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

RECEIVED
AUG 27 2014
S.C. Supreme Court

Appellate Case No. 2014-000965

1634 Main, LP, Appellant

Vs.

Shirley Hammer, Respondent

Vs.

Howard Hammer, Appellant

and

Howard Hammer Appellant

Vs.

Shirley Hammer, Respondent

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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II. Did the Master properly awarded sanctions against the judgment debtors pursuant to Rule 11, SCRCP and the FCPSA?

III. Did the Master have personal jurisdiction over judgment debtors in supplemental proceedings, where the Rules to Show Cause and Orders of Reference were served by private process server rather than a sheriff's deputy?

STATEMENT OF THE CASE

This action arises out of consolidated, supplemental proceeding in two separate civil actions initiated in the Richland County Circuit Court. (C.A. #2009-CP-40-0591 and #2010-CP-40-2889[1])(R. pp. 23-27; pp. 1023-10302[2]). Following *nulla bona* returns from the Sheriff of Richland County for executions against property issued January 29, 2013, Circuit Judge Casey Manning issued Rules to Show Cause and Orders of Reference to the Master-in-Equity for Richland County, Joseph M. Strickland.[3] both filed with the Clerk of Court on April 22, 2013. *Id.*[4]

The Orders referred both underlying cases to the Master and required Appellants to appear with documents at a May 30, 2013 hearing to show cause why Appellants' property should not be applied toward satisfaction of the judgments and why a receiver should not be appointed. *Id.* The Orders also granted the Master full authority to enter final judgment with appeal directly to the South Carolina Supreme Court and to "entertain and rule upon all motions necessary to dispose of this matter, to include but be not limited to: motions to

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1 The underlying judgments were the subject of a direct appeal pending during the same period these supplemental proceedings were on-going. Ultimately, this Court affirmed the judgments in both cases by an unpublished opinion filed March 19, 2014. (Opinion Number 2014-MO-007)

2 ROA citations are to the version of the ROA that were sent to Respondent's counsel via email from appellant's counsel on Tuesday, August 26, 2014 at 2:27 pm. (copy attached by separate filing); This version of the ROA is not accurate in that it separated pleadings that Respondent had designated (email of Desa Ballard to Art Aiken 8-26-2014, filed separately). The ROA served via U.S. mail by Appellant on 8-21-2014 and apparently filed with the Court was reported to be inaccurate, per his attorney's Dropbox message of 8-22-2014). Respondent has not yet been served with an amended ROA.

3 Feb. 6, 2013 judgment in Case No. 2010-CP-40-2889 in amount of $75,000.00 against Howard Hammer and Feb. 6, 2013 judgment in Case No. 2009-CP-40-5911in the amount of $80,000.00 against Howard Hammer. (R. pp. 23-24; pp. 26-27; p. 10)

4 Feb. 6, 2013 judgment in Case No. 2010-CP-40-2889 in the amount of $25,000.00 against 1634 Main, LP. (R. pp. 23-24; pp. 26-27, p. 10)

dismiss, motions to appoint a receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor[s] in satisfaction of the Plaintiff's debt."[5] *Id.* @ pp. 23-24, pp. 26-27.

On May 30, 2013, neither Appellant appeared but Mr. Arthur Aiken appeared as counsel for Mr. Hammer and 1634 Main, although he did not explain the failure of the Appellant/debtors to appear. (R. p. 5) The Court continued the matter and ordered both Appellants to appear with documents at a hearing on June 4, 2013. *Id.* According to the Master:

> 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.

(R. p. 11). As a result of Appellants' attempts at obstruction and obfuscation, the Master granted a continuance to August 12, 2013 to allow Respondent to proceed on written interrogatories and requests to produce and required Appellants to file their responses with the Court. (R. pp. 5-08; pp. 11-12) The June 10, 2013 Master's Order also granted Respondent's motion to consolidate the matters. (R. p. 4). Neither Appellant timely served or filed any responses to the written discovery. (R. pp. 12).

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5 On June 25, 2013 additional judgments against Appellants in the underlying cases were returned by the Sheriff as *nulla bona*. (R. pp. 961-967).

At a third hearing on August 12, 2013, Appellant Hammer again failed to appear. Mr. Aiken appeared for both Appellants and reported that Mr. Hammer had gone to the Bahamas on a vacation with his children. (R. p. 233). Mr. Aiken presented to Respondent's counsel answers to the interrogatories that were non-substantive and useless to the court. (R. p. 12; R. p.. 233, line 24 – p. 237, line 12). Appellants did not provide any response to the requests to produce, and the court record reflects no responses to the written discovery were ever filed with the court as required by the June 10, 2013 Order. *Id.* The August 12, 2013 hearing concluded without resolution. (R. p. 266, line 1 – p. 272, line 11).

On September 9, 2013, Respondent submitted a proposed order for the transfer of real property located at 1634 Main Street to Plaintiff, and Appellants filed a joint motion for summary judgment alleging that transfer of real property was beyond the power of the court. (R. pp. 10-11). The Master heard all outstanding motions on January 9, 2014, where Respondent renewed her request for execution against property owned by Appellants and where Appellants made an oral motion to dismiss asserting that only a foreclosure action could divest a judgment debtor of property for purposes of satisfying a judgment. (R. p. 276, line 8 – p. 278, line 16; p. 282, line 24 – p. 288, line 3; p. 295, line 2 – p. 298, line 18; line 24 – p. 299, line 11; p. 300, line 19 – p. 301, line 24) . The Master denied both the Motion to Dismiss and the Motion for Summary Judgment. (R. pp. 13-14)

The Master then transferred ownership of Appellants' interest in real and personal properties to Respondent so that she could market and sell the building at 1634 Main Street and ultimately receive the amounts due to her on the various judgments. *Id.* at 17-21(. The Master also sanctioned Appellants for their misconduct during the supplemental

proceedings pursuant to Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act S.C. Code Ann. § 15-39-10 (1976, as amended) (FCPSA) by awarding Respondent additional attorneys' fees and costs in the amount of $55,385.70. *Id.* at 17-18). Further, the Master ruled that while any appeal from the January 21, 2014 Order was pending, Appellants would not interfere with the management or sale by Respondent of the assets transferred by the Order. *Id.* at 21. On January 21, 2014, the Master also executed a Deed making the transfers provided for in his January 21, 2014 Order. (R. pp. 381-383).

Subsequently, on February 3, 2014, Appellants filed a Motion under Rule 59(e), SCRCP, to alter or amend the January 21, 2014 Order. (R. p. 41). The Master denied that motion on March 21, 2014 (R. p. 22). This appeal follows.

ARGUMENT

Standard of Review

"In an equitable matter referred to a master for final judgment with direct appeal to the [S]upreme [C]ourt, the appellate court may determine the facts in accordance with its own view of the preponderance of the evidence." *A Fast Photo Exp., Inc. v. First Nat. Bank of Chicago*, 369 S.C. 80, 84, 630 S.E.2d 285, 287 (Ct. App. 2006)(*citing Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct.App.1984) and *Friarsgate, Inc., v. First Fed. Sav. & Loan Ass'n*, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct.App.1995). This Court is not required, however, to disregard the findings of the Master. *Id.*

Similarly, the sanctions imposed against Appellants, by the Master, under FCPSA, sound in equity rather than at law and the Court reviews findings of fact in an equity matter taking its own view of the evidence. *Father v. S. Carolina Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003). However, the imposition of sanctions under Rule 11, SCRCP, should not be disturbed on appeal absent a clear abuse of discretion by the lower court. Rule 11, SCRCP; *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160,162 (1996). Furthermore, "[t]he decision of the trial court [regarding personal jurisdiction] should be affirmed unless unsupported by the evidence or influenced by error of law." *Power Products & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008) (*citing Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

I. The Master properly conveyed Appellants' interest in the subject property to Respondent.

The thrust of Appellants' argument both before this Court and before the Master is that they believe the Master lacked the authority to transfer the subject property and the related LLC interests to Respondent in order to satisfy the judgments against them. Appellants' arguments, however, ignore the equitable nature of the proceedings and the plain language of applicable statutes. In this case, the interests and assets of Appellants could not be reached via the normal execution and levy process, and so supplemental proceedings were necessary to identify and reach assets sufficient to satisfy the judgments against Appellants.

As explained in *Johnson v. Service Management, Inc.*, 319 S.C. 165, 167, 459 S.E.2d 900, 902 (Ct. App. 1995) (*aff'd per curiam* in *Johnson v. Service Management, Inc.*, 324 S.C. 198, 478 S.E.2d 63 (1996)):

> Judgments generally are enforced by way of writs of execution issued to the sheriff. See S.C. Code Ann. § 15-35-180 (1976, as amended) (providing that judgments requiring the payment of money or the delivery of real or personal property "may be enforced in those respects by execution as provided in this Title."); S.C. Code Ann. § 15-39-80 (1976, as amended) (setting forth the requirements for the contents of the execution, including that it be directed to the sheriff and intelligibly refer to the judgment, stating the court, the county in which the judgment roll or transcript is filed, and the amount of the judgment). ***If a judgment is unsatisfied, the judgment creditor may institute supplementary proceedings to discover assets***. S.C. Code Ann. § 15-39-310 (1976, as amended). ***In addition to their discovery functions, supplementary proceedings "furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action."*** *Lynn v. International Brotherhood of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955).

(emphasis added). The Orders of Reference authorized the Master to "enter into final judgment . . . [and to] 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." (R. pp. 23-28; R. pp. 1023-1028; R. p. 1031)[6]. S.C. Code Ann. § 15-39-10(c) (1976, as amended) specifically provides that one manner of execution be "the delivery of the possession of real or personal property or such delivery

6 Respondent notes that at certain points in the proceedings Appellants attempted to limit the master's authority to the collection of assets sufficient to satisfy only the first two judgments which had been returned *nulla bona* by the Sheriff in April of 2013. Subsequent to the Order of Reference, additional judgments from the two cases were also returned *nulla bona.* Because the Master had both cases already referred to him with finality, Respondents sought the full amount owed on the judgments plus statutory interest. The Master properly included all amounts owed on the judgments because he had been granted jurisdiction over both "matters" for final determination not simply the first two individual judgments arising out of the two lawsuits.

with damages for withholding the property." Such executions "may issue upon final judgments or decrees." S.C. Code Ann. § 15-39-30 (1976, as amended).

Separate foreclosure proceedings and judicial sales are not required for the court to reach the debtors' assets. S.C. Code Ann. § 15-39-310 ("And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution."); *Lynn v. International Broth. of Firemen and Oilers,* 228 S.C. 357, 90 S.E.2d 204 (S.C. 1955) (Proceedings supplementary to execution, in addition to providing for an examination of the judgment debtor for the purpose of discovering property out of which the judgment against him may be satisfied, furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution . . ."). Moreover, S.C. Code Ann. § 15-39-410 (1976, as amended) provides that the "***judge may order any property of the judgment debtor***, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, ***to be applied toward the satisfaction of the judgment***, except that the earnings of the debtor for his personal services cannot be so applied." (emphasis added).

Appellants' reliance on *In re Hinson,* 20 B.R. 753 (Banker. D.S.C. 1982) for the proposition that judgment creditors are limited in their remedies to foreclosure actions is misplaced. *In re Hinson* was a bankruptcy action involving the enforceability of judgment liens against real property, whereas these are supplementary proceedings seeking application of judgment debtors' assets to satisfy their judgment debts. They do not involve a judgment lien on real property nor do they involve questions of lien avoidance. The

language lifted by Appellants from the bankruptcy opinion regarding the fact that S.C. Code Ann. § 15-35-810 (1976, as amended) (the judgment lien statute) does not operate to transfer any interest in the debtor's property to the judgment creditor and that such a transfer of property interest can only be accomplished by sale pursuant to S.C. Code Ann. § 15-39-10, *et seq.* (1976, as amended), has no bearing on this action which is not for the foreclosure of a judgment lien. In fact, S.C. Code Ann. § 15-39-10(c) (1976, as amended) specifically provides that one manner of execution may be "the delivery of the possession of real or personal property or such delivery with damages for withholding the property," and there is no provision in the law which limits the master's authority to the procedures outlined in S.C. Code Ann. § 15-39-610 *et seq.* (1976, as amended). (provisions related to property taken under execution), which would have applied had the Sheriff been able to reach Appellants' property in the original executions of judgment.

Appellants' remaining arguments are also without merit. First, as to Appellants' inflammatory and inaccurate arguments as to how they have been prejudiced by the Master's Order and by the alleged conduct of Respondent since January, none of those allegations are contained in the record nor are they supported by actual evidence. None of them are properly before the Court. Second, as to Appellants' arguments concerning the lack of a surety bond to protect it while the underlying judgments were on appeal, that issue is now moot as this Court has affirmed the underlying judgments. Hammer v. Hammer, Unpublished Opinion Number 2014-MO-007.

Finally, Appellants' arguments regarding the potential for harm to a third-party (the parties' minor child) whom Appellants allege had an interest in the LLC is also wholly

without merit. Appellants made no responsive pleadings at any point in the supplemental proceedings, produced not one document detailing it or anyone else's ownership interests in the subject property and LLC's, and essentially did everything they could to "hide the ball" regarding their assets and interests. If the minor child has any interest in the LLP, that interest was unaffected by the transfer. Appellants never raised this issue before the trial court. Appellants' cooperation with the process and full and fair disclosures would have uncovered those interests. As custodial parent of the minor child, Respondent will certainly do what is necessary to protect the child's interest in the LP, if any exists.

Appellants cannot by bald assertion avoid the application of their assets to lawful judgments against them simply by alleging some unproven interest of a third party. Moreover, even if Appellants "concern" for the interests and constitutional rights of a third-party were genuine, Appellants themselves have no standing to assert those rights as a way to avoid their own judgment debts. Again, this issue was not raised during the proceedings.

Appellants' reliance on Rule 62(a), SCRCP, as a way to void the Master's Deed is also misplaced. Rule 62(a), SCRCP, provides a ten day automatic stay of enforcement proceedings following judgment. These supplemental proceedings ***are*** enforcement proceedings and the Master's Deed was not initiated within ten days of the entry of the underlying judgments by the Circuit Court. Moreover, even if the Master's Order amounted to a new "judgment," which it does not, the burden was on Appellants to move for a stay of enforcement of the judgment pending the disposition of their motion for relief from judgment or while the Master's Order remained on appeal. *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 653 S.E.2d 274 (2007). Appellants made no such

motion, and so even if Rule 62(a), SCRCP applied to the Master's Order, they have waived their right to claim the benefits of the 10 day stay to void the Master's Deed.

For all of these reasons, this Court should affirm the Master's January 21, 2014 Order transferring the property and property interests to Respondent.

II. The Master properly awarded sanctions against the judgment debtor pursuant to Rule 11 and the FCPSA.

Despite Appellants' insistence that they received no notice of Respondent's request for sanctions and were denied an opportunity to be heard, the record entirely supports the Master's decision to award sanctions. Appellants had every possible opportunity to conform their behavior to acceptable practice and were afforded a full opportunity to be heard – actually, to explain *ad nauseam* why they should not be held accountable for their conduct. Respondent complained of Appellants' obstructionist behaviors multiple times both orally, as well as in a motion for criminal contempt dated August 2, 2013. Specifically, Respondent complained repeatedly of Appellants interposing deliberately evasive answers, failing to produce information and documents as required by court order, failing to answer timely and completely; written discovery ordered by the court, and failing to file written responses to discovery as ordered. (R. pp. 48 - 54; R. p. 238, line 6 – p. 239, line 8, R. p. 242, line 8 – p. 243, line 8).

Respondent also specifically alleged that Appellants' conduct was intentional and for the purposes of obstructing legitimate legal process and harming Respondent by further delaying her receipt of monies owed. (R. pp. 48-54). The Master himself found Appellant Hammer to be "actually fairly evasive and uncooperative. In fact, for example we couldn't

even nail him down as to how old he was." (R. p. 228, lines 6-14).

The supplemental proceedings, which should have taken only a few days and one hearing, dragged out over ***eight months*** and ***four hearings***. They cost Respondent an additional $55,385.70 in fees and costs -- all because Appellants refused to obey any court order, follow any normal rule of procedure, and interposed any and all objections and motions they could conjure up to delay the proceedings.

The Master understood Respondent's request for fees as a request for sanctions (R. p. 368, lines 16 – 23), and while he ultimately declined to find Appellant Hammer in criminal contempt, he did award sanctions in the amount of $55,385.70. Based on the procedural history of the supplemental proceedings and the obstructionist behavior of Appellants recited in the Master's January 2014 Order at pages two through five, the Master granted Respondent her fees as a sanction pursuant to the FCPSA, S.C. Code Ann. Section 15-36-10 *et. seq (1976, as amended).* and Rule 11, SCRCP. (R. pp. 17 – 18). In so ruling, the Master found specifically:

> 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.

Id. at R. p. 18.

S.C. Code Ann. § 15-36-10(c)(1) (1976, as amended) permits a court to sanction parties if it finds their manner of conducting their defense of a civil suit was intended merely to harass or injure the other party, or was frivolous, or was interposed merely for

delay. Under subsections (D) and (G), with notice and an opportunity to be heard, the court is empowered to sanction litigants including by requiring the payment of the aggrieved parties' fees. Here, Appellants knew as early as Aug. 2, 2013 when Respondent asked for criminal contempt findings, that sanctions were possible and, moreover, they knew with specificity what behaviors Respondent and the court found objectionable. They had five months to cure their conduct and two hearings in which to explain their failures to cooperate. At no time did Appellants provide the information they were ordered to provide nor did they cooperate with the proceedings in any sort of reasonable fashion. Appellants appeared to make each litigation decision with an eye toward further delay and obfuscation. Given the length of the proceedings and the specific findings of the Master, he had more than sufficient evidence to justify sanctioning Appellants under the relevant provisions of FCPSA. Therefore, this Court should affirm the Master's award of sanctions.

Rule 11, SCRCP, also provided the Master a mechanism by which he could and did sanction Appellants. Rule 11 allows a court to award fees and issue fines as punishment for a party filing frivolous motions, for making frivolous arguments, or for filing a motion in bad faith. *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 597, 713 S.E.2d 624, 628 (2011); *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). Rule 11(a), SCRCP, in the form existing at the time the Master issued his Order provides, "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Further, Rule 11, SCRCP provides:

> If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11, SCRCP. Under Rule 11, SCRCP, a party and/or the party's attorney may also be sanctioned for filing a frivolous pleading, motion or other paper, ***or for making frivolous arguments.*** *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160,162 (1996) (*citing Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990). "The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith (i.e., to cause unnecessary delay) whether or not there is good ground to support it." *Id. citing Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995). "The sanction may include an order to pay the reasonable costs and attorneys' fees incurred by the party . . . defending against the frivolous action." *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50. Additionally, in order to deter such future conduct, the sanctions may include a fine paid to the party forced to defend against the frivolous action, or to the court. *Id.*

Our courts generally define an action as frivolous if there are no good grounds to support it or if it is interposed in bad faith to cause delay. Although compliance with Rule 11, SCRCP is evaluated by a subjective standard, this Court has held Rule 11, SCRCP "may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Ex parte Bon Secours*, 393 S.C. at 598, 713 S.E.2d at 628. The criteria for Rule 11, SCRCP sanctions are essentially the same as those for sanctions under the FCPSA. *In re Beard*, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) (cert. denied).

As discussed above, the Master himself found Appellant Hammer to be "actually fairly evasive and uncooperative." The supplemental proceedings, which should have taken only a few days and one hearing, dragged out over eight months and four hearings. Appellants refused to obey any court order or follow any normal rule of procedure, and interposed any and all objections and motions they could conjure up to delay the proceedings. In fact, they never produced any documents demanded of them and made excuse after excuse for why they could not bring themselves to produce the information sought by the court. The Master expressly awarded sanctions against Appellants based on the conduct of Appellants and for their making frivolous, delaying arguments designed to frustrate the purpose of the proceedings. The Master was completely within his discretion to award sanctions under Rule 11, SCRCP and this Court should affirm his decision.

As an alternate sustaining ground, Respondent also points out that it was within the inherent powers of the court to impose sanctions against recalcitrant parties who refused repeatedly to cooperate with the process. "When imposing sanctions pursuant to its inherent powers, the [court] must find that the conduct in question was 'without colorable basis' and undertaken in bad faith, i.e. 'motivated by improper purpose such as harassment or delay.'" *Schlaifer Nance & Co. Inc. v. Estate of Andy Warhol*, 194 F.3d 323, 334 (2d Cir. 1999). Moreover, a court may exercise its inherent power to assess attorney's fees when a party has "acted in bad faith, vexatiously, wantonly or for oppressive reasons." *Chambers v. NASCO. Inc.*, 501 U.S. 32, 45-46, 11 S.Ct. 2123 (1991). "These powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* at

43, (*quoting Link v. Wabash R. Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, (1962)).

Here, Appellants received specific written notice of their objectionable conduct in the form of Respondent's Motion for Contempt and orally at the various hearings where Respondent complained about their obstructionist conduct and frivolous motions. Respondent's requests for the imposition of sanctions in the form of attorneys' fees was well known to Appellants and they were given ample opportunity to be heard on the issue at multiple hearings.

The Master was clearly within his authority to sanction Appellants for their "beyond the pale" behaviors and cannot be said to have abused his discretion at any stage of the proceedings. Therefore, this Court should affirm the Master's award of fees to Respondent.

III. The Master had personal jurisdiction over Appellants in these supplemental proceedings, and service was proper under the applicable Rule of Civil Procedure.

Prior to Appellants' first failure to appear for a hearing in the supplemental proceedings (originally set for May 30, 2013), Appellants filed motions to dismiss for lack of personal jurisdiction claiming inadequate service because Judge Manning's orders were served by process server rather than by a sheriff's deputy (R. pp. 33-34; R. pp. 35-36). The Master denied Appellants' motion to dismiss, finding that Appellants had actual notice of the proceedings and thus had been afforded procedural due process. (R. pp. 4-5).[7] Further,

7 Even if Rule 4(b), SCRCP, applied to these supplemental proceedings, our Courts have long held that, "[e]xacting compliance with the rules is not required to effect service of process; rather, the court must inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Mull v. Ridgeland Realty, LLC* 387 S.C. 479, 693 S.E.2d 27 (Ct. App. 2010).

the Master ruled that because the Rules and Orders of Reference related to ongoing actions in which Appellants had already appeared, service was proper under Rule 5(b)[8], SCRCP, and there was no need for Respondent to effect service under Rule 4. *Id.*

Appellants appear to have abandoned their procedural due process claim regarding service by admitting they had actual notice of the proceedings and by not reasserting their due process arguments regarding service. (Appellants' Final Brief at pg. 14). However, even if that claim had not been abandoned, the Master's conclusion that the service effected comported with due process is entirely supported by existing law. For example, in *Everhart v. Everhart*, 261 S.C. 322, 325, 200 S.E.2d 87, 88 (1973), this Court ruled that an application to enforce an alimony award was a supplementary proceeding and not an independent action or the commencement of a new action requiring fresh service. In so holding, the Court "specifically held that where a court of equity has assumed jurisdiction of a cause, it will retain such jurisdiction to dispose of all issues within the scope of the pleadings, including the granting of whatever auxiliary and supplementary relief may be required to render its judgment effective." *Id. citing Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956); *Holly Hill Lumber Co. v. McCoy*, 203 S.C. 59, 26 S.E.2d 175 (1943).

> Where the proceeding is a continuation of the original action, and the parties have been properly brought within the jurisdiction of the trial court at the outset, **due process is satisfied by giving the defaulting husband notice which is reasonably calculated to give him knowledge of the proceeding and an opportunity to be heard.** *See Maner v. Maner*, 412 F.2d 449 (5th Cir. 1969). It has been held that service by mail upon a nonresident husband is sufficient. *Prensky v. Prensky*, 146 So.2d 604 (Fla.App.1962). Certainly personal service satisfies that requirement.

8 The Master's June 10, 2013 Order contained a scrivener's error listing the applicable Rule as Rule 6(b), SCRCP rather than Rule 5(b), SCRCP. Obviously, the Master intended to find service proper under Rule 5(b), SCRCP.

Id. (emphasis added).

Likewise, here the court had already obtained personal jurisdiction over Appellants in the underlying actions and, thus, the court retained jurisdiction for all supplemental proceedings. Respondent needed only to provide "notice which is reasonably calculated to give . . . [Appellants] knowledge of the proceeding and an opportunity to be heard" as clearly she did by arranging for personal service via process server. *Cf., S.C. Dept. of Social Services v. Johnson*, 386 S.C. 426, 434, 688 S.E.2d 588, 591-92 (Ct. App. 2009)(holding that Rule 5, SCRCP, and not Rule 4, SCRCP, applies to all pleadings and "written notices" served subsequent to the original summons and complaint); *Humphries v. Spitz*, 284 S.C. 521, 327 S.E.2d 370 (Ct. App. 1985)("The rule to show cause of this case was intrinsic to the case; it was a direct attack, as opposed to a collateral attack, on the underlying divorce decree. Family courts retain jurisdiction in divorce cases; the rule to show cause before us was intrinsic -- within the existing, ongoing litigation.) Therefore, the Master properly concluded that service by process server was sufficient in these circumstances and this Court should affirm his denial of Appellants' motion to dismiss.

CONCLUSION

For all of the foregoing reasons, the Master properly denied Appellants' motions and should be affirmed in all respects.

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August 27, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
James F. Barber Jr., Supervising Circuit Court Judge
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Appellate Case No. 2014-000965

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR. Respondent added a footnote to identify to which version of the Record on Appeal the citations are made.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
AUG 27 2014
S.C. Supreme Court

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

Appellate Case No. 2014-000965

1634 Main, LP,	Appellant
Vs.	
Shirley Hammer,	Respondent
Vs.	
Howard Hammer,	Appellant
and	
Howard Hammer	Appellant
Vs.	
Shirley Hammer,	Respondent.

CERTIFICATE OF SERVICE

I, Mara Ballard, an employee of Ballard & Watson Attorneys at Law, do hereby certify that on August 27, 2014, I served a copy of the **Final Brief of Respondent** in the above-captioned case on the following individuals by electronic mail and by regular United States Mail, with sufficient first class postage affixed, addressed as follows:

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August 27, 2014
West Columbia, South Carolina