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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

2013-CP-40-6890

Shirley Hammer,

Respondent,

v.

Howard Hammer; 1634 Main, LP, Alvin Hammer, SH5, LLC; SH4, LLC, SH3, LLC; HASCI, LLC; D&M Chateau, LLC; Heart of Columbia, LLC; Alvin J. Hammer, as Personal Representative of the Estate of Eleanor Bernstein Hammer; Joye Elizabeth Life Estate; Stanley Hammer; Department of the Treasury-IRS; Chateau DeVille Association, Inc and/or Chateau DeVille Horizontal Property Regime; David H., a minor under the age of 14,

Defendants,

Of Whom,

Alvin Hammer; HASCI, LLC; Heart of Columbia, LLC a/k/a Heart of Columbia, Inc ; Alvin J. Hammer, as Personal Representative of the Eleanor Bernstein Hammer, and Stanley Hammer,

Appellants.

MEMORANDUM OF APPELLANTS

Pursuant to this Court's request, Appellants Alvin Hammer, HASCI, LLC, Heart of Columbia, LLC a/k/a Heart of Columbia, Inc., Alvin Hammer, Personal Representative of the Estate of Eleanor Hammer, and Stanley Hammer submit this Memorandum on the appealability of the lower court's orders.¹

FACTUAL BACKGROUND

This matter originated with litigation between Shirley Hammer and Howard Hammer, who were formerly husband and wife. The action on appeal was filed in the lower court on November 13, 2013 by Shirley Hammer's Verified Complaint for Attachment and Foreclosure of Judgments, with service by Appellants accepted on December 16, 2013. The complaint alleged that Shirley Hammer had recorded judgments as follows:

Date Entered	Roll No.	Amount Due:	Defendant
February 6, 2013	2009CP4005911	\$80,000.00	H. Hammer
February 6, 2013	2010CP4002889	\$50,000.00	H. Hammer
February 6, 2013	2010CP4002889	\$25,000.00	1634 Main
June 3, 2013	2009CP4005911	\$60,744.30	H. Hammer
June 3, 2013	2010CP4002889	\$102,032.87	1634 Main
Total Due:		\$317,777.17, plus interest (Complaint paragraph 1)(Exhibit 1)	

Shirley Hammer's complaint further alleged that Howard Hammer and others (not Appellants) owned property located at 1634 Main Street, Sumter Street, Chateau Drive and Catawba Street (Complaint paragraphs 4, 5, 7, 9, 11, 12, and 24) (Exhibit 1); further, Shirley Hammer alleged

¹ The letter from this Court requesting the memorandum did not state the particular concern of this Court with regard to appealability. If this Memorandum fails to address the concern of the Court, Appellants welcome the opportunity to provide a supplemental

Howard Hammer (but not 1634 Main, LP) was an owner of HASCI, (one of the Appellants herein) which owned unencumbered real property on Assembly Street, Sumter Street and other Main Street property - - not 1634 Main Street (Complaint paragraphs 14, 16, 18, 20 and 22) (Exhibit 1). Shirley Hammer's complaint alleged, as to each of these properties, that her judgments against Howard Hammer and 1634 Main, LP are "a first lien on the property." (Complaint paragraph 6, 8, 10, 15, 17, 19, 21, 23 and 25) (Exhibit 1). Shirley Hammer's prayer of the complaint requested the amount due upon her judgments be determined, that the judgment lien of Shirley Hammer be declared a first lien on the properties and Shirley Hammer have a judgment of foreclosure. Shirley Hammer also specifically prayed for sale of these properties under the direction of the court.

In addition to the foregoing the complaint alleged, as to mortgages of Eleanor Hammer and Alvin Hammer on the Chateau Drive properties, that these mortgages constituted fraudulent conveyances (Complaint paragraphs 11 and 12) (Exhibit 1).

On or about January 9, 2014 Appellants' counsel was notified that 1634 Main Street was being transferred to Shirley Hammer by the Master in a separate action, which "resolved" the matters in the foreclosure case. Thereafter on January 15, 2014 Appellants answered and moved to dismiss the foreclosure action against them. No discovery was taken in the foreclosure case which remained dormant, primarily because Appellants considered the transfer of 1634 Main Street by order in separate actions satisfied the judgments. (Exhibit 2 - Order of January 21, 2014).

In November 2014, however, Defendants' motion to dismiss was scheduled but was

memorandum.

continued. Thereafter, by motions dated December 18, 2014 and December 23, 2014 Shirley Hammer filed a motion and an amended motion to amend the complaint to allege entitlement to a charging lien and a receiver. In each of the filings she asserted

The original judgments obtained by Plaintiff were **satisfied** by order of this Court dated January 21, 2014 in Hammer v. Hammer et al, Case Nos. 2009-CP-40-5911 and 2010-CP-40-2889, which awarded Plaintiff ownership of certain real estate and personal property...²

(Emphasis added).

Appellants' motion to dismiss was heard on January 14, 2015. The only ground advanced by Appellants to support dismissal was that the judgments upon which the Foreclosure action was based had been satisfied by the transfer of 1634 Main Street to Shirley Hammer under the prior court order. For this reason, because there were no "unsatisfied judgments" on which to base a charging lien, Appellants also argued that a charging lien was premature.

On March 16, 2015, the Court issued the Order granting Appellants motion to dismiss, also finding Shirley Hammer was not entitled to a charging lien against Appellants. This order determined that Shirley Hammer must have an "unsatisfied judgment" to obtain a charging lien under S.C. Code Ann § 33-44-504(a). (Order Granting Motion to Dismiss, p 3). It would appear, although not stated, that there was no "unsatisfied judgment" because the transfer of 1634 Main Street satisfied the judgments, and therefore dismissal of Appellants was warranted. As later discussed, the only basis for this conclusion is that Shirley Hammer had no "unsatisfied judgments" because the judgments were satisfied by the transfer of 1634 Main Street to Shirley

² The property referred to is 1634 Main Street. (See Exhibit 2). In addition, Plaintiff's counsel sent an email to the court on May 9, 2014 which states "the judgments have been satisfied by the transfer of the building."

Hammer.

The Court then issued a second separate Order Granting Charging Order in the case in which the Court, under the same section, S.C. Code § 33-44-504, and without determining the amount due upon Shirley Hammer's "judgments," granted a charging order for an unknown amount against Howard Hammer's distributional interest in HASCI. The order noted that there was no need to appoint a receiver because "three (3) lawyers who represented themselves to have some interest in HASCI, LLC, as well as Keith Babcock, attorney for HASCI, LLC attended the hearing and are aware of the request for a charging order."

Appellants moved under Rule 59 and 60 to alter or amend the "Order Granting Charging Order" in the case in which Appellants are named as party defendants in the complaint brought by Shirley Hammer. As an alternative, Appellants moved to require the sale of 1634 Main Street. (See Exhibit 3) In summary, the primary basis of the motions was 1) the Order of January 21, 2014 transferred all interest of Howard Hammer and 1634 Main, LP to Shirley Hammer which (as noted above) Shirley Hammer has asserted satisfied her judgments; thus the motion for a charging order should have been denied; 2) that the alleged judgments against Howard Hammer were approximately \$190,000; yet the Court did not set forth this (or any other amount) as the amount for the charging order, thus creating uncertainty for Appellants as to how much is required to be distributed under the charging order, if any; 3) that without a certain amount Appellants, who are strangers to the original judgments, risk being embroiled in further and continuing charging lien litigation by Shirley Hammer (see attachment B to Exhibit 3) and/or co-defendants and/or being required to be involved in further declaratory relief actions and/or other actions; and 4) Appellants have offered to pay to Shirley Hammer the full judgment

amounts³ in exchange for the return of 1634 Main Street which was previously transferred to Shirley Hammer⁴ to sell to satisfy her judgments (see attachment A to Exhibit 3). This payment would end this litigation (and the appeals), and the sale to Appellants and/or at public auction or a judicial sale (after determination of the amount due as prayed for in Shirley Hammer's own complaint) is required by equitable considerations including judicial economy.

The Appellants Rule 59 and 60 motion and the alternative motion were denied and this appeal timely followed.

ARGUMENT

1. The Appellants are entitled to appeal, for clarification, the order dismissing Appellants.

South Carolina Code Section 18-1-30 provides that "[a]ny party aggrieved may appeal..." Rule 201(b), SCACR provides that "a party aggrieved by an order, judgment, sentence or decision may appeal." Appellants were parties in the underlying matter and are aggrieved by the orders issued by the lower court.

By this appeal Appellants seek an order on appeal clarifying that the dismissal here is "with prejudice" and factually based upon the fact that, at the time of the issuance of the order,

³ A further order attached as Exhibit 4 - Order of April 24, 2015, which shows the full amount of judgments to date as being \$423,357.57. (See paragraph 47 \$335,168.76 and paragraph 80A \$88,088.81.) This Order combines the judgments amounts as to both Howard Hammer and 1634 Main, LP but does not separately state the amount of judgments against Howard Hammer. This Order also does not provide a reduction for the amount of rents of approximately \$140,000 received after transfer of 1634 Main Street to Shirley Hammer. This Order also noted that it concluded all actions between the parties.

⁴ Shirley Hammer has transferred the 1634 Main Street to another entity, HighTower, LLC, by deed dated January 24, 2014 and recorded in the Richland County RMC Office at Record Book 1922 at page 3825.

Shirley Hammer had no “unsatisfied judgments,” thereby precluding her proceeding in this Foreclosure Action to obtain foreclosure and/or to amend to allege a charging ~~hne~~ lien against the distributional interest of any HASCI member. Appellants seek such an order for res judicata purposes for future claims already threatened (See attachment B to Exhibit 3).

Appellants are parties to the case and while the Order Granting Motion to Dismiss does dismiss Appellants and deny a charging lien, the factual basis as required by Rule 52, SCRCF is not set forth so as to unequivocally, without further litigation, ensure that the basis of the dismissal is res judicata as to the fact that Shirley Hammer had no “unsatisfied judgments” on which to base Foreclosure and/or base any charging lien requiring appellants to hold or distribute funds to Shirley Hammer.⁵

This entitlement to res judicata is supported by the fact the order dismissing Appellants is the same basis as to all Appellants. As set forth above, paragraphs 11 and 12 of the complaint are allegations against Eleanor Hammer and Alvin Hammer that mortgages they hold on Chateau Drive properties are fraudulent conveyances. These allegations, if true, would have prevented the court from dismissing these Hammer defendants on any basis EXCEPT on the basis that the transfer of 1634 Main Street under the Order of January 21, 2014 (Exhibit 1) satisfied Shirley Hammer’s judgments and thus no “unsatisfied judgments” were in effect to allow the actions to proceed against these Hammer defendants. The fact that this was also the only ground advanced by these defendants is further support for Appellants contention on appeal; otherwise the defendants may face continuing litigation.

⁵ A party may appeal adverse portions of an otherwise favorable order. Toal, Vafai and

Also supporting Appellants entitlement for res judicata purposes is the legal principle that all issues which were or could have been raised in a proceeding are precluded from relitigation by res judicata and, thus, the fact that the only ground advanced by these defendants was that the judgments had been satisfied and an order in defendants favor was issued entitles Appellants on appeal to a determination with this as a factual basis and thus to preclude relitigation for future proceedings, which clearly would burden Appellants

Appellants are clearly affected, aggrieved, and burdened by the Order's failure to specifically set forth the factual basis implicitly stated,⁶ for the Order and are also affected, aggrieved and burdened by the failure to have ordered dismissal "with prejudice."

2. Appellants are parties aggrieved by the Charging Order and thus, entitled to appeal.

As discussed above, Appellants assert that they are parties to this case, and therefore entitled to appeal under S.C. Code § 18-1-30. However, even if Appellants are no longer parties, as the lower court asserts, they have standing to appeal as aggrieved parties under Rule 201, SCACR. The Fourth Circuit has also recognized that non-parties adversely affected by an order have recourse:

The rule that only original parties and intervenors to the action before the district court may appeal an adverse judgment is not absolute. We have recognized an exception to the general rule that permits a nonparty to appeal a district court's order or judgment when the appellant (1) possessed "an interest in the cause litigated" before the district court and (2) "participated in the proceedings actively enough to make him privy to the record." To satisfy the requirements for

Muckenfuss, Appellant Practice in South Carolina, 2nd ed., 2002, p. 109.

⁶ Of course, if Respondent agreed to a consent order of this court clarifying that the basis of this appealed order is because "no unsatisfied" judgments existed at the time the Order below was issued on which to base Foreclosure and/or any charging lien requiring Appellants to hold or distribute funds to Shirley Hammer, this appeal need not proceed.

nonparty appellate standing, the appellant must have some cognizable interest that is affected by the district court's judgment or order.

Doe v. Pub. Citizen, 749 F 3d 246, 259 (4th Cir. 2014)(internal citations omitted). Non-parties have been permitted to appeal in a variety of situations, including: non-party creditors who assert rights in receivership proceedings may appeal orders affecting their legitimate interests. See, West v. Radio-Keith-Orpheum Corp., 70 F 2d 621, 623-24 (2d Cir.1934); where an injunction extends to non-parties, they may appeal from it. See, Brown v. Board of Bar Examiners, 623 F.2d 605, 608 (9th Cir.1980); and a non-party may generally appeal an order holding him in civil contempt. See, Union of Professional Airmen v. Alaska Aeronautical, Inc., 625 F 2d 881, 884 (9th Cir.1980).

The Brown case is particularly relevant here. In that case, district court granted the plaintiff's motion for injunctive relief as to all defendants but, at the same time, dismissed the Board of Governors and the Board of Bar Examiners as improper parties. The Board of Governors and the Board of Bar Examiners appealed the court's grant of an injunction. The appellate court rejected the plaintiff's argument that once dismissed from the case, the appellants were deprived of standing to seek review of the injunction,⁷ noting that the injunction ordered the appellants to physically comply by allowing the plaintiff to sit for the bar exam. The Court stated:

Ordinarily, as parties specifically bound under the terms of a preliminary injunction, appellants could avail themselves of interlocutory appellate review pursuant to 28 U.S.C. s 1292(a)(1). We see no logic in the district court's novel rulings which concurrently dismissed appellants and yet granted specific relief

⁷It would appear that a person or entity that had, at one time, been a party, has greater standing than one that was never a named party

against them. Whatever the rationale, however, appellants should not be denied appellate review of orders by which they were aggrieved.

Brown v. Bd. of Bar Examiners of State of Nev., 623 F.2d 605, 608 (9th Cir. 1980). By dismissing Appellants, yet at the same time granting a charging lien for Howard's distributional interest, without specifying the amount of the lien, the lower court has placed Appellants in the same position as the parties in Brown. As aggrieved parties, Appellants have standing to appeal.

It must also be noted that the Order dismissing Appellants set forth above ordered that Shirley Hammer's "Amended Motion for Charging Lien against these defendants" (Appellants herein) was "denied," because Shirley Hammer was required to have an unsatisfied judgment in order to obtain a charging lien. Notwithstanding, a separate order was issued including the following totally inconsistent language.

Pursuant to S.C. Code Ann Section 33-44-504, Mrs. Hammer's request for a charging order against Mr Hammer's distributional interest in HASCI, LLC and Chateau DeVille LLC is granted. The court does not find it necessary, at least at this time, to appoint a receiver; three (3) lawyers who represented themselves to have some interest in HASCI, LLC, as well as Keith Babcock, attorney for HASCI, LLC attended the hearing and are aware of the request for a charging order.

Mrs. Hammer's motion for a charging order against Mr. Hammer's distributional interest in the LLC defendants is:

GRANTED.

Order Granting Charging Order, p. 4.

As clearly shown in that order, burdens are placed upon HASCI and HASCI members who are lawyers as well as upon HASCI counsel Keith Babcock.⁸ Moreover, Appellants' motion

⁸ In effect HASCI, through these lawyers, is made an involuntary receiver under this

to alter or amend and require a sale of 1634 Main Street (Exhibit 2) shows why Appellants are affected, aggrieved and burdened by the Order Granting Charging Order. All of the basis set forth in the motion are subject to appeal and will be pursued on appeal.

However, as a summary Appellants would point out that 1) 1634 Main Street already transferred to Shirley Hammer is worth well in excess of the judgments alleged by Shirley Hammer.⁹ Further, because the transfer satisfied the judgment, the Order Granting a Charging Order effectively eroded the initial order denying a charging lien. Moreover, the Order Granting Charging Order is totally inconsistent with the Order denying a charging lien as to Appellants. Thus, Appellants are party defendants aggrieved by the Order Granting Charging Order; 2) Additionally, Appellants, particularly HASCI, own other properties jointly with Beth Bernstein, Lowell Bernstein, Anne Bernstein, Hillary Bernstein and Michelle Bernstein Perrick, all of whom will be adversely affected, burdened and aggrieved by the charging order which effectively prevents HASCI from selling any further property until the judgments herein are resolved so as to avoid further litigation; and 3) Appellants sought equitable relief (sale of 1634 Main Street) which was exactly the same relief sought Shirley Hammer in her complaint. The denial of this relief is clearly a matter by which Appellants are aggrieved and is therefore subject to appeal. This is so, in part, because a private auction sale (now scheduled) without a prior determination of the amount due Shirley Hammer, as prayed for by Shirley Hammer in her pleadings, would not allow Appellants to know how much to bid to ensure that enough will be

order.

⁹ At the hearing held January 14, 2015 counsel for Shirley Hammer stipulated that the property was appraised at \$1.4 million.

paid for 1634 Main Street to totally satisfy Shirley Hammer's judgments in order to extinguish any charging lien. Otherwise, Appellants will be subject to further litigation (see Exhibit B to Exhibit 2), which is clearly a burden, to determine the amount necessary to extinguish any charging lien (which also is a burden upon Appellants).

3. Appellants are aggrieved by the Order Denying Motion to Alter or Amend Judgment or Determine a Specific Amount of the Judgment of Plaintiff and Require Sale of 1634 Main Street and thus have standing to appeal.

In this Order the Court denied Appellants Rule 59 and 60 motion and the alternative motion of Appellants (Exhibit 2). The only basis stated for denial is that Appellants did "not have standing to ask for the relief sought." This conclusion, however, is not based upon any stated facts nor is any legal support for this determination cited in the Order. Since, as shown above (see Footnote 5, *supra*), a party does have standing to appeal adverse portions of an otherwise favorable order, Appellants are entitled to appeal error in the portion of the orders by which Appellants are aggrieved and/or burdened.

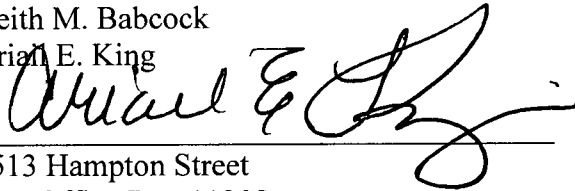
In this regard it should be noted that the order states that Appellants only remedy is "to expel Howard Hammer or disassociate themselves from him" in accordance with law in order to "end any negative consequences from a charging order as to Howard Hammer's interest..." This order therefore shows on its face that Appellants are burdened and aggrieved by the order. This is so because the order recognizes that negative consequences result to Appellants from the charging order as to Howard Hammer's interest. It further shows that Appellants will be required to obtain legal counsel obviously at expense to Appellants, to determine a way to expel or disassociate from Howard Hammer "in accordance with state law" to avoid these negative consequences. Moreover, whether a party has standing is a legal issue and, thus, whether the

lower court determination that Appellants lack standing burdens Appellants ~~and~~ is itself a legal determination subject to appeal.

CONCLUSION

Based upon the foregoing it is respectfully submitted that each of the orders appealed from is appealable and/or at the very least the appealability can only be determined after briefing of the issues on appeal and consideration of the appeal in a normal manner. Accordingly, Appellants respectfully submit that the appeals are appropriate and should proceed.

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Keith M. Babcock
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Columbia, South Carolina 29211
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Attorneys for Appellants
Alvin Hammer, Eleanor Hammer,
Stanley Hammer, HASCI, LLC, and
Heart of Columbia, LLC

Columbia, South Carolina
May 4, 2015

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Document</u>
1	Complaint of Shirley Hammer (November 13, 2013)
2	Order Directing Transfer of Real Property to Satisfy Judgments (January 21, 2014)
3	Appellants' Motion to Alter or Amend Order Granting Charging Order (March 26, 2015)
4	Order Granting Motion for Sanctions (April 24, 2015)

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EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MASTER IN EQUITY COURT
Case No. 2013-CP-40-_____

Shirley Hammer,

Plaintiff,

v.

Howard Hammer, 1634 Main, LP, Alvin
Hammer; SH5, LLC; SH4, LLC; SH3, LLC;
HSCI, LLC; D&M Chateau, LLC; Heart
Of Columbia, LLC; Eleanor Hammer; Joye
Elizabeth Life Estate; Stanley Hammer;
Department of the Treasury- IRS; Chateau
DeVile Association, Inc; and/or Chateau
DeVile Horizontal Property Regime; David
H. _____ a minor under the age of 14,

Defendants.

VERIFIED COMPLAINT FOR
ATTACHMENT, AND
FORECLOSURE OF JUDGMENT

RICHLAND COUNTY
FILED
2013 NOV 13 AM 10:26
JENNIFER M. GREGG
Clerk of Court

Plaintiff would respectfully show:

1. That heretofore Plaintiff recovered and recorded judgments against Defendant Howard Hammer and against Defendant 1634 Main, LP as hereinafter set forth; and that there is still due and owing on said judgments the sum indicated herein, below, Defendants having failed and refused to satisfy same:

Date Entered	Roll No.	Amount Due:	Defendant
February 6, 2013	2009CP4005911	\$80,000.00	H. Hammer
February 6, 2013	2010CP4002889	\$50,000.00	H. Hammer
February 6, 2013	2010CP4002889	\$25,000.00	1634 Main
June 3, 2013	2009CP4005911	\$60,744.30	H. Hammer
June 3, 2013	2010CP4002889	\$102,032.87	1634 Main
Total Due:		<u>\$317,777.17, plus interest¹</u>	

2. That executions thereafter duly issued to the Sheriff of the County of Richland against Defendant and said Sheriff has returned the same Nulla Bona.

3. That upon information and belief, the Defendant 1634 Main LP and Howard Hammer have assets in the County and in the State not exempt from levy which they unjustly refuse to apply toward satisfaction of said judgments; Plaintiff would show, in particular, that Howard Hammer owns substantial assets by and through his ownership interest in various limited liability companies and limited partnerships, as set forth herein.
4. On information and belief, Defendant Howard Hammer is the sole member of a South Carolina limited liability company called SH5, LLC; and, Howard Hammer, his minor son David Hammer and SH5, LLC are the members in the limited partnership 1634 Main, LP.
5. On information and belief, these parties own, unencumbered, the real property located at 1634 Main Street in Columbia, South Carolina, which bears Tax Map #09014-04-19, and is more aptly 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 of 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 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

¹ Interest owed from the dates of filing, to be calculated at the judicially ordered post-judgment rate.

in the office of the Register of Deeds for Richland County, South Carolina, in Deed Book 00627, at page 1909.

6. That Plaintiff is informed and believes her judgments against Howard Hammer and 1634 Main, LP are the only judgment enforceable against the property at 1634 Main Street, and are therefore a first lien on the property
7. Furthermore, Howard Hammer, SH5, LLC and 1634 Main, LP own, unencumbered, the real property located at 1632 Main Street in Columbia, South Carolina, which bears Tax Map #R09014-04-19, a lot adjacent to 1634 Main Street.
8. That Plaintiff is informed and believes her judgments against Howard Hammer and 1634 Main, LP are the only judgments enforceable against this property at 1632 Main Street, and are therefore a first lien on the property.
9. On information and belief, Defendant Howard Hammer is the sole member of a South Carolina limited liability company called SH3, LLC, which owns property for or with defendant Joye Elizabeth Life Estate, which property is located at 2109 Sumter Street, in Columbia, South Carolina, and is more accurately described as follows:

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying or being on the western side of Sumter street, between Elmwood Avenue and Scott Street, in the city of Columbia, County of Richland, State of South Carolina, being shown and delineated on a plat prepared for SH3, LLC by Anderson & Associates Land surveying, Inc. dated April 4, 2000. Said lot is more particularly described as follows, to wit: commencing at an iron pin on the western edge of the right of way of Sumter Street located Two hundred twenty-three: and three-hundredths (223 . 03") feet south of the center line of Scott Street at its intersection with Sumter Street, which iron pin is the common corner of the subject property, property now or formerly of Gretchen G. Dawson and the western edge of the right of way of Sumter Street, and from such Point of Commencement running S 14 degrees 36' 25" E minutes along the western edge of the right of way of Sumter Street for a distance: of Sixty-five and three-tenths

(65.3') feet to an iron pin; thence turning and running S 75 degrees 55' 36" W along property now or formerly of J. Marvin Mullis, Jr. for a distance of Ninety seven and ninety two-hundredths (97.92') feet to an iron pin; thence turning and running S 76 degrees 10' 46" W along property now or formerly of Johnson and King Engineers, Inc. and property now or formerly of Allen J. Horn for a distance of One hundred ten and seven-tenths (110.70') feet to an iron pin; thence turning and running S 76 degrees 3' 39" W along property now or formerly, of Allen J. Horn for a distance of Ten and eight-hundredths (10.08') feet to an iron pin; thence turning and running 13 degrees 39' 55" W along property now or formerly of Isadore S. Bernstein and Henry Hammer for a distance of One hundred five and nine-hundredths (105 . 09') feet to an iron pin; thence turning and running N 76 degrees 5' 56" E along property now : or formerly of Isadore S. Bernstein and Henry Hammer for a distance of One hundred seventeen and four-hundredths (117.04') feet to an iron pin; thence turning and running S 14 degrees 23' 25:" E along property now or formerly of Gretchen . G. Dawson for a distance of Forty (40.00') feet to an iron pin; thence turning and running N 75 degrees 53' ,57" E minutes along property now or formerly of Gretchen G. Dawson for a distance of One hundred and eight-hundredths (100.08') feet to the Point of Commencement.

10. That Plaintiff is informed and believes her judgments against Howard Hammer are the only judgments enforceable against this property at 2109 Sumter Street, and are therefore a first lien on the property.
11. On information and belief, Howard Hammer owns certain real property located at 3600 Chateau Drive, Apt. 125. Defendant Chateau DeVille Association, Inc. may claim an interest in the subject property by virtue of Notice of Lien in the amount of \$1,211, which Notice is recorded on November 10, 2009 in the Office of the ROD for Richland County, in Book 1568 at page 2545. On information, Defendant Chateau DeVille Association, Inc. may claim an additional interest in the amount of \$7,718, which Notice is recorded on February 7, 2012 in the Office of the ROD for Richland County, in Book 1740 at page 1488. On information and belief Howard's mother, defendant Eleanor Hammer may claim an interest in the subject property by virtue of a mortgage in the amount of \$65,000, recorded on November 1, 2012 in the Office of the ROD for Richland County in Book 1812,

Page 3020. On information and belief, this mortgage may have been issued for purposes of encumbering the subject property in an attempt to insulate it from plaintiff's anticipated judgment(s), which would constitute a fraudulent conveyance.

12. On information and belief, Howard Hammer owns certain real property located at 3600 Chateau Drive, Apt. 202. On information, Defendant Chateau DeVille Horizontal Property Regime may claim an interest in the amount of \$1,211, which Notice is recorded on November 10, 2009 in the Office of the ROD for Richland County, in Book 1568 at page 2546. On information and belief Howard's brother, Alvin Hammer issued a mortgage in the amount of \$60,000, which was recorded on November 1, 2012 in the in the Office of the ROD for Richland County in Book 1812, Page 3017. On information and belief, this mortgage may have been issued for purposes of encumbering the subject property in an attempt to insulate it from plaintiff's anticipated judgment(s), which would constitute a fraudulent conveyance.
13. On information and belief, Howard Hammer is the sole member of a limited liability company called D&M Chateau, LLC, which owns certain real property located at 3600 Chateau Drive, Apt. V-236. On information, Defendant Chateau DeVille Horizontal Property Regime may claim an interest in the amount of \$1,667, which Notice of Lien is recorded on November 10, 2009 in the Office of the ROD for Richland County, in Book 1568 at page 2547.

14. On information and belief, Defendant Howard Hammer is 20 % owner of HASCI, LLC, which owns certain unencumbered real property located at 1011 Assembly Street in Columbia, South Carolina, bearing TMS #R08916-09-08, and being more fully described as follows:

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on the Western side of Assembly Street between Senate and Pendleton Street in the City of Columbia County of Richland, State of South Carolina, being shown and designated as 1011 Assembly Street and 1013 Pendleton Street on a plat prepared for Bessie Bernstein and Jane Gibbes Edens by William Wingfield, Registered Surveyor, dated October 25, 1957, revised January 3, 1958, and later revised February 24, 1959, and having the following metes and bounds: commencing at a point on said Assembly Street Two Hundred Nine ,and' 75/100 (209.75') feet North of the Northwest corner of Pendleton Street and Assembly Street and running along said Assembly Street South 18 degrees 50 minutes East for a distance of One Hundred Forty (140') feet; thence turning and running South 70 degrees 59 minutes West for a distance of Two Hundred Eight and 25/100 (208.25') feet; and being bounded on the South along said line by property now or formerly of Leventis; thence turning and running South 19 degrees no minutes East for a distance of Sixty-nine and 7511 00 (69.75') feet; thence turning and running along Pendleton Street South 71 degrees seven (7) minutes West for a distance of One Hundred Twelve and 641100 (112.64') feet; thence turning and running North 18 degrees 52 minutes West for a distance of Twenty-nine (29') feet, and being bounded on the West along said line by property now or formerly of Rivkin; thence turning and running South 71 degrees 7 minutes West for a distance of Ninety-six (96') feet to Park Street and being bounded on the South along said line by property now or formerly of Rivkin; thence turning and running North 18 degrees 52 minutes West for a distance of One Hundred Seventy-nine and Eight-tenths (179.8') feet along said Park Street; thence turning and running North 70 degrees 56 minutes East for a distance of Four Hundred Sixteen and Nine-tenths (416.9') feet to the point of commencement, be all measurements a little more or less and being bounded on the North along said line by property of Bookman, Caughman and Sebastian, all of which is shown on said plat.

This being the identical property conveyed to Alvin L. Hammer, Howard Hammer and Stanley F. Hammer by deed recorded December 30, 1961 in Book 316 Page 288, in the Office of the Register of Deeds for Richland County; and deed recorded January 3, 1985, in Book 724 Page 408, in the Office of the Register of Deeds for Richland County; and deed recorded December 18, 2007, in Book 1385 Page 1719, in the Office of the Register of Deeds for Richland County.

15. That Plaintiff is informed and believes her judgments against Howard Hammer

are the only judgments enforceable against this property at 1011 Assembly Street, and is therefore a first lien on the property.

16. On information and belief, Defendant Howard Hammer is 20% owner of HASCI, LLC, which owns certain unencumbered real property located at 1017 Assembly Street in Columbia, South Carolina, bearing TMS #R08916-09-06, and being more fully described as follows:

All the Grantor's interest in that certain piece, parcel or lot of land, together with the improvements thereon; situate, lying and being on the western side of Assembly Street between Pendleton Street and Senate Street in the City of Columbia, County of Richland and State of South Carolina, and being more particularly shown on a certain plat of property surveyed for Winchester Graham, Inc., by William Wingfield, Reg. Surveyor, dated August 8th, 1958, and recorded in the Office of the Clerk of Court for Richland County, South Carolina, in Plat Book 11 at Page 284 and being described as follows: on the north by property now or formerly of Caughman and measuring thereon one hundred and sixty-seven and eight tenths (167.8') feet; on the east by Assembly Street, whereon the same fronts for a distance of forty-four and five-tenths (44.5') feet; on the south by property now or formerly of Bernstein and Edens and measuring thereon one hundred and sixty-six (166') feet; and on the west by lands now or formerly of Caughman and measuring thereon forty-three and five tenths (43.5') feet. This being the identical property conveyed to Alvin J. Hammer, Howard Hammer and Stanley F. Hammer by deed recorded December 18, 2007, in Book 1385 Page 1715, in the Office of the Register of Deeds for Richland County.

The subject property may also be identified as follows:

All the decedent's interest in that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the western side of Assembly Street between Pendleton Street and Senate Street in the City of Columbia, County of Richland and State of South Carolina, and being more particularly shown on a certain plat of property surveyed for Winchester Graham, Inc., by William Wingfield, Reg. Surveyor, dated August 8, 1958, and recorded in the Office of the Clerk of Court for Richland County, South Carolina, in Plat Book 11 at Page 284 and being described as follows: on the north by property now or formerly of Caughman and measuring thereon one hundred and sixty-seven and eight tenths (167.8') feet; on the east by Assembly Street, whereon the same fronts for a distance of forty-four and five-tenths (44.5') feet; on the south by property now or formerly of Bernstein and Edens and measuring thereon one hundred and sixty-six (166') feet; and on the west by lands now or formerly of Caughman and measuring thereon forty-three and five tenths (43.5') feet. This

being the identical property conveyed to Alvin J. Hammer, Trustee of the Residuary Trust under the Last Will and Testament of Henry Hammer by Deed of Distribution of the Estate of Henry Hammer, Richland County, South Carolina Probate Case No. 2005-ES40-01493 dated October 30, 2007, and recorded November 2, 2007 in Book 1372 Page 3536, in the Office of the Register of Deeds for Richland County.

17. That Plaintiff is informed and believes her judgments against Howard Hammer are the only judgments enforceable against this property at 1017 Assembly Street, and are therefore a first lien on the property.
18. On information and belief, Defendant Howard Hammer is 20% owner of HASCI, LLC, which owns certain unencumbered real property located at 2120 Sumter Street, in Columbia, South Carolina, bearing TMS #R09016-12-17, and being more fully described as follows:

All of Grantor's interest in that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being in the City of Columbia, and the County of Richland, State of South Carolina, on the east side of Main Street, being more particularly shown on a plat prepared for Isadore S. Bernstein by William Wingfield, Reg. Surveyor, dated August 16, 1963, and revised February 3, 1964; the land hereby conveyed, as shown on said plat, commencing at an iron marker in the right-of-way line of Main Street; thence running North seventy-five degrees twenty-eight minutes East (N 75° 28' E) for a distance of two hundred seven and six-tenths (207.6') feet to an iron marker; thence turning and running South fifteen degrees twenty-seven minutes East (S 15° 27' E) for a distance of forty-eight and two-tenths (48.2') feet to an iron marker; thence turning and running South fourteen degrees fifteen minutes East (S 14° 15' E) for a distance of one hundred nine (109.0') feet to an iron marker; thence turning and running South seventy-five degrees fifty-eight minutes West (S 75° 58' W) for a distance of fifty-two and five-tenths (52.5') feet to an iron marker; thence turning and running South seventy-seven degrees forty-seven minutes West (S 77° 47' W) for a distance of one hundred fifty-five and four-tenths (155.4') feet to an iron marker in the right-of-way line of Main Street; thence turning and running along the right-of-way line of Main Street North fourteen degrees seventeen minutes West (N 14° 17' W) for a distance of one hundred fifty and seven-tenths (150.7') feet to the point of commencement. The land hereby conveyed is bounded on the West by Main Street; on the North by property now or formerly of Gulf Oil Company and property now or formerly of Nix, Fox and Rice; on the East by property now or formerly of Nichols and by property now or formerly of Yeoman; and on the South by property now or formerly of Michas and property now or formerly of

Howard. This being the identical property conveyed to Alvin L. Hammer, Howard Hammer and Stanley F. Hammer by deed recorded December 18, 2007, in Book 1385 Page 1727, in the Office of the Register of Deeds for Richland County.

19. That Plaintiff is informed and believes her judgments against Howard Hammer are the only judgments enforceable against this property at 2120 Sumter Street, and are therefore a first lien on the property
20. On information and belief, Defendant Howard Hammer is 20% owner of HASCI, LLC, which owns certain unencumbered real property located at 2121 Sumter Street, in Columbia, South Carolina, bearing TMS #R09016-12-04, and being more fully described as follows:

All of Grantor's interest in that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being on the west side of the 2100 block of Sumter Street, in the City of Columbia, County of Richland, State of South Carolina (formerly designated as 2121-23 Sumter Street), being more particularly shown and delineated on a plat prepared for Isadore S. Bernstein by William Wingfield, Registered Surveyor, dated May 26, 1964, said lot being bounded and measuring as follows: on the north by property now or formerly of Wheeler, whereon it measures two hundred seventeen and 4/10ths (217.4) feet as shown on said plat; on the east by Sumter Street whereon it fronts fifty-one (51) feet as shown on said plat; on the south by lot now or formerly of Yeoman whereon it measures two hundred seventeen (217) feet as shown on said plat; and on the west by lot now or formerly of Isadore S. Bernstein and Henry Hammer, whereon it measures fifty-one and 9/10ths (51.9) feet as shown on said plat. This being the identical property conveyed to Alvin L. Hammer, Howard Hammer and Stanley F. Hammer by deed recorded December 18, 2007, in Book 1385 Page 1723, in the Office of the Register of Deeds for Richland County.

21. That Plaintiff is informed and believes her judgments against Howard Hammer are the only judgments enforceable against this property at 2121 Sumter Street, and are therefore a first lien on the property.
22. On information and belief, Defendant Howard Hammer is 20% owner of HASCI, LLC, which owns certain unencumbered real property located at 3018 Main Street, in Columbia, South Carolina, bearing TMS #09111-06-03 and 04, and

being more fully described as follows:

All of Grantor's interest in and to all that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being on the east side of Main Street, in the City of Columbia, County of Richland, State of South Carolina, and being shown and delineated on a plat made for Gladys S. Varn by Barber Keels and Associates, . Engineers, dated May 14, 1950 and recorded in the Office of the Register of Deeds for Richland County in Plat Book I at page 214, and being bounded and measuring as follows: on the north by lands formerly of Burnside, measuring thereon 273.6 feet; on the northeast by lands now or formerly of John C.B.Smith, measuring thereon 92.7 feet; on the south by lands formerly of Frank E. Quinn and Newman (now or formerly Bernstein, Stem and Hammer), measuring thereon 321.6 feet; and on the west by Main Street, as shown on said plat, measuring thereon 80 feet.

And

All of Grantor's interest in and to all that certain piece, parcel or lot of land, with improvements thereon, known as 3018 Main Street (formerly 2910 Main Street), situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, at the northeastern intersection of the said Main Street and Grace Street, and more fully shown and described on a plat prepared for Claude A. Yarbrough by William Wingfield, Registered Surveyor, dated June 9, 1958, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 14 at page 55, said lot being irregular in shape and having the following metes and bounds: beginning at an iron along the right of way at the northeastern intersection of said streets and running N 00°30' E for a distance of 271.2 ' along the right of way of said Main Street to an iron; thence turning and running S 89°32' E for a distance of 321.2' to an iron; thence turning and running S 29°57' E for a distance of 60.7' to an iron; thence turning and running S 89°03' W for a distance of 37.3' to an iron; thence turning and running S 00°06' E for a distance of 117.3' to an iron; thence turning and running N 83°27' W for a distance of 24.0' to an iron; thence turning and running S 06°34' W for a distance of 4.5' to an iron; thence turning and running N 88°16' for a distance of 82.8' to a 2-inch steel post; thence turning and running S 01 °00" W for a distance of 9.6' to a 4-inch steel post; thence turning and running S87°01' W for a distance of 19.3' to a 4-inch steel post; thence turning and running S 00°33' W for a distance of 9.3' to a 2 1/2 inch post; thence turning and running S 85° 55' W for a distance of 105.3' to a 2 inch post; thence turning and running S 01° 53' W for a distance of 81. 0' to an iron along the right of way of the said Grace Street; thence turning and running N 83°35' W along the right of way of the said Grace Street for a distance of 81.3' to the point of beginning. These being the identical properties conveyed to Alvin L. Hammer, Howard Hammer and Stanley F. Hammer by deed recorded December 18, 2007, in Book 1385 Page 1731, in the Office of the Register of Deeds for Richland County.

23. That Plaintiff is informed and believes her judgments against Howard Hammer

are the only judgments enforceable against this property at 3108 Main Street, and are therefore a first lien on the property.

24. On information and belief, Howard Hammer owns real property located at 1609 Catawba Street in Columbia, South Carolina, bearing TMS#11304-19-10, and being more fully described as.

All that certain piece, parcel, lot or tract of land, with any improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and delineated as Lot 2 on a plat prepared for Andre Bauer by Benjamin H. Whetstone, dated September 23, 2003, to be recorded; said property being more particularly shown and delineated on plat prepared for Laura A. Voight by Inman Land Surveying Company, Inc., dated June 1, 2006 and recorded June 7, 2006 in Record Book 1191 at Page 3070, Office of the Register of Deeds for Richland County. Reference is made to said plat for a more complete and accurate description to said lot, all measurements being a little more or less. The conveyance is made subject to easements, conditions and restrictions of record affecting subject property. This being the same property conveyed to Laura A. Voight by deed of Bauer and Joye Investments, LLC, dated June 5, 2006 and recorded June 7, 2006 in Record Book 1191 at Page 3052, Office of the Register of Deeds for Richland County.

25. That Plaintiff is informed and believes her judgments against Howard Hammer are the only judgments enforceable against this property at 1609 Catawba Street, and are therefore a first lien on the property, subject only to any homestead exemption that may exist if this property constitutes defendant Howard Hammer's sole residence.
26. On information and belief, there is a federal tax lien against Howard Hammer in the amount of \$53,783.00, which was recorded by Defendant Department of Treasury-Internal Revenue Service on February 15, 2011 in the Office of the ROD for Richland County at Book 1668 and page 200. Plaintiff lacks sufficient knowledge or information from which to determine the viability of this lien.

27. Plaintiff is informed and believes that the property sought to be attached is not exempt from execution, attachment, or sale to satisfy a judgment or order. See S.C. Code Ann. §15-41-30.
28. Plaintiff is informed and believes that pursuant to SC Code §15-19-10, her judgments set forth herein may be attached and become liens to the properties owned in whole or in part by defendants Howard Hammer and/or 1634 Main, LP.
29. Plaintiff is informed and believes these properties owned by an entity in which Howard Hammer holds an interest may be used to satisfy any judgment awarded to Plaintiff, pursuant to section 15-19- 220, S.C. Code Ann. **"The rights or shares which any defendant may have in any vessel or in the stock of any association or corporation, together with the interest and profits thereon, and all other property of such defendant in this State, except that exempt from attachment by the Constitution, shall be liable to be attached and levied upon and sold to satisfy the judgment and execution."**
30. Plaintiff is informed and believes that she is entitled to have her aforesaid judgment liens foreclosed against the interests of Howard Hammer and 1634 Main, LP, in the above-described real properties, or in such portions of the real property as necessary to satisfy Plaintiff's judgment liens after first satisfying any priority lienholders, and to have such real property sold at public auction under the direction of the Court, and that any equity of redemption therein be barred, and that the proceeds of the sale be applied toward the payment of judgment indebtedness to Plaintiff.

WHEREFORE Plaintiff having fully set forth her complaint herein, prays as follows:



- a) That the amount due upon the judgments in favor of Plaintiff against defendants Howard Hammer and 1634 Main, LP be ascertained and determined under the direction of the Court, together with interest and costs of this action; and
- b) That the judgment liens of the Plaintiff be declared a first lien on the real properties as hereinabove described as 1634 Main Street, 1632 Main Street, 1609 Catawba Street, 2109 Sumter Street, 1011 Assembly Street, 1017 Assembly Street, 2120 Sumter Street, 2121 Sumter Street, and 3018 Main Street, and third lien on the real properties at Chateau DeVille insofar as the judgment creditors' interest in said properties is concerned and deemed valid; and
- c) That the Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with the costs of this action; and
- d) That 1634 Main, LP's interest and Howard Hammer's interest, individually and vis a vis his ownership interest in limited liability company holding the deed thereto, in the real properties described herein be sold under the direction of this Court, and subject only the liens and mortgages set forth herein, the equity of redemption of the Defendant Howard Hammer in the properties be forever barred, and the proceeds of sale applied as follows:

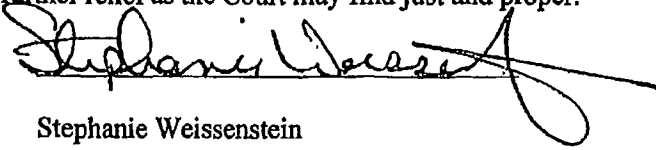
First: To the cost and expense of the within action and sale;

Second: Toward the amount due on the Federal Tax Lien, set forth herein if not previously satisfied;

Third Toward the amount due on the Plaintiff's judgment against the Defendants Hammer and 1634 Main, LP; and

Fourth: The surplus may be hold by the Court and distributed in accordance with its further Order; and,

- e) For such other and further relief as the Court may find just and proper.



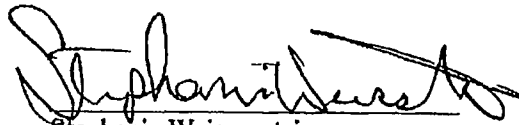
Stephanie Weissenstein
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Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: stephanie@desaballard.com

Attorney for the Plaintiff

November 8, 2013

VERIFICATION

Personally appears Stephanie Weissenstein, who first being duly sworn, deposes and says that she is the attorney for the Petitioning judgment creditor and that she has read the foregoing Petition and knows the contents thereof and the same are true of her own knowledge except to matters alleged therein on information and belief, and as to these, she believes it to be true that she is the attorney for the Plaintiff and authorized to make this oath on her / its behalf.



Stephanie Weissenstein
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West Columbia, South Carolina 29171
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E-mail: stephanie@desaballard.com

Attorney for Plaintiff

SWORN AND SUBSCRIBED BEFORE ME
THIS 8th DAY OF NOVEMBER, 2013



Notary Public for South Carolina

My Commission Expires 11/1/23

EXHIBIT 2

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

RICHLAND COUNTY
FILED
2014 JAN 21 AM 9:04
JENNIFER W. HERNANDEZ
C.C.P. & G.S.

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.

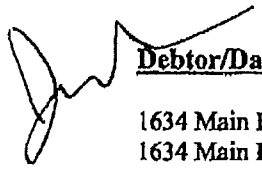
Hammer matter, and as agent for 1634 Main, LP. Art Aiken appeared as counsel for 1634 Main,

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:

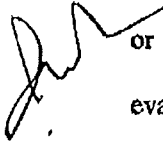


<u>Debtor/Date</u>	<u>Principal</u>	<u>Interest¹</u>	<u>Total</u>
1634 Main LP (01/29/2013 Judgment)	\$25,000.00	\$ 1,673.46	\$ 26,673.46
1634 Main LP (06/03/2013 Judgment)	\$102,032.87	\$ 4,397.90	\$106,430.77
	<u>\$127,032.87</u>	<u>\$ 071.36</u>	<u>\$133,104.23</u>
Howard Hammer (01/29/2013 Judgments)	\$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.

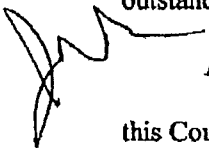
Neither Mr. Hammer nor 1634 Main LP has filed any responses to the written discovery served upon them, as they were required to do by this court's order dated June 10, 2013.

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.

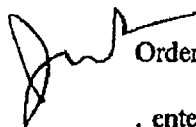
On September 9, 2013, the defendant debtors filed a motion for summary judgment alleging that transfer of the real property is beyond the power of this court, under S.C. Code §15-31-310, *et. seq.* A hearing was scheduled for January 9, 2014 for purposes of addressing all outstanding issues, and notice 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 1/2" 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.

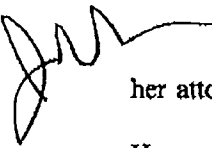
According to the evidence and documents of record, 1634 Main LP owns an unknown percentage of the real estate located at 1634 and 1632 Main Street, Columbia, SC, as described above.

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, SCRCP. 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, SCRCP.

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED.
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Shirley Hammer,

Plaintiff,

v.

Howard Hammer, 1634 Main, LP, Alvin
Hammer; SH5, LLC; SH4, LLC, SH3, LLC;
HASCI, LLC; D&M Chateau, LLC; Heart
Of Columbia, LLC a/k/a Heart of Columbia
Inc., Alvin Hammer, personal representative
of the Estate of Eleanor Hammer; Joye
Elizabeth Life Estate; Stanley Hammer;
Department of the Treasury - IRS; Chateau
DeVille Association, Inc. and/or Chateau
DeVille Horizontal Property Regime; David
H [REDACTED] a minor under the age of 14,

Defendants.

Case Number: 2013-CP-40-6898

MOTION TO ALTER OR AMEND
JUDGMENT AND IN THE
ALTERNATIVE TO DETERMINE
A SPECIFIC AMOUNT OF
THE JUDGMENT OF PLAINTIFF
AND REQUIRE SALE OF 1634 MAIN

FILED
2015 MAR 25 PM 2:58
JEANETTE W. MCGRIDE
CLERK
SOUTH CAROLINA
COUNTY OF RICHLAND

PLEASE TAKE NOTICE that, pursuant to South Carolina Rules of Civil Procedure 59 and/or 60, Defendants Alvin Hammer, HASCI, LLC, Heart of Columbia, LLC a/k/a Heart of Columbia, Inc., Alvin Hammer, Personal Representative of the Estate of Eleanor Hammer, and Stanley Hammer ("Movants") move this Court at such time, date and place as the court may fix for an order altering and amending the judgment of this court filed March 16, 2015 at 10:01 AM, said order being captioned as "Order Granting Charging Order." ("The Order")

Movants request the Court to amend The Order to deny a charging order and/or to amend it to clarify the amount of the charging lien and the amount of the actual judgment against Howard Hammer and 1634 Main LP., they further request that the Court, after determining the amount due Shirley Hammer, order the expeditious sale of the 1634 Main Street Property, previously transferred to Plaintiff for purposes of satisfying a judgment against Howard Hammer and 1634 Main Street LP. In support of this request, your Movants show the following:

1. Movants are strangers to the litigation giving rise to the judgments at issue, CASE NUMBERS 2009-CP-40-2889 and 2010-CP-40-5911. Additionally, Movants have no interest in Defendant 1634 Main, LP and no interest in the property located at 1634 Main Street.
2. The Court has properly dismissed an action filed by Shirley Hammer against Movants, yet the Court has entered a charging order against Howard Hammer. Accordingly Defendant HASCI, LLC now is burdened with HASCI not knowing the amount of the charging lien. Thus, HASCI respectfully requests that the Court state in its Order the amount of the charging lien at issue.
3. Plaintiff has previously alleged that the amount of the judgments against Howard Hammer is \$190,744.30 (verified Complaint paragraph 1). However, upon information and belief, Shirley Hammer has received rental payments of approximately \$130,000.00 as rent from 1634 Main Street which should be deducted from any amount covered by any charging order.
4. The complaints and proposed amended complaints in this matter reflect that the only judgments against Howard Hammer are approximately \$190,000.00. The other judgments are against 1634 Main, LP, in the amount of approximately \$125,000.00. 1634 Main, LP is not a member of HASCI, LLC, nor is it entitled to any distributional interest from any of the moving Defendants herein. The charging order herein was issued on March 16, 2015, and thus can only cover the period of time until March 16, 2015, and cannot cover the judgments against 1634 Main, LP.
5. Plaintiff, a judgment creditor of Howard Hammer and 1634 Main, LP, has previously

represented to the Supreme Court of South Carolina that the 1634 Main Street property (previously transferred by this Court to Plaintiff) has a value sufficient to satisfy the judgments against both 1634 Main, LP and Howard Hammer.

6. The sale of 1634 Main Street will satisfy the judgments against Howard Hammer and 1634 Main, LP, without ensnaring Movants into the ongoing disputes between litigants Howard Hammer and Shirley Hammer.
7. Notwithstanding that the stipulated value of 1634 Main Street exceeds the amount of any judgments against Howard Hammer and 1634 Main, LP, Plaintiff has not sold that property to satisfy the judgment. Furthermore, in negotiations Plaintiff has represented that she is not in a position to warrant to convey marketable title or insurable title. More specifically, Shirley Hammer rejected HASCI's offers to purchase the 1634 Main Street property. (See Exhibit A).
8. Although The Order finds that "Despite Mrs. Hammer's diligent efforts, a sale has not yet been concluded," Plaintiff has not diligently attempted to sell the 1634 Main Street property to Defendants HASCI and/or Alvin Hammer. (See Exhibit A). Efforts for HASCI and/or Alvin Hammer to purchase the property were undertaken to free these movants from interference with the manner in which they manage or dispose of property in which Howard Hammer has an interest. Movant's respectfully suggest that Plaintiff's response to Movants' offers belie any conclusion that Plaintiff's efforts at sale have been either diligent or reasonable. In fact, HASCI is still willing to enter a contract of sale for \$525,000 plus interest from January 30, 2015, plus tax liens to purchase and close on sale by May 30, 2015, subject to a normal inspection clause and provided marketable insurable title can be given and that the purchase will satisfy all

judgments and claims in this and the related referenced litigation.

9. If such marketable, insurable title cannot be given, a Court ordered public sale or a judicial sale is needed to eliminate any questions regarding the marketability of title of 1634 and at the same time satisfy the Plaintiff's judgments against Howard Hammer and extinguish any liens.
10. A public sale or a judicial sale would eliminate the need for a real estate commission and end costs accruing, and thereby make more money available to all parties and further eliminate the necessity for the implementation of a charging order which will likely ensnare the moving Defendants in further and additional litigation.
11. Even if a public sale or judicial sale were not to bring a bid sufficient to pay the judgments involved herein, which is extremely unlikely, it would greatly reduce the judgment amount and make it much more likely that sufficient funds would be available from any distributional interest which could fill the gap to satisfy the judgment. At this point, without a sale and resulting satisfaction of Shirley Hammer's judgments, HASCI, LLC may not be able to distribute any proceeds of a proposed sale to its members.
12. Because the charging order creates uncertainty for the moving Defendants herein, as is evidenced in part by the question of what is the amount of the charging lien and/or other issues, HASCI, LLC may not be able to make any distribution until after a sale of 1634 Main Street. Rather, HASCI's only option may be to reinvest or hold its assets for reinvestment and to use its assets to protect it against further litigation. Because the moving parties have no relation to the underlying litigation and only seek to avoid being ensnared in further litigation, equity and good conscience dictate that this Court order

the sale of 1634 Main Street within a time certain, determine the full amount due Shirley Hammer on sale before sale, and upon sale release the charging lien if sufficient proceeds are bid in to cover the amount due Shirley Hammer. Otherwise, any distribution may subject the moving Defendants to potential liability claims by both litigants and the risk of being ensnared in ongoing litigation with either or both parties.

13. If a sale of 1634 Main Street is not ordered, there is a likelihood that the moving Defendants will be ensnared in further litigation with either or both parties. It has already been determined by the Court in its March 12, 2015, Order that the moving Defendants were not proper parties to this action. The moving Defendants are realistically concerned about being made part of future proceedings without basis, given the history of the litigation between Plaintiff and Defendant Howard Hammer.

14. The difficulties facing HASCI, as well as the other Moving Defendants, and the potential for future legal action, is demonstrated by a letter dated March 25, 2015, from a forensic accountant associated with Plaintiff's counsel. (See Exhibit B). That letter asserts an incorrect legal position that the charging lien granted by the Court on March 16, 2015, would have priority over prior loans and other obligations involving Mr. Howard Hammer and HASCI. The potential for future legal actions, such as a declaratory judgment action, can be eliminated by a court ordered public sale or judicial sale of the 1634 Main Street property.

15. Some of the Moving Defendants, particularly HASCI, LLC own other properties.¹

¹ Much of this property is owned jointly with Beth Bernstein, Lowell Bernstein, Anne Bernstein, Hilary Bernstein and Michel Bernstein Perrick, all of whom will be adversely affected by the charging order which effectively prevents HASCI from selling any further property until the judgments herein are resolved so as to avoid any further litigation.

HASCI may need to hold onto sufficient assets to insure that a sufficient amount is bid on the sale of 1634 Main Street so that the judgment of Shirley Hammer will be resolved and she will not be able to have any legitimate legal basis to make any claim against other properties. In order to make such a bid, the Moving Defendants need to know the amount of the total judgments against Defendant Howard Hammer and 1634 Main, LP.

16. In all likelihood, if a sale of 1634 Main Street is not ordered and the judgments not satisfied, it is respectfully submitted, and the history of the underlying litigation strongly suggests, that there will be ongoing litigation as to whether the order granting the charging lien herein is correct, what the amount of the charging lien is, and/or whether a charging lien is appropriate in light of the fact that Plaintiff's complaint, which has never been amended, did not seek a charging order. In fact, the latest motion filed by Plaintiff was to allow Plaintiff to amend the complaint. No specific order was issued because this motion was also rendered moot by the dismissal of Defendants.
17. The Order at issue fails to recognize that Shirley Hammer has asserted to this Court on at least three instances that the judgments obtained in Case Nos. 2009-CP-40-5911 and 2010-CP-40-2884 have been satisfied by the January 21, 2014 Order entered in those cases. In both the original and amended versions of Plaintiff's Motions for a Charging Lien Against Corporate Defendant, which was denied by separate order of this court, Shirley Hammer asserted

"The original judgments obtained by Plaintiff **were satisfied** by order of this Court dated January 21, 2014 in Hammer v. Hammer et al, Case Nos. 2009-CP-40-05911 and 2010-CP-40-2889, which

awarded Plaintiff ownership of certain real and personal property and directed Plaintiff to sell certain real property formerly owned by the judgment debtors.” (Emphasis added) (Plaintiff’s motions dated 12/18/14 and 12/23/14)

In an email to this Court dated May 9, 2014 it was asserted on behalf of Shirley Hammer that “the judgments have been **satisfied** by the transfer of the building.” Emphasis added. By these assertions Shirley Hammer has conceded that the only judgments at issue have been satisfied. Since there is no unsatisfied judgment upon which to base a charging lien, it is respectfully submitted that it was error for this Court to issue a charging lien, which should have been denied.

18. As a separate order of this Court determined, Plaintiff has asserted that the transfer of 1634 Main Street rendered this case (the foreclosure action) moot. Since the case is moot, it is respectfully submitted that there is no basis for a charging lien to be issued.
19. From the time of filing the above captioned action in late 2013 until late in December of 2014 the pleadings in this case reflected that Plaintiff sought to foreclose on 1634 Main Street and sell that property. Moving Defendants justifiably relied upon the fact that the foreclosure would occur as to that property which would obviate the need for any further action because at a public sale on foreclosure, these Defendants could protect themselves by bidding in an appropriate amount to insure the satisfaction of the judgment. If Plaintiff determined that the January 21, 2014 Order in Case Numbers: 2009-CP-40-5911 and 2010-CP-40-2884 took 1634 Main Street out of this foreclosure action she should have made a motion to amend much earlier so that Defendants could be heard concerning binding effect and/or the impact of the January 21, 2014 Order in the other cases (in which the moving Defendants are not parties) on this case. If such

a motion were made these Defendants would have moved for the Court to include 1634 Main Street in this foreclosure and would have requested that it be sold as first priority. This would eliminate the opportunity for Movants to be ensnared in litigation between the parties in Case Numbers: 2009-CP-40-5911 and 2010-CP-40-2884. Plaintiff's attempt to now first ensnare HASCI proceeds of sale conflicts with the complaint which was never amended and which sought a public sale of 1634 Main Street. Moreover, the issuance of a charging order conflicts with the pleadings and the rights of the moving Defendants to have 1634 Main Street sold first so that the judgment could be satisfied and no charging liens or burdens be placed upon the moving Defendants.

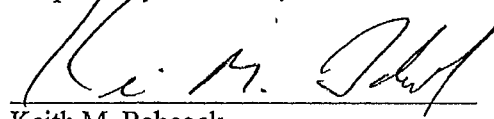
For the foregoing reasons it is respectfully submitted that the within motion to alter or amend should be granted as set forth above.

PLEASE TAKE FURTHER NOTICE that, in the alternative, the moving Defendants above named move this court at such time, date and place as the court may fix for an order requiring the amount of the judgment in favor of Shirley Hammer be determined and, within 90 days thereafter, that 1634 Main Street be ordered sold at public auction or judicial sale, after due public notice. Said motion is made upon the grounds and for the reasons set forth in the above motion to Alter or Amend and because this is the exact relief sought in the complaint by Plaintiff and with which these moving Defendants concur as to 1634 Main Street, subject to a determination of the amount of the judgment as set forth above. The granting of this motion and/or the motion to alter or amend as requested is clearly required by equitable considerations where there is a sufficient asset, 1634 Main Street, which can be sold to satisfy any judgments between the original parties without placing burdens on strangers to that litigation where there is clearly no necessity to place such burdens on the moving Defendants, strangers to the original litigation and the supplemental

proceedings.

For the foregoing reasons it is respectfully submitted that the alternative motion should also be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith M. Babcock", written over a horizontal line.

Keith M. Babcock
Lewis Babcock & Griffin, LLP
Post Office Box 11208
Columbia, SC 29211
Phone: 803-771-8000

Attorneys for Defendants Alvin Hammer,
HASCI, LLC, Heart of Columbia, LLC
a/k/a Heart of Columbia, Inc.,
Alvin Hammer, Personal Representative
of the Estate of Eleanor Hammer,
and Stanley Hammer

March 26, 2015

EXHIBIT A



Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Friday, February 28, 2014 4:11 PM
To: Karen LeRoy
Subject: FW: Hammer -

Please give this to Alvin. Thanks.
Keith

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com
website: <http://www.lbglegal.com>

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From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Friday, February 28, 2014 4:05 PM
To: Keith M. Babcock
Cc: Stephanie Weissenstein; Beth Cogan; Terrie Stafford
Subject: Hammer -

Per our conversation, \$376,244.62 plus a full general release from Howard and any of his entities in favor of Shirley and her agents.

Per Judge Strickland's order, Howard owes fees due to our office today by 5 pm of \$55,385.70. Those are included in the number above.

Noon Monday --

Have a great weekend.

Desa Ballard
Ballard Watson Weissenstein
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to terrie@desaballard.com

A. CAMDEN LEWIS
KEITH M. BABCOCK
JAMES M. GRIFFIN
ARIAL E. KING
J. RYAN HEISKELL*
MARGARET N. FOX**

*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN N.C.

LB&G

LEWIS, BABCOCK & GRIFFIN L.L.P.

EMAIL: KMB@LBGLEGAL.COM

1513 HAMPTON STREET
P.O. BOX 11208 (29211)
COLUMBIA, S.C. 29201
FACSIMILE: 803-733-3534
TELEPHONE: 803-771-8000
WEBSITE: WWW.LBGLEGAL.COM

April 2, 2014

VIA EMAIL

Desa Ballard, Esquire
Ballard Watson Weissenstein
226 State Street
West Columbia, South Carolina 29169

Re: Alvin Hammer, Our File No. 13-132

Dear Desa:

Thank you for your email yesterday. That was of help. We are now all in agreement that the total payment from Alvin to Shirley will be \$439,619.91. This takes care of the judgments, fees and costs, the cost of sale, and the 1634 Main debt. We are also in agreement that the 2013 property taxes, the notes from Howard to the limited partnership, and the federal tax lien are not matters that need to be addressed as part of this resolution.

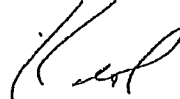
One thing that we cannot agree to is an indemnification from Alvin. While he is willing to pay a substantial sum to get this matter resolved and the judgment satisfied, he needs to be done with everything once the settlement is consummated.

If you have any questions, please give me a call. I will be out of the office most of this afternoon, but I will be in the office tomorrow morning. However, I will be out of the office tomorrow afternoon and all day Friday for my son's wedding this weekend.

With best regards, I am

Very truly yours,

LEWIS, BABCOCK & GRIFFIN, L.L.P.



Keith M. Babcock

KMB:cg

cc: Alvin J. Hammer, Esquire

Shirley Hammer v Howard Hammer
For Settlement Discussions Only

Judgments

1634 Main LP (01/29/2013)	\$ 26,673.46	
1634 Main LP (06/03/2013)	106,430.77	
H. Hammer (01/29/2013)	138,701.99	
H. Hammer (06/03/2013)	63,362.55	
H Hammer (01/21/2014)	<u>55,385.70</u>	
		\$ 390,554.47

BWW Fees and Costs

from 01/21/2014 thru		
3/28/2014	\$ 16,023.70	
Estimated through Settlement	<u>2,000.00</u>	
		\$ 18,023.70

Costs of Sale

Appraisal	\$ 1,500.00	
Danville Contract Buyout	9,193.56	
Lock Change (Key Shop)	2,724.10	
Security for HH move (Barton)	387.50	
New Bank Acct Check Chg	91.27	
Insurance on Building	1,081.75	
LP Set up charges	<u>110.00</u>	
		\$ 15,088.18

Total Due Shirley from 01/21/2014 Forward

\$ 423,666.35

Operating Expenses

Danville	907.15	
Central Midlands Cleaning	4,865.00	
Madison Fludd	135.00	
Crawford Electric	350.00	
City of Columbia	210.61	
AT&T	218.09	
ThyssenKrupp	3,068.06	
ADT Security	335.24	
Air Cond	1,368.00	
Gregory Pest	438.79	
SCE&G	<u>4,057.62</u>	
		\$ 15,953.56

Total prior to Contingent Debts

\$ 439,619.91

Contingent Debts of 1634 Main LP

Prop tax 2013	\$ 21,886.96	
Loan to Howard with Interest -1	27,945.88	
Loan to Howard with Interest -2	<u>9,564.31</u>	

\$ 59,397.15

Total due

\$ 499,017.06

From: Keith M. Babcock [<mailto:kmb@lbglegal.com>]
Sent: Friday, May 9, 2014, 1:45 PM
To: Desa Ballard; stricklandj@rcgov.us; stricklandsc@sccourts.org
Cc: art@alkenandhightower.com; Thomas W. Bunch, II; Mara Ballard; Beth Cogan
Subject: RE: Shirley Hammer v. Howard Hammer

Dear Judge Strickland,

I do represent Alvin Hammer, Howard Hammer's brother, who has come forward to loan his brother the money to pay the outstanding judgment against his brother and the costs and attorney's fees awarded by you. In return, the building and limited partnership would be returned to Howard and the appeal withdrawn, eliminating the need for any appeal bond. Earlier, there were other releases and related documents being sought, but I understand that request has been withdrawn. Alvin would very much like to help end this litigation by getting the funds to Mrs. Hammer and Ms. Ballard, with the building and partnership being returned to Howard. It would seem that such a resolution benefits everyone, as well as the judicial system. I would certainly be pleased to attend a status conference with the parties, as suggested by Mr. Bunch.

With highest regards, I am

Very truly yours,

Kelth Babcock

Kelth M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com

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From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Friday, May 09, 2014, 11:33 AM
To: stricklandj@rcgov.us; stricklandsc@sccourts.org
Cc: art@alkenandhightower.com; Keith M. Babcock; TBunch@robinsonlaw.com; Mara Ballard; Beth Cogan
Subject: Shirley Hammer v. Howard Hammer

Judge Strickland:

You received a letter from Tommy Bunch yesterday which inaccurately stated that efforts were being made to resolve this matter. I have repeatedly told Mr. Bunch (who now apparently represents Howard Hammer) and Keith Babcock (who has communicated with me on behalf of Alvin Hammer) that we are not interested in their proposals. I asked Mr. Bunch yesterday and again this morning to advise you that his letter was incorrect, but he has failed to do so.

Mrs. Hammer is complying with your order dated January 21, 2014 and is proceeding with a sale of the real property which was the subject of that order. Appeals have been filed and there are no matters currently pending before you (or over which you have jurisdiction) other than our request for appeal bond and the residual matters that remains pending as a result of Mr. Hammer's noncompliance with the January 21, 2014 order (or any of your prior orders).

I am sorry that your time is being wasted. Mr. Bunch is trying to force us into settlement discussions which we have repeatedly told him we are not interested in. I worked in good faith with Mr. Babcock for quite some time to settle this matter with Mr. Alvin Hammer, to no avail.

Desa Ballard

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to marab@desaballard.com

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Friday, May 09, 2014 2:20 PM
To: stricklandj@rcgov.us; stricklandsc@sccourts.org
Cc: art@alkenandhightower.com; Mara Ballard; Beth Cogan; Keith M. Babcock; Desa Ballard
Subject: RE: Shirley Hammer v. Howard Hammer

Dear Judge Strickland,

As a follow up to Ms. Ballard's and Mr. Babcock's emails to you, it appears that Ms. Ballard misunderstands the letter I sent you yesterday. Ms. Ballard had requested your guidance on an appeal bond for her client in order to enter into a contract to sell 1634 Main St. I took the opportunity to respond to Ms. Ballard's letter by letting you know that a bond would not be necessary as the underlying judgments could be paid in full by Mr. Hammer in exchange for a return of the building and partnership interest, as I had let Ms. Ballard also know before responding to her letter. This is not a negotiation. I am apprising you that the bond is unnecessary, and that the judgment can be paid in full. Please let us know if you are available for a status conference. Thank you in advance for your time and efforts.

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
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TBunch@robinsonlaw.com
v-card

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Columbia, South Carolina 29202

P: (803) 779-8900

TT MERITAS' LAW FIRMS WORLDWIDE

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Friday, May 09, 2014 3:04 PM
To: Thomas W. Bunch, II; stricklandj@rcgov.us; stricklandsc@sccourts.org
Cc: art@alkenandhightower.com; Mara Ballard; Beth Cogan; Keith M. Babcock; Mara Ballard; Beth Cogan
Subject: RE: Shirley Hammer v. Howard Hammer

Your Honor, the judgments have been satisfied by the transfer of the building. There is money due to Ms. Hammer following the sale of the building and we will comply with the order. We do not wish to engage in a status conference.

The only judgments remaining to pay are the judgments awarded under Your Honor's order, and Mr. Bunch and Mr. Babcock do not know the amounts due.

I echo Mr. Bunch's position; this is not a negotiation. Ms. Hammer is complying with a court order.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066

From: Keith M. Babcock [mailto:kmb@lbglegal.com]
Sent: Tuesday, May 13, 2014 8:56 AM
To: Desa Ballard
Subject: Alvin Hammer

Desa,

I would like to explore another concept with you. It might be more straight forward at this point if Alvin just bought the building directly. I don't know where you stand with your prospective purchaser, but I think Alvin would be willing to better what that person is discussing. Please give me a call to see if we can proceed along those lines. Thanks.
Keith

Keith M. Babcock
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From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, May 13, 2014 9:40 AM
To: Keith M. Babcock
Cc: mara@desaballard.com<mailto:mara@desaballard.com>; Mara Ballard; Beth Cogan
Subject: RE: Alvin Hammer

Sorry I was out yesterday. If Alvin is interested in buying the building directly, he should contact Marion Turbeville. Marion is the listing agent. I can't speak to where we are except that the potential purchaser has already spent money on due diligence and scheduling repairs that are required as a condition of closing. I am not sure if we have a contract, but I had told Marion week before last that we had concluded discussions with Alvin so proceed with sale.

After last week's very-unhelpful contact by Tommy Bunch, I am just sending Judge Strickland a proposed order on the appeal bond.

I am sorry we were not able to work this out.

db

Karen LeRoy

From: mturbeville@danvillebusinessadvisors.com
Sent: Wednesday, May 14, 2014 10:42 AM
To: Karen LeRoy
Subject: RE: 1634 Main Street

Acknowledged.

----- Original Message -----

Subject: 1634 Main Street
From: "Karen LeRoy" <kleroy@gedneyhowe.com>
Date: Wed, May 14, 2014 10:42 am
To: <mturbeville@danvillebusinessadvisors.com>

Dear Marion:

It was nice talking to you today about the building at 1634 Main Street. I am interested in buying the building if you do not get an offer at the appraised value of \$1,475,000. As I mentioned to you, I very much appreciate your agreeing to let me know before any contract is signed so that I will have an opportunity to meet or better any offer that is made. As to the personal property of my father which we discussed, as the Personal Representative I would be glad to make sure that it is removed if and when it needs to be removed from the building.

My contact information is: Alvin Hammer - phone 843-722-8048. My address is 8 Chalmers Street, Charleston, SC 29401 and you can email me at kleroy@gedneyhowe.com. I look forward to hearing from you if and when there is any activity which would result in a potential sale.

Please stay in touch so we can be sure that a full price is realized. Thanks very much for talking to me and for your cooperation in this matter.

Alvin Hammer

Karen Sudlow
Legal Secretary
Law Office of Gedney M. Howe, III, P.A.
PO Box 1034
Charleston, SC 29402
Phone: 843-722-8048
Fax: 843-722-2140
Email: kleroy@gedneyhowe.com

From: Desa Ballard <desab@desaballard.com<mailto:desab@desaballard.com>>
 Date: May 14, 2014 at 4:32:57 PM EDT
 To: <TBunch@robinsonlaw.com<mailto:TBunch@robinsonlaw.com>>
 Cc: <Mara@desaballard.com<mailto:Mara@desaballard.com>>, Mara Ballard
 <Mara@desaballard.com<mailto:Mara@desaballard.com>>, Beth Cogan
 <Beth@desaballard.com<mailto: Beth@desaballard.com>>
 Subject: Breakdown

Shirley Hammer v Howard Hammer
 For Settlement Discussions Only
 As of: May 13, 2014

Judgments (includes interest through 01-09-2014)	
1634 Main LP (01/29/2013)	\$ 28,673.46
1634 Main LP (06/03/2013)	106,430.77
H. Hammer (01/29/2013)	138,701.99
H. Hammer (06/03/2013)	63,362.55
H. Hammer (01/21/2014)	55,385.70
	<u>\$ 390,554.47</u>

BWW Fees and Costs (Recoverable under Strickland's Order dated 01-21-2014)	
From 01/21/2014 through 06/13/2014	\$ 29,329.78
Bill of Costs	\$ 3,559.19
Estimated through Settlement	<u>4,000.00</u>
	<u>\$ 36,888.97</u>

Costs of Sale	
Appraisal	\$ 1,500.00
Danville Contract Buyout	9,193.56
Danville Sale Commission	73,750.00
Lock Change (Key Shop)	2,959.50
Security for HH move (Barton)	387.50
New Bank Acct Check Chg	91.27
Insurance on Building	1,081.75
Umbrella Policy	1,000.00
Wheels Painting	1,400.00
LP Set up charges	<u>110.00</u>
	<u>\$ 91,473.68</u>

Operating Expenses due upon transfer to Shirley Hammer	
Danville	907.15
Central Midlands Cleaning	4,865.00
Madison Fludd	135.00
Crawford Electric	350.00
City of Columbia	210.61
AT&T	218.09
ThyssenKrupp	3,068.06
ADT Security	335.24
Alr Cond	1,368.00
Gregory Pest	438.79
SCE&G	4,057.62
	<u>\$ 15,953.56</u>

Total Due on Sale or Transfer	<u><u>\$ 534,870.58</u></u>
-------------------------------	-----------------------------



ROBINSON MCFADDEN
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COLUMBIA, SOUTH CAROLINA

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FAX
(803) 744-1545
tbunch@RobinsonLaw.com

January 26, 2015

VIA E-MAIL

Desa Ballard, Esquire
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

Re: Shirley Hammer v. Howard Hammer, 1634 Main, LP, Alvin Hammer, et al
Case No. 2009-CP-40-5911 and 2010-CP-40-2889
File No. 31141-0001

Dear Desa:

After much coordination with multiple parties, Howard is in a position to meet Mrs. Hammer's settlement demands set forth Friday, January 16. The monetary demands were payment of \$525,000, payment of the property taxes for 2013 and 2014 (represented to be approximately \$42,000), and payment of the IRS tax lien (represented to be approximately \$8,000) which total \$575,000.00. In addition, Shirley requested and Howard will give a release to Shirley and her agents for matters dealing with the building at 1634 Main St. and its contents. In accepting Shirley's demands, reliance is placed on the following representations: approximately two year's remaining on the Children's Trust lease at \$6,900/month, approximately 1 year remaining on the Oliver Gospel Mission lease at \$1,300/month, a lease with Susan Lipscomb at \$1,400/month, and that the leases are assignable.

Payment of \$575,000 would be structured by the sale of the building by its owner(s) to HASCI, LLC by warranty deed with marketable title, free of all liens and encumbrances, including mechanic's lien claims and any other claims for payments by third parties. The leases would also be assigned to HASCI, also free of encumbrances. We would deem the sale to be commercially reasonable under the January 21, 2014 Order of Judge Strickland. Closing and payment would follow the sale of HASCI's Assembly Street property. This is scheduled in less than a month, but I understand that the purchaser may request one additional 30 day contract extension. In any event, if the Assembly Street sale does not close by April 25, 2013, Alvin Hammer is agreeable

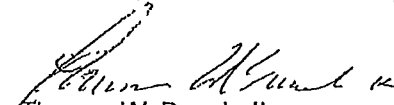
Desa Ballard, Esquire
January 28, 2015
Page 2

to funding the purchase price for HASCI by April 30, 2015.. Shirley would satisfy the outstanding judgments against Howard and 1634 Main, LP, and would withdraw, drop and dismiss with prejudice any and all claims of any kind or nature including, but not limited to, claims for costs, legal fees, and/or sanctions in all circuit and appellate courts of South Carolina.

This acceptance meets all of Shirley's demands and puts a workable structure to the transaction. We are prepared to make this transaction work.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Thomas W. Bunch, II

TWB:aew
Cc: Keith M. Babcock, Esquire (via e-mail)

Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Tuesday, January 27, 2015 8:47 AM
To: Karen LeRoy
Subject: FW: Since I have not heard from you

fyi

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
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From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Tuesday, January 27, 2015 8:18 AM
To: Thomas W. Bunch, II
Cc: art@alkenandhightower.com; Keith M. Babcock; Beth Cogan; Mara Ballard
Subject: RE: Since I have not heard from you

I am amending the documents now. It is not 3 days. It has been months. Howard, and HASCI, LLC has had more than enough time.

We will not tie settlement of this case to any other occurrence other than payment of money by this Friday.

We do not accept a settlement proposal that is tied to a sale by HASCI LLC

See you at 9:30.

db

From: Thomas W. Bunch, II [<mailto:TBunch@robinsonlaw.com>]
Sent: Tuesday, January 27, 2015 8:15 AM
To: Desa Ballard
Cc: art@alkenandhightower.com; Keith M. Babcock
Subject: RE: Since I have not heard from you

Desa,

I could not modify the pdf you sent over. HASCI needs marketable title. I am checking on the timing of payment to see if we can do any better, but other than movies and TV, I don't know anyone who can raise a half million dollars plus in three days. The acceptance we sent was to pay the money as soon as HASCI closed or not later than April 30 – anywhere

Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Monday, February 09, 2015 5:02 PM
To: Karen LeRoy
Subject: FW: Hammer settlement docs
Attachments: QCDeed-ShirleyH to HighTowerLLC-2015-TO SIGN.pdf; QCDeed-1634MainLP to HighTowerLLC-2015-TO SIGN.pdf; Contract of Sale to HASCI.pdf; Settlement Agr. signed by Howard, Alvin & HASCI.pdf; [1516419] QCDeed-HowardHammer to HighTowerLLC-2015-TO SIGN.pdf

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From: Thomas W. Bunch, II [<mailto:TBunch@robinsonlaw.com>]
Sent: Monday, February 09, 2015 3:36 PM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: Hammer settlement docs

Desa,

Hope you are well. Attached are the following:

1. A Settlement Agreement signed by Howard Hammer, Alvin Hammer and HASCI, LLC.
2. A Contract of Sale to sell the property to HASCI. This was just finalized a short while ago, so it does not yet have signatures.
3. Quitclaim Deed from Shirley.
4. Quitclaim Deed from 1634.
5. Quitclaim Deed from Howard

We are working on a title policy and hope to have that finalized today. Unless something comes up that I am not aware of, I hope issuing a commitment will not be a problem. Allan Fulmer, Jr. was retained by HASCI to handle the real-estate aspects of this transaction so he is copied on the email. He asked that I convey to you that the deeds might need to be worked on some, but I am forwarding to you so you will see where we are going with the structure of the closing.

Tommy



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
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F: 803-744-1545
TBunch@robinsonlaw.com
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Recording Requested By and When Recorded Mail to
Allan E. Fulmer, Attorney, P.A.
Post Office Box 1548, Columbia, South Carolina 29202
[Prepared Without Benefit of Title Exam- No Title Opinion Provided]

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) ***QUIT-CLAIM DEED***

Whereas, by that certain *General Warranty Deed* recorded in the Office of the Register of Deeds for Richland County on January 24, 2014 in Record Book 1922, at Page 3825, Shirley Hammer conveyed all of her right, title and interest in the below-described real property to HighTower, LLC; *however*, the Probate in the Deed was incorrectly signed which may cause confusion as to the validity of the transfer of title; and,

Whereas, in order to resolve any confusion and to confirm proper transfer of title to the Grantee herein named, this Deed is being delivered by Shirley Hammer unto HighTower, LLC to convey any right, title or interest she may have therein;

Accordingly, **THIS DEED**, executed on February ____, 2015, by *Shirley Hammer* (hereinafter referred to as "*Grantor*") to *HighTower, LLC* (hereinafter referred to as "*Grantee*"), whose mailing address is 421 River Club Road, Lexington, South Carolina 2929072.

WITNESSETH:

IN CONSIDERATION of the sum of Five Dollars (\$5.00) and other valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, Grantor has granted, bargained, sold and released, and by this Deed grants, bargains, sells and releases, subject to the easements, restrictions, covenants, reservations and conditions referenced specifically or generally below, to Grantee, its successors and assigns, the following described properties (hereinafter collectively the "Property"):

All Right, Title, and Interest of the undersigned in and to:

1634 Main Street, Columbia, SC 29201
Parcel "A" and Parcel "B" – Collectively Containing 0.50 Acres
Plat Prepared by Cox and Dinkins, Inc. dated February 5, 1996
County of Richland, State of South Carolina
TMS #09014-04-19

See *Exhibit "A"* attached hereto and incorporated herein by reference.

THIS conveyance is made subject to all covenants, restrictions, easements, rights-of-way, and other matters of record, and such matters as would be shown by a current plat and an inspection, affecting the within-described property, including without limitation matters shown on the plat(s) referenced in *Exhibit "A"*.

Quit-Claim Deed – Shirley Hammer to HighTower, LLC – 1634 Main Street [cont.]

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

SUBJECT TO the easements, restrictions, covenants, reservations and conditions referenced specifically or generally above, Grantor covenants to warrant and forever defend all and singular said property unto Grantee, its successors and assigns, from and against Grantor, her heirs and assigns, whomsoever lawfully claiming the same, or any part thereof, and no others.

IN WITNESS WHEREOF, Grantor has caused this Deed of Real Property to be executed as of the day and year first above written.

*Signed, sealed and delivered
in the presence of:*

Witness #1 Signs Here

Shirley Hammer (SEAL)

Witness #2 Signs Here/Can Also Be Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, _____, Notary Public for the State of South Carolina, do hereby certify that Shirley Hammer, also known as Shirley Hightower, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2015.

Notary Public, State of South Carolina (L.S.)

My Commission Expires: _____

[Legal Description Follows on Next Page]

EXHIBIT "A"

[Property Description]

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, generally known as *1634 Main Street*, 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 to record 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 1/2" 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 Kimbiell'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 - This being the same property conveyed by 1634 Main (E&A) L.L.C. unto 1634 Main, L.P. by that certain *Deed* dated December 19, 2000 and recorded in the Office of the Register of Deeds for Richland County on December 22, 2000 in Record Book 469, at Page 1543; thereafter, a 52.75% interest therein was conveyed by 1634 Main L.P. unto Shirley Hammer by that certain *Deed* dated February 11, 2002 and recorded in the Office of the Register of Deeds for Richland County on February 15, 2002 in Record Book 627, at Page 1909; thereafter, pursuant to Master's Deed all right, title and interest of Howard Hammer, if any, and 1634 Main, L.P. was conveyed by the Master unto Shirley Hammer, the same dated January 21, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922 at Page 1520; and thereafter conveyed by Shirley Hammer unto HighTower, LLC by that certain *Deed* dated January 23, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 24, 2014 in Record Book 1922, at Page 3825.

Tax Map # 09014-04-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

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, as described in Exhibit A [1634 Main Street, Columbia, SC 29201, TMS #09014-04-19], is being transferred by Shirley Hammer unto HighTower, LLC.
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) X EXEMPT from the deed recording fee because it is a transfer of real property by QUIT-CLAIM DEED and no consideration paid thereunder.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (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 X 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) \$ 0.00 the amount listed in item 4 above
 - (b) \$ 0.00 the amount listed in item 5 above (if no amount, place zero)
 - (c) \$ 0.00 Subtract Line 6(b) from Line 6(a) and place the result
7. The Deed Recording Fee due is based on the amount listed on Line 6(c) above, and the Deed Recording Fee due is \$ 0.00.
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 willfully 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.

Sworn to before me this _____
day of _____, 2015

Notary Public for South Carolina
My Commission Expires: _____

Shirley Hammer - Grantor (SEAL)

CONTRACT OF SALE

THIS CONTRACT OF SALE (the "Contract") is made this ____ day of February, 2015 (the "Effective Date") between Shirley Hammer a/k/a Shirley Grace Hightower, Hightower, LLC, and 1634 Main, L.P. ("Seller") and HASCI, LLC ("Buyer").

RECITALS

A. Buyer is interested in purchasing that certain tract or parcel of land with all improvements thereon located in the City of Columbia, County of Richland, State of South Carolina, known as 1634 Main St. and having TMS No. 09014-04-19 (the "Property"), which is more particularly shown and described on EXHIBIT A attached hereto.

B. Seller has agreed to sell the Property to Buyer and Buyer has agreed to purchase the same, subject to, and upon the terms and conditions as set forth in this Contract.

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Property.** Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase and accept the same from the Seller in an "as-is, where-is" condition subject to the terms and conditions of this Contract herein. Such conveyance shall include all rights, privileges, easements and appurtenances appertaining to the Property including, but not limited to, all of Seller's rights, title and interests in any timber, mineral rights, adjacent streets, roads, parking lots, alleys, rights of way and condemnation awards, any utility allocations and any governmental permits or approvals. Subject to the following:

(a) all easements, restrictions, covenants and conditions of record (provided they do not make the title unmarketable);

(b) all licenses, rights of way and easements, if any, for public utilities;

(c) all governmental statutes, ordinances, rules and regulations, including those involving proper zoning;

(d) any state of facts which an accurate survey and/or physical inspection of the Property might reveal.

2. **Purchase Price and Deposit.** The purchase price is FIVE HUNDRED AND TWENTY-FIVE and no/100 (\$525,000.00) DOLLARS plus interest accruing at \$104.28 per diem after January 30, 2015 until the date of closing ("Purchase Price"), payable upon the closing of this transaction and delivery of a deed.

3. **Buyer's Rights Prior to Closing.** Although the property is being purchased AS IS – WHERE IS, Buyer shall have the following rights of inspections:

(a) Commencing as of the Effective Date (as defined herein) of this Contract, Buyer, its authorized agents and employees, as well as others authorized by the Buyer, shall have full and complete access to the Property for thirty (30) days to conduct due diligence ("Inspection Period"). Buyer shall be entitled to enter upon the Property and make such structural, operational, legal, surveying, architectural, engineering, topographical, geological, soil, subsurface, environmental, water drainage, and other investigations, inspection, evaluations, studies, tests and measurements as the Buyer deems reasonably necessary or advisable so long as same does not result in any material adverse change to the physical characteristics of the Property (collectively, the Buyer's rights set forth herein are referred to as the "Investigations"). Buyer agrees to indemnify and hold Seller harmless from and against any and all claims, costs, expenses and liabilities including reasonable attorneys' fees arising from or by reason of the Investigations. Buyer shall restore any disturbance of the Property caused by the Investigations into the same condition that existed prior to the Effective Date in the event Buyer fails to close or terminates this Contract.

(b) Within five (5) business days of the Effective Date of this Contract, Seller shall provide Buyer or Buyer's legal counsel with copies of any existing title insurance policies, surveys, plats, geotechnical, engineering, environmental documents, or other title-related or construction documents (such as restrictive covenants and easements (whether finalized or in draft form), construction and signage requirements, etc.) and other information affecting the Property which are in Seller's actual possession or reasonably obtainable by Seller.

(c) As part of the Investigations, Buyer may, at his sole cost and expense, choose to obtain a survey of the Real Property by a licensed surveyor or engineer selected and engaged by Buyer (the "Survey") showing and certifying to the effect that (i) the boundary lines of the Real Property close; (ii) no improvements to the Real Property materially encroach upon adjoining property and no improvements to adjoining property materially encroach upon the Real Property; (iii) the boundaries of the Real Property, as shown on such survey, are consistent with its boundaries as indicated by any existing surveys of record; and (iv) the Real Property has access to a public right of way, either directly or by means of a recorded easement;

(d) As part of the Investigations, Buyer may also perform an examination of title and obtain a commitment for title insurance for the Property from a national title insurance company ("Title Commitment") committing to insure that fee simple title is vested in Seller (or will be by the time of Closing); that title is good and marketable of record; title is free and clear of all liens, encumbrances, easements, restrictions, claims of title, leases, adverse possession, condemnation and other matters that will make title to the property unmarketable other than those exceptions set forth in Exhibit B hereto ("Permitted Exceptions") and that the Property has access to a public right of way, either directly or indirectly or by means of a recorded easement;

(e) At any time prior to the expiration of the Inspection Period, the Buyer shall have the sole and exclusive right to terminate this Contract if the Buyer cannot obtain a Title Commitment insuring good and marketable title to the Property, as determined by Buyer's legal counsel. If the Buyer elects to terminate this Contract pursuant to this paragraph, it shall give written notice of such termination to the Seller prior to the expiration of the Inspection Period. Upon such termination neither party shall have any further rights or obligations hereunder.

4. Conditions to Closing. It is further understood and agreed that the obligation of Seller and Buyer under this Contract is contingent solely upon, and subject to, the following:

(a) Title. Buyer shall provide to Seller a commitment for an ALTA owner's title policy covering the Property issued by a national title insurance company (the "Title Commitment") within thirty (30) days of execution of this Contract, together with a copy of all documents referenced therein ("Title Documents"). On or before 5:00 p.m. EST on the tenth (10th) day after receipt of the Title Commitment and Title Documents (the "Title Review Period"), Buyer shall deliver to Seller and Title Company a written notice (the "Buyer's Title Notice"), which shall specify any matter disclosed by the Title Commitment, the Title Documents or any Survey that are not acceptable to Buyer in its sole discretion (the "Objections"). On or before 5:00 p.m. EST on the tenth (10th) day after receiving Buyer's Title Notice, Seller shall notify Buyer in writing of the Objections (if any) that Seller will satisfy or cure at or before Closing (the "Seller's Title Notice"). In the event that Seller does not provide Seller's Title Notice within the time period specified above, Seller shall be deemed to have elected not to cure any of the Objections. If Seller elects (or is deemed to have elected) not to cure or satisfy any one or more of the Objections, then Buyer shall have the right, by written notice delivered to Seller on or before the expiration of the Inspection Period to either (i) waive its prior notice as to the Objections and therefore proceed to Closing or (ii) terminate this Contract. Buyer's failure to deliver such written notice shall be a conclusive presumption that Buyer has elected to waive those Objections which Seller has elected not to cure or satisfy. For purposes of this Contract, the "Permitted Exceptions" are and shall be limited to (a) those Schedule B exceptions set forth in the Title Commitment (including the standard printed exceptions included in the standard South Carolina Land Title Association owner's title policy) other than the Objections (unless any such Objections are waived by Buyer or cured by Seller pursuant to this Section 4(a), (b) municipal or other governmental laws, ordinances and regulations, if any, affecting the herein-described Property and (c) the lien of non-delinquent taxes, assessments and other usual and customary charges assessed against owners of real property in the State of South Carolina (subject to proration as provided in Section 10 hereof). Seller shall cure and remove at or prior to Closing (and Buyer shall not be required to object thereto) all monetary liens and encumbrances (such as mortgages and deeds of trust, mechanics' liens, income tax liens, judgment liens, tax liens assessed for delinquent taxes and other similar liens) affecting the Property or any part thereof which arose during the period January 21, 2014 until closing, and in no event shall any such monetary liens and encumbrances constitute Permitted Exceptions, except the Richland County real property taxes for which Buyer agrees to assume responsibility.

(b) **Other Documents.** All of the documents and other items required to be delivered by Seller to Buyer at the Closing as provided by this Contract shall have been delivered in form and substance reasonably satisfactory to Buyer.

5. **No Other Contingencies.** Except as specifically provided in this Section 4 of this Contract, this contract constitutes Buyer's firm offer, with no contingencies as to the validity, effectiveness, or binding nature of the offer, including without limitation, contingencies for financing, due diligence, or inspection. This contract does not depend upon Buyer receiving prior approval of its intended use for the property.

6. **Intended Use.** Not Applicable.

7. **Closing.** The Closing shall take place at the offices of the closing attorney for the Buyer or at such other place designated by the Buyer

(a) Seller shall deliver at the Closing the following with respect to the Property, all in form satisfactory to Buyer:

(1) A quitclaim deed or deeds, executed and acknowledged by the Seller as of the Closing Date;

(2) A certificate and affidavit of non-foreign status (the "FIRPTA Affidavit"), executed by Seller as of the Closing Date;

(3) Appropriate resolutions and other evidence of the Seller's authority to execute and deliver the deed;

(4) All other documents reasonably necessary to effectuate the transaction under the terms of this Contract.

(b) At the Closing, Buyer shall deliver, the following with respect to the Property:

(1) On or prior to 10:00 a.m. on the Closing Date, Buyer shall have deposited in escrow with the closing agent the Purchase Price by wire transfer via the Federal Reserve System (plus or minus any net adjustments computed hereunder).

(2) All other documents reasonably necessary to effectuate the transaction under the terms of this Contract.

8. **Title.** Seller agrees to convey to Buyer good and marketable, fee simple title to the Real Property and deliver a proper quitclaim deed, with all recording transfer fees and documentary stamps/taxes paid, free of encumbrances, subject only to the Permitted Exceptions.

9. **Closing Costs.** Seller agrees to pay for its share of past due amounts owed for utilities and services due on the property, and pro-rata utility costs, all documentary and transfer taxes, deed preparation fees, real estate commissions, if any, and Seller's attorney's fees. Buyer shall pay for its normal closing costs, including its attorney fees, title insurance premiums, fees to record the deed, the cost of a survey, and expenses of Inspections of the Property described herein. All other charges will be divided between the parties in accordance with practices customary in the jurisdiction in which the Property is located.

10. **Pro-rations.** Except Permitted Exceptions, all rents (as and when collected), water rents, sewer charges, lights and other utilities and other legal assessments shall be adjusted as of the Closing Date. Buyer shall be solely responsible for all roll back taxes assessed, charged or levied against the Property (if any).

11. **Seller's Representations and Warranties.** As a material inducement to Buyer's execution and performance of this Contract, Seller makes the following representations and warranties, all of which are true and complete as of the date of this Contract, shall be true and complete as of the settlement, and shall survive the Closing:

(a) **Condemnation.** To the actual knowledge of Seller, there are no pending or threatened condemnation or similar proceedings or special assessments or tax reassessments affecting the Property or any part thereof, nor to the knowledge of Seller are any such proceedings or assessments contemplated by any "Governmental Authorities" (as used herein, "Governmental Authorities" shall mean the United States, the State of South Carolina, the County of Richland, the City of Columbia, or any agency, department, commission, board, bureau or instrumentality of any of them), or other entity having condemnation authority, and that Seller shall promptly notify and deliver to Buyer copies of all such notices received by Seller prior to Closing, if any; and

(c) **Materialman's Liens.** To the actual knowledge of Seller, there are no unpaid charges, debts, liabilities, claims or obligations arising from the construction, ownership or operation of the Property by Seller which could give rise to any mechanic's or materialmen's or other statutory lien against the property, or any part thereof, or for which buyer will be responsible.

13. **Buyer's Representations and Warranties.** As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated herein, Buyer hereby represents and warrants to Seller:

(a) **Organization.** Buyer is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of South Carolina, and has power required to carry on its business as is now conducted. Buyer has all requisite power and authority to own, lease, and use the Property.

(b) **Authority.** The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions evidenced hereby are within the power and authority of Buyer and have been duly authorized by all necessary action on the part of Buyer. Buyer has all necessary legal capacity to enter into this Agreement. This Agreement has been duly and validly executed and delivered by Buyer and this Agreement and the other transaction documents required hereby to be executed and delivered by Buyer at Closing constitute or, when executed and delivered, will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(c) **As-Is Purchase.** THE PROPERTY IS PURCHASED, ON AN AS-IS-WHERE-IS BASIS AND SELLER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, COMPLIANCE WITH LAWS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION OR THE PROPERTY.

(d) **Reliance by Buyer on Due Diligence.** Buyer acknowledges and agrees that, except as otherwise expressly set forth in this contract and/or in the closing documents to the contrary:

(1) Buyer shall have had the opportunity to conduct all due diligence inspections of the property as of the expiration of the due diligence period, including reviewing all due diligence documents and materials and obtaining all information which it deems necessary to make an informed decision as to whether it should proceed with the purchase of the property;

(2) Buyer shall be deemed to be satisfied with the results of its due diligence review of the property upon the expiration of the due diligence period;

(3) Buyer will be relying only on its due diligence inspections of the property, its review of the seller due diligence materials and the representations and warranties expressly made by seller in this contract and/or in the closing documents in purchasing the property; and

(4) Buyer will not be relying on any statement made or information provided to buyer by Seller (except for the representations and warranties expressly made by seller in this contract and/or in the closing documents) or any of its affiliates, or any of their respective shareholders, members, partners, trustees, beneficiaries, directors, managers, officers, employees, attorneys, accountants, contractors, consultants, agents or representatives, or any person purporting to represent any of the foregoing.

14. Default.

(a) **By Buyer.** It is expressly agreed that if the Buyer fails or refuses to comply with the conditions assumed by Buyer, or to perform all of Buyer's obligations hereunder, Seller's shall have no remedy except to rescind this contract and Shirley Hammer may seek the remedies available to her as of the date of entering into this contract against Howard Hammer in case numbers 2009-CP-40-5911, 2010-CP-40-2889, and 2013-CP-40-6809.

Except as provided in this paragraph, Seller specifically waives all other claims, damages or remedies at law or in equity.

(b) **By Seller.** It is expressly agreed that if Seller fails or refuses to perform Seller's obligations hereunder, including the furnishing of marketable title as herein defined and transfer of possession as agreed, Buyer's sole right and exclusive remedy shall be to have all claims, judgments and awards of costs and sanctions against Howard Hammer, whether determined or to be determined, in case numbers 2009-CP-40-5911, 2010-CP-40-2889, and 2013-CP-40-6809, including any appeals of those cases and costs/sanctions awarded in such appeals dismissed with prejudice, provided that Shirley Hammer must comply with all directives set forth in the Order of the Honorable Joseph Strickland dated January 14, 2014 in case numbers 2009-CP-40-5911, 2010-CP-40-2889.

15. **Possession.** Seller shall give Buyer possession of the Property as of the Closing Date.

16. **Notices.** Whenever notices shall or may be given to either of the parties by the other, each such notice shall be in writing and be either hand-delivered or sent by certified mail, adequate and proper postage prepaid and affixed, addressed to the party at the address set forth hereinbelow (unless changed in the manner hereinafter set forth) and deposited in the United States Mail:

If to the Buyer, to:

HASCI, LLC
c/o Alvin Hammer
68 Lenwood Blvd.
Charleston, SC 29401

With copy to:

Alan Fulmer, Jr.
1812 Bull Street
Columbia, SC 29202

Keith Babcock
Lewis Babcock & Griffin, LLP
PO Box 11208
Columbia, SC 29211

Thomas W. Bunch, II
Robinson McFadden & Moore, PC
PO Box 944
Columbia, SC 29202

If to the Seller, to:

Shirley Hammer
412 River Club Drive
Lexington, SC 29072

With copy to:

Desa A. Ballard
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

The foregoing addresses may be changed by notice given in the above-listed manner. Any such notice shall be deemed to have been given at the time it was placed in the United States Mail with proper postage affixed.

17. Time of the Essence. Time is of the essence; however, if the transaction cannot close within the stipulated time limits of this Contract, then Buyer and Seller may agree to extend this contract for a reasonable period of time.

18. Real Estate Commissions. To the extent that there is any real estate commission owed to anyone as a result of entering into or closing on this contract, they are the sole responsibility of the Seller, and they shall be disbursed by the closing agent. Buyer represents that it has not engaged a broker or assumed any responsibility to pay such a person. Seller and Buyer each agree to hold each other harmless and indemnify the other from any claim for commission from any brokers claims arising from the conduct of the other party related to this sale or by virtue of any act or omission of the other party.

19. Assignment. Prior to or at closing, the Buyer shall have the right to assign any right or interest hereunder to a third party including any entity to-be-formed by the Buyer or its agents.

20. Modification/Further Assurances. No modification of this Contract shall be valid or binding unless such modification is in writing, duly dated and signed by all parties hereto. The parties agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done and made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, confirming or otherwise, as may be reasonably required to effect the purpose and intent of this Contract.

21. Entire Agreement. This instrument constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreement between the parties with respect to the sale of the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and/or conditions set forth in this Contract and that no party shall be bound by any terms, conditions, statements or representations, oral or written, not herein contained. Each party hereby acknowledges that in executing this Contract he or she has not been induced, persuaded, or motivated by any promise or representation made by the other party, unless expressly set forth herein. All negotiations, statements and preliminary instruments by the parties or their representatives are merged in this instrument.

22. Binding Contract/Survival. This Contract shall be binding upon and shall inure to the benefit of all parties, their respective heirs, successors, assigns, principals, and representatives. All of the representations, warranties and indemnification provided in this Contract shall survive closing.

23. Risk of Loss. The Property shall be held at the risk of the Seller until legal title has passed and possession has been given to the Buyer. The Seller shall immediately have all insurance policies on the Property endorsed to protect all parties hereto as their interests may appear and shall continue the insurance in full force during the term of this Contract.

24. **Tax-Free Exchange.** The parties acknowledge and agree that either party may desire to structure this transaction as a tax-free exchange (to include a reverse exchange) pursuant to Internal Revenue Code Section 1031. The parties agree to cooperate with each other and execute and deliver all documents and perform such acts as are reasonably necessary to enable the transactions contemplated by this Contract to qualify as a like kind exchange of real property under §1031 of the Internal Revenue Code of 1986. The parties shall each bear the cost of their own, additional expenses arising out of the exchange process which would not otherwise have been attendant to this transaction.

25. **OFAC Compliance.** Seller and Buyer each represent as to itself and its own members that neither Seller nor Purchaser nor any shareholders, partners or members of Seller or Purchaser is listed in Executive Order 13224-Blocking Property and Prohibiting Transaction with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended ("Executive Order 13224"), and neither Seller nor Purchaser has present, actual knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in Seller or Purchase are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13224, or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

26. **Dates and Times.** If the final day of any period or the deadline for performance of any obligation under this Contract falls on a Saturday, Sunday or legal holiday as defined by Title 53, Chapter 5 of the South Carolina Code of Laws, as amended, then the final day of the period or the deadline for performance shall be deemed to fall on the next day which is not a Saturday, Sunday, or legal holidays. Any reference in this Contract to any time period of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, or legal holidays.

27. **Governing Law and Venue.** The laws of the State of South Carolina, shall govern the validity, enforcement and interpretation of this Contract.

28. **Time of Acceptance.** This offer shall remain open for a period of Three (3) business days from the delivery of this Contract from Buyer to Seller. If Buyer has not accepted this offer by 5:00 p.m. on February ____, 2015, then this Contract shall be considered null and void and of no further force and effect. The term "acceptance" shall mean when the original of this Contract has been fully executed by Seller, properly witnessed, and delivered to Buyer.

29. **Execution of the Contract.** The effective date of this Contract shall be deemed to be the date of execution by the last party to sign this Contract ("Effective Date"). This Contract may be executed in counterparts by the parties. It shall not be necessary to have all of the signatures on behalf the parties appear on each counterpart. All such counterparts shall constitute a single Contract.

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates set forth below.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SELLER:

Shirley Hammer a/k/a Shirley Grace
Hightower

Date: _____

1634 Main, L.P.

By: _____ (L.S.)

Date: _____

BUYER:

HASCI, LLC

By: _____ (L.S.)

Its: _____

Date: _____

EXHIBIT A

PROPERTY DESCRIPTION

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, generally known as *1634 Main Street*, 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 to record 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 1/2" 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.

Derivation - This being the same property conveyed by 1634 Main (E&A) L.L.C. unto 1634 Main, L.P. by that certain *Deed* dated December 19, 2000 and recorded in the Office of the Register of Deeds for Richland County on December 22, 2000 in Record Book 469, at Page 1543; thereafter, a 52.75% interest therein was conveyed by 1634 Main L.P. unto Shirley Hammer by that certain *Deed* dated February 11, 2002 and recorded in the Office of the Register of Deeds for Richland County on February 15, 2002 in Record Book 627, at Page 1909; thereafter, pursuant to Master's Deed all right, title and interest of Howard Hammer, if any, and 1634 Main, L.P. was conveyed by the Master unto Shirley Hammer, the same dated January 21, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922 at Page 1520; and thereafter conveyed by Shirley Hammer unto HighTower, LLC by that certain *Deed* dated January 23, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 24, 2014 in Record Book 1922, at Page 3825.

Tax Map # 09014-04-19

EXHIBIT B

PERMITTED EXCEPTIONS

1. Ad valorem real property taxes and assessments for the year 2015 and subsequent years, not yet due and payable.
2. Ad valorem real property taxes and assessments for the year 2013 estimated to be in the amount of \$21,971.96 as of February 2, 2015 pursuant to the Richland County Government website, together with all penalties and interest thereon.
3. Ad valorem real property taxes and assessments for the year 2014 estimated to be in the amount of \$19,919.03 as of February 2, 2015 pursuant to the Richland County Government website, together with all penalties and interest thereon.
4. Such state of facts as would be disclosed by an accurate survey or physical inspection of property.
5. All rights-of-way, easements and restrictive covenants of record.
6. All governmental statutes, ordinances, rules and regulations.
5. Tax liens against Howard Hammer

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

1

Quit-Claim Deed – Howard Hammer to HighTower, LLC – 1634 Main Street [cont.]

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

SUBJECT TO the easements, restrictions, covenants, reservations and conditions referenced specifically or generally above, Grantor covenants to warrant and forever defend all and singular said property unto Grantee, its successors and assigns, from and against Grantor, his heirs and assigns, whomsoever lawfully claiming the same, or any part thereof, and no others.

IN WITNESS WHEREOF, Grantor has caused this Deed of Real Property to be executed as of the day and year first above written.

*Signed, sealed and delivered
in the presence of:*

Witness #1 Signs Here

Howard Hammer (SEAL)

Witness #2 Signs Here/Can Also Be Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, _____, Notary Public for the State of South Carolina, do hereby certify that Howard Hammer, individually, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2015.

Notary Public, State of South Carolina (L.S.)
My Commission Expires: _____

[Legal Description Follows on Next Page]

Quit-Claim Deed – Howard Hammer to HighTower, LLC – 1634 Main Street [cont.]

EXHIBIT "A"

[Property Description]

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, generally known as *1634 Main Street*, 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 to record 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 1/2" 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.

Derivation - This being the same property conveyed by 1634 Main (E&A) L.L.C. unto 1634 Main, L.P. by that certain *Deed* dated December 19, 2000 and recorded in the Office of the Register of Deeds for Richland County on December 22, 2000 in Record Book 469, at Page 1543; thereafter, a 52.75% interest therein was conveyed by 1634 Main L.P. unto Shirley Hammer by that certain *Deed* dated February 11, 2002 and recorded in the Office of the Register of Deeds for Richland County on February 15, 2002 in Record Book 627, at Page 1909; thereafter, pursuant to Master's Deed all right, title and interest of Howard Hammer, if any, and 1634 Main, L.P. was conveyed by the Master unto Shirley Hammer, the same dated January 21, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922 at Page 1520; and thereafter conveyed by Shirley Hammer unto HighTower, LLC by that certain *Deed* dated January 23, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 24, 2014 in Record Book 1922, at Page 3825.

Tax Map # 09014-04-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

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, as described in Exhibit A [1634 Main Street, Columbia, SC 29201, TMS #09014-04-19], is being transferred by Howard Hammer unto HighTower, LLC.
- 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) X EXEMPT from the deed recording fee because it is a transfer of real property by QUIT-CLAIM DEED and no consideration paid thereunder.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (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 X 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) \$ 0.00 the amount listed in item 4 above.
 - (b) \$ 0.00 the amount listed in item 5 above (if no amount, place zero).
 - (c) \$ 0.00 Subtract Line 6(b) from Line 6(a) and place the result
7. The Deed Recording Fee due is based on the amount listed on Line 6(c) above, and the Deed Recording Fee due is \$ 0.00 .
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 willfully 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.

Sworn to before me this _____
day of _____, 2015

Notary Public for South Carolina
My Commission Expires, _____

Howard Hammer (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Whereas, by that certain *Master's Deed* recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922, at Page 1520, the Master in Equity for Richland County sought to convey the ownership interests of 1634 Main L.P. in the below-described real property to Shirley Hammer; however, it appears that the conveyance to Shirley Hammer may have only transferred to Shuley Hammer a 52.75% interest in the below-described real property, leaving 47.25% interest in the said real property in the name of 1634 Main L.P. which may cause confusion as to the ownership interest transferred by the Master in Equity to Shirley Hammer, and then subsequently by Shirley Hammer to HighTower, LLC by that certain *Deed* recorded January 24, 2014 in Record Book 1922, at Page 3825; and,

Accordingly, **THIS DEED**, executed on February ____, 2015, by **1634 Main, L.P.** (hereinafter referred to as "**Grantor**") to **HighTower, LLC** (hereinafter referred to as "**Grantee**"), whose mailing address is 421 River Club Road, Lexington, South Carolina 2929072.

IN CONSIDERATION of the sum of Five Dollars (\$5.00) and other valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, Grantor has granted, bargained, sold and released, and by this Deed grants, bargains, sells and releases, subject to the easements, restrictions, covenants, reservations and conditions referenced specifically or generally below, to Grantee, its successors and assigns, the following described properties (hereinafter collectively the "Property"):

1634 Main Street, Columbia, SC 29201
Parcel "A" and Parcel "B" – Collectively Containing 0.50 Acres
Plat Prepared by Cox and Dinluns, Inc. dated February 5, 1996
County of Richland, State of South Carolina
TMS #09014-04-19

THIS conveyance is made subject to all covenants, restrictions, easements, rights-of-way, and other matters of record, and such matters as would be shown by a current plat and an inspection, affecting the within-described property, including without limitation matters shown on the plat(s) referenced in *Exhibit "A"*.

Quit-Claim Deed – 1634 Main, L.P. to HighTower, LLC – 1634 Main Street [cont.]

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

SUBJECT TO the easements, restrictions, covenants, reservations and conditions referenced specifically or generally above, Grantor covenants to warrant and forever defend all and singular said property unto Grantee, its successors and assigns, from and against Grantor, its successors and assigns, whomsoever lawfully claiming the same, or any part thereof, and no others.

IN WITNESS WHEREOF, Grantor has caused this Deed of Real Property to be executed as of the day and year first above written.

*Signed, sealed and delivered
in the presence of:*

1634 MAIN, L.P.

Witness #1 Signs Here

By: _____ (SEAL)
Shirley Hammer
Authorized Officer

Witness #2 Signs Here/Can Also Be Notary

By: _____ (SEAL)
Shirley Hightower
Authorized Officer

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, _____, Notary Public for the State of South Carolina, do hereby certify that Shirley Hammer, also known as Shirley Hightower, as authorized officer of 1634 Main, L.P., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2015.

Notary Public, State of South Carolina
My Commission Expires: _____

[Legal Description Follows on Next Page]

EXHIBIT "A"

[Property Description]

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, generally known as *1634 Main Street*, 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 to record 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 1/2" 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.

Derivation - This being the same property conveyed by 1634 Main (E&A) L.L.C. unto 1634 Main, L.P. by that certain *Deed* dated December 19, 2000 and recorded in the Office of the Register of Deeds for Richland County on December 22, 2000 in Record Book 469, at Page 1543; thereafter, a 52.75% interest therein was conveyed by 1634 Main L.P. unto Shirley Hammer by that certain *Deed* dated February 11, 2002 and recorded in the Office of the Register of Deeds for Richland County on February 15, 2002 in Record Book 627, at Page 1909; thereafter, pursuant to Master's Deed all right, title and interest of Howard Hammer, if any, and 1634 Main, L.P. was conveyed by the Master unto Shirley Hammer, the same dated January 21, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922 at Page 1520; and thereafter conveyed by Shirley Hammer unto HighTower, LLC by that certain *Deed* dated January 23, 2014 and recorded in the Office of the Register of Deeds for Richland County on January 24, 2014 in Record Book 1922, at Page 3825.

Tax Map # 09014-04-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

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, as described in Exhibit A [1634 Main Street, Columbia, SC 29201, TMS #09014-04-19], is being transferred by 1634 Main, L.P. unto HighTower, LLC
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) X EXEMPT from the deed recording fee because it is a transfer of real property by QUIT-CLAIM DEED and no consideration paid thereunder.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (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 X 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) \$ 0.00 the amount listed in item 4 above.
 - (b) \$ 0.00 the amount listed in item 5 above (if no amount, place zero).
 - (c) \$ 0.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. The Deed Recording Fee due is based on the amount listed on Line 6(c) above, and the Deed Recording Fee due is \$ 0.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Officer of Grantor.
9. I understand that a person required to furnish this affidavit who willfully 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

Sworn to before me this _____
day of _____, 2015

Notary Public for South Carolina
My Commission Expires: _____

_____(SEAL)
Shirley Hammer—Authorized Officer of Grantor

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

Settlement Agreement

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

Settlement Agreement

SETTLEMENT AGREEMENT ("Agreement") effective January 31, 2015 by and between Howard Hammer as Party of the First Part, Shirley Hammer a/k/a Shirley Grace Hightower, 1634 Main, L.P., SH5, LLC, and Hightower, LLC as Parties of the Second Part, HASCI, LLC as Party of the Third Part, and Alvin Hammer as Party of the Fourth Part;

WHEREAS, upon request of Shirley Hammer a/k/a Shirley Grace Hightower the January 21, 2014 Order of the Honorable Joseph M. Strickland (the "January 21 Order") and Master's Deed of that date transferred all of Howard Hammer's interest in 1634 Main L.P. and SH5, LLC and any interest Howard Hammer, 1634 Main, L.P. and SH5, LLC had in the real property located at 1634 Main Street, identified by TMS #09014-04-19 ("the Real Property") to Shirley Hammer.

WHEREAS, the January 21 Order arose out of supplementary proceedings instituted by Shirley Hammer to collect judgments against Howard Hammer and 1634 Main, L.P. entered in the above captioned cases.

WHEREAS, the January 21 Order directed Shirley Hammer to sell the Real Property in a commercially reasonable manner and account to the Court for the proceeds and expenses of sale.

WHEREAS, after the January 21 Order was entered and a Master's Deed recorded to convey to Shirley Hammer the Real Property, Shirley Hammer deeded the Real Property to Hightower, LLC (an LLC controlled by Shirley Hammer a/k/a Shirley Grace Hightower), and Hightower, LLC is now the record owner of the Real Property.

WHEREAS, the parties of the Second Part have represented that there are currently three tenants at the Real Property, those being Children's Trust of South Carolina with approximately two years remaining on its lease at a monthly rent of \$6,900, Oliver Gospel Mission with approximately one year remaining on its lease at a monthly rent of \$1,300, and Susan Lipscomb at a monthly rent of \$1,400.

WHEREAS, it is acknowledged and agreed that Shirley Hammer may exercise the powers of 1634 Main LP and SH5, LLC for purposes of this Agreement and the

documents identified herein, and the parties expressly and irrevocably stipulate to her authority to sign this Agreement, the documents identified herein, and any other documents necessary to complete the obligations created hereunder.

WHEREAS, no party to this Agreement shall appeal, seek to amend or vacate this Agreement on any basis, except lack of authority or capacity to enter into this Agreement or the documents executed pursuant thereto.

WHEREAS, each party whose signature appears below affirms that he, she or it is competent and fully able in all respects to enter into this agreement, and has had the advice of counsel and any other persons or entities upon whose advice the party relies for any purpose prior to entering into this agreement.

WHEREAS, each party to this agreement affirms and acknowledges the accuracy and truth of the foregoing recitals in this Agreement.

NOW, THEREFORE, for and in consideration of the undertakings and obligations created by this agreement, the adequacy of consideration being fully acknowledged, all of the undersigned, agree as follows:

1. For the payment of the principal amount of Five Hundred Twenty-Five Thousand (\$525,000.00) Dollars plus interest (the "Contract Price"), the Parties of the Second Part agree to (1) sell to and convey by quitclaim deed to HASCI, LLC the Real Property, and (2) assign to HASCI, LLC the three leases referenced in the recitals, all pursuant to the Contract of Sale attached hereto and which terms are incorporated herein.
2. The sale, conveyance, and payment for the Real Property is conditioned upon title to the Real Property being marketable and/or insurable. If it is not, then

this agreement, and all obligations of each party hereto, shall be null and void. As a limited exception to this condition, the grantee of the Real Property agrees to assume any and all responsibility for liens against the property which arose prior to January 21, 2014 plus Richland County property taxes for 2014 that were due and payable January 15, 2015 and said taxes accruing thereafter. Except as provided in the foregoing sentence regarding property taxes assessed by Richland County, nothing herein shall be construed to obligate or require purchaser to be obligated for any liens and encumbrances against the Real Property arising on or after January 22, 2014.

3. Payment by HASCI, LLC shall be made upon closing of certain property fronting on Assembly Street in Columbia, S.C. on which HASCI has a contract for sale and which is scheduled to close on or about February 22, 2015. The buyer under the HASCI contract may request a 30 day extension to close the sale after February 22. If for any reason the HASCI contract of sale fails to close by April 30, 2015, the Party of the Fourth Part, Alvin Hammer, agrees to guarantee the Contract Price. At any time before April 30, 2015, the undersigned parties to this Agreement agree that that HASCI and/or Alvin Hammer may fund the Contract Price and close the transaction.
4. For each day after January 30, 2015, the principal purchase price of \$525,000.00 shall increase at a per diem amount of \$104.28 based on an annual interest rate of 7.25% on the principal purchase price. The principal amount of \$525,000.00 plus the per diem interest are the "Contract Price."

5. The parties to the cases captioned above stipulate that the sale of the Real Property under the terms of this Agreement shall constitute a commercially reasonable sale of the Real Property for purposes of the January 21 Order and that upon full compliance with this Agreement that Shirley Hammer has fully discharged all obligations imposed upon her under that order.
6. Upon payment of the Contract Price, the closing of the sale of the Real Property, and the assignment of leases, the undersigned parties agree that the Parties of the Second Part shall:
 - a. File satisfactions of judgment in Richland County and any other jurisdictions and Courts in which Shirley Hammer has filed or obtained any evidence of judgment to fully discharge and release any and all judgments she holds against Howard Hammer and/or 1634 Main LP as a result of prior orders of Judge George James and Judge Joseph P. Strickland in the captioned actions.
 - b. Dismiss with prejudice any matters and all claims which remain pending in the captioned cases and any other cases in which Howard Hammer is a Defendant in any and all courts (including the South Carolina Supreme Court) as well as in Case No. 2013-CP-40-6898, including but not limited to any pending motions in any legal matter in either the Circuit Court or the South Carolina Supreme Court.
 - c. Assume any and all responsibility for financial obligations arising out of any agreements with any person or entity with whom they entered into agreements or incurred obligations which relate to the Real Property,

and specifically including Marlon Turbeville, Danville Business Advisors LLC, Aries Advisors, LLC, and any entity with which Marlon Turbeville has an interest or claim related to the Real Property.

- d. Notify all tenants at 1634 Main Street that the ownership of the property has transferred and that rents including any past due rents are due and payable to the new owner as of the date of transfer. Rents and utilities shall be pro-rated as of the day of closing, and the Parties of the Second Part are responsible for payment of any utility expenses incurred, but not paid as of the date of closing.
 - e. Authorize and direct Danville Business Advisors LLC to release to HASCI, LLC any and all keys and alarm codes to the building located at 1634 Main Street and all suites therein.
7. Subject to closing and conveyance of the Real Property and Leases, and compliance with all other terms of this Agreement by the Parties of the Second Part, Howard Hammer releases Shirley Hammer a/k/a Shirley Grace Hightower and her agents, servants, employees, personal representatives, and assigns from any and all claims, demands, actions, and damages of any nature, at law or in equity, arising out of the conveyance of the Real Property, their taking of the Real Property, their management of the Real Property, and their disposal of the contents therein.
8. Howard Hammer waives any and all rights he may have had at any time in the past or will have at any time in the future, to seek reconsideration, appeal,

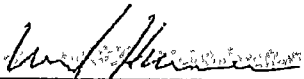
challenge, invalidate, modify or vacate this agreement or any orders of dismissal referenced in this agreement, or any judgments or orders previously issued in the above captioned cases by any judge(s) in any court, including but not limited to, any arguments concerning public policy grounds or any other basis whatsoever.

9. This document shall not be construed as having been authored by any party over the other and shall at all times be construed as the product of the parties jointly, and no ambiguities regarding construction of the terms of this agreement shall be construed against any party to this agreement
10. Should any provision of this agreement be found to be unenforceable for any reason at any time, it is the express intent of the parties that the remaining portion of this agreement shall continue in full force and effect.
11. Time is of the essence in this agreement.
12. This document may be executed separately by the parties and combined into a final and complete agreement.
13. Should any provision of this agreement be deemed invalid or unenforceable by a court of competent jurisdiction, all other provisions shall remain in full force and effect.
14. This is the entire agreement of the parties, and there are no oral or written agreements other than as set forth herein which govern the rights of the parties or modify the terms of this agreement in any way.

15.No party has been promised anything in connection with his/her execution of this agreement other than the terms set forth herein.

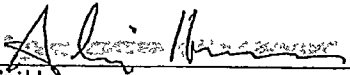
16.The signatures of the undersigned reflect that this agreement is entered into voluntarily by the parties, that all parties understand the effect of this agreement, and each has had the opportunity to consult with any counsel or other person or entity with whom that party may wish to consult prior to executing this agreement.

17.Nothing herein shall affect matters which are exclusively within the jurisdiction of the Family Court.


Howard Hammer

HASCI, LLC
By: 

Its: _____


Alvin Hammer

Shirley Hammer a/k/a
Shirley Grace Hightower

1634 Main, L.P.

By: _____

Its: _____

SH5, LLC

By: _____

Its: _____

Hightower, LLC

By: _____

Its: _____

Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Tuesday, February 10, 2015 8:34 AM
To: Karen LeRoy
Subject: FW: Hammer settlement docs

fyi

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com
website: <http://www.lbglegal.com>

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From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Tuesday, February 10, 2015 6:19 AM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan; Mara Ballard
Subject: RE: Hammer settlement docs

Tommy: We are on the right track, but we will not warrant that we convey marketable title, the release is too narrow, we are not leaving Shirley obligated for the real estate taxes for any year, and we are not selling the property to HASCI; we are conveying it in exchange for settlement. There are a few other small things. If you want to send me the Word documents, I'll fix them (using track changes, so you can see what changes I make) and I'll send a signed copy back to you. We don't need a contract of sale.

Send the Word documents and I'll get the changes back to you today. What time did schedule delivery of funds on Friday?

db

From: Thomas W. Bunch, II [<mailto:TBunch@robinsonlaw.com>]
Sent: Monday, February 09, 2015 3:36 PM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: Hammer settlement docs

Desa,

Hope you are well. Attached are the following:

1. A Settlement Agreement signed by Howard Hammer, Alvin Hammer and HASCI, LLC.

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, February 10, 2015 10:04 AM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan, Mara Ballard
Subject: RE: Hammer settlement docs

Attached is my email. Interest will run until money paid on 2-13. "Closing" if you will on 2-13.

I was very clear. Send me the Word docs so we can get this done.

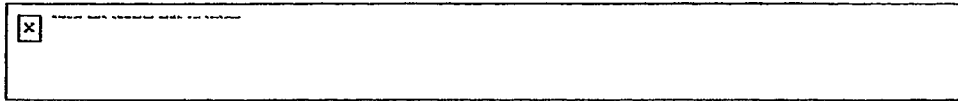
From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Tuesday, February 10, 2015 9:37 AM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: RE: Hammer settlement docs

Desa,

I don't understand the request for payment by this Friday. At the January 27 hearing, when we mentioned a payment deadline of 4/30/15, you said if we could not pay by January 30th that interest would accrue on the payment. We agreed to that request. The settlement documents are drafted to cover accruing interest. Since then you have twice mentioned a payment deadline earlier than 4/30. At the same time, you are advising Judge Strickland that only settlement documents need to be signed by 2/13. ("Mr. Bunch and I have been trying to finalize the settlement we discussed at our last appearance and we (Mrs. Hammer and I) have asked that the matter be finalized (all documents executed) by 2-13-2015." Ballard email dtd. 2/3/15.).

What's the deal?

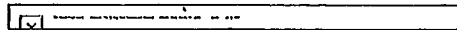
Tommy



Thomas W. Bunch, II
P: 803-227-1103
P: 803-744-1545
TBunch@robinsonlaw.com
v-card

Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900



From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, February 10, 2015 6:19 AM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan; Mara Ballard
Subject: RE: Hammer settlement docs

Tommy: We are on the right track, but we will not warrant that we convey marketable title, the release is too narrow, we are not leaving Shirley obligated for the real estate taxes for any year, and we are not selling the property to HASCI, we are conveying it in exchange for settlement. There are a few other small things. If you want to send me the Word documents, I'll fix them (using track changes, so you can see what changes I make) and I'll send a signed copy back to you. We don't need a contract of sale.

Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Tuesday, February 10, 2015 11:23 AM
To: Karen LeRoy
Subject: FW: Hammer settlement docs

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com

website: <http://www.lbglegal.com>

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From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Tuesday, February 10, 2015 10:37 AM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: RE: Hammer settlement docs

Desa,

I understood your email about the February 13th deadline for documentation and payment. I did not know why you changed your mind from the January 27th hearing at which we had discussed a payment deadline of 4/30 with accruing interest. Then, I assumed you had realized your change of position when you told Judge Strickland that the matter needed to be finalized (all documents executed) by 2/13. Thank you for clarifying. I certainly would not have spent a good bit of time drafting a settlement agreement and coordinating on a contract of sale with a 4/30 closing deadline had I understood there was a deadline of 2/13.

Keith and Allen are now aware of the 2/13 deadline and they can advise if their clients are in position to pay anything by 2/13.

Tommy



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
P: 803-227-1103
F: 803-744-1545
TBunch@robinsonlaw.com
v-card

Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900

 MERITAS LAW FIRMS WORLDWIDE

Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Wednesday, February 11, 2015 3:57 PM
To: Karen LeRoy
Subject: FW: Settlement Agreement with db changes 2-11-2015
Attachments: Settlement Agreement with db changes 2-11-2015.docx

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com
website: <http://www.lbglegal.com>

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From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Wednesday, February 11, 2015 9:52 AM
To: 'Thomas W Bunch (TBunch@robinsonlaw.com)'; Keith M. Babcock
Cc: Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard
Subject: Settlement Agreement with db changes 2-11-2015

Please see the attached, which incorporates the changes (via track changes and comments function in Word) we are agreeable to in order to conclude this settlement. There is no need for a contract of sale, because we are not selling the property; we are transferring it to Howard's designee in exchange for payment of an agreed-upon sum by way of settlement. I have not yet reviewed the proposed quit claim deeds that Alan Fulmer sent, but I'm moving to that next.

We had set several prior deadline dates, none of which was met, and we have been forced to keep this settlement offer alive despite it supposedly having deadlines. I tried to have it done by 2-9, but you pointed out that everyone was busy, etc. so I agreed to your suggested deadline of 2-13-2015, and specifically pointed out that extending the time yet again required consummation and payment of money by 2-13-2015.

I am not trying to be difficult, but I have dealt with Howard long enough that I know he has something up his sleeve and I'm trying to protect Shirley as best I can.

You will note that this version requires HASCI to pay all property taxes for all years; your draft and what you said at the last hearing was trying to force Shirley to pay the property taxes that came due during her ownership of the property and that was not agreeable. The discount settlement price of \$525K, which is far too little and was supposed to be a "today only" offer more than a month ago, cannot require Shirley to have any financial obligation other than Turbeville.

Please review this and I'll review the proposed quit claim deeds and get them back to Alan right away so we can get this matter concluded on Friday.

db

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

)
) Settlement Agreement
) (not to be filed)
)

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.: 2010-CP-40-2889

)
) Settlement Agreement
) (not to be filed)
)

SETTLEMENT AGREEMENT ("Agreement") effective January 31, 2015 by and
between Howard Hammer (hereafter referred to as "Howard") as Party of the First Part,
Shirley Hammer a/k/a Shirley Grace Hightower, individually and as agent for Hightower,
LLC, and on behalf of any interest she may own in 1634 Main, L.P., SH5, LLC, and
Hightower, LLC (hereafter referred to collectively as Parties of the Second Part,

Comment [001]: You guys have argued that Shirley doesn't own all of 1634 Main LP, which is why my draft authorized her to sign over what interest she had, if any, which you declined. You also said you didn't want Shirley's interest in 1634 Main LP or SH5, LLC. Has that changed? The language I suggested, which is more vague about what interest, if any, Shirley has, is more accurate. Shirley has no way of knowing what Howard did with ownership of either of the companies, and all she knows is that she owns whatever Judge Strickland gave her of those companies. So she can't purport to act on their behalf entirely. I have changed this language accordingly.

"Shirley"), HASCI, LLC, (hereafter referred to as "HASCI") -as Party of the Third Part,
and Alvin Hammer, individually and as an agent of HASCI, LLC as Party of the Fourth
Part (hereafter referred to as "Alvin"):

WHEREAS, ~~upon request of Shirley Hammer a/k/a Shirley Grace Hightower the~~
~~January 21, 2014 Order of the Honorable Joseph M. Strickland (the "January 21 Order")~~
~~and Master's Deed of that date transferred all of Howard Hammer's interest in 1634~~
~~Main L.P. and SH5, LLC and any interest Howard Hammer, 1634 Main, L.P. and SH5,~~
~~LLC had in the real property located at 1634 Main Street, identified by TMS #09014-04-~~
~~19 ("the Real Property") to Shirley Hammer.~~

~~WHEREAS, the January 21 Order arose out of supplementary proceedings~~
~~instituted by Shirley Hammer to collect judgments against Howard Hammer and 1634~~
~~Main, L.P. entered in the above-captioned cases.~~

~~WHEREAS, the January 21 Order directed Shirley Hammer to sell the Real~~
~~Property in a commercially reasonable manner and account to the Court for the~~
~~proceeds and expenses of sale.~~

~~WHEREAS, after the January 21 Order was entered and a Master's Deed~~
~~recorded to convey to Shirley Hammer the Real Property, Shirley Hammer~~
~~subsequently deeded the Real Property to Hightower, LLC (an LLC controlled by Shirley~~
~~Hammer a/k/a Shirley Grace Hightower), and Hightower, LLC is now the record owner~~
~~of that portion of the real property previously owned by Howard, 1634 Main LP the Real~~
~~Property.~~

~~WHEREAS, the parties of the Second Part have represented that there are~~
~~currently three tenants at the Real Property, these being Children's Trust of South~~

~~Carolina with approximately two years remaining on its lease at a monthly rent of \$6,000, Oliver Gospel Mission with approximately one year remaining on its lease at a monthly rent of \$1,300, and Susan Lipscomb at a monthly rent of \$1,400.~~ are currently three (3) tenants at 1634 Main Street, two (2) of which have leases with 1634 Main LP and one of which does not. Neither Shirley Hammer nor Hightower LLC have leased out any portion of the building since the Master's Deed of January 21, 2014.

WHEREAS, it is acknowledged and agreed that Shirley Hammer may exercise the powers of 1634 Main LP and SH5, LLC for purposes of this Agreement and the documents identified herein, and the parties expressly and irrevocably stipulate to her authority to sign this Agreement, the documents identified herein, and any other documents necessary to complete the obligations created hereunder.

WHEREAS, no party to this Agreement shall appeal, seek to amend, modify, clarify, supplement or vacate this Agreement on any basis, ~~except~~ including lack of authority or capacity to enter into this Agreement ~~nor will any party seek to challenge the validity of documents executed pursuant thereto.~~

WHEREAS, each party whose signature appears below affirms that he, she or it is competent and fully able in all respects to enter into this agreement, and has had the advice of counsel and any other persons or entities upon whose advice the party relies for any purpose prior to entering into this agreement, and authority to act on behalf of any entity party on whose behalf s/he serves as agent in full or in part; provided however, that Shirley does not warrant or represent that she has full authority to act on behalf of 1634 Main LP or SH5, LLC, but to the extent she has such interest, she will execute the documents identified herein accordingly.

WHEREAS, each party to this agreement affirms and acknowledges to the best of their knowledge the accuracy, ~~and truth~~ and limitations of the foregoing recitals in this Agreement.

NOW, THEREFORE, for and in consideration of the undertakings and obligations created by this agreement, ~~the adequacy of consideration being fully acknowledged,~~ all of the undersigned, agree as follows:

1. ~~Upon receipt by Shirley of~~ For the payment of the principal amount of Five Hundred Twenty-Five Thousand (\$525,000.00) Dollars plus interest as set forth below (the "~~Contract consideration~~Price"), the ~~Parties Shirley~~ of the ~~Second Part~~ agrees to (1) sell to and convey by quitclaim deed any and all interest she may have by virtue of her individual ownership or any interest she has in 1634 Main LP and SH5, LLC to HASCI, LLC the Real Property, ~~and (2) assign to HASCI, LLC the three leases referenced in the recitals, all pursuant to the Contract of Sale attached hereto and which terms are incorporated herein.~~
2. ~~The sale, conveyance, and payment for the Real Property is conditioned upon title to the Real Property being marketable and/or insurable. If it is not, then this agreement, and all obligations of each party hereto, shall be null and void. As a limited exception to this condition, the grantee of the Real Property HASCI LLC agrees to assume any and all responsibility for any and all taxes and liens of any kind accrued or due in connection with or against the property which arose prior to January 21, 2014 plus Richland County property taxes for 2014 that were due and payable January 15, 2015 and said taxes~~

~~accruing thereafter. Except as provided in the foregoing sentence regarding property taxes assessed by Richland County, nothing herein shall be construed to obligate or require purchaser to be obligated for any liens and encumbrances against the Real Property arising on or after January 22, 2014.~~

3.2. Payment by HASCI, LLC may shall be made upon closing of certain property fronting on Assembly Street in Columbia, S.C. on which HASCI has a contract for sale and which is scheduled to close on or about February 22, 2015. The buyer under the HASCI contract may request a 30 day extension to close the sale after February 22. If for any reason the HASCI contract of sale fails to close by February 13, 2015 ~~April 30, 2015~~, the Party of the Fourth Part, Alvin Hammer, agrees and to guarantees to pay to Shirley the consideration set forth in Paragraph 1 no later than 5 pm on February 13, 2014 ~~Contract Price~~. At any time before April 30, 2015, the undersigned parties to this Agreement agree that that HASCI and/or Alvin Hammer may fund the Contract pay the stated consideration and effect transfer of title to the real property to HASCI, LLC ~~Price and close the transaction.~~

Comment [DB2]: If we leave this in will need to see this, redacted as necessary, to satisfy myself it is real and the provisions cited here are accurate.

4.3. For each day after January 30, 2015 until February 13, 2015, the principal purchase price of \$525,000.00 shall increase at a per diem amount of \$104.28 based on an annual interest rate of 7.25% ~~on the principal purchase price~~. The principal amount of \$525,000.00 plus the per diem interest are the "Contract Price full consideration for the agreements and undertakings set forth herein."

~~5.4.~~ The parties to the cases captioned above stipulate that the ~~sale- transfer~~ of the Real Property under the terms of this Agreement shall constitute a commercially reasonable sale of the Real Property for purposes of the January 21 Order and that upon full compliance by all parties of the terms of with this Agreement that Shirley Hammer has fully discharged all obligations imposed upon her under that order.

~~6.5~~ Upon receipt by Shirley payment of good funds in the amount of the ~~Contract Price~~ consideration set forth herein in Paragraph 3, the closing of the ~~sale of the Real Property, and the assignment of leases,~~ the undersigned parties agree that ~~the Parties of the Second Part~~ Shirley shall:

- a. File satisfactions of judgment in Richland County and any other jurisdictions and Courts in which Shirley Hammer has filed or obtained any evidence of judgment to fully discharge and release any and all judgments she holds against Howard Hammer and/or 1634 Main LP as a result of prior orders of Judge George James and Judge Joseph P. Strickland in the captioned actions.
- b. Dismiss with prejudice any matters and all claims which remain pending in the captioned cases and any other cases in which Howard Hammer is a Defendant in any and all courts (including the South Carolina Supreme Court) as well as in Case No. 2013-CP-40-6898, including but not limited to any pending motions in any legal matter in either the Circuit Court or the South Carolina Supreme Court.

c. Assume any and all responsibility for financial obligations, if any, arising out of any agreements with any person or entity with whom they entered into agreements or incurred obligations which relate to Shirley's ownership of the Real Property, and specifically including Marlon Turbeville, Danville Business Advisors LLC, Aries Advisors, LLC, and any entity with which Marlon Turbeville has an interest or claim related to the Real Property.

d. Notify all tenants at 1634 Main Street that the ownership of the property has transferred and that any rents including any past due rents w hich become due after February 13, 2015 are due and payable to HASCI the new owner as of the date of transfer. Rents and utilities shall be pro-rated as of the day of closing, and the Parties of the Second Part are responsible for payment of any utility expenses incurred, but not paid as of the date of closing.

e. Authorize and direct Danville Business Advisors LLC to release to HASCI, LLC any and all keys and alarm codes to the building located at 1634 Main Street and all suites therein.

Comment [DB3]: I am open to leaving this in, the reason I hesitate is that Shirley had to pay all of the arrearages of utilities that came with ownership of 1634 Main and it was a substantial sum. Payments are current now, so HASCI would take over and only owe the next current billing for utilities, elevator contract, janitorial service, etc.

7.6. Subject to closing and conveyance of the Real Property and Leases, and compliance with all other terms of this Agreement by the Parties of the Second Part, Upon transfer of title of the real property to HASCI under the terms set forth herein, Howard Hammer, his heirs, successors, agents and assigns, and any entity in which he owns or claims an ownership or

management interest fully and completely releases and discharges -Shirley Hammer a/k/a Shirley Grace Hightower and her agents, servants, employees, personal representatives, and assigns from any and all claims, demands, actions, and damages of any nature, at law or in equity, arising out of any action taken in connection with the litigation of the captioned actions including the conveyance of the Real Property, their taking of the Real Property, their management of the Real Property, and their any disposal of the contents therein.

~~8.7.~~ Howard Hammer. All parties waives any and all rights ~~they~~ may have had at any time in the past or will have at any time in the future, to seek reconsideration, appeal, challenge, invalidate, modify or vacate this agreement or any orders of dismissal referenced in this agreement, or any judgments or orders previously issued in the above captioned cases by any judge(s) in any court, including but not limited to, any arguments concerning public policy grounds or any other basis whatsoever.

~~9.8~~ This document shall not be construed as having been authored by any party over the other and shall at all times be construed as the product of the parties jointly, and no ambiguities regarding construction of the terms of this agreement shall be construed against any party to this agreement.

~~40.9~~ Should any provision of this agreement be found to be unenforceable for any reason at any time, it is the express intent of the parties that the remaining portion of this agreement shall continue in full force and effect.

~~44.10~~ Time is of the essence in this agreement.

~~42-11.~~ This document may be executed separately by the parties and combined into a final and complete agreement.

~~43-12.~~ Should any provision of this agreement be deemed invalid or unenforceable by a court of competent jurisdiction, all other provisions shall remain in full force and effect.

~~44-13.~~ This is the entire agreement of the parties, and there are no oral or written agreements other than as set forth herein which govern the rights of the parties or modify the terms of this agreement in any way, other than the documents identified herein.

45.14. No party has been promised anything in connection with his/her execution of this agreement other than the terms set forth herein.

46.15. The signatures of the undersigned reflect that this agreement is entered into voluntarily by the parties, that all parties understand the effect of this agreement, and each has had the opportunity to consult with any counsel or other person or entity with whom that party may wish to consult prior to executing this agreement.

47.16. Nothing herein shall affect matters which are exclusively within the jurisdiction of the Family Court.

Howard Hammer

HASCI, LLC

By: _____

Its: _____

Shirley Hammer individually and on behalf of Hightower, LLC and, to the extent applicable, any interest she has in 1634 Main LP and SH5, LLC a/k/a Shirley-Grace Hightower
4634 Main, L.P.

By: _____

Its: _____

Alvin Hammer, Individually and on Behalf of HASCI, LLC

SH5, LLC

By: _____

Its: _____

Hightower, LLC

By: _____

Its: _____

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Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Sunday, February 15, 2015 12:55 PM
To: Karen LeRoy
Subject: FW: Hammer update

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com
website: <http://www.lbglegal.com>

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From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Friday, February 13, 2015 4:47 PM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan; Mara Ballard
Subject: RE: Hammer update

You can make a new offer, but the \$525k is off the table. I do want to settle this but we simply can't deal with the continuous delays. That has been a problem from the beginning. That's why we have had deadlines on the \$525. It was supposed to be a one-day only offer when we were at the courthouse on 1-24-2015, and somehow it got stretched to a month. We're done with that offer.

If you want to make an offer I'll take it to Shirley. However, we have to move forward.

Have a good weekend.

db

From: Thomas W. Bunch, II [<mailto:TBunch@robinsonlaw.com>]
Sent: Friday, February 13, 2015 4:39 PM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: Hammer update

Desa,

I wanted to give you an update on where we are regarding settlement. First, right after we spoke yesterday, I had to leave for the day. I started reviewing and revising the settlement agreement when I got back in today, but had other matters on my calendar today, including a mediation and meeting with a client for the last 2.5 hours in a Chapter 11 bankruptcy case of some importance. Thus, despite my best intentions as of yesterday's conversations of getting something to you today,

I am not at that point. Second, although I understand that Alvin is willing to pay the \$25,000 we discussed yesterday, he is only willing to do that when we have a signed agreement and real-estate contract.

As I was writing this, I see that you notified Judge Strickland that we have been unresponsive in meeting your deadlines and that your offers are withdrawn. I had planned on continuing to revise the documents over the weekend. If settlement is a dead issue, please advise so I do not further spend time on it.

Tommy



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
P: 803-227-1103
F: 803-744-1545
TBunch@robinsonlaw.com
v-card

Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900

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From: Desa Ballard [mailto:desab@desaballard.com]

Sent: Wednesday, February 18, 2015 10:23 AM

To: Thomas W. Bunch, II

Cc: Keith M. Babcock; Allan Fulmer Jr; Mara Ballard; Beth Cogan; Mara Ballard

Subject: RE: Hammer updated settlement documents

As we discussed via email on Friday, our settlement offer was withdrawn on Friday 2-13-2015. Is this a new proposal with a higher payout? If so, I'll take a look at it.

db

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]

Sent: Tuesday, February 17, 2015 5:49 PM

To: Desa Ballard

Cc: Keith M. Babcock; Allan Fulmer Jr

Subject: Hammer updated settlement documents

Desa,

Per our discussions last Thursday and our Friday emails, please see updated settlement documents which have been coordinated with Keith Babcock and Allen Fulmer. There is a track changes version, and a clean version with comments.

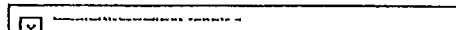
Tommy



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v-card

P: (803) 779-8900

 MERITAS LAW FIRMS WORLDWIDE

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Wednesday, February 18, 2015 9:56 PM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan; Mara Ballard
Subject: RE: Hammer updated settlement documents

I'm really tired of hearing about artificial deadlines. That must be why you never even considered the deadlines to be real and you ignored them.

Our offer was withdrawn on Friday, 2/13/2015. There was nothing artificial about that.

We are not interested in the settlement that you could not pull together in a full month. We will proceed with Judge Strickland's order, however long that takes.

db

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Wednesday, February 18, 2015 12:11 PM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: RE: Hammer updated settlement documents

Desa,

The total payment of \$525k plus accruing interest did not change. That is a lot of guaranteed money your client is walking away from if you won't review the documents. She will have the money in less than 90 days. If you don't wish to review the documents, that is also a ton of protection as to your client's obligation to conduct a commercially reasonable sale which she would be walking away from, and she gets to deal with leasing and selling the building. If you and/or Shirley wish to be dismissive of settlement and the attached documents because we (Shirley and the other parties) could not meet an imposed artificial deadline, even when she is protected by our agreement to pay interest past the deadline, that is your call. I do not have any authority to increase the money offer, nor have you made a different demand. If you increase your demand, I'll notify my client. However, I will recommend to my client not to entertain an increased demand if you won't review the documents in good faith. If we can't agree on the structure of a settlement, the money is irrelevant. We are agreeable to paying the \$25k "deposit" (for lack of a better term) that Shirley demanded Thursday (2/12/15) afternoon.

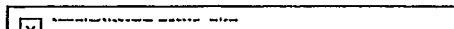
Tommy



Thomas W. Bunch, II
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F: 803-744-1545
TBunch@robinsonlaw.com
v-card

Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900



Karen LeRoy

From: Keith M. Babcock <kmb@lbglegal.com>
Sent: Thursday, February 19, 2015 9:50 AM
To: Karen LeRoy
Subject: FW: Hammer updated settlement documents

fyl

Keith M. Babcock
Lewis, Babcock & Griffin, L.L.P.
Post Office Box 11208
Columbia, S.C. 29211
(803)771-8000
(803)733-3534 (fax)

kmb@lbglegal.com
website: <http://www.lbglegal.com>

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From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Thursday, February 19, 2015 9:19 AM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: RE: Hammer updated settlement documents

Desa,

Neither I nor anyone else ignored the deadline you set. You called me just before 5:00 p.m. on Thursday, just as I was leaving the office for a previously scheduled matter, and changed the terms your client was willing to accept. I tried to revise the settlement agreement and get it to you on Friday, but I mediated a case that morning and had a client meeting that afternoon which concluded after 4:00 p.m. I spent parts of Monday and Tuesday coordinating changes to the agreement with my client, with Keith Babcock (who needed to consult with his clients), and with Allan Fulmer. After that was completed I sent the updated settlement agreement to you Tuesday afternoon, which, I might add was after your Friday email which stated in part, "I do want to settle this, but can't deal with the continuous delays." Aside from frustration with me needing to coordinate with several parties and not being able to move at a pace of dealing with one party, Shirley has not suffered any harm or detrimentally changed her position by me sending the updated agreement on Tuesday, which accepted the new terms conveyed on Thursday. Your call on whether Shirley really wants to settle.

I'll be leaving for court in a little while for hearings that will take an undetermined amount of time.

Tommy



Thomas W. Bunch, II
P: 803-227-1103
F: 803-744-1545

Post Office Box 944
Columbia, South Carolina 29202

EXHIBIT B



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING

Desa Ballard
Harvey M. Watson III

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

March 25, 2015

Via U.S. mail and Email (rip@bblawsc.com)
Knowlton "Rip" Sanders, Esquire
Bernstein & Bernstein
Post Office Box 583
Columbia, South Carolina 29202

Re: *Your Client: HASCI LLC*
Our Client: Shirley Hammer

Dear Mr. Sanders:

This letter follows up on Ms. Ballard's letter of January 6, 2015, regarding the pending sale of real property owned by HASCI LLC and Heart of Columbia, Inc. I am enclosing for your reference Judge Strickland's Order granting Ms. Ballard's request for a charging lien against the distributional interest of Howard Hammer as it relates to HASCI LLC.

Please accept this letter as additional notice to you and to your clients that Ms. Hammer claims an interest in any distributional interest that may be due to Howard Hammer from the sale of any property owned by HASCI, LLC. Ms. Hammer holds several judgments against Mr. Hammer, all of which have been affirmed by the Supreme Court. There is also one additional pending judgment.

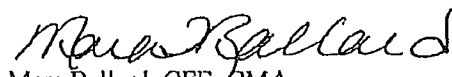
Further, please be advised that Ms. Hammer objects to any distribution or allocation of proceeds being made to Howard Hammer from the sale of any property owned by HASCI LLC or any of the other corporate entities named in the pending action (referenced in your letter dated December 2, 2014). Ms. Hammer claims an interest in those proceeds, and it is our position that Rule 1.15(d) of the Rules of Professional Conduct, Rule 407, SCACR, prohibits any attorney from disbursing funds to Mr. Hammer when a third party (Ms. Hammer) claims an interest in those proceeds. That would include any interest of Mr. Hammer's that may be credited to other members of HASCI LLC for any loans or any other obligations. It is our position that, unless any loans or other obligations are secured, Ms. Hammer's judgments have priority over any funds that might be due to Mr. Hammer from the sale.

Mr. Knowlton Sanders, Esquire
In re: HASCI, LLC
March 23, 2015

Page 2 of 2

Thank you for your time and attention to this matter. If you need anything further from us, please let me know. With kindest regards, I am,

Sincerely yours,

A handwritten signature in cursive script, reading "Mara Ballard".

Mara Ballard, CRE, CMA
Forensic Accountant
mara@desaballard.com

cc: Shirley Hammer (via email)



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case Number: 2013-CP-40-6898

Shirley Hammer,
Plaintiff,
v.

Howard Hammer, 1634 Main, LP, Alvin
Hammer; SH5, LLC; SH4, LLC; SH3, LLC;
HASCI, LLC; D&M Chateau, LLC; Heart
Of Columbia, LLC a/k/a Heart of Columbia
Inc., Alvin Hammer, personal representative
Of the Estate of Eleanor Hammer; Joye
Elizabeth Life Estate; Stanley Hammer;
Department of the Treasury- IRS; Chateau
DeVille Association, Inc. and/or Chateau
DeVille Horizontal Property Regime; David
H [REDACTED], a minor under the age of 14,
Defendants.

**ORDER GRANTING
CHARGING ORDER**

FILED
2015 MAR 16 AM 10:01
CLERK OF COURT
S.C. 2013-CP-40-6898

Shirley Hammer moves for an order pursuant to S.C. Code Ann. Section 33-44-504 establishing a charging order on Howard Hammer's distributional interest in the defendant limited liability corporations, *i.e.*, HASCI, LLC, SH5, LLC, SH4, LLC, SH3, LLC, D&M Chateau, LLC, and Heart of Columbia, LLC (which is now known to be improperly named and is, instead, a regular corporation). The motion is granted.

In two (2) prior cases, Mrs. Hammer obtained judgments against Howard Hammer and 1634, LP, a limited partnership in which Mr. Hammer was the general partner by virtue of his sole ownership of SH5, LLC. Those judgments were conditionally satisfied by this Court's order of January 21, 2014 in the collection proceedings, in which this Court transferred the only known non-exempt assets of Mr. Hammer to Mrs. Hammer, with directives to sell the real property, pay

herself the amount of the judgments, as well as certain other funds to which the Court determined she was entitled. That order was appealed and affirmed (other than vacating and remanding for a new sanctions hearing) by the Supreme Court on November 14, 2014. Despite Mrs. Hammer's diligent efforts, a sale has not yet been concluded, so she has not yet received any funds to satisfy either the earlier judgments or the judgment entered on January 21, 2014.

Mrs. Hammer was notified by counsel for Alvin Hammer and HASCI, LLC, that a pending sale of real property was scheduled to occur in January, 2015. This action had not yet been heard on the merits because it was anticipated that the sale of the real property awarded to Mrs. Hammer in the earlier cases would have operated to satisfy her judgments. Several defendants had filed motions to dismiss, and hearings on those motions had been delayed by consent, anticipating they would become moot.

In the Supreme Court's order dated November 14, 2014, Mr. Hammer was ordered to provide this Court with a complete financial statement of his income and assets. For the first time, this Court learned Mr. Hammer's financial disclosure dated November 20, 2014 that Mr. Hammer owned significant assets that he had not previously divulged to the Court, despite earlier orders that required him to disclose that information to the court and the parties in the collection proceedings. Among the assets listed in his financial disclosure of November 20, 2014, Mr. Hammer now acknowledges he owns a membership interest in HASCI, LLC, HOC, LLC, and other real property and interests he had not previously disclosed. Mr. Hammer's financial disclosure also contained a letter dated November 17, 2014 which confirmed Mr. Hammer's "approximately 12%" interest in HASCI, LLC, and that a sale of real property owned by that LLC was anticipated to occur in 2015. It is upon that basis that Mrs. Hammer seeks to obtain a

charging order against Mr. Hammer's distributional interest in HASCI, LLC and the other defendant LLCs.

Mr. Hammer asserts that Mrs. Hammer no longer holds any judgments against him, asserting that the earlier judgments were satisfied by the Court's order of January 21, 2014 in the collection action. Mrs. Hammer asserts that the transfer of real property to her for sale purposes only partially satisfied the judgments, since the real property has not yet been sold and she has not received any payment on the judgments.

This Court's order of January 21, 2014, which was made necessary by Mr. Hammer's intentional withholding of information regarding his other assets, specifically anticipated that additional steps would be taken before Mrs. Hammer's judgments would be fully satisfied. Transfer of title of real property to her, with specific instructions regarding sale, did not fully satisfy the judgments in full, but simply set in place a mechanism by which the earlier judgments, and the additional judgments of January 21, 2014, would be satisfied. Neither Mr. Hammer nor any other party asserts that Mrs. Hammer has received any money toward her judgments against Mr. Hammer and 1634 Main LP.

Mr. Hammer asserts the January 21, 2014 order provided for a termination of post-judgment interest on the earlier judgments, thus establishing full satisfaction of the earlier judgments. The post-judgment interest was terminated by the January 21, 2014 order, but it was specifically anticipated by that order that Mrs. Hammer would incur additional costs related to the marketing and sale of the building and the order specifically provided for her recovery of those funds as a part of any "satisfaction" of the judgments she was owed.

Since the real property transferred to Mrs. Hammer has not yet sold, Mrs. Hammer retains

the right to recover against other assets owned by Mr. Hammer. Should she recover all funds to which she is entitled from other assets, the proceeds from the sale required by the January 21, 2014 order will be held in escrow pending further order of the Court, as set forth in Paragraph 7 of that order.

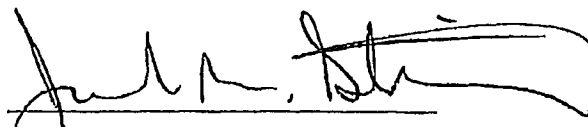
Mrs. Hammer is entitled to a charging order against Mr. Hammer's distributional interest in any of the defendant LLCs in which he has an ownership, membership, or distributional interest. He acknowledges a distributional interest in HASCI, LLC and Chateau Deville LLC, as well as HOC, LLC, which is not a named defendant in this action¹.

Pursuant to S.C. Code Ann. Section 33-44-504, Mrs. Hammer's request for a charging order against Mr. Hammer's distributional interest in HASCI, LLC and Chateau DeVille LLC is granted. The court does not find it necessary, at least at this time, to appoint a receiver; three (3) lawyers who represented themselves to have some interest in HASCI, LLC, as well as Keith Babcock, attorney for HASCI, LLC attended the hearing and are aware of the request for a charging order.

Mrs. Hammer's motion for a charging order against Mr. Hammer's distributional interest in the LLC defendants is:

GRANTED.

IT IS SO ORDERED.



Joseph M. Strickland
Master in Equity
Richland County

EXHIBIT 4

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Howard Hammer,)

Plaintiff,)

vs.)

Shirley Hammer, et al ,)

Defendant(s),)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

1634 Main LP,)

Plaintiff,)

vs.)

Shirley Hammer, et al.,)

Defendant(s),)

IN THE COURT OF COMMON PLEAS

CA# 2009-CP-40-05911

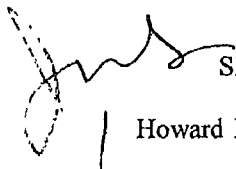
CA# 2010-CP-40-2889

ORDER GRANTING

**MOTION FOR SANCTIONS
(Concludes Cases)**

RICHLAND COUNTY
FILED
2015 APR 24 AM 11:57
JENNIFER W. McBRIDE
C.C.P. & G.S.

INTRODUCTION

 Shirley Hammer (hereafter "Shirley") moved for an order awarding sanctions against Howard Hammer (hereafter "Howard" or "Howard Hammer") based on his misconduct during these supplemental proceedings. Sanctions are sought pursuant to Rule 11, SCRCP, S.C Code Ann. § 15-36-10 *et seq.*, and the inherent authority of this Court. The motion is granted.

A hearing was held on April 2 and 3, 2015 Shirley was present and was represented by her counsel Desa Ballard. Howard was present and was represented by his counsel Thomas W.

Bunch and Art Aiken. The Court heard live testimony and written exhibits. The Court finds the following facts and Conclusions of Law.

FINDINGS OF FACT

1. This is the latest chapter of litigation between Shirley and Howard Hammer, which began when they entered into a settlement agreement in family court in their divorce case (which began in 2005) in May, 2008. A mutual release for all purposes was signed by the parties on May 9, 2008, releasing all disputes between them except any litigation related to the settlement agreement that was entered into them at that time. (Plaintiff's Exhibit No. 1).
2. Shortly thereafter, Howard was arrested and charged with several criminal offenses arising out of events related to his separation and divorce from Shirley. Those criminal charges were eventually dismissed, but they formed the basis for the South Carolina Supreme Court to place his license to practice law on interim suspension on June 12, 2008. *In re: Hammer*, 378 S.C. 413, 663 S.E.2d 37 (2008).
3. Howard filed these lawsuits against Shirley in circuit court in 2009 (*pro se*) and 2010 (through counsel). Howard's claims in the 2009 action were dismissed on motion, leaving only Shirley's counterclaims pending. While the 2010 action was ostensibly brought by a limited partnership controlled by Howard, the trial judge eventually concluded that Howard had instigated the filing of the lawsuit by providing false information to his property manager to prompt the suit against Shirley simply to harass her and cause her to incur fees and costs.
4. In 2011, Howard entered into an Agreement for Discipline by Consent with the Office of Disciplinary Counsel in which he admitted he had engaged in litigation

misconduct in connection with his *pro se* deposition of a "former friend" who had sided with Shirley in their contentious domestic case. He attributed his lack of judgment and control largely to the stress of his domestic action, but he acknowledged he "could have used better judgment." The agreement noted the dismissal of the prior criminal charges, and included an affidavit by then-Fifth Circuit Solicitor Barney Geise, who opined that Howard's conduct which formed the basis of the arrests had not been criminal in nature (Plaintiff's Exhibit 46)

5. The agreement also included affidavits from numerous individuals, including a psychiatrist who had "seen Howard. . . professionally" and provided counseling. The numerous witnesses attested that Howard is "mentally and emotionally fit", "emotionally stable", "mentally stable", "absolutely fit, mentally and emotionally, to practice law", "intelligent, focused and mentally sound", and "rational and realistic". (Plaintiff's Exhibit 46). Howard advised the Supreme Court that he "regrets and apologizes" for his misconduct.

6. The South Carolina Supreme Court accepted Howard's Agreement to Discipline by Consent and imposed a definite suspension of six-months. The Court noted its "deep concern" with Howard's emotional stability, finding that he was "obsessed" with Shirley, from whom he had then been divorced for six (6) years. The Court also commented on Howard's initial refusal to accept responsibility for his actions, and his decision to characterize himself as the victim in disputes with Shirley and others. *Matter of Hammer*, 395 S.C. 385, 718 S.E.2d 442 (2011). The Supreme Court ordered Howard to remain in counseling for a period of two (2) years. *Id.*

- 7 The civil suits filed by Howard against Shirley in 2009 and 2010 did not progress in any appreciable way. Meanwhile, Howard continued to file motions in family court seeking to set aside the 2008 settlement and appealing each time his efforts were denied. Howard filed a total of seven (7) appeals from various orders of the family court after he purportedly settled all his domestic issues with Shirley. (Plaintiff's Exhibit No. 45).
8. In June, 2012, Shirley filed a petition with the South Carolina Supreme Court asking for an order to assist in bringing these matters, as well as multiple appeals by Howard from various orders of the family court, to a conclusion (Plaintiff's Exhibit No. 45)
9. By order dated September 21, 2012, the Supreme Court issued an order assigning the supervision of these cases to Circuit Judge James R. Barber III, as well as granting relief regarding the related domestic matters that were then pending. *Id.* In so doing, the Supreme Court noted that its intervention was necessary "to curtail Howard Hammer's abuse of the judicial system." The Supreme Court's order required that these matters be expedited and required Judge Barber to provide monthly status reports to the Supreme Court regarding the progress of these actions.
10. Judge Barber assigned the trial of these matters to Circuit Court Judge George James, and set a non-jury trial date for both matters to begin on October 29, 2012. Judge James held several hearings, eventually issuing order filed on January 29, 2013 that dismissed the claim by 1634 Main LP against Shirley. (Plaintiff's Exhibit No. 3).
11. Judge James also found in favor of Shirley against both Howard and 1634 Main LP on her claims for abuse of process. He awarded Shirley actual and punitive damages

against Howard and the limited partnership controlled by him based on Howard's and the partnership's abuse of process in bringing and conducting the suits. *Id.*

12. Judge James found that Howard's conduct in pursuing frivolous claims against Shirley was "reprehensible . . . totally improper . . . totally unfounded." *Id.* @ ¶40. He found that Howard had threatened Shirley with never-ending litigation to bankrupt her, and that these two suits brought were brought solely to harass Shirley and try to force her into bankruptcy as he had threatened to do. *Id.* @ ¶ 2. Judge James found "clear and convincing evidence of Howard's intent to use unmeritorious litigation of any kind to harass and cause financial hardship to Shirley." *Id.*

13. Judge James specifically noted that Howard's testimony during the trial of these cases was "characterized by obfuscation and degenerated into areas having little to do with the issues germane to the case." *Id.* @ ¶ 1. "His manner of answering questions clearly established that he is intent on using the civil process to unnecessarily and unfairly prolonging any and all litigation involving Shirley." *Id.*

14. The findings in Judge James' order filed January 29, 2013 contain a detailed chronology of Howard's efforts to interfere with the sale of the former marital home, including "timing his arrival [at the closing attorney's office] to disrupt the closing." *Id.* @ ¶ 30.

15. Judge James found that Howard initiated the 2010 action "very soon after [he] was unsuccessful in stopping the sale" of the former marital home *Id.* @ ¶ 32. The action was initiated by the limited partnership against Shirley because Howard provided inaccurate information to his property manager to insure suit was brought

only against Shirley, but not himself or other members of the limited partnership. *Id.* @ ¶ 58, 76, 77, 80, 83, 88, 89, 90, 92, 94.

16. In awarding actual damages to Shirley for abuse of process, Judge James found that “Howard is unable to entertain the thought that his relationship with Shirley is over, and he has chosen to resort to commencing and continuing . . . baseless litigation in a completely improper forum for reasons that are nothing but abusive . . .” and he had taken steps “to keep the litigation waters churning.” *Id.* ¶ 46.

17. In awarding punitive damages to Shirley, Judge James found that Howard’s abusive litigation against Shirley was brought at a time when she was “financially vulnerable” and that his “conduct was repeated, intentional consistent, and grounded in malice toward Shirley. The reprehensibility of Howard’s conduct and Howard’s awareness of the conduct are beyond doubt.” (emphasis added). *Id.* ¶ 123. Judge James noted that his award of punitive damages against Howard was “perhaps low in light of Howard’s conduct ” *Id.* @ ¶ 124.

18. All of Judge James’ findings of fact regarding the abusive nature of Howard’s conduct and malicious intent toward Shirley were affirmed on appeal by the South Carolina Supreme Court. *Hammer v Hammer*, Memorandum Opinion No. 2014-MO-007 (filed March 19, 2014).

19. In March, 2013, Shirley attempted collection proceedings through the Richland County Sheriff, who reported that the judgements were “uncollectible” through the resources of his office. (Plaintiff’s Exhibit No. 4).

20. Shirley commenced these supplemental proceedings (hereafter called “supplemental proceeding”) in the 2009 and 2010 actions in April 2013, which were referred to this

Court for determination. A Rule to Show Cause was issued requiring Howard to appear before the undersigned at a hearing on May 30, 2013 and to bring specified financial documents to assist the court in locating assets from which the judgments could be satisfied.

21. Judge James heard Shirley's motion for sanctions (following his original order filed January 29, 2013) against Howard and 1634 Main LP on May 1, 2013 and May 17, 2013. (Exhibit 10, P. 2, ¶ 2).

22. While the motion for sanctions was pending before Judge James, Howard and his counsel contacted the undersigned on May 7, 2013 (through counsel), May 24, 2013 (independently, with copies to his counsel) and May 28, 2014 (independently, with copies to his counsel) seeking to cancel or delay the May 30, 2014 hearing. (Plaintiff's Exhibits No. 5, 6, 7, 8 and 9). No delay was granted

23. Howard did not appear and did not produce any documents at the May 30, 2013 hearing. His attorney Art Aiken appeared but brought no documents. This court recessed and rescheduled, instructing Mr. Aiken to have Howard present on June 4, 2013 to respond to the Rule to Show Cause.

24. Howard did appear on June 4, 2013, as ordered, but he brought none of the documents which were mandated by the Rule to Show Cause. Shirley's counsel questioned Howard, which produced several hours of evasive and rambling responses and no substantive information. Inexplicably, while evading the questions asked, Howard injected several colloquies with no one in particular accusing Shirley of failing to comply with her obligations under the prior family court orders. By way of

example, he provided his analysis of one property transfer arising from the family court proceedings:

And I might add, the property that you're talking about, a deed was supposed to have been delivered by my former wife. She did not deliver that deed to me. I repeat, the deed was delivered some six months after it was supposed to be or five months, or whatever, to the adverse attorney. Not to me. He had no authority to act on my behalf, no authority to receive a deed on my behalf. It was not received by me.

(Plaintiff's Exhibit No. 10, Page 49, lines 11-19).

25 The court made several inquiries directly to Howard. The court inquired of Howard what he did for a living, and he replied he received social security. (Plaintiff's Exhibit No. 10, Page 62, lines 17-19) The court inquired "[y]ou don't work at all?" and Howard replied "No, sir." (*Id.* P. 62, lines 20-21).

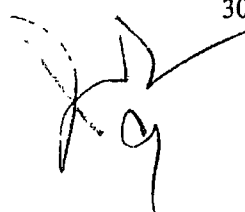
26. After observing Howard's refusal to answer questions, the court decided that written questions and responses would more likely produce substantive information that would assist the court in the task assigned to it and "make life easier for you and Mrs. Hammer." (Plaintiff's Exhibit 10, pp. 9-57; p. 63, lines 19-21).

27. Howard objected to continuing the matter by written inquiry, indicating that he intended to appeal preliminary rulings made at the commencement of the June 4, 2013 hearing, "which would put [these proceedings] on hold" and cause the court to "lose jurisdiction." *Id.* @ p. 60, lines 9-18; p. 64, lines 4-10). He also said he would not have time to respond to written questions due to his son's upcoming bar mitzvah, summer visitation with his sons, an anticipated medical appointment and "other

litigatory matters". (*Id.* @ p. 61, lines 14-20, p. 65, line 15 – p. 66, line 13; p. 121, line 5 – p. 123, line 12.)¹.

28. The court agreed to give Howard more than a month before he was required to respond to the written questions that were going to be propounded. (*Id.* @ p. 61, lines 17-20; p. 130, line 22 – p. 131, line 5) The court verbally instructed that, if the deadline it was establishing could not be met "you need to petition the court for an extension." *Id.*

29. Howard immediately stated he could not timely respond to the written questions because he didn't know when he was going to receive the order requiring him to respond, and he might move to reconsider the order. (*Id.* @ p. 131, line 21 – p. 132, line 5).



30. Unbeknownst to the court or the litigants, Judge James had issued an order on June 3, 2013, assessing sanctions against Howard for the original litigation of these matters (in addition to the actual and punitive damages already awarded), noting Howard and 1634 Main LP had raised "[m]any tenuous issues" during the trial. (Plaintiff's Exhibit 11, p. 12). Judge James concluded Howard's conduct in the original litigation "clearly and convincingly" warranted an award of sanctions. *Id.* @ p. 18. "[T]he court is convinced Mr. Hammer threatened and desired to bankrupt Mrs. Hammer through this litigation." Judge James concluded the litigation against Shirley was "groundless" and "baseless" and Howard's actions were "egregious" and his claims against Shirley were "frivolous" *Id.* @ pp 12- 13; pp. 18-19.

¹ Howard disputed the Supreme Court's requirement that these matters be expedited, suggesting some defect in the proceedings, but in doing so he acknowledged the Supreme Court's order to expedite existed. *Id.* @ p. 74, lines 1-14' p. 105, lines 13-20. He opined that the Supreme Court's order to expedite was "a substantive error" P. 110, lines 1-12;

31. The undersigned filed an order on June 10, 2013 addressing the matters heard on June 4, 2013. In that order, this court found that Howard had appeared on June 4, 2013 but was not prepared to answer questions and did not provide the required documents. (Plaintiff's Exhibit 12). Shirley was instructed to serve Interrogatories and Request to Produce in *lieu* of verbal responses to the Rule to Show Cause, and Howard was required to file and serve his answers to both on July 8, 2013.

32. Shirley's filed and served Interrogatories and Request to Produce on Howard by mail on June 11, 2013. (Plaintiff's Exhibits 14 and 15). On June 13, 2013, Howard returned the Interrogatories and Request to Produce to Shirley's counsel, advising that he had not yet received a copy of this Court's order of June 11, 2013, and instructing that he would calculate his time to respond when he was properly served based on the date on which he received the Interrogatories and Requests to Produce. (Plaintiff's Exhibit No. 16).

33. Shirley's counsel re-served the Interrogatories and Request to Produce by letter dated June 18, 2013, and enclosed a courtesy copy of this court's order of June 11, 2013. (Plaintiff's Exhibit No. 18).

34. By letter to the undersigned dated June 20, 2013, Howard acknowledged he had returned the written questions to Shirley's counsel, had received the courtesy copy of the order from Shirley's counsel and had received the written questions. (Plaintiff's Exhibit 19). Howard requested a status conference "in an effort to avoid the necessity of motions and potential objections." The court did not schedule a status conference.

35. The deadline of July 8, 2013 in which to respond to the Interrogatories and Requests to Produce came and went with no response from Howard. No motion was filed by Howard or on his behalf

36. The Sheriff returned the second judgments (for sanctions) as uncollectible on July 25, 2013.

37. On July 10, 2013, the undersigned set a hearing on the motion for August 12, 2013 and Shirley's counsel provided notice to all parties by mail on that date. On August 2, 2013 Shirley's counsel filed a Motion for Contempt against Howard based on his failure to respond to the written questions by July 8, 2013.

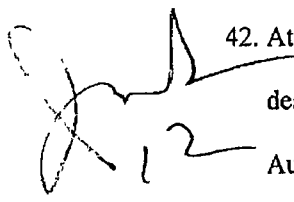
38 Howard may have interfered with at least three (3) subpoenas served by Shirley's counsel in an effort to locate assets to satisfy the judgments she held: Debra Covington, Bernie Ackerman and Synovus Bank. (Plaintiff's Exhibits 22, 23, 25). Shirley received documentary evidence from Debra Covington only after filing a motion for contempt against her, which prompted her to appear at a hearing and provide the materials subpoenaed from her earlier. Shirley never received the documents she subpoenaed from Mr. Ackerman or from Synovus Bank. Howard also refused to produce any document served upon him in his capacity as agent of multiple entities. (Plaintiff's Exhibits 17 and 21)

39. On August 6, 2013, Howard's former counsel Ms. Lipscomb² e-mailed the court and counsel to advise that she had been informed that Howard was "not able to send or receive e-mails. . . but should be to do so after the 19th." (Plaintiff's Exhibit No. 27).

² Ms Lipscomb did not appear in these proceedings for any party. She represented 1634 Main LP in the earlier proceedings before Judge James

40. Three days later, on Friday, August 9, 2013³, Mr Aiken requested a continuance of the August 12, 2013 hearing, advising Mr. Hammer was departing on August 11, 2013 to take his sons on vacation to the Bahamas. (Plaintiff's Exhibit No. 28). Mr. Aiken also stated that he had not received the Notice of the Hearing (which was served by mail on July 10, 2013, and clocked in on July 11, 2013) until August 5, 2013.

41. The same date, August 9, 2013, the court spoke by phone with Ms. Ballard, on behalf of Shirley, and Mr. Aiken on behalf of Howard and declined to continue the August 12, 2013 hearing. Howard chose not to attend the hearing, and Mr. Aiken advised Howard had taken his sons to the Bahamas to swim with the dolphins.

 42. At the August 12, 2013 hearing, Mr. Aiken provided Shirley's counsel with what he described as answers to interrogatories on behalf of Howard and 1634 Main LP, dated August 12, 2013. None of the responses were filed with the court, as was required by the June 10, 2013 order. The documents were not provided to the court until Shirley's counsel filed them as exhibits at the hearing on sanctions held on April 2 and 3, 2015. (Plaintiff's Exhibits No. 29 and 30).

43. The "answers" were not answers in any real sense; most were objections but even the "answers" provided no information. By way of example, Howard's answer to Interrogatory No. 2 said "... this Interrogatory will be answered in due course." His answer to Interrogatory No. 21, he stated "this interrogatory will be answered after those records are located." (Plaintiff's Exhibit 29). Similarly, the "answers" provided on behalf of 1634 Main LP responded only to Interrogatory No. 20, to which 1634

³ The letter from Mr. Aiken, which is Plaintiff's Exhibit No. 28, is dated October 9, 2012, but is obviously dated incorrectly. The letter was received by Shirley's counsel via fax on August 9, 2013, a month after the Notice of Hearing was served.

Main LP claimed the 5th Amendment and South Carolina Constitution Article I, § 12 to invoke “the privilege against self-incrimination.” No purported “answers” were provided to any other questions that had been posed to 1634 Main LP. (Plaintiff’s Exhibit 30)

44. At the August 12, 2013 hearing, counsel for Shirley requested the court to transfer ownership of an unencumbered office building at 1634 Main Street, and the accompanying limited partnership and LLC interests owned by Howard, to satisfy the judgments, with any excess from a sale to be paid to the court for distribution as determined to be appropriate. The court directed she prepare an order to present to Howard upon his return for vacation. Alvin Hammer, Howard’s brother, also agreed to assist in resolving the satisfaction of Shirley’s judgments against Howard.

45. On September 9, 2013, Shirley’s counsel advised no progress had been made in settling the matter, and submitted a proposed order as the court had requested on August 12, 2013. (Plaintiff’s Exhibit No. 32).

46. In late September, the court scheduled a final hearing on these proceedings for January 9, 2014. (Plaintiff’s Exhibit No. 35). On December 19, 2013, Mr. Aiken requested a continuance of the hearing based on a conflict in his schedule. (Plaintiff’s Exhibit No. 36). The court did not respond because the date Mr. Aiken asserted for a conflict (January 7, 2014) was not the date set for the hearing (January 9, 2014)⁴.

47. The court held the scheduled hearing on June 9, 2014. By order dated January 21, 2014, the court transferred Howard’s interests in real property at 1634 Main Street,

⁴ Mr. Aiken did have a scheduling conflict for January 7, 2014 in connection with an appeal in the South Carolina Supreme Court in which he was listed as co-counsel for appellant, which was scheduled to begin at 9.30 a.m. <http://www.judicial.state.sc.us/supremeRosters/dspSupRosterChoice.cfm>

and his personal property interests in 1634 Main LP and SH5, LLC to Shirley Hammer for purposes of selling the property to satisfy judgments she held, then in the amount of \$335,168.76, which reflected the judgments through the date of the order, including interest Shirley's motion for contempt was denied

48. The order also ordered that Shirley could recover costs related to the transfer, marketing and sale of the property, and directed that any excess proceeds be paid to the court for further action. The court also awarded sanctions against Howard in the amount of \$55,385.70, based upon the attorney's fees and costs Shirley had incurred in pursuing the supplemental proceedings.

49. The Supreme Court later affirmed the January 21, 2014 order in all respects, with the exception of reversing the award of sanctions, concluding that Howard was entitled to more notice of intent to seek sanctions under the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(D) and Rule 11, SCRPC. The Supreme Court specifically ruled that its reversal was "without prejudice as to allow Shirley to raise this issue before the Master in subsequent accounting proceedings."⁵ *Hammer v Hammer*, Memorandum Opinion 2014-0045 (November 6, 2014)

50. The Supreme Court also required Howard to "file a financial disclosure of all his assets and income with the master within fifteen days of the filing of this opinion."

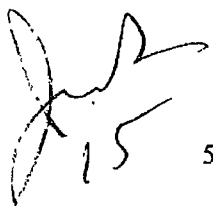
Id.

51. On December 12, 2014, Shirley filed a motion for sanctions against Howard for his misconduct in this proceeding, using as a basis for the award the fees she has incurred in these proceedings. At the time of the filing of the motion, Shirley's fees and costs

⁵ At the time the case was heard by the Supreme Court, Shirley had a contract to sell the real property at 1634 Main Street for slightly more than \$1 million dollars. The contract did not close.

were \$75,195.24. She also prayed that the court award a lodestar multiplier of four (4) to the award of sanctions, based upon Howard's egregious misconduct during these proceedings.

52. During the pendency of the appeal, attorney Tommy Bunch became co-counsel for Howard. In May, 2014, while the appeal was pending, Mr. Bunch notified the undersigned that Howard had now decided to pay the judgments awarded by Judge James. (Plaintiff's Exhibit No. 37). Mr. Bunch advised the court and counsel that "[t]his is not a negotiation" *Id.* Mr. Bunch's attempts to satisfy the judgments came too late, since this court's order of January 21, 2014 dealt with Judge James' judgments and imposed obligations on Shirley that had required her to incur time and expense in marketing and selling the property. Payment of the judgments awarded by Judge James were no longer a unilateral option that could be exercised by Howard.



53. By letter to the undersigned dated November 20, 2014, Howard submitted certain financial materials. Contrary to his earlier testimony, Howard disclosed, for the first time, that he had received income in addition to Social Security, some of which resulted in cash to him and other of which constituted "phantom" income generated by his various ownership interests (not previously disclosed) in several LLCs that owned real property.

54. When counsel for Shirley refused to accept Mr. Bunch's proposal⁶, Mr. Bunch, in conjunction with counsel for Alvin Hammer and several corporate entities in which Howard and/or Alvin had an ownership interest, made several attempts to settle with Shirley. On at least two (2) occasions, once before this court and once before the

⁶ There is no evidence that any funds were ever actually tendered to Shirley or her counsel by or on behalf of Howard or anyone else.

Supreme Court, Mr. Bunch (on behalf of Howard) filed motions attempting to force Shirley to accept settlement on terms dictated by Howard and/or his counsel. The Supreme Court declined (order dated October 24, 2014). This court also attempted to urge the parties to attempt to reach a settlement. The proposals were unacceptable to Shirley and she declined them, which she had every right to do.

55. Shirley has been in litigation with Howard for almost seven (7) years after she settled with and obtained a full release in her favor from Howard on May 9, 2008.

(Plaintiff's Exhibit No. 1). These supplemental proceedings have taken more than two (2) years, and more than a full year after this court created a mechanism by which her judgments could be satisfied, she remains unsatisfied judgment creditor; she has received not one penny from Howard toward her judgments against him

56. There is insufficient evidence from which to conclude that Howard's belated attempts to reach settlements with Shirley were made in bad faith. There is no question his attempts, which did not begin until four (4) months after this court issued the order from which the judgments she held were to be satisfied, unnecessarily prolonged this proceeding

57. Howard filed a Motion to Dismiss these supplemental proceedings (which was denied). Howard, sometimes directly and sometimes through counsel, filed motions and contacted the court numerous times (letters, motion to quash, motion for summary judgment, motion for supersedeas, opposition to Shirley's request for an appeal bond). These contacts and filings did, in fact, unnecessarily delay and complicate these proceedings.

58. Moreover, Howard refused to answer the written questions that were necessitated by his refusal to verbally respond to questions he was required to answer when responding to the Rule to Show Cause. Howard has now acknowledged and apologized to this court for his intentional refusal to answer the questions regarding his assets.

59. Mr. Aiken attempted to accept blame for Howard's failure to provide the required information to the Court, asserting that he (Mr. Aiken) was simply too busy with other professional obligations to answer the written questions posed to Howard and to 1634 Main LP

60. Howard divulged substantive information regarding his assets and income to this court only after the Supreme Court ordered that he do so in its opinion in November, 2014. Until then, he had disclosed nothing. Howard prolonged these supplemental proceedings unreasonably.

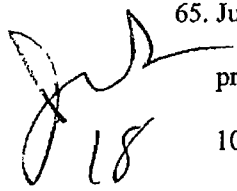
61. During his testimony on April 3, 2015, Howard demonstrated that he could have provided the information required of him in June, 2013, when he intentionally and falsely claimed lack of knowledge and produced none of the documents that he had been ordered to produce, and there were no impediments to him obtaining the information, had he simply bothered to gather it.

62. As noted above, Howard apologized to the court for his failure to provide information that this court ordered him to provide. He gave no explanation. Instead, he asked for "mercy." He made no apology to the judicial system, to the opposing party, or to the Supreme Court for his outrageous and unforgivable conduct.

63. Since the Supreme Court's order of September 7, 2012, which was intended to

"curtail Howard's . . . abuse of the judicial system, Howard has continued his abuse unabated, despite being assessed punitive damages and sanctions.

64. In an effort to bring Howard's 2009 and 2010 civil claims against her to a conclusion, in 2012 Shirley sought assistance from the South Carolina Supreme Court. The Supreme Court issued order on September 9, 2012 which centralized both of these civil actions under the supervision of Honorable James R. Barber and expedited them for conclusion. Shirley incurred attorney's fees and costs for that proceeding in the amount of \$40,888.55.

 65. Judge Barber issued thirty (30) monthly status reports as these matters progressed, prompting a follow-up order from the Supreme Court, issued *sua sponte* on March 10, 2015, noting that "Mr. Hammer's customary dilatory tactics" had delayed these proceedings, and mandating that these proceedings be concluded within 45 days. (Plaintiff's Exhibit No. 44).

66. In pursuing these supplemental proceedings, Shirley incurred attorney's fees and costs in the amount of \$80,088.81 through March 31, 2015. She also incurred fees and defending against the appeals filed by Howard in the amount of \$32,165.85 (appeals from Judge James' orders) and \$22,420.69 (from this court's January 21, 2014 order) for total appellate fees in defending the appeal of \$54,586.54⁷.

⁷ Following the Supreme Court's order affirming (in part), this court's order of January 21, 2014, Shirley sought an award of sanctions from the Supreme Court, based upon the attorney's fees incurred in defending that appeal. The Supreme Court awarded the attorney fee and cost provided in the appellate court rules, but denied Shirley's request for sanctions. The Court specifically ruled that its denial of sanctions "shall not be construed as having any effect on the lower court's consideration of sanctions as permitted by the opinion of this Court" (Supreme Court order dated March 10, 2015)

67. Stated differently, since Howard was punished for bringing and pursuing abusive litigation against Shirley by awards of actual and punitive damages, and since being sanctioned for engaging in frivolous litigation, Howard's unrelenting attempts to prevent Shirley from collecting the judgments she holds against him, has caused Shirley to incur additional fees and costs of \$134,675.35.

68. During the last hearing, Howard's counsel asked for all individual time entries incurred by Shirley since the 2009 litigation was initiated

69. Shirley seeks sanctions against Howard based on Rule 11, SCRCP, the Frivolous Civil Proceedings Sanctions Act, S.C.Code. Ann. § 15-36-10, and the inherent authority of the court.

 70. In addition to monetary sanctions, Shirley seeks injunctive relief pursuant as permitted by § 15-36-10(G) to try to prevent future frivolous litigation against her by Howard or at his behest.

71. The evidence presented, both at the hearing on the motion for sanctions and the court's own dealings with Howard throughout these proceedings. Establishes Howard's conduct in this matter included frivolous assertions, frivolous defenses, intentionally evasive and false testimony, intentional delay tactics and positions.

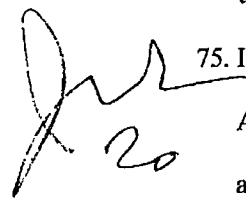
72 As in the earlier proceedings before Judge James, Howard's misconduct in this proceeding was malicious and intentional He was not deterred in his misconduct by the prior damages and sanctions awarded against him.

CONCLUSIONS OF LAW

73. Howard argues the court lacks jurisdiction over the motion for sanctions because it was filed and served on December 12, 2014, before the remittitur was transmitted to

the trial court by the Supreme Court⁸ on December 18, 2014. This argument is without merit. While the motion was filed before the remittitur was returned from the Supreme Court, it was not heard until three (3) months after the remittitur was transmitted to the trial court. This court has jurisdiction over the subject matter of the motion, and over the parties.

74. Howard asserts Shirley should not be entitled to recover sanctions against him, arguing that she refused his numerous offers of settlement, or settlement offers made by others which would have absolved him of responsibility for the judgments against him. Howard cites to no authority, and this court finds none, that obligates a party to accept an offer of settlement.

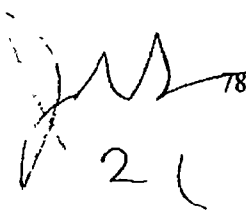
 75. In seeking sanctions under the Frivolous Civil Proceedings Sanctions Act, S.C.Code Ann. § 15-36-10, the party against whom sanctions are sought is entitled to “notice and an opportunity to respond.” 15-36-10(D). Shirley’s motion for sanctions was filed on December 12, 2014,

76 Howard filed a response arguing the motion for sanctions should be dismissed, delayed, postponed, and not heard at all, and reserving the right to present a full defense to the sanctions at any subsequent hearing. Other than that, Howard did not “respond to the allegations” in writing as permitted by Section 15-36-10(D), indicating he would do so later at a hearing. Shirley made no objection to Howard’s presentation of evidence at the hearing on April 2 and 3, 2015. At the hearing, Howard testified, and also called his counsel Mr. Aiken and Shirley’s counsel Desa

⁸ As set forth above, the Supreme affirmed this court’s order of January 21, 2014 by its Memorandum Opinion No 2014-045 dated November 6, 2014. Howard and 1634 Main LP filed motions for rehearing after the Supreme Court’s ruling,, so the Supreme Court retained jurisdiction until the motions were denied and the remittitur transmitted on December 18, 2014.

Ballard as witnesses and introduced exhibits without objection. The court set aside two (2) full days for the hearing on Shirley's motion for sanctions and Howard was given the opportunity to present any evidence he chose. The second day of hearing concluded before the end of the day, and Howard apparently offered all testimony and evidence he wished to provide.

77. Mr. Aiken testified all of his filings on behalf of Howard in this proceeding were filed in good faith and for a legitimate purpose. It was not the specific filings themselves that caused the problems, but rather Howard's entire approach to these proceedings which intentionally caused delay, and further causing these proceedings to be unnecessarily and unreasonably complex, convoluted and lengthy. Section (A) of 15-36-10 focuses on sanctions appropriate for filing of specific documents. That section is not applicable here.

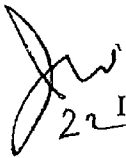
 78. Shirley is entitled to recover sanctions against Howard pursuant to Section 15-36-10 (C), in that she has established that Howard's conduct in these supplemental proceedings were "not reasonably founded in fact" (in that he provided false or misleading facts regarding his assets), were "interposed merely for delay" and "were brought for a purpose other than . . . or adjudication of the claim . . . upon which the proceedings are based

79. Shirley is also entitled to recover sanctions against Howard pursuant to Rule 11, SCRCF and the inherent authority of the court. Howard's actions during this proceeding have been intentional and have been intended to both burden the court and Shirley, and to successfully force Shirley to incur unnecessary fees and costs, and to interfere with the administration of justice.

80. Shirley incurred reasonable fees and costs in this proceeding in the amount of \$80,088.81, plus fees and costs incurred in the appeal of this court's order of \$22,420.69, the reasonableness or necessity of which is not disputed.

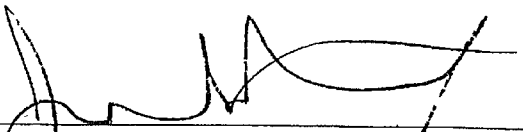
A. Shirley Hammer is awarded sanctions against Howard Hammer in the amount of, eighty-eight thousand, eighty-eight dollars and eighty-one cents (\$88,088.81), which shall be paid by Mr. Hammer on or before June 8, 2015 at 5:00 p.m.

B This is a final order which concludes these actions for all purposes.

 22

IT IS SO ORDERED.

April 24 2015



JOSEPH M. STRICKLAND
MASTER IN EQUITY FOR RICHLAND COUNTY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Case No. 2013-CP-40-6898

RECEIVED

MAY 04 2015

SC Court of Appeals

Shirley Hammer,

Respondent,

v.

Howard Hammer; 1634 Main, LP; Alvin Hammer; SH5, LLC; SH4, LLC; SH3, LLC; HASCI, LLC; D&M Chateau, LLC; Heart of Columbia, LLC a/k/a Heart of Columbia, Inc.; Alvin J. Hammer, as Personal Representative of the Estate of Eleanor Bernstein Hammer; Joye Elizabeth Life Estate; Stanley Hammer; Department of the Treasury-IRS; Chateau DeVille Association, Inc. and/or Chateau DeVille Horizontal Property Regime; David H., a minor under the age of 14,

Defendants,

Of Whom,

Alvin Hammer, HASCI, LLC; Heart of Columbia, LLC a/k/a Heart of Columbia, Inc.; Alvin J. Hammer, as Personal Representative of the Estate of Eleanor Bernstein Hammer; and Stanley Hammer are

Appellants.

PROOF OF SERVICE

I, Connie W. Grugan, secretary to the law firm of Lewis, Babcock & Griffin, L.L.P., hereby certify that I have served Memorandum of Appellants upon counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

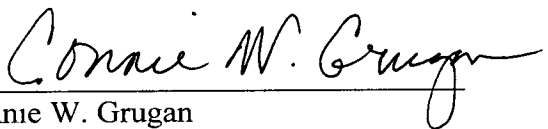
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Connie W. Grugan

This 4th day of May, 2015.