing we had on August the
16 12th, Your Honor, Ms. Ballard said, during the
17 testimony in the trial before Judge James the
18 testimony was that it was worth between \$900 and \$1
19 million, which is the building. And what happened
20 with that property, Your Honor, is it's part of the
21 domestic settlement and has to do with matters
22 concerning the domestic settlement. And then Ms.
23 Ballard said, "But he owns it, the deed has been
24 delivered to him. Now, she also has judgments
25 against 1634 Main, LP. It owns the remaining

1 portion of that office building. Now, I think the
2 quickest way to satisfy those judgments would be to,
3 and we have in fact filed a motion to appoint a
4 receiver, to take possession of 1634 Main, both the
5 limited partnership and the real estate and sell it,
6 rent it out, do whatever it has to do, similar to
7 the way was being with the Chateau DeVille property.
8 Mr. Hammer has debts, he's got real estate, he's got
9 income that can be used to satisfy these judgments."
10 I don't agree with what ... that particular portion.
11 "And he simply doesn't want to." Now, you know, if
12 having heard that from Ms. Ballard, and she
13 subsequently submitted a proposed order which
14 provided for just a naked transfer of property. In
15 other words, an order from you, Judge, saying that
16 property is hereby transferred to Ms. Hammer. Okay?
17 So I get that, and the position I'm in is, you know,
18 we're talking about 1634 Main now. That's what's in
19 play, that's what the dispute's about.

20 **THE COURT:** Now, Mr. Aiken, does Mr. Hammer have an office
21 in that building?

22 **MR. AIKEN:** He does.

23 **THE COURT:** Does he have an employee to manage that
24 office?

25 **MR. AIKEN:** He has an employee that comes in parts of

1 different days. Debra Covington.

2 **THE COURT:** All right. What does Mr. Hammer do all day
3 that requires an office and support staff?

4 **MR. AIKEN:** I don't know the answer to that, Judge,
5 because I'm not with him on a daily basis. But I
6 think Mr. Hammer would be happy to answer that
7 question.

8 **THE COURT:** Okay. The reason I asked, the lady came last
9 time.

10 **MR. AIKEN:** That's correct.

11 **THE COURT:** She didn't testify under oath. And I'm trying
12 to remember, there was an assertion that maybe Mr.
13 Hammer's still practicing law. Now, I don't ... you
14 know, I haven't said anything to anybody about that.

15 **MR. AIKEN:** Yes, sir.

16 **THE COURT:** Because that's a fairly serious ...

17 **MR. AIKEN:** Well, I would let Mr. Hammer address that. If
18 you don't mind.

19 **THE COURT:** Because, as you know, unauthorized practice of
20 law is a felony in South Carolina.

21 **MR. HAMMER:** Your Honor?

22 **THE COURT:** Yes, sir?

23 **MR. HAMMER:** The only allegation that I've been practicing
24 law came from the affidavit that was wrongfully
25 obtained, under ... improper, by an improper

1 conversation with Mr. Aiken's client, Mr. Ackerman.
2 And that affidavit is a false affidavit. That
3 affidavit says that Mr. Ackerman said to this, to
4 Mrs. Ballard's office, Mrs. Ballard I think is the
5 one that ...

6 **MR. AIKEN:** Mara Ballard.

7 **MR. HAMMER:** Mara Ballard. That Mr. Ackerman told her
8 that he was practicing law, that I was his lawyer.
9 Mr. Ackerman has an affidavit that Mr. Aiken informs
10 me he has that says, I never told her any such
11 thing. Mr. Aiken informs me that that is not the
12 ... that is not ... that absolutely is an
13 impossibility because he was advising Mr. Ackerman.
14 So that's the only allegation that I've been
15 practicing law. Now, what do I do in that office?
16 I'm trying ... I've moved into one office. We're
17 trying to rent that building and, as Your Honor
18 knows, the economy has been such that it's been
19 difficult to rent buildings, to rent office space
20 downtown in Columbia. I have a ... had until
21 January 1st a property manager. The property
22 manager took care of whatever had to be taken care
23 of in the building.

24 **THE COURT:** Now, who's the property manager?

25 **MR. HAMMER:** That was Mr. Marion Turbeville. He's no

1 longer the property manager, he's ... I'm able to do
2 that because I'm unable, the building is unable to
3 afford to pay for it.

4 **THE COURT:** So you have no tenants?

5 **MR. HAMMER:** We have ... yes, we have tenants.

6 **THE COURT:** Okay.

7 **MR. HAMMER:** But we have ... we were unable to pay the ...
8 with the tenants, with the ... the building is in
9 disrepair.

10 **THE COURT:** Who are the tenants?

11 **MR. HAMMER:** Oliver Gospel Mission, it has half the second
12 floor. The ... Susan Lipscomb has ... not ...
13 between Susan Lipscomb and Oliver Gospel Mission,
14 they have about two-thirds of the second floor. A
15 sixth of the second floor, I occupy one office that
16 I use, and I have permission to walk through the
17 other. And I have storage in the second ... I use
18 storage in the second floor. And the other part is
19 the children's trust, and then the children's trust
20 occupies the downstairs. I do not handle all that,
21 until this year. Mr. Turbeville's handled all of
22 it.

23 **THE COURT:** Now, your tenants pay rent?

24 **MR. HAMMER:** Yes.

25 **THE COURT:** Who do they pay it to?

1 **MR. HAMMER:** They pay it to Mr. Turbeville.

2 **THE COURT:** And who does he give the money to?

3 **MR. HAMMER:** He puts it in the bank and pays all the bills
4 that have to be paid.

5 **THE COURT:** Okay. So you have tenants in a building you
6 own, and you don't get any of the money from it?

7 **MR. HAMMER:** I don't own the building, Your Honor. I am
8 the general partner. I have a leasing agreement
9 with the general partner, exclusive leasing
10 agreement with the general partner. And these were
11 the things that he was going to take care of, until
12 January 1. We're changing as of January 1.

13 **THE COURT:** Now, who's ... I'm confused now.

14 **MR. HAMMER:** This is an LP, a limited partnership.

15 **THE COURT:** Okay. All right. And who's the ... who are
16 the partners?

17 **MR. HAMMER:** The partners for the last ... that's in
18 litigation, Your Honor. But we had ... that was
19 part of the litigation that has occurred. It was
20 the position until last year ... until the ruling
21 actually this past 2013, six or eight months ago,
22 that Mrs. Hammer owned a significant portion of it.
23 Regardless ... and that I owned a portion of it.
24 And then one of my children owned a portion of it.
25 Regardless of who the partners are, the partnership

1 return has not ... there has never been any, for the
2 last several years, and I can't tell you how many,
3 there has not been any money generated by the
4 building. Last year the building ... the year
5 before last the building went into ... was put up
6 for sale because it was unable to pay the taxes,
7 that's for 2011. At the end of 2011 money was used
8 that was collected in 2011 to pay the 2011 bill.
9 2012 came up and there was no money to pay the 2012
10 taxes. 2012 was, it was ... it has now been paid,
11 and monies were borrowed in order to pay that. And
12 there are ... the, the ... the bottom line is that
13 the building does not collect enough money. It's
14 not now collecting enough money to operate on. And
15 so Mr. ... one of the things that we're ... that Mr.
16 Turbeville had suggested is that expenses be cut
17 back, and one of the things that he suggested is
18 that he will help me informally and that I should
19 handle a lot of the building now and that he will
20 collect the rents, he will collect the amounts due
21 to him, he will send them to me with a list of
22 monthly payments, and I'll make those monthly
23 payments. He hasn't sent me that list, but we
24 anticipate the amount that we're going to owe is
25 going to be probably more than the amount that we're

1 receiving each month. He is now in the process of
2 trying to find other tenants for the portion that I
3 am using, and I am paying only a small portion for
4 that which I'm using. So, as to the building
5 itself, it is not a income-producing building.
6 Period. Doesn't produce any income. It is in debt
7 right now to the tune of \$30,000. Has a debt of
8 \$30,000. So that is the answer to the building
9 matter.

10 **THE COURT:** It has a debt. Is there a mortgage on the
11 building?

12 **MR. HAMMER:** There's no mortgage; it has a debt that it
13 ...

14 **THE COURT:** I don't understand it. You borrowed money
15 against the building? You're saying it has a debt,
16 so my first thought, there's a lien against it or
17 there's a mortgage and ...

18 **MR. HAMMER:** The judgment debt came ... there's a judgment
19 lien first.

20 **THE COURT:** Yes, sir.

21 **MR. HAMMER:** That's the judgment lien of the petitioner.

22 **THE COURT:** Okay.

23 **MR. HAMMER:** All right. Subsequent to that judgment, to
24 that judgment debt, this last December the building
25 would have been ... was up for sale for failure to

1 pay the taxes ...

2 **THE COURT:** The property taxes?

3 **MR. HAMMER:** The property taxes that were due in 2012.
4 Hasn't paid the 2013 property taxes. As Your Honor
5 knows, it runs a year behind. So they were up for
6 payment ... excuse me, 2013 has not been paid, and
7 they would have been ... it was up for sale for the
8 2013. There was a loan made for \$30,000 to pay the
9 taxes. That loan was subsequent to the judgment.
10 So the person making the loan did not ... there's no
11 use to put a \$30,000 mortgage on it behind a
12 \$350,000 judgment, \$180 of which we're here now, so
13 there's simply a note to that a person to pay off
14 their amount. And that is being paid off in ...
15 that will be paid off as part of the expenses of the
16 building, just like the electricity problem. The
17 electricity was not able to be paid last month and
18 we had to go to SCE&G, and Mr. Turbeville and I
19 worked out a situation for a payment plan with
20 SCE&G. So that building's not earning any money.
21 Now, getting back to the focus of all of this, it is
22 important that they have filed a foreclosure action.
23 That is a ... that is of the utmost and primary
24 importance because what they came here for is to
25 find out what the assets are, which they already

1 knew, which as Mr. Aiken has pointed out, you know,
2 they've gone through a lot of things apparently to
3 ... I don't know what their reason is, but it
4 appears to be part of their reason is to raise
5 issues and try to disparage my reputation by telling
6 you that I've repre- ... that I am the lawyer, for
7 you to put me under oath to ask whether ... tell me
8 I'm practicing law. Well, I'm not. There's no
9 evidence of that. And the only evidence of that is
10 a false affidavit.

11 **MS. WEISSENSTEIN:** Your Honor, I object. This is the
12 fourth time he has accused my staff member of filing
13 a false affidavit and ...

14 **MR. HAMMER:** Well, it is. It's true that it's a false
15 affidavit, and I have an affidavit from, or Mr.
16 Aiken has an affidavit, do you not?

17 **MR. AIKEN:** I don't have it with me.

18 **THE COURT:** Actually, Mr. Hammer, I agree with you on one
19 issue, that we're here to discover assets. And we
20 have discovered an asset, and my ...

21 **MR. HAMMER:** All right. Well ...

22 **THE COURT:** Let me finish for a second. I'm simply
23 waiting for you to finish talking so I can rule.

24 **MR. HAMMER:** All right, well, I ...

25 **THE COURT:** And hopefully that will be the last time we

1 have to come back here.

2 **MR. HAMMER:** And my, my, my ... I think that we're only
3 talking about the ... what should be done now with
4 the asset. And the asset is, in all due respect,
5 that's out of your hands for now, Your Honor.

6 **THE COURT:** Because of foreclosure?

7 **MR. HAMMER:** Yes, sir.

8 **THE COURT:** I'm not sure that's an accurate statement of
9 law.

10 **MR. HAMMER:** Well, Your Honor, I will tell you why.
11 Because the law is that if they draw a prior action,
12 which they did prior to ... there's not been any
13 filed motion that I've seen that is ... I've got no
14 written motion asking that you, that you sell the
15 property. I've got no written motion asking that
16 the property be transferred. I've gotten no written
17 motion asking any of these things. So there's been
18 no motion filed with you in that regard. Prior to
19 any motion being filed with you on that regard, they
20 filed an action to foreclose, which they have a
21 right to do. So let this thing, let this matter be
22 taken care of in the foreclosure action because all
23 that we're going to have here ... if Your Honor
24 moves ... if Your Honor makes any ruling concerning
25 the property, then there will be another action.

1 There will be two actions going on as to which one
2 ... what should happen to the foreclosure action,
3 how that should go forward. There's a bond that has
4 to be put up, double the amount of the value of the
5 property, which I will remind Your Honor ...

6 **THE COURT:** What do you mean, a bond has to be put up?
7 For what reason?

8 **MR. HAMMER:** When a foreclosure action is brought the
9 statute requires, under 18, and I'm not sure which
10 portion of 18, that double the amount of the, of the
11 property be put up by the person asking to
12 foreclose.

13 **THE COURT:** I'm not aware of that. Unless I'm not
14 understanding the ... yes, sir?

15 **MR. AIKEN:** I think I can address that, Your Honor.

16 **THE COURT:** Okay.

17 **MR. AIKEN:** Both of the actions from which these two
18 judgments arise are on appeal, and they're pending
19 now before the South Carolina Supreme Court. When
20 an action is on appeal, if there is an effort to
21 levy and execute, which is essentially what they're
22 asking you to do, the person requesting levy and
23 execution has to post a bond that is for two times
24 the amount of the value of the property they want to
25 execute against. That's to secure the rights of the

1 judgment debtor who has his case on appeal. Because
2 if that weren't the law, then everybody would be
3 rushing out to execute on their judgment and moot
4 the appeal, get the property, sell it, take the
5 money and run. And that's not how it works when the
6 matter's on appeal. When the matter's on appeal and
7 there's a levy and execution sought and there's a
8 pending execution sale, then the judgment creditor
9 has to post a bond in twice the amount of the value
10 of the property. That's our position on that.

11 **MR. HAMMER:** And, Your Honor, may I go back? You've asked
12 ... we seem to move from one issue to the other.

13 **THE COURT:** Well, if I'm doing that, what I'm doing I
14 guess ... my reputation's that I ask a lot of
15 questions that seem irrelevant or out of left field.
16 I'm trying to make sure that somebody reading a
17 transcript of this in the future understands what's
18 going on.

19 **MR. AIKEN:** Yes, sir.

20 **THE COURT:** Because we know what's going on, but somebody
21 who doesn't know the case won't understand what
22 we're talking about.

23 **MR. HAMMER:** Are you ... Your Honor ...

24 **MS. WEISSENSTEIN:** Your Honor, while he's conferring, if I
25 might address briefly ...

1 **MR. HAMMER:** Your Honor, may we have ...
2 **THE COURT:** I'll give you a chance to respond.
3 **MS. WEISSENSTEIN:** Thank you.
4 **MR. AIKEN:** Just a few matters, Your Honor.
5 **THE COURT:** Yes, sir.
6 **MR. AIKEN:** Do you want to allow Ms. Weissenstein to
7 respond to Mr. Hammer and just have me ...
8 **THE COURT:** Y'all are finished then?
9 **MR. AIKEN:** I have some matters I need to cover as well,
10 Your Honor.
11 **THE COURT:** Okay.
12 **MR. AIKEN:** If that's all right. If Ms. Weissenstein
13 would like to go now and respond to what Mr. Hammer
14 said, that's fine.
15 **THE COURT:** Do you have anything in response?
16 **MS. WEISSENSTEIN:** First of all, Your Honor, I would just
17 like to point out that, I guess in defense of Mara
18 Ballard, there have been accusations that she's
19 filed a false affidavit and that she contacted a
20 subpoenaed party, Bernard Ackerman, improperly.
21 Well, I would like to point out for the record that
22 Bernard Ackerman was subpoenaed for documents. When
23 he didn't provide the materials, having no notice,
24 and still having no notice that Bernard Ackerman was
25 represented by Mr. Aiken, Mara contacted Mr.

1 Ackerman and Mr. Ackerman told her, as set forth in
2 the affidavit that we filed on August the 9th before
3 the hearing, which is in your packet at 11A, he
4 reported to Mrs. Ballard that, My attorney told me
5 not to respond to the subpoena. Who's your
6 attorney? Howard Hammer. That is affidavit
7 evidence. Mr. Hammer has provided a lot of hearsay
8 testimony today that we would just generally object
9 to on the basis that it's hearsay. I would also
10 like to point out that, Your Honor, this is the
11 fourth time I think that we've appeared here for the
12 supplementary proceedings which, as Mr. Hammer
13 points out, one of the main purposes for those
14 proceedings is to ascertain information about the
15 assets. This goes back to my motion for contempt.
16 Today was the first time we've ever gotten any of
17 this information about the levies, liens, rentals,
18 and other information about the property located at
19 1634 Main Street. That just goes to further our
20 allegation and assertion that he is completely
21 disregarding this Court's orders. Regarding his
22 argument that the foreclosure proceedings that we
23 filed just before Thanksgiving somehow take
24 precedent over this action, the rule to show cause
25 that was filed on or around April 22nd of 2013

1 requires the debtor to show cause why property in
2 his possession should not be executed against in
3 order to satisfy the creditor's claim. So we've
4 been seeking execution against property of Mr.
5 Hammer's since April. And so there's no ... there's
6 nothing that I can think of where an after-filed
7 action would somehow come in and usurp your
8 jurisdiction, Your Honor, especially since you would
9 likely have jurisdiction over this other action. If
10 we are successful today in achieving some sort of
11 execution against property, as we're seeking to do
12 in these supplementary proceedings pursuant to the
13 orders for rule to show cause, then that foreclosure
14 matter could be rendered moot. And the reason I say
15 could is because based on information we just
16 received today, apparently some of the main asset
17 that we've all been talking about, that we are
18 informed and believe is unencumbered enough to
19 satisfy our client's debts, we haven't actually been
20 given any information about that. There's no
21 evidence to that, which is why we've had to use
22 these proceedings to try to find out other
23 information that could be used to execute, to
24 satisfy. And because of the abject failure of Mr.
25 Hammer and Mr. Aiken to provide us with the

1 responsive materials that would give us that
2 information, on our own investigation we've taken
3 the step to go ahead and try to foreclose against
4 other properties. In order to do that we had to
5 file a foreclosure matter because there are other
6 judgment creditors out there against these other
7 properties and we needed to protect them. Now,
8 again, all that would be rendered moot and dismissed
9 if we can satisfy the judgments in this action the
10 way we intended to do back in April. And as ...
11 **THE COURT:** What's the total amount of all the judgments?
12 What's the total amount?
13 **MS. WEISSENSTEIN:** I'm sorry?
14 **THE COURT:** Of the ... there's more than one judgment
15 against Mr. Hammer that your client ...
16 **MS. WEISSENSTEIN:** Right. There are ...
17 **THE COURT:** What's the total amount involved?
18 **MS. WEISSENSTEIN:** The total amount of the judgments, with
19 interest, is about \$355,000. To be specific,
20 \$355,168.76. We would also ask that the Court award
21 Mrs. Hammer damages in the collections matter for
22 her attorneys' fees because of the requirement that
23 we go through so many subpoenas and hoops to try to
24 find the information that Howard himself was
25 required to answer by a court order. Those

1 attorneys' fees and costs are \$55,385.70. And that
2 has no interest on it. Regarding the outstanding
3 subpoenas, Mr. Ackerman, who has the tax information
4 for at least 1634 Main, LP, we believe Mr. Hammer
5 personally, we believe possibly for other entities
6 in which Mr. Hammer ... you know, we believe that
7 since he didn't provide that information to us,
8 that's why we subpoenaed Mr. Ackerman. He never
9 responded. He didn't show up for court pursuant to
10 a second subpoena. They filed a motion to quash
11 against that. We have subpoenaed NBSC, Synovus
12 Bank, which we believe has bank records and
13 information that Mr. Hammer was under court order to
14 provide to us and he didn't. He instructed Synovus
15 not to respond. We have a motion to compel that is
16 outstanding.

17 **MR. HAMMER:** Your Honor, I object to that. There's no
18 evidence that I instructed Synovus anything.
19 Period. That's her ... that is pure ... you know,
20 Your Honor, she wants to testify under oath, let her
21 take the stand. Otherwise, I object to all this
22 that she has to say. She wants to testify under
23 oath about the subpoenas, let her take the stand.
24 If this is, if this is the presentation on the, on
25 the, on the matter of the contempt, which it sounds

1 like it is, then I ask that it ... first I ask that
2 it be dismissed. I'm moving right now that the
3 contempt matter be dismissed for this reason.
4 There's a motion for contempt. There was no
5 affidavit for contempt. There was no affidavit
6 attached to the motion. It's purely a motion.
7 There is no evidence at all that was attached to it.
8 In order to have a contempt you have to have some
9 evidence. There's been no ... and I have to have a
10 chance to respond. I have to know what the charges
11 are against me. There has been none of that. And
12 as a matter of fact, we are prepared to show that
13 there cannot be any of that. We are prepared to
14 show that there is no contempt. And if she wants to
15 put up evidence on that, let her take the stand and
16 let us ask questions. Otherwise, we ask that the
17 matter be, that that matter be dismissed and we move
18 on to the other matter of, the technical matter of
19 the, of the, of the ... and we have some motions in
20 connection with that, of her question about the, the
21 receivers and what you can or cannot do. So we
22 would ask ... we would move now, I would move that,
23 from my perspective, on the contempt against me and
24 my case, that that be dismissed immediately.

25 **THE COURT:** Well, let me state that generally contempt is

1 an issue between parties and the Court. And
2 occasionally attorneys will ask that somebody else
3 be held in contempt, but obviously I have to make
4 that determination. With regard to the contempt
5 issues, I'm going to take that under advisement. I
6 wasn't going to rule today on any contempt issues.
7 So, and I don't know how I'm going to rule. If we
8 end the case, I'm going to ... obviously there's no
9 need to hold anybody in contempt, but ...

10 **MR. HAMMER:** Your Honor ...

11 **THE COURT:** Yes, sir.

12 **MR. HAMMER:** If you're ... before you make a ruling on the
13 contempt issues, we're asking for a hearing.

14 **THE COURT:** That's right.

15 **MR. HAMMER:** On the contempt. If Your Honor ... we're
16 asking for ... our motion would be to dismiss the
17 contempt. If Your Honor denies that motion, then
18 we're asking for a full hearing. We will bring
19 witnesses at that time.

20 **THE COURT:** Okay.

21 **MR. HAMMER:** On the contempt. But we're asking that Your
22 Honor, and we understand that Your Honor is not
23 going to just issue an order holding me or anybody
24 else in contempt. Your Honor wouldn't ... he's just
25 going to rule on whether or not that it's going to

1 be dismissed, and have a hearing if Your Honor's not
2 dismissing it. Is that correct?

3 **THE COURT:** Well, I'm going to take the contempt under
4 advisement.

5 **MR. HAMMER:** I understand that, Your Honor, but ...

6 **THE COURT:** And we understand that if we have to go there,
7 you'll be afforded counsel and you will in fact have
8 another hearing.

9 **MR. HAMMER:** So, just for my own clarity, if Your Honor
10 ... Your Honor's taking under ... the motion to
11 dismiss under advisement.

12 **THE COURT:** All the contempt issues are under advisement.

13 **MR. HAMMER:** And if Your Honor decides ... before issuing
14 an order of contempt, Your Honor will permit us a
15 hearing?

16 **THE COURT:** That's correct. I think you're entitled to
17 that. But again, I'm taking that under advisement.
18 I wasn't even prepared to deal with contempt issues
19 today.

20 **MS. WEISSENSTEIN:** Okay. I was ...

21 **THE COURT:** I wanted to cut to the chase. And what I
22 normally do is, Ms. Weissenstein, at the end ... you
23 said you have no questions for Mr. Hammer. I was
24 going to ask what relief you request and then I was
25 going to rule. And, but the lawyers want to make

1 sure the record's clear and that everything's out
2 there. So I'm going to listen to y'all as long as
3 you want to talk but, you know, I'm prepared to
4 rule.

5 **MS. WEISSENSTEIN:** Your Honor ...

6 **THE COURT:** Go ahead, you want to make the record clear.
7 And of course everybody has a right to a full
8 record. Go ahead.

9 **MS. WEISSENSTEIN:** I understand. And in that regard, Your
10 Honor, what I would like to essentially say is this.
11 Our goal today is to satisfy the judgments. We
12 believe, as I've stated before, that in this rule to
13 show cause matter you have the authority to execute
14 against real property owned in whole or in part by
15 Howard Hammer. You asked him earlier about the
16 ownership of the property at 1634 Main. What we
17 would show is that evidence in this matter has been
18 presented that 52.75 percent undivided interest in
19 the real property at 1634 Main was transferred to
20 Howard Hammer by a deed executed February 27th,
21 2013; that the ownership interest that Mrs. Hammer
22 had in 1634 Main, LP was transferred from Mrs.
23 Hammer to Mr. Hammer by instrument of assignment
24 dated February 27th, 2013; and we would show that
25 SH5, LLC, which is the general partner of the debtor

1 1634 Main, LP, is a one-member LLC and that one
2 member is Howard Hammer. So that's kind of just to
3 clarify the record and answers that question.

4 **THE COURT:** Okay. While I'm thinking about it, before I
5 get lost, the judgments that Mrs. Hammer has against
6 Mr. Hammer, could you outline what those judgments
7 are and where they came from?

8 **MS. WEISSENSTEIN:** Yes.

9 **THE COURT:** Just briefly.

10 **MS. WEISSENSTEIN:** The judgments in this matter, and I'm
11 speaking only as to principal, we have a judgment
12 dated January 29th, 2013, against 1634 Main, LP and
13 Howard Hammer jointly and several in the amount of
14 \$25,000. There is a judgment dated June 3rd, 2013,
15 against 1634 Main, LP in the principal amount of
16 \$102,032.87 for a total judgment against 1634 Main,
17 LP of \$127,032.87. Principal against Howard Hammer,
18 judgment dated January 29th, 2013, \$130,000.
19 Principal judgment against Howard Hammer dated June
20 3rd, 2013, \$60,744.30, for a total judgment against
21 Howard Hammer individually of \$190,744.30. Under
22 that regard, the principal due to Shirley is
23 \$317,777.17. At the judicial interest rate we have
24 interest in the amount of \$17,391.59, so the total
25 amount of judgments which Howard ... for Howard

1 Hammer individually as of today, principal and
2 interest, \$202,064.53. Principal and interest
3 against 1634 Main, LP as of today is \$133,104.23.
4 And again, we would request that this Court award
5 Mrs. Hammer her attorneys' fees and costs related to
6 this collections matter in the amount of \$55,385.70.

7 **THE COURT:** In what court did she get those judgments?

8 **MS. WEISSENSTEIN:** I'm sorry?

9 **THE COURT:** What court issued those judgments?

10 **MS. WEISSENSTEIN:** The Richland County Court of Common
11 Pleas, sir.

12 **THE COURT:** Okay.

13 **MS. WEISSENSTEIN:** Judge James.

14 **THE COURT:** So a circuit judge signed those individually.
15 Okay.

16 **MS. WEISSENSTEIN:** Yes. And the sheriff has issued ...
17 or, executed those judgments. They've been filed.
18 And in regard to the appellate matter and, you know,
19 there's some concern by the Court regarding an
20 appellate bond be posted. We are certainly willing
21 to explore that and do what the Court decides we
22 need to do in order to satisfy the Court that all
23 the I's are dotted and T's are crossed, if the Court
24 does elect to execute against property in order to
25 satisfy these judgments for Mrs. Hammer. Thank you.

1 **THE COURT:** Okay. All right, Mr. Aiken, you wanted to
2 respond?

3 **MR. AIKEN:** Your Honor, just briefly. I think what
4 they're saying, and I'm not sure about this but I'm
5 trying to distill down what they're saying, give us
6 a receivership or make a judicial transfer of the
7 property to Mrs. Hammer or order an execution
8 against the 1634 Main property. That's my
9 understanding of what they're talking about. Now,
10 you know ...

11 **THE COURT:** She says that's accurate, so.

12 **MR. AIKEN:** Is that correct?

13 **THE COURT:** Yeah.

14 **MR. AIKEN:** I'm correct about that?

15 **MS. WEISSENSTEIN:** Yes, Your Honor. Basically anything
16 that this Court, anything that's within its power to
17 do to satisfy our client's judgments, we are on
18 board with that plan.

19 **THE COURT:** Okay.

20 **MR. AIKEN:** I went through my file very carefully this
21 morning, and I didn't see a motion to have a
22 receiver appointed. I think it may have been
23 mentioned in the rule to show cause ...

24 **THE COURT:** Well, just let me say. I'm not going to
25 appoint a receiver.

1 **MR. AIKEN:** Okay.

2 **THE COURT:** That's another expense ...

3 **MR. AIKEN:** Layer of expense, yes, sir.

4 **THE COURT:** And among other things. I mean ...

5 **MR. AIKEN:** Yes, sir. And then, as to the second matter,

6 which is the judicial transfer of ownership to Mrs.

7 Hammer, with all due respect, Your Honor, under the

8 series of statutes concerning supplemental

9 proceedings, which is SC Code Section 15-39-310 and

10 following, I don't see any grant of authority to you

11 to just make a naked transfer of real property. I

12 don't think you have that power, Judge. And like I

13 say, I say that with all due respect, but I don't

14 think you do under the statutes. Now, as far as

15 your entering an order now for execution on that

16 real property, the problem with that is that real

17 property is owned by a limited partnership in which

18 individuals other than Mr. Hammer have interest,

19 including Mr. Hammer's children. Am I correct about

20 that?

21 **MR. HAMMER:** My son.

22 **MR. AIKEN:** One of your sons has an interest in that

23 property.

24 **THE COURT:** Isn't that child a minor?

25 **MR. AIKEN:** Yes.

1 MR. HAMMER: Yes.

2 THE COURT: And he has a guardian?

3 MR. AIKEN: No, he does not have a guardian at this point.

4 We have ... the children are involved in that D&M
5 Chateau case.

6 THE COURT: I understand that.

7 MR. AIKEN: And Jay Elliott is the guardian in that case.

8 THE COURT: But he's a ... if he's a partner in an ongoing
9 business or owns real estate, I mean, somebody has
10 to act for him.

11 MR. AIKEN: Yes, sir.

12 THE COURT: All right. Who acts for the son?

13 MR. HAMMER: Your Honor, in the family court there was a
14 guardian appointed for the children. The guardian
15 was Richard Whiting. I don't really know Mr.
16 Whiting.

17 THE COURT: I do, yes.

18 MR. HAMMER: All right. Mr. Whiting's term ended in June
19 of this year. There's a ... Mr. Whiting, there's a
20 question about whether or not he will be
21 reappointed, whether it necessary to be reappointed.
22 My impression is that, from what I've gathered from
23 the court, from Mr. Whiting, is that that is not
24 going to be something that he's going to be anxious
25 to do. So that's kind of up in the ... that is up

1 in the air. So to answer your question as to
2 whether ... as to guardian, not guardian ad litem
3 ...

4 **THE COURT:** Yes, sir.

5 **MR. HAMMER:** As to your question, Mr. Whiting was the
6 guardian until June. His guardianship ran out in
7 June. The court has asked for a report from him on
8 certain matters and given him ... made him guardian
9 for those specific matters until that report is
10 heard. So the child does not have a guardian, as I
11 understand you to be talking about.

12 **THE COURT:** Yes.

13 **MR. HAMMER:** As a guardian ad litem, there's been no
14 guardian ad litem that they've requested to be
15 appointed in this action.

16 **THE COURT:** Now, how old is your son?

17 **MR. HAMMER:** He's 13. Now, as far as the guardian ad
18 litem, there's been no action that they've requested
19 ... and that's the importance of the, of the
20 foreclosure action. Because in the foreclosure
21 action, those matters will be all taken up. The
22 guardian ad litem will be appointed. All of that
23 will be done in due course. There are other pieces
24 of property that they've asked to foreclose in the
25 foreclosure action. It's possible that those other

1 pieces of property will satisfy the judgments. We
2 don't know. And that foreclosure action is brought
3 before any motion has been made before Your Honor
4 regarding, as Mr. Aiken points out, concerning the
5 matters that they've talked about now. And
6 concerning the matters they're talking about now,
7 they haven't offered any proof. They haven't
8 offered anything under ... there's been no
9 testimony. All there has been is her making
10 accusations. There is no, there is no, there is no
11 sworn testimony except my testimony that you have on
12 this matter. And in connection with that, Your
13 Honor, if you'll go through ... we just received
14 the, the, the hearing transcripts yesterday, through
15 no fault of the court reporter. I understand she
16 was busy. I'd asked for that in I think October
17 28th. I told her that we would need it by ...

18 **THE COURT:** Now ...

19 **MR. HAMMER:** Let me finish.

20 **THE COURT:** Let me ask which hearings are those transcripts
21 of?

22 **MR. HAMMER:** We only have transcripts of two of the three
23 hearings that I asked for.

24 **THE COURT:** And were you present at those hearings?

25 **MR. HAMMER:** I was present at one of the hearings.

1 **THE COURT:** Okay. All right.

2 **MR. HAMMER:** But let me ...

3 **THE COURT:** I'm sorry, I ...

4 **MR. HAMMER:** But what I'm saying is the court reporter is
5 busy. I'm not blaming the court reporter. What I'm
6 saying is because of circumstances beyond anybody's
7 control, we didn't get those until last night and we
8 haven't had a chance to review them. I suspect that
9 they're going to impact on everything that has to do
10 here. For instance, Your Honor ...

11 **THE COURT:** Hold on a second. Let Mr. Aiken finish.

12 **MR. HAMMER:** Okay, I'm sorry.

13 **THE COURT:** And I, you know, I ...

14 **MR. HAMMER:** I'm sorry.

15 **THE COURT:** I don't know if you know much about my past.
16 My first job out of law school I worked in the U.S.
17 Senate, and they've changed the rules in the U.S.
18 Senate. They don't allow filibusters the way they
19 used to back in those days. Actually, William
20 Proxmire filibustered something and I was up with
21 him for 16 hours straight, so ... I had a lot of
22 patience to let them argue for a long time. If you
23 argue for less than 16 hours, I'm good. So, but ...

24 **MR. HAMMER:** I apologize, Your Honor. I'll try to be more
25 succinct.

1 **THE COURT:** Well, my point is I've been ready to rule for
2 about an hour and a half. And nothing has been said
3 in the last hour and a half that's changed my mind
4 one way or the other, so. But I want everybody to
5 have a chance to get a full record because I
6 suspect, even though I think this will be ended
7 today, it may not be quite frankly. So the record
8 needs to be clear. And that's why I'm letting
9 everybody talk as long as they want to talk.

10 **MR. HAMMER:** Would Your Honor give us some idea of what
11 Your Honor is inclined to do so we know whether we
12 have to put up any evidence in connection with this
13 in order to make a full record?

14 **THE COURT:** As soon as y'all stop talking I'm going to
15 rule, and you'll have more than an indication of
16 what I'm going to do. Mr. Aiken, please proceed.

17 **MR. AIKEN:** I think I went over the receivership and I
18 went over the just naked transfer of the property.
19 And when we get to the execution, I've read over
20 pretty carefully the series of statutes concerning
21 supplemental proceedings. And I believe, or it is
22 my interpretation of those, that you do have
23 authority to execute, but it's my view that you only
24 have authority to execute at the conclusion of a
25 foreclosure action on the judgment. Now, the

1 foreclosure action is obviously essential in this
2 case because what we're dealing with is third-party
3 rights, the Hammers' child, who has an interest in
4 the property. How can that child's interest be
5 protected? He's not here, he doesn't have a
6 guardian ad litem involved in this case to protect
7 his interest, he's not a party to this case. The
8 way you protect third-party interests is you tell a
9 person, well, you might be right, you might be able
10 to execute. But you need to go through the process
11 of foreclosure on your judgment lien to make sure
12 that all third-parties who are not parties to your
13 supplemental proceedings, that their rights are
14 protected. Because obviously Mr. and Mrs. Hammer's
15 son has a right to have his interest protected
16 before the property is sold on an execution sale.
17 So that's all the more reason in my mind that the
18 foreclosure matter needs to go forward. And this
19 matter needs to be ended and everybody needs to
20 focus their attention and their efforts into that
21 matter.

22 **THE COURT:** Okay, now let me stop you for one minute.

23 **MR. AIKEN:** Yes, sir.

24 **THE COURT:** Can you put your hands on the order of
25 reference? The order of reference, the order

1 referring this matter to the Master in Equity?

2 **MS. WEISSENSTEIN:** Yes. Your Honor, I would just like to
3 also say that Mrs. Hammer is the legal primary
4 custodial parent of the minor child. We would move
5 that if the Court needs to appoint a guardian, that
6 she can be considered. We can also say that the
7 child, you know, the Court can appoint another
8 guardian. We haven't made that motion because Mr.
9 Hammer and Mr. Aiken have not provided enough
10 information or evidence regarding the child's
11 participation or ownership in ...

12 **THE COURT:** Let me explain why I'm asking for the order of
13 reference. Mr. Aiken raised the issue of what power
14 I have, and that's an interesting and a good point.

15 **MS. WEISSENSTEIN:** Here is one of the orders of reference.

16 **THE COURT:** Yeah, we'll give you a minute to find those.

17 **MR. AIKEN:** I'm looking at it, Judge.

18 **THE COURT:** Well, yeah. The reason being, typically once
19 a case is referred to the Master in Equity we have
20 all the power of the circuit court sitting non-jury.
21 However, the order of reference can certainly limit
22 or specify what powers I do or don't have. And I
23 want to look at both of them just to refresh my
24 recollection, to make sure what I can and can't do,
25 quite frankly, in this proceedings. This is a

1 surprise. The stacks I have, it would take me
2 probably 30 minutes to find it. Y'all are better
3 organized than I am. Okay. Give me one moment,
4 please. Okay. Now, Mr. Aiken, which order do you
5 have, the one only dealing with 1634 Main?

6 **MR. AIKEN:** I think the text is the same. I've got the
7 one dealing with Howard Hammer.

8 **THE COURT:** Yeah, that ought to do it. And the other one
9 ...

10 **MR. AIKEN:** I believe the text is the same. It appears to
11 be.

12 **THE COURT:** Okay. Now, when you're looking at the
13 paragraph that basically says what power I have to
14 dispose of the matter, I think that's dispositive of
15 that particular argument. I don't have the
16 authority to do what they're asking because ... I
17 do, I do have the ... based on the orders of
18 reference. Unless I signed it myself, which ...

19 **MR. AIKEN:** Well ...

20 **THE COURT:** Which I think it's ... yeah, it's signed by
21 Judge Manning, one of them, and Judge ... well,
22 actually Judge Manning on both of them, so. He's my
23 circuit judge, he has the authority to tell me what
24 I can and can't do. And it's pretty clear that
25 under that order of reference signed by a circuit

1 judge, that I have the authority to do what they
2 asked.

3 **MR. AIKEN:** Well, may I be heard just a moment on that
4 point?

5 **THE COURT:** Yes, sir.

6 **MR. AIKEN:** My argument is this. It says, Motions to sell
7 all or certain property of judgment debtor in
8 satisfaction of the plaintiff's debt. The problem
9 we have is here there's a part owner in what's going
10 to be sold who's not a judgment debtor, so the
11 judgment debtor does not own that property alone.
12 There is an unrepresented non-party, the son of the
13 Hammers, who owns part of the property. And he has,
14 he has a right, if he so chooses, to say I like my
15 interest in 1634 Main, I don't want the property
16 sold, it's not in my best interest, those matters
17 that would be raised by a guardian ad litem in the
18 foreclosure action on the judgment lien. And, you
19 know, so we're talking about an unrepresented non-
20 party child who they're asking you ... who owns part
21 of property that they're asking you to sign an order
22 for sale. Well, I don't know what's in the child's
23 best interest. The child's not here, the child's
24 not a party, the child's not represented, no
25 guardian ad litem. All that would be taken care of

1 by going forward with the judgment lien. It's ...
2 Your Honor, it's kind of like a situation where you
3 have a piece of real property and there's a mortgage
4 on that real property, and maybe there's equity in
5 that real property, and I get a judgment and I have
6 a judgment lien. I can't go hold a gun to the
7 mortgage company's head and say, Judge, sign this
8 order, sell this property, because the mortgage
9 company may think, we've got a mortgage, this guy's
10 been paying on a regular basis, we don't want you to
11 sell the property, and we have an interest in it and
12 we have a right to say no. Just like this child
13 does. Just like this child does. And, you know, if
14 at the end of the day, in the foreclosure action on
15 the judgment lien, the property has to be sold, then
16 so be it, the property has to be sold. But the
17 minor child's rights are protected, the minor
18 child's right to say I've got an interest in this
19 property and I don't want it sold. It's not fair to
20 a third-party non-party child to sell the property
21 if that might not be in their best interest. And we
22 don't know the answer to that, Judge. We don't know
23 the answer to whether that's in their best interest.
24 And the way we do that is we do the, the foreclosure
25 on the judgment lien, Judge.

1 THE COURT: Okay.

2 MR. HAMMER: Your Honor, and I have a matter too before
3 Your Honor rules.

4 THE COURT: Okay. Now, Mr. Hammer, and I hope Ms.
5 Weissenstein understands, I'm going to give you the
6 last word. So, when you finish I'm going to rule.

7 MR. HAMMER: Before we do anything else, at one time Your
8 Honor had ... there was supposed to be a status
9 conference. I received a notice that said status
10 conference for November 27th. That was put off.

11 THE COURT: Yes, sir, because of ...

12 MR. HAMMER: Your Honor, there are matters that I would
13 prefer not to have on the record that I would like
14 to discuss at a status conference for 15 minutes
15 right now before I come back. Otherwise, I need to
16 make a full record.

17 THE COURT: Okay.

18 MR. HAMMER: And we have some other motions. And I'd like
19 to have a short status conference with Your Honor.

20 THE COURT: Why would you not want them on the record?
21 Maybe that ...

22 MR. HAMMER: I think that if Your Honor will allow me to
23 have a status conference it will become apparent.

24 THE COURT: With counsel present?

25 MR. HAMMER: Yes, all of us.

1 **THE COURT:** Okay. We can just have Ms. Reibold take her
2 ears off and we can talk right here.

3 **MR. HAMMER:** Your Honor, I think it's better, that this is
4 better without anyone else ... this would be
5 something that would be a private matter. Your
6 Honor, I ... as a ... not as an officer of the court
7 but as a representative of the court, I am trying to
8 keep this from getting into a situation that I think
9 would be unpleasant for all that I don't want to get
10 into.

11 **THE COURT:** I don't understand.

12 **MR. HAMMER:** Well, I'd like to explain that to you in, in,
13 in a ... if Your Honor would like to have the people
14 here leave for a moment, I would ...

15 **THE COURT:** No, I ...

16 **MR. HAMMER:** May we have a sidebar?

17 **THE COURT:** Sure, I guess. I'm trying to ...

18 **MR. HAMMER:** All right. And this is off the record?

19 **MS. WEISSENSTEIN:** We can go off the record, then if we
20 need to we can go back on.

21 **THE COURT:** All right. Turn your ears off.

22 (Off the record, 11:25 a.m. to 11:27 a.m.)

23 **THE COURT:** Okay, Mr. Hammer, go ahead.

24 **MR. HAMMER:** Your Honor, from the tone of what you're
25 saying, and I'd hoped that we would be able to move

1 this, as I said earlier, that Your Honor would
2 accept that what we have is a matter simply of
3 whether or not there is a ... that what the assets
4 are, that they've found the assets, that there is a
5 foreclosure action pending, that there's been no
6 motion made in this court prior to the foreclosure
7 action. Although you have authority, it's not just
8 blanket authority; you've got a motion being made.
9 It is authority based upon what they asked. I have
10 thought that Your Honor would, and that's why I
11 asked for a ruling on that. I had thought, because
12 the law is pretty clear, that when one court has
13 taken jurisdiction ... and I ask that Your Honor
14 take judicial notice of the fact that there has been
15 a filing of a foreclosure action as I understood it
16 from Mr. Bunch in November of this year, that he's
17 accepted service as of the 30th of ... as of the
18 31st of last year, and that they are going to go
19 ahead with the foreclosure action. That the
20 foreclosure action involves all of the properties
21 that have been discussed, all the ones that I've
22 given information on. And I have given information
23 on all of them. I had anticipated and hoped that
24 Your Honor would find this in the end, find that
25 there's been property, just as they said there's

1 been property, and that Your Honor would determine
2 that either this needs to be continued until after
3 the foreclosure ... determination of the foreclosure
4 action or that this needs to be dismissed. So I
5 again ask for you to rule on my motion to dismiss
6 this, or in the alternative to continue this before
7 I make any other motions.

8 **THE COURT:** Okay. Those motions are denied.

9 **MR. HAMMER:** All right.

10 **THE COURT:** Please proceed.

11 **MR. HAMMER:** Your Honor, in order for the foreclosure
12 matter to be put on the record, I need to call ...
13 unless Your Honor would take judicial notice and
14 they will stipulate that there is a foreclosure
15 action pending, prior to any motion made, then I
16 need to call Ms. Weissenstein to the stand.

17 **THE COURT:** Is there any disagreement about that, Ms.
18 Weissenstein? Is that accurate, that there's a
19 foreclosure action pending regarding this particular
20 ...

21 **MS. WEISSENSTEIN:** We stipulate that we have filed an
22 action to foreclosure against multiple properties.
23 I believe we filed that action on November the 6th
24 of 2013. We would also again reiterate that ...

25 **MR. HAMMER:** I'd like ...

1 **MS. WEISSENSTEIN:** ... these matters were filed first,
2 that the rule to show cause was for purposes of
3 finding property upon which there can be execution
4 and that if these matters are resolved then that
5 foreclosure matter will be rendered moot and
6 dismissed by the plaintiff.

7 **MR. HAMMER:** Your Honor, what she has ... I asked for a
8 stipulation, not an argument. The pure stipulation
9 that I ask that the Court make is they stipulated
10 that a foreclosure action asking for foreclosure of
11 all the properties was filed on November 6th. Do
12 you stipulate to that?

13 **MS. WEISSENSTEIN:** Yes.

14 **MR. HAMMER:** In open court. All right. So we now have a
15 stipulation that the foreclosure action was filed
16 prior to any motion and prior to the setting of this
17 hearing, as a matter of fact.

18 **MS. WEISSENSTEIN:** I did not stipulate to that, that is
19 incorrect.

20 **MR. HAMMER:** Your Honor did not set this hearing for
21 December the ... actually January the 9th until
22 after November the 6th. You had set it for another
23 time and then you changed it.

24 **THE COURT:** There was a reason we changed it, Mr. Hammer,
25 because it was the week of Thanksgiving week. And

1 also a religious holiday for some people also was
2 around that time, if I'm not mistaken.

3 **MR. HAMMER:** I don't remember a religious holiday, but
4 that action was a status conference that you set for
5 November 27th.

6 **MS. WEISSENSTEIN:** We filed a notice of hearing on October
7 the 14th, 2013, establishing that these proceedings
8 would be held today. You were served with that
9 notice, sir.

10 **THE COURT:** Now, hold on a second.

11 **MS. WEISSENSTEIN:** On October the 11th, 2013.

12 **THE COURT:** Ms. Weissenstein, I'm going to let Mr. Hammer
13 have the last word but I ... that's why that date
14 was changed. I don't think there was ... unless I'm
15 mistaken, there was at least ... and I don't have a
16 November calendar in front of me, but that was only
17 a day or so before Thanksgiving that same week or
18 the week after, very close to Thanksgiving. And ...

19 **MR. HAMMER:** Your Honor, give me just a moment.

20 **THE COURT:** I didn't realize I'd be taken to task for
21 doing that, so. Now, Mr. Hammer, you have yet to
22 address what you addressed at the sidebar, which I
23 need ... we need to make a record for that.

24 **MR. HAMMER:** I'm not ready to do that, Your Honor.

25 **THE COURT:** Let's go ahead. I'm anxious to make a record

1 of what ...

2 **MR. HAMMER:** I have what I need.

3 **THE COURT:** No, no, hold on a second. Hold on a second.
4 Before I let you finish, Mr. Hammer indicated that I
5 had a conversation with Ms. Desa Ballard, who
6 represents Mrs. Hammer, and that she and I engaged
7 in ex parte conversation, which of course is
8 inappropriate. And, of course, I think I remember
9 asking Mrs. Ballard to memorialize our conversation
10 and send a copy to everybody involved to cure any
11 potential ethical violations. And I know the
12 lawyers get hard-charging sometimes. We've had Mr.
13 Aiken say I didn't have the power to do what he
14 thought I was being asked to do by the other side,
15 which I guess is well received, which is why I made
16 sure of that. Then he said it'd be unfair to Mr.
17 Hammer's son if I ruled. And, of course, you all
18 know, saying to a judge that he's being unfair is
19 almost the worst thing you can say. I'll just make
20 that clear for the record. So that, on top of being
21 accused of being unethical by Mr. Hammer.

22 **MR. HAMMER:** And, sir, I have not accused you of being
23 unethical. There's nothing in the record that I've
24 said that's accusing you of being unethical.

25 **THE COURT:** No, when we had the sidebar. That's ...

1 **MR. HAMMER:** Sir, we had a sidebar, it was a private
2 conversation and I did not accuse you of being
3 unethical and have not accused you of being
4 unethical.

5 **THE COURT:** You said, you said I engaged in ex parte
6 contact with ...

7 **MR. HAMMER:** Sir, that was a sidebar, which is not ...
8 which we agreed would not be on the record, and ...

9 **THE COURT:** No, no, we didn't agree. I said we need to
10 put it on the record.

11 **MR. HAMMER:** And I said that I did not ... I said that if
12 I wanted to put it on the record I would. And if I
13 do, I will, Your Honor. I have not accused you of
14 any unethical conduct as of this moment.

15 **THE COURT:** Well, why would ...

16 **MR. HAMMER:** So I ...

17 **THE COURT:** Well, hold on a second. Why would you even
18 raise that issue then? An ex parte communication is
19 in fact an unethical conduct, as I remember the Code
20 of Judicial Conduct. And you said that, you said
21 you didn't want to put it on ... now, you weren't
22 just trying to mess with me, were you? I mean ...

23 **MR. HAMMER:** No, sir, I wasn't trying to mess with you. I
24 was trying to ...

25 **THE COURT:** That's a, it's a fairly serious point you

1 raised and my ... I'm just going to ...

2 **MR. HAMMER:** That was a sidebar matter that I called ... I

3 think that needs ... let's get back ...

4 **THE COURT:** No, you said you were going to ask me to

5 recuse myself and ...

6 **MR. HAMMER:** I said I may ask you to recuse yourself.

7 **THE COURT:** And, and all ... I'm not going to argue with

8 you.

9 **MR. HAMMER:** Pardon?

10 **THE COURT:** I'm just saying that I think I stated that

11 that needs to be on the record and ...

12 **MR. HAMMER:** Okay.

13 **THE COURT:** And I don't know, I mean, can I ...

14 **MR. HAMMER:** I'll put it all on the record, but first ...

15 **THE COURT:** I anticipate now that you're going to file a

16 grievance against me based on how I rule.

17 **MR. HAMMER:** I'm not, I'm 'not ... there's ... Your Honor,

18 can we ... if Your Honor anticipates that ...

19 **THE COURT:** But, no, you can do that. I can't, you know,

20 the fact that I'm not ...

21 **MR. HAMMER:** If you can just ... here's the, here's the

22 November 27th. It was clearly a status conference

23 for November 27th.

24 **THE COURT:** Okay.

25 **MR. HAMMER:** You signed it.

1 **THE COURT:** I rescheduled, yes.

2 **MR. HAMMER:** You scheduled a status conference.

3 **THE COURT:** Right. Actually, we'd actually scheduled a
4 hearing I believe, then changed to a status
5 conference, and then I think I decided, I don't know
6 if anyone said anything, that because of the
7 proximity to the holiday. Now, maybe I have my
8 dates confused, but that's why I was ... I think
9 your point is, I'm anticipating your argument is
10 that you weren't prepared for the hearing that we're
11 having today.

12 **MR. HAMMER:** No. My argument is that the motion was not
13 ... that a status conference, a hearing for a status
14 conference was asked for, not for a motion. That
15 the hearing for the motion was on ... that their
16 hearing for any motions came after the filing on
17 November 6th of the foreclosure action. And the
18 important thing there is that the foreclosure action
19 preceded any notice of hearing for this, and there
20 has yet to be filed any motion for ... if there was
21 a motion it was filed afterwards and withdrawn for
22 what they're ... for the ... for what they're asking
23 for now. So I, I've ... I have brought those things
24 to Your Honor's attention. Having brought those
25 things to Your Honor's attention, the fact that

1 there is a, that there, that there is a prior, a
2 stipulation now that there was a prior foreclosure
3 action filed, and the record shows prior to any
4 notice of hearing and prior to any motion, would
5 Your Honor reconsider on the ... on your motion ...
6 on your provisional ruling a moment ago concerning
7 whether or not the foreclosure action takes
8 precedence over these, or at the very least continue
9 this to allow for ... to continue this to allow for
10 briefing on that issue, because that is a
11 significant and important issue. So I renew that
12 motion with those provisos now that Your Honor has
13 that stipulation and information before you.

14 **THE COURT:** All right. Your motion's denied.

15 **MR. HAMMER:** All right.

16 **THE COURT:** Thank you, sir.

17 **MR. HAMMER:** Now, Your Honor has brought up matters that I
18 had mentioned in the sidebar and that I had not made
19 a decision on what I was going to do. But Your
20 Honor has now brought them up and I feel as though I
21 am forced to now ask, because of the fact that there
22 has been a ... and I do this ... I really did not
23 want to do this. I thought I made that clear at the
24 sidebar. I said I wanted to avoid having to do
25 this; I would like to get a motion and then I would

1 make a decision. But Your Honor has brought this
2 out, so I think it has to be followed through upon.
3 There is a one-and-a-half page letter which I ask to
4 be marked and entered into the record.

5 **THE COURT:** All right. And then we have another exhibit
6 that you wanted to mark as well. Okay.

7 **MR. HAMMER:** This is ... I'm offering this into evidence.

8 **THE COURT:** Okay.

9 **MR. HAMMER:** I'm not offering this as an exhibit. I'm
10 offering it as a document in evidence in this case.

11 **THE COURT:** Okay. October 1st ... I'm sorry, the letter's
12 dated October 4th, 2013. Today is January 9th,
13 2014. And I'm curious as to why you're bringing
14 this up now, why you didn't bring it up in October
15 or November or December or before today.

16 **MR. HAMMER:** Today's the first hearing we've had since
17 that letter, Your Honor.

18 **THE COURT:** Okay. All right.

19 **MR. HAMMER:** Introduced into evidence. See it, Ms.
20 Weissenstein?

21 **MS. WEISSENSTEIN:** Yes.

22 **THE COURT:** This is going to be a Court exhibit. Also,
23 just have the other one ... I don't want to forget
24 that we have one other document ...

25 **MR. HAMMER:** Rather than an exhibit, it's a Court document

1 into evidence if I understand correctly.

2 **THE COURT:** I'm not sure what you mean.

3 **MR. HAMMER:** I'm introducing it into evidence without
4 objection.

5 **THE COURT:** All right. I mean ... sure. I mean, that's
6 fine. That's fine with me. That is a letter that
7 Ms. Ballard wrote at my instructions.

8 **(Court's Exhibit Number One is marked and entered into the**
9 **record.)**

10 **MR. HAMMER:** All right. It says, Pursuant to your
11 instructions I wanted to confirm our conversation.
12 Pursuant to your instructions I wanted to confirm
13 our conversation.

14 **THE COURT:** Yes, sir.

15 **MR. HAMMER:** She talked about a proposed order sent to you
16 on September 9th and mentioned the failure of
17 numerous persons to respond to subpoenas we served
18 in the current proceedings but did not disclose the
19 identities of those failing to respond. That
20 apparently prompted your phone call to me yesterday
21 during which you relayed your concerns that some of
22 the people who failed to respond may be lawyers and
23 there may be problems with it. Our conversation
24 then led about the procedural status of the above
25 referenced matter. Well, I don't believe, and I

1 don't know whether you want to have a hearing on
2 this or not, but I don't believe that Your Honor
3 would have brought up ... Your Honor called for one
4 purpose. Your Honor called simply for the purpose,
5 as I read this letter, to find out about the matter
6 concerning ... and I assume Your Honor called
7 because Your Honor believed that maybe Ms. Ballard
8 had some information on ODC, if she'd worked there
9 sometime or something of that sort, and wanted to
10 find out the information on that. I don't believe
11 that Your Honor went on with the conversation and
12 proceeded to procedural statuses. I don't believe
13 that it was Your Honor that proceeded to that. I
14 don't believe that Your Honor said, okay, now that
15 we've talked about this matter about the ... that
16 I'm concerned about the subpoenas, I now want to
17 talk to you about the procedural status. And I have
18 no way of knowing that. Now, if Your Honor says
19 that you did ... I ask Your Honor that right now.
20 If not, then I think we need Ms. Ballard here and we
21 need to have her under oath and we need to have
22 testimony from you and from Ms. Ballard concerning
23 that. Did Your Honor ... would Your Honor mind if I
24 asked Your Honor whether or not ... it said "our
25 conversation led," did Your Honor then go and ask

1 ... say, Mrs. Ballard, now that we've talked about
2 this other, gee, let me talk to you about some
3 procedural stuff? I don't think Your Honor would
4 have done that.

5 **THE COURT:** Well, I don't remember quite frankly because
6 it was October 4th. That's why I asked her to write
7 it down in a letter.

8 **MR. HAMMER:** Well, then I ...

9 **THE COURT:** I have no reason to believe the letter's
10 inaccurate.

11 **MR. HAMMER:** All right.

12 **THE COURT:** Because I, you know, I was sensitive to the
13 issue of talking to her without you knowing about it
14 and Mr. Aiken knowing about it. So I have no reason
15 to believe that anything in that letter's
16 inaccurate.

17 **MR. HAMMER:** All right. Well, I think ...

18 **THE COURT:** Again, I don't remember because it was back in
19 October.

20 **MR. HAMMER:** Right. But the question is, did you initiate
21 or did she initiate the second part of the
22 conversation?

23 **THE COURT:** I don't remember, Mr. Hammer. And I'm kind of
24 startled that you would start examining me.

25 **MR. HAMMER:** I'm not examining you, Your Honor, but Your

1 Honor has to ... I'm making a motion to recuse Your
2 Honor because of this.

3 **THE COURT:** I understand.

4 **MR. HAMMER:** If Your Honor ... it says, Our conversation
5 then led to discussions about the procedural status
6 of the above referenced matter, the efforts of my
7 staff to schedule a merits hearing before me, and
8 the next steps that may be taken in the collection
9 matter including the potential that we might file
10 ... that we may file a separate action to foreclose
11 judgment liens, which could be heard at the same
12 time as the merits hearing in the current actions.
13 So they had intended and she has letters to you
14 asking that the foreclosure matter be heard. Now,
15 they are now here talking to you about the same
16 matter that they had a private conversation with you
17 about, and that's the foreclosure. That's the
18 execution. The procedural matters, which would
19 include the execution. And we were not privy to
20 that conversation. Your Honor does not remember
21 what went on in that conversation. Ms. Ballard is
22 not here with that ... for that conversation. And
23 we have no idea what she said to you, we are unable
24 to response to what she said to you, we have no way
25 of knowing whether what she said to you may have

1 influenced you, may have subconsciously influenced
2 you although you don't remember. For those reasons,
3 and because of the other matters that are in this
4 document, we ask that Your Honor recuse yourself
5 from this. For the fact ... because of the fact
6 that you had a conversation, inintentionally,
7 unintentionally, don't know whether you brought it
8 up, it doesn't sound like you brought it but, but
9 the fact is that Ms. Ballard spoke to you; doesn't
10 sound like you spoke to her, spoke to you about
11 matters that are presently before you, in depth,
12 enough in depth to write a one-and-a-half page
13 letter. And that ...

14 **THE COURT:** At my suggestion she write a letter.

15 **MR. HAMMER:** Of course.

16 **THE COURT:** When did you get that letter, Mr. Hammer?

17 **THE COURT:** I don't know when I got the letter, Your
18 Honor. It's dated October 4th. I don't know when
19 I would have received it. But, Your Honor, the
20 relevance of that is not when I received it, I would
21 say with due respect. The relevance of this letter
22 is not whether ... it's not what you've done, it is
23 what Mrs. Ballard has done. And the letter, the
24 import of the letter is that she discussed with you,
25 without my presence or Mr. Aiken's presence, a

1 matter that you're being asked to rule on now. And
2 I don't think that there would be any question that
3 that would be inappropriate. And I don't think that
4 there would be any question that it would be
5 appropriate to err on the side of caution rather
6 than to make a ruling.

7 **THE COURT:** So you're saying that if I make a ruling ...

8 **MR. HAMMER:** We don't ...

9 **THE COURT:** ... I'm not ... I should have recused myself
10 and had some other judge hear it? I don't
11 understand. I mean ...

12 **MR. HAMMER:** As to ...

13 **THE COURT:** ... this is the very end of this case, at
14 least as far as this court's concerned. And I can't
15 understand why you didn't say anything before now,
16 if you think I should recuse myself. You're
17 concerned now that I'm going to rule against you so
18 you're going to throw this.

19 **MR. HAMMER:** No, Your Honor. I'm not concerned that
20 you're going to rule against me. I thought the law
21 was very, very clear that once you had ... and
22 there's another action pending, there ... that it
23 was very clear that the action that was pending on
24 the foreclosure was filed before any motion was made
25 before you concerning this. Now, what troubles me,

1 Your Honor, is that there's been no motion made and
2 that Your Honor has indicated ... has given some
3 indication that Your Honor is getting ready, at
4 least if I understand it, because I asked for
5 dismissal of that, that Your Honor would therefore
6 ... if you're not dismissing it, then you're going
7 to rule against it, which I'm surprised to hear.
8 And so because I had anticipated that Your Honor
9 would do what I think is a black, and I may be
10 wrong, black letter following of the law, and
11 because of the fact that you did have this
12 conversation, which they're now pushing which, Your
13 Honor, they had indicated in a letter to you that
14 they weren't going to discuss here. On December
15 30th, this is a letter to you, Your Honor, that was
16 written on January 3rd.

17 **THE COURT:** From who?

18 **MR. HAMMER:** From Stephanie Weissenstein (ph.). Do you
19 recognize that signature?

20 **MS. WEISSENSTEIN:** I do. And it's Weissenstein.

21 **MR. HAMMER:** Weissenstein, sorry.

22 **MS. WEISSENSTEIN:** Thank you. May we introduce this into
23 evidence, please? Do you have any objection?

24 **MS. WEISSENSTEIN:** No.

25 **THE COURT:** Let me look at it. Okay.

1 (Court's Exhibit Number Two was marked and entered into
2 the record.)

3 MR. HAMMER: Now, maybe I was wrong and maybe I should
4 have introduced this earlier, but I thought Your
5 Honor, since it was to Your Honor, that Your Honor
6 would have been aware of it. I know Your Honor has
7 a lot of things, I apologize for not calling it to
8 your attention.

9 THE COURT: That's all right.

10 MR. HAMMER: Before I go any further let me call it to
11 your attention to maybe ... it may be something that
12 you would like to consider in reconsidering my
13 request to reconsider the ruling. This states very
14 clearly that, We wrote you requesting the issues to
15 be raised recently filed in the foreclosure action
16 to be addressed ... they asked that those matters
17 from the foreclosure action be addressed at the
18 January 9th, 2014. We have agreed to withdraw that
19 request in order to give the defendants named
20 additional time to respond. So they wrote a letter
21 saying they're withdrawing the request to have the
22 ... to have any matters dealing with foreclosure or
23 dealing with an order from you ...

24 MS. WEISSENSTEIN: Objection, he's summarizing
25 inappropriately and inaccurately ...

1 **MR. HAMMER:** I'm arguing.

2 **MS. WEISSENSTEIN:** ... the contents of that letter. That
3 letter requests that the Court not consider the
4 foreclosure matter that was filed on November 6,
5 2013.

6 **MR. HAMMER:** Your Honor, it's the matter ... requesting
7 that the issues, the issues raised in the recently
8 filed foreclosure action. And those issues are the
9 same as the issues here, that is to foreclose,
10 execute on the property, foreclose and execute. Be
11 addressed ... we have agreed to withdraw that
12 request. She wrote you a letter asking that you
13 take that, the issue of ... that Mr. Aiken talked
14 about and that Your Honor read that you felt that
15 you had authority to do, that is to order execution,
16 foreclosure essentially, correct? Execution
17 foreclosure.

18 **THE COURT:** I don't agree with that.

19 **MR. HAMMER:** All right. Well, she at least asks that that
20 ... an interpretation could well be that that was to
21 be ... that was to be withdrawn. She went on to say
22 that the matters for the motion to compel Synovus,
23 the motions for summary judgment and the motions for
24 contempt. Those were the only matters that she said
25 would be taken up at this hearing. That's it. If I

1 read that wrong, please correct me. But if I read
2 the second paragraph, she said those are the matters
3 that she wanted to take up. Now, that isn't the
4 matter of ... that we're now talking about. So
5 we're talking about a matter that she did not ...
6 that she indicated, at least implicitly, that would
7 be an interpretation that she withdrew. And she
8 said specifically the matters that she wanted to
9 take up. Your Honor has already ruled that as far
10 as the contempt matter, that you're taking that
11 under advisement. And if you thought that there
12 needed to be a further hearing on it, there would be
13 a further hearing. So for the moment, prior to
14 going forward on my motion to recuse and prior to
15 ... I am withdrawing temporarily, with the right ...

16 **MS. WEISSENSTEIN:** I'm sorry, I'm confused. If you can
17 clarify, you're temporarily withdrawing your motion
18 for the judge to recuse himself?

19 **MR. HAMMER:** Your Honor, going forward with the motion to
20 ... she'll have an opportunity to ask. If Your
21 Honor doesn't understand, please ask me to repeat.
22 Your Honor, I am going forward with the motion ...
23 without going forward further on the motion to
24 recuse yourself and temporarily withdrawing that
25 motion, reserving the right to make it again. And

1 in fairness to the Court, because of the fact that
2 Your Honor indicates you're about to rule on
3 something that I don't think Your Honor was aware
4 of, this letter that you're not being asked to rule
5 on today; I'm withdrawing temporarily my motion to
6 recuse. I'm withdrawing temporarily my introduction
7 of this document.

8 (Court's Exhibit Numbers One and Two were withdrawn from
9 the record.)

10 MR. HAMMER: And I'm going back to the fact ... to the
11 matters that Mr. Aiken raised, and I'm asking you
12 again, based on this new information ... based on
13 the information that Your Honor had from this
14 letter, which I know Your Honor gets a lot of emails
15 and may not have seen, I'm asking now that this has
16 been called to your conscious attention, that the
17 issue of the foreclosure or execution be dismissed
18 and be denied.

19 THE COURT: Well ...

20 MR. HAMMER: And I'm asking at the very least, that Your
21 Honor continue that until Your Honor has delved into
22 the matter of the foreclosure action that has
23 already been decided. So I'm asking that at this
24 point Your Honor either rule and dismiss that motion
25 because she's withdrawing it, or that Your Honor

1 continue it and allow us to have a further hearing
2 on that issue.

3 **THE COURT:** Okay. Mr. Hammer, your motions are denied.

4 **MR. HAMMER:** All right. I ask that this, that Exhibit Two
5 be re-entered in the record.

6 **(Court's Exhibit Number Two was re-entered into the**
7 **record.)**

8 **THE COURT:** Okay. And also, the first exhibit you had
9 earlier today ...

10 **MR. HAMMER:** I ...

11 **THE COURT:** You said you only had one copy? You wanted it
12 made part of the record and you put it on the table.
13 I don't remember what that was. Do you remember,
14 Mr. Aiken?

15 **MR. AIKEN:** I do. I have them right here. They're
16 actually the rules to show cause and the orders of
17 reference.

18 **THE COURT:** Okay.

19 **MR. AIKEN:** And I think you recited for the record the
20 judgment amounts that were stated in those two
21 documents. So I'm not sure it's necessary to put
22 them in.

23 **THE COURT:** Mr. Hammer, is that ...

24 **MR. HAMMER:** The only thing that we wanted to get into the
25 record was the judgment ... the only amounts that

1 they were asking for judgment of in the rule to show
2 cause. And your authority was limited therefore to
3 those amounts, we would respectfully urge. I now
4 ... Your Honor has dismissed that, my motion to ...
5 that I just made and I now re-enter, which was
6 Exhibit Number One, and I continue with my motion
7 now having called to Your Honor's attention the fact
8 that she withdrew it, the letter which indicated
9 that there was a discussion about this very issue
10 without our presence.

11 **(Court's Exhibit Number One was re-entered into the**
12 **record.)**

13 **MR. HAMMER:** I ask that Your Honor recuse yourself in the
14 interest of erring on the side of caution. I wish
15 to make it very clear that I have not accused and I
16 do not accuse Your Honor of any unethical conduct.
17 As I read this letter, Your Honor asked for a simple
18 matter as to an opinion about whether or not some
19 subpoenas ... the result of some subpoenas. Whether
20 Your Honor should have had that conversation or not,
21 I don't know. But that would not impact upon
22 anything ... that would impact upon something other
23 than the matters that are at issue here. As I read
24 this letter, it would be my understanding, knowing
25 Your Honor, that that's all Your Honor would have

1 done. And it would be my belief that, from the
2 reading of the letter, that everything else, because
3 Your Honor wouldn't have discussed it because Your
4 Honor wouldn't have known about it, Your Honor
5 wouldn't have had any idea what they were going to
6 do, so Mrs. Ballard had to bring those matters up
7 before you, all right? And so the letter indicates
8 that she brought those matters up before you, and
9 having brought those matters up before you in an ex
10 parte manner, you certainly can't come back and
11 write a letter afterwards and cure what has ... and
12 cure your ... any wrongful action that she may have
13 had and involved you in unnecessarily. So I want to
14 make it clear, I'm not making any accusations
15 against you. I'm letting the letter speak for
16 itself, but my interpretation of the letter is that
17 you didn't bring up the question because you would
18 have no idea what they were going to file. You are
19 not a mind reader on that. She would have had to
20 told you we plan to file this, we plan to file that,
21 and she would have had to continue that conversation
22 with you. And having done that, having had that
23 conversation, I believe that Your Honor attempted to
24 do the first step. Okay, write them about it. But
25 writing about it doesn't cure it. Writing us about

1 it doesn't cure it. It's saying, Mrs. Ballard, you
2 shouldn't have brought that up with me, write it
3 about it. But that doesn't cure the fact that she's
4 had that conversation, because there's no way to
5 reconstruct what went on in that conversation, nor
6 is there any way to know what impact that that
7 conversation may have had, consciously or
8 subconsciously, on any ruling that you may have.
9 And so in the interest of fairness and erring on the
10 side of caution, we ask that you recuse yourself on
11 that issue.

12 **THE COURT:** Okay, your motion's denied. I'm going to
13 grant Mrs. Hammer's motion to transfer this
14 particular building. I'd ask that counsel prepare a
15 proposed order and share it with Mr. Hammer and Mr.
16 Aiken. The issue of attorneys' fees, now as we all
17 know, you can get attorneys' fees pursuant to a
18 statute or a contract. And less common is
19 attorneys' fees being awarded as a sanction, and I
20 guess that's what you're looking for here, as a
21 sanction for having to come back so many times.
22 Include that in your order. I don't know what I'm
23 going to do on that part of it.

24 **MS. WEISSENSTEIN:** Okay.

25 **THE COURT:** But as far as transferring the building, you

1 need to prepare an order in that regard. And also
2 go ahead and prepare a deed, a master's deed
3 however, which ...

4 **MS. WEISSENSTEIN:** I'm sorry, could you repeat that last
5 part, sir?

6 **THE COURT:** As master's deed. I certainly don't have the
7 power to give you a general warranty deed or
8 anything like that, but. And also point out that
9 once this transfer is complete or consummated, all
10 the judgments will be satisfied, the judgments that
11 were cited here today. Of course, that's ... your
12 clients need to go ahead and have them marked
13 satisfied after the transfer is consummated. Now, I
14 don't know what's going to happen after I sign the
15 order. You're going to see it before it gets
16 signed, you'll see it before it gets signed.

17 **MR. HAMMER:** I have another matter to take up, Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. HAMMER:** We would move they put up a bond in double
20 the amount of the value of the property. They have
21 indicated that the property is worth 900 to \$1
22 million; we'd ask that they put up a bond, since
23 it's on appeal, in the amount of \$1,950,000.

24 **THE COURT:** Now, this particular matter isn't on appeal.
25 I suspect it may be one day, but ...

1 **MR. HAMMER:** But the judgment is on appeal.

2 **THE COURT:** The judgment itself is on ... okay. All of
3 them, or just ...

4 **MR. HAMMER:** All the judgments are on appeal, and so the
5 property that they're asking for arises ... what
6 they're asking for arises out of a judgment that's
7 on appeal; the statute provides, as Mr. Aiken has
8 pointed out, that a bond is required in double the
9 amount of the value of the property. And the value
10 of the property, they have stipulated, and I'll read
11 that into the record if there's any question about
12 it ... is there any question about that?

13 **THE COURT:** Let's go back. Let's go back. What's the
14 purpose of a bond? Now, and again, what would
15 happen ... this is perhaps a rhetorical question,
16 and I hope y'all can understand it. Under the Rules
17 of Appellate Procedure, generally speaking when you
18 appeal a judgment's stayed, right? We all agree on
19 that, okay. Let me finish before you shake your
20 head.

21 **MS. WEISSENSTEIN:** Sorry.

22 **THE COURT:** There are exceptions to that. And I believe,
23 again, I don't have my rule book here with me, but I
24 believe the exceptions are if there's real estate,
25 title real estate's involved it's not automatically

1 stayed.

2 **MS. WEISSENSTEIN:** Yes, sir.

3 **THE COURT:** And the question is, who's supposed to post
4 the bond? The policy I guess behind posting the
5 bond is to identify ... I'm sorry, indemnify the
6 losing side in the appeal in case that the other
7 side, you know, lost money because of the appeal.
8 Is that an accurate ...

9 **MR. AIKEN:** Actually, this is what, this is what an appeal
10 bond is for, Your Honor.

11 **THE COURT:** That's right.

12 **MR. AIKEN:** And it's classically ... this would be a
13 classic case in which an appeal bond is necessary.

14 **THE COURT:** Who's appealing the judgment?

15 **MR. AIKEN:** Mr. Hammer and 1634 Main.

16 **THE COURT:** Okay. Now ...

17 **MR. AIKEN:** Both judgment debtors are appealing the
18 underlying cases.

19 **THE COURT:** And you're saying the creditor has to post a
20 bond or does the debtor have to post the bond?

21 **MR. AIKEN:** The creditor has to post a bond.

22 **THE COURT:** The debtor doesn't post a bond pending the
23 appeal in case the creditor loses money because of
24 the appeal?

25 **MR. AIKEN:** Actually, the judgment creditor, if they want

1 to execute on the property. Okay, if they want to
2 get in the property by means of what you just
3 discussed or by levying an execution, they have to
4 post a bond that's in the amount of twice the value
5 of the property.

6 **THE COURT:** Okay.

7 **MR. AIKEN:** And the reason why you do that, Judge, is
8 this. We've got it on appeal. If we ... if they're
9 not required to post bond, they get the property,
10 they sell it, they get all the money and skip town;
11 and we win the appeal, where's our vindication for
12 winning the appeal? They've just taken all the
13 value of the property from us.

14 **THE COURT:** So you're saying what I said but in a
15 different way. The purpose of a bond is to
16 indemnify the winning party if, on appeal, if in
17 fact they are damaged because of the ... delayed
18 because of appeal, is that right?

19 **MR. AIKEN:** No, no, no. That's not right.

20 **THE COURT:** Okay.

21 **MR. AIKEN:** The purpose of the appeal bond is to protect
22 the judgment debtor who has the case on appeal,
23 because if ... and the way it works is this. They
24 post bond, which means once they've done that they
25 can go ahead and sell the property. They can go

1 ahead and take it and sell it, okay? But there's a
2 surety company on the hook for twice the value of
3 the property in case we win the appeal. Because if
4 we win the appeal, it is a finding that the judgment
5 should not have been entered against our clients in
6 the first place.

7 **THE COURT:** Okay.

8 **MR. AIKEN:** Do you see? It protects ...

9 **THE COURT:** I'm not sure that's correct as a matter of
10 law. Do you have your rulebook handy? My dream was
11 to have a laptop up here and look at the rules that
12 ... and I had a law clerk one time, an intern one
13 time who had everything on his phone.

14 **MR. HAMMER:** Your Honor, that is in the statute, not in
15 the rulebook. And it's at 18, Section 18 of the
16 statutes.

17 **THE COURT:** Okay. Well, obviously I'm going to look at
18 that before I sign the order.

19 **MR. AIKEN:** Yes, sir.

20 **MR. HAMMER:** And ...

21 **MR. AIKEN:** Your Honor, we'll supply you with the statute
22 which proposed that.

23 **THE COURT:** No, I can pull it up.

24 **MR. AIKEN:** Okay.

25 **THE COURT:** I'm more familiar with the rule that ...

1 **MS. WEISSENSTEIN:** I think that's ...

2 **THE COURT:** This is supplemental proceedings. We're
3 actually looking for appellate court rules. Okay,
4 that's ...

5 **MS. WEISSENSTEIN:** Your Honor, we'll be happy to ... the
6 appeal that they're talking about, final briefs are
7 due on the 24th of this month. If we would like to
8 maybe work in some kind of language that the
9 property will not be alienated for a period of 60
10 days, you know, we'll be happy to consent to
11 something like that as well.

12 **THE COURT:** Can y'all agree on that much?

13 **MR. HAMMER:** What are they saying?

14 **THE COURT:** Repeat what you said.

15 **MR. HAMMER:** What are they suggesting? What are you
16 suggesting?

17 **THE COURT:** Mr. Hammer needs clarification on what you're
18 asking.

19 **MS. WEISSENSTEIN:** If, you know, for everyone's peace of
20 mind, with the briefs ... this case is being
21 expedited by the Supreme Court pursuant to an order
22 of expedition, and the final briefs are due on
23 January the 24th. We would be happy to include a
24 clause in the order transferring the property that
25 the property will not be alienated for a period of

1 60 days, meaning we won't put it on the market or
2 anything like that. Kind of I guess to give the
3 debtor some peace of mind or, as I said, we'll be
4 happy to look into the statutory requirements, if
5 it's so required, for a bond.

6 **MR. HAMMER:** Your Honor, we're looking for double the
7 amount ...

8 **MS. WEISSENSTEIN:** I don't actually have that information.

9 **MR. HAMMER:** We are looking for double the amount of the
10 value of the property, which they perceive to be
11 between \$900,000 and \$1 million, which would be
12 \$950,000, which would be \$1,900,000.. So we would
13 ask for a bond for \$1,900,000 for this ... on this
14 particular piece of property.

15 **THE COURT:** Okay. One moment, please. She handed up a
16 copy of the rule. It's Rule 211 I believe of the
17 appellate court rules. And it talks about stays and
18 it talks about lifting a stay.

19 **MS. WEISSENSTEIN:** Your Honor, that would be Appellate
20 Court Rule 241(b).

21 **THE COURT:** Yeah, I'm sorry. Going by memory. I guess I
22 shouldn't. I'm going to have to write these down.
23 Okay. Let's revisit what the order's supposed to
24 say.

25 **MS. WEISSENSTEIN:** I'm sorry?

1 **THE COURT:** Let's recite what the order's supposed to say.
2 I'm not sure I was finished or not. The order to
3 transfer the property to Ms. Hammer and, a proposed
4 order, and the issue of attorneys' fees to be held
5 in abeyance, but you need to include that in the
6 order as well. You're also going to prepare a
7 master's deed. And again, Mr. Hammer and Mr. Aiken
8 are going to see this before I sign it. Or if I
9 have to make changes they're going to see it before
10 I sign it. Make sure I make some notes here and
11 make sure we don't ...

12 **MS. WEISSENSTEIN:** Your Honor, would you like the proposed
13 order to address the other motions to dismiss and
14 the motion for recusal as well?

15 **THE COURT:** Sure. That's easy enough.

16 **MS. WEISSENSTEIN:** Okay.

17 **THE COURT:** And the contempt issue, make a statement that
18 that's going to be held in abeyance. I'm ... well,
19 I said I wasn't going to rule today so I'm not, but
20 I was tempted to maybe make that part of the ...
21 well, I guess I'll have to decide it anyways because
22 it's a matter of the court. I was going to possibly
23 consider, you know, no punishment for contempt
24 because the case is over and there's really nothing
25 to be gained by that, but.

1 **MS. WEISSENSTEIN:** Okay.

2 **MR. HAMMER:** Your Honor, there's one other matter that we
3 would like to, to introduce the original of, because
4 there's been a lot of talk about that and because
5 this is likely to reach an appellate stage. We
6 would like to have permission to introduce as an
7 exhibit Mr. Ackerman's affidavit.

8 **THE COURT:** Have you seen that, Ms. Weissenstein?

9 **MS. WEISSENSTEIN:** I have not seen that and I'm going to
10 object to ...

11 **MR. HAMMER:** Well, then I'm going to ...

12 **THE COURT:** What exactly does it say? Give me a summary
13 of what it says.

14 **MR. HAMMER:** I'd like to get the affidavit and not give
15 you a summary because I don't want to rely on my
16 memory. I'd rather ...

17 **THE COURT:** All right.

18 **MR. HAMMER:** And I guess in that regard I need to have Mr.
19 ...

20 **THE COURT:** We'll leave the record open for that. We'll
21 leave the record open. You can submit it later.

22 **MR. HAMMER:** Okay. And so, Your Honor, we will get Mr.
23 Ackerman's affidavit. Mr. Ackerman's affidavit, for
24 the record, essentially says that he ... that what
25 Mrs. Ballard had said in terms of the conversation

1 is absolutely incorrect and false.

2 **THE COURT:** All right. Contradictory statements. Okay,

3 anything further today?

4 **MR. HAMMER:** We would like that marked as an exhibit, so

5 we would like for ... not as an exhibit ...

6 **THE COURT:** Send it to us with a cover letter saying you

7 want it ...

8 **MR. HAMMER:** ... introduced into ... we would like for it

9 to be introduced into evidence?

10 **THE COURT:** Any objection?

11 **MS. WEISSENSTEIN:** I'm sorry? I didn't hear what you were

12 trying to ... I missed ...

13 **MR. HAMMER:** We're going to introduce into evidence Mr.

14 Ackerman's affidavit.

15 **MS. WEISSENSTEIN:** I ...

16 **THE COURT:** You can't consent to that because you haven't

17 seen it.

18 **MS. WEISSENSTEIN:** I don't consent to that yet. I'm not

19 ...

20 **MR. HAMMER:** But then let me ...

21 **THE COURT:** I'll ... the objection's overruled, and I'll

22 mark it as a Court exhibit. Just send us a cover

23 letter reminding us and it'll be part of that.

24 **MR. HAMMER:** That it'll be part of the ... and, Your

25 Honor, if we may, in order to be clear on what your

1 order was, we would ask that the last ... there's no
2 use to do the whole transcript. But the last, Your
3 Honor said what the order was, so when she writes
4 the order up we can look at what Your Honor has said
5 and see that it's the same thing, we would ask that
6 just the last 15 minutes, since 12:00 ...

7 **THE COURT:** Let's give you a caveat though. I may change
8 whatever she says, I may revise it and put it ...
9 she's going to send you a copy.

10 **MS. WEISSENSTEIN:** I'll email it to everyone in Word.

11 **THE COURT:** Yeah. Yeah. And I may very well change it,
12 the order that I sign, if I sign an order, may not
13 be the same thing she submitted.

14 **MR. HAMMER:** All right.

15 **THE COURT:** Yeah.

16 **MR. HAMMER:** If it ... of course, we would bring it up ...
17 okay.

18 **THE COURT:** Yeah. All right, anything else today?

19 **MS. WEISSENSTEIN:** No, Your Honor.

20 **THE COURT:** All right, thank you.

21 (There being nothing further, the hearing was concluded at
22 12:15 p.m.)

23 (Court's Exhibit Number Three was marked and entered into
24 the record after the conclusion of the hearing.)

CERTIFICATE

I certify that the foregoing transcript, consisting of 106 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on January 9, 2014, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

March 17, 2014

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

MASTER'S DEED
State of South Carolina
COUNTY OF Richland

Book 1922-1520
2014004073 01/22/2014 14:52:50:093
Fee: \$10.00 County Tax: \$0.00

Master's Deed-Foreclosure
State Tax: \$0.00

TO ALL WHOM THESE PRESENT SHALL CONCERN:



I, Joseph M. Strickland, as Master in Equity for Richland County, in said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Richland County between **Shirley Hammer, as Plaintiff, vs. Howard Hammer as Defendants, Case Number 2009-CP-40-5911 and Shirley Hammer, as Plaintiff, vs. 1634 Main, LP, Case Number 2010-CP-40-2889** by an Order dated **January 17, 2014**, it was decreed that the property hereinafter described should be transferred by the Master in Equity for Richland County on the terms and for the purposes mentioned in the Order(s) granted in the case; and

WHEREAS, Shirley Hammer, as Plaintiff, on or about the 18th day of August, 2009, did file Summons and Complaint in the Court of Common Pleas at Columbia, in the County of Richland, and State aforesaid against Howard Hammer and 1634 Main, LP, as Defendant/s:

And after full hearing of the issues, the Honorable **JOSEPH M. STRICKLAND**, Judge of said Court, on January 17, 2014 did Order, Adjudge, and Decree that the property more particularly hereinafter set forth and described, should be transferred on the terms and for the purposes mentioned in the order and/ or orders in the case made;

And pursuant to said order, I, **JOSEPH M. STRICKLAND**, as Master in Equity for Richland County, do hereby convey 1634 and 1632 Main Street in Columbia South Carolina to Shirley Hammer.

NOW, KNOW ALL MEN, That I, the undersigned, as Master in Equity for Richland County, releases the following described property unto the grantee,

Grantee's Name : **Shirley Hammer**
421 River Club Road
Lexington, South Carolina 29072

See attached property description.

Subject to assessments, Richland County taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

TOGETHER, with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other

persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, their successors and assigns for their own use and benefit forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Richland County, under and by virtue of the said Order(s), have hereunto set my Hand and Seal the 21st day of January, in the year of our Lord Two Thousand and Fourteen, and in the Two Hundred and Thirty-seventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED)

In the Presence of:)

Fritella Cornelius)

Austen M. Strickland)

State of South Carolina)

COUNTY OF RICHLAND)

(Seal)
Master in Equity, Richland County

PERSONALLY APPEARED the above named witness and made oath that (s)he saw the within named Joseph M. Strickland, as Master for Richland County, sign, seal and as his act and deed, deliver the within Deed; and that (s)he with the other above named witnessed the execution thereof.

Fritella Cornelius

SWORN TO AND SUBSCRIBED before me on this 21st day of Jan., 2014.

Austen M. Strickland

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: August 27, 2023

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

TITLE TO REAL ESTATE

Book 1922-3825

2014004891 01/24/2014 16:21:06:930

Deed

Fee:\$10.00 County Tax: \$0.00

State Tax: \$0.00

STATE OF SOUTH CAROLINA



2014004891 John T. Hopkins II

Richland County R.O.O.

COUNTY OF RICHLAND

KNOW ALL MEN BY THESE PRESENTS, that SHIRLEY HAMMER

in consideration of Five Dollars (\$5) and other valuable consideration, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto:

HighTower LLC, its successors and assigns:

All of her right title and interest in and to

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:

1. 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 (IX" 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.

Derivation: Book 1922 at page 1520 on January 22, 2014.

Tax Map #09014-04-19

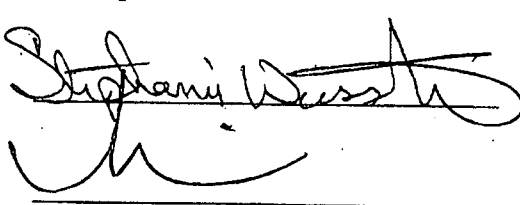
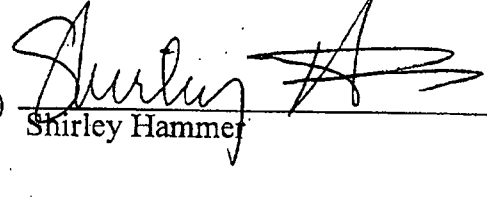
Grantee's mailing address: 421 Riverclub Drive Columbia SC 29072

This conveyance is made subject to easements and restrictions of record and otherwise affecting the 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(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 23 day of Jan, 2014.

SIGNED, sealed and delivered
in the presence of:

  (SEAL)
Shirley Hammer

PROBATE

STATE OF SOUTH CAROLINA

COUNTY OF Coxington

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within written deed and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 23 day of January, 2014.


South Carolina (SEAL) 
Notary Public for

My Commission Expires: 3-11-21

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND } AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property was transferred by SHIRLEY HAMMER
to HIGHTOWER LLC on January 23, 2014
3. Check one of the following: The deed is
 - (A) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (C) ☒ exempt from the deed recording fee because (See Information section of affidavit): 8 (Explanation required)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes ☐ or No ☐
4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):
 - (A) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
 - (B) ☐ The fee is computed on the fair market value of the realty which is _____
 - (C) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____
6. The deed recording fee is computed as follows:
 - (A) Place the amount listed in item 4 above here: _____
 - (B) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
 - (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____
7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____
8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as:
Grantor
9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Shirley Hammer
Responsible Person Connected with the Transaction

Shirley Hammer
Print or Type Name Here

Sworn this 23 day of Jan 20 14
Debra B. Bepko
Notary Public for South Carolina
My Commission Expires: 2 20 21

Richland County
Register of Deeds

1701 Main St.
Columbia, SC 29201
803-576-1910

This document is being accepted

AS IS

Missing Witness to

Notary
hc



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

October 4, 2013

Via Email (stricklandj@rcgov.us) and US mail
Honorable Joseph Strickland
Post Office Box 192
Columbia, South Carolina 29202

Re: *Hammer v Hammer, 1634 Main LP v Hammer v Hammer*
Case No: 2013-001638 and 2013-001652

Dear Judge Strickland:

Pursuant to your instructions, I wanted to confirm our conversation yesterday. My proposed order sent to you on September 9, 2013 had mentioned the failure of numerous persons to respond to subpoenas we served in the current proceedings, but did not disclose the identity of those failing to respond. That apparently prompted your phone call to me yesterday during which you relayed your concerns that some of the people who failed to respond may be lawyers, and that you may have an obligation to report their actions to ODC. As I told you, we had previously weighed the issues and decided that we were not obligated, at least at this point, to make any reports to ODC concerning the failures to respond to the subpoenas.

Our conversation then led to discussion about the procedural status of the above-referenced matter, the efforts of my staff to schedule a merits hearing before you, and the next steps that may be taken in the collections matter, including the potential that we may file a separate action to foreclose our judgment liens which could be heard at the same time as the merits hearing in the current actions. Having moved beyond the initial discussion of mandatory reporting of misconduct, however, we agreed our conversation about those additional subjects should be disclosed to all counsel involved. This letter is sent to accomplish that disclosure and provide all parties with an opportunity to respond as they deem necessary or desire.

Given the sensitivity of the issues in this case, as well as some of the parties involved, we further discussed the potential for such a disclosure to prompt a request for recusal from further proceedings in the collection action. Of course a decision in that regard will be yours to make, if it is even requested, but I believe it necessary to go ahead and raise the issue as part of this communication in an effort to deal with any issues that may complicate or delay

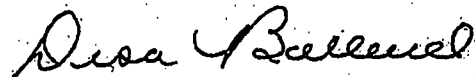
Honorable Joseph M. Strickland
In re Hammer matter
October 4, 2013
Page 2/2

resolution of this matter, even those based on the unexpected and unintended direction our conversation took that was not intended to prejudice any party.

As to the administrative matters that were discussed, we have tentatively scheduled a merits hearing through Gillian Conner for Wednesday, November 27, 2013, although you suggested that perhaps a Friday would be better. We are awaiting a Notice of Hearing from Mr. Conner to serve on all parties. I am taking the opportunity, by this letter, to advise the parties and counsel of the tentative schedule for November 27, 2013. We will await the definite notice from Mr. Conner and will serve everyone with the same, absent some change in circumstances precluding your presiding over that hearing as currently contemplated.

Thank you for your assistance to date in this difficult matter. With warm personal regards, I am

Sincerely Yours,



Desa Ballard
desa@desaballard.com

c: All via US mail and email
Honorable James R. Barber III
Art Aiken, Esquire
Howard Hammer
Shirley Hammer



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Monday, December 30, 2013

Via U.S. Mail and Facsimile
Honorable Joseph M. Strickland
Post Office Box 192
Columbia, South Carolina 29202-0192

Re: *Shirley Hammer vs. Howard Hammer* Case No. 2009-CP-40-05911 and
Shirley Hammer vs. 1634 Main, LP Case No. 2010-CP-40-2889
Shirley Hammer v. Howard Hammer, et al Case No. 2013-CP-40-6898

Dear Judge Strickland:

A hearing is scheduled before you on January 9, 2014 at 9:30 AM for purposes of concluding the supplemental proceedings by Shirley Hammer in her efforts to collect the judgments against Howard Hammer and 1634 Main, LP. As you may recall, at the last hearing, Ms. Hammer requested that certain real property owned by Mr. Hammer and/or 1634 Main, LP be sold for purposes of satisfying the judgments. Because an agreement could not be reached between the parties to resolve the issue, Shirley Hammer thereafter initiated foreclosure proceedings against real property owned in whole or in part by Howard Hammer and 1634 Main, LP; in effort to protect any and all other lien holders and/or co-owners of the properties subject to attachment/foreclosure, Ms. Hammer named as defendants to that action all interested parties of which she has knowledge and those people were served.

Ms. Hammer hereby requests that when the parties to the supplemental proceeding appear for hearing on January 9, 2014, all matters may be addressed at that time so the sale of the real properties will address both actions. Mrs. Hammer would show that all parties to the foreclosure matter have been notified of the hearing date on January 9, 2014, and parties were served the complaint in that action more than 30 days prior to the hearing date.

Sincerely yours,

Stephanie Weissenstein
stephanie@desaballard.com

c. via email Joel Deason, Esq.
Keith Babcock, Esq.
Thomas Burch, Esq.
Art Aiken, Esq.
Shirley Hammer

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Jr.
Master-in-Equity

Case No. 2009-CP-40-0511

1634 Main, LP, Appellant v. Shirley Hammer, Respondent

v.

Howard Hammer, Appellant

and

Howard Hammer, Appellant

v.

Shirley Hammer Respondent

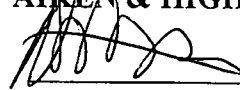
Appellate Case No. 2014-000965

RULE 210(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that the Record on Appeal contains all material proposed to be included in it by any of the parties and not any other material.

(SIGNATURE ON THE FOLLOWING PAGE)

AIKEN & HIGHTOWER, PA



ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, SC 29205

Telephone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPELLANTS

Columbia, SC
August 21, 2014

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Jr.
Master-in-Equity

Case No. 2009-CP-40-0511

1634 Main, LP, Appellant v. Shirley Hammer, Respondent

v.

Howard Hammer, Appellant

and

Howard Hammer, Appellant

v.

Shirley Hammer Respondent

Appellate Case No. 2014-000965

PROOF OF SERVICE

I hereby certify that I served the Record on Appeal Volume 1 by depositing a copy of it in the U.S. Mail, postage prepaid, on August 21, 2014, addressed to her attorney of record, Desa A. Ballard, PO Box 6338, West Columbia, SC 29171-6338.

(SIGNATURE ON THE FOLLOWING PAGE)

AIKEN & HIGHTOWER, PA



ARTHUR K. AIKEN

2231 Devine Street, Suite 201

Columbia, SC 29205

Telephone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPELLANTS

Columbia, SC
August 21, 2014