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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Joseph M. Strickland, Master-in-Equity
Case No. 2013-CP-40-6898
Appellate Tracking No. 2015-000835

Shirley Hammer,

Respondent,

v.

Howard Hammer; 1634 Main LP; Alvin Hammer; SH5, LLC; SH4, LLC; HASCI LLC; D&M Chateau, LLD; 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, and David H., a minor.

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.

**MEMORANDUM OF RESPONDENT SHIRLEY HAMMER AND
MOTION TO DISMISS**

Respondent Shirley Hammer submits this memorandum in response to the letter from the Clerk of Court dated April 23, 2015¹.

¹ The undersigned did not receive the April 23, 2015 letter, we became aware of it on May 5, 2015, when we received a memorandum from Appellant's counsel. On that date, we obtained the letter from C-

BACKGROUND

Respondent Shirley Hammer (hereafter “Shirley”) is the ex-wife of Defendant Howard Hammer (hereafter “Howard”). Shirley filed for divorce from Howard in 2005, and that divorce was granted in 2008. Since that time, Howard has filed multiple civil actions against Shirley (as well as multiple petitions for relief in the family court, all of which were appealed to the Court of Appeals), generating a tidal wave of litigation which virtually crippled Shirley.

In September, 2012, The South Carolina Supreme Court issued an unprecedented order in an effort to “curtail Howard[s’] . . . abuse of the judicial system” and asserting exclusive appellate jurisdiction over all pending matters as well as all future matters to which Shirley and Howard were parties. (Exhibit A). The order also entrusted the trial court litigation to Circuit Judge James Barber to shepherd it to conclusion. *Id.* This appeal, therefore, is of a case in which the Supreme Court has assumed exclusive appellate jurisdiction.

After the Supreme Court took control over the litigation between Howard and Shirley, Shirley succeeded in obtaining dismissals of Howard’s claims against her. She also prevailed on her claims against him and a limited partnership that he controlled for abuse of process and sanctions. Those judgments were entered in 2012 and 2013. Both were appealed to the Supreme Court and affirmed. *Hammer v Hammer*, Memorandum Opinion No. 2014-MO-007 (filed March 19, 2014) (Attached as Exhibit B). As a result of supplemental proceedings against Howard, title to certain real property and entities owned by Howard were transferred to Shirley to sell, for the purpose of generating funds to satisfy

Track We have not reviewed Appellant’s memorandum and will not review it until this memorandum is completed and sent for filing and service

her judgments. This order was also affirmed by the Supreme Court. *1634 Main LP v Hammer v Hammer*, Memorandum Opinion No. 2014-M)-0454 (Attached as Exhibit C). The real property has not yet been sold (but is scheduled for auction on May 13, 2015), so Shirley's judgments against Howard remain unsatisfied.

While the supplemental proceedings were pending, Shirley initiated this foreclosure action, seeking to foreclose on property owned by Howard individually, as well as seeking collection against the distributional share of certain entities of which he was a member or shareholder. Defendants Alvin Hammer, Eleanor Hammer, Stanley Hammer, HASCI, LLC and Heart of Columbia, LLC moved to dismiss the action as to them, and their motion was granted. (Exhibit D).

Shirley's motion for a charging order against Howard was granted. (Exhibit E). Appellants, who were successful in having themselves dismissed from the foreclosure action, filed a motion to reconsider. (Exhibit F²). When that was denied, appellants filed this appeal.

The Court (in its letter dated April 23, 2015) has asked whether Appellant's appeal is "appealable." The answer is clearly no.

Appellants filed a motion seeking to be dismissed as parties to the foreclosure action. (Exhibit D). Their motion was granted. *Id* They won.

Appellate review is available only to parties who are aggrieved by the underlying judgment. Ex Parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986). An "aggrieved party" is one who is injured in a legal sense or who has suffered an injury to person or property by virtue of the appealed order. *Id*

² Exhibit E includes only the motion itself, without attachments. The entire filing was 90 pages long.

Permitting this appeal would be the equivalent of allowing parties to appeal an order to which they have consented, which is clearly not permitted. *Parsons v Gibbs*, 59 S.C. 215, 37 S.E. 753 (1901).

Appellant's counsel has informed Shirley's counsel that HASCI, LLC (one of the entities in which Shirley's charging order attaches to Howard's distributional interest) owns property that is under contract for sale. Through counsel, Shirley has put counsel for HASCI, LLC on notice of her charging order against Howard's distributional interest. (Exhibit G). On information and belief, the real complaint by the appellants is that Shirley's charging order, issued against Howard's distributional interest in HASCI, LLC, may prevent other members of HASCI, LLC from using Howard's distributional interest to repay themselves for money they have loaned to Howard, during the period of time he has claimed poverty as an excuse for not satisfying the judgments Shirley has against him (or paying child support). (Exhibit G). It appears the members of HASCI, LLC want to be paid for loans they have made to Howard, notwithstanding that the money should be used to satisfy Shirley's judgments against Howard³.

Shirley submits that appellants are attempting to use internal bookkeeping transactions to devalue Howard's distributional interest in HASCI, LLC, so that there is no money to pay to Shirley when real property owned by HASCI is sold. That's why they have filed this appeal.

³ More than a month ago, Shirley's counsel expressed this concern to appellants' counsel, asking if the other members of HASCI LLC held judgments that may take priority over Shirley's judgments. No response has been received. (Exhibit I)

Shirley's charging order against Howard's distributional interest in HASCI, LLC does not aggrieve appellants in any way⁴. If Howard owns a twelve percent (12%) interest in HASCI, and HASCI sells a piece of real estate (or anything else), it is pure math to determine what Howard's distributional interest is and hold it⁵. If other members of HASCI, LLC, including one or more appellants, are attempting to jump ahead of a lienholder (Shirley) and collect loans they have made to Howard before determining his distributional interest in HASCI, LLC, perhaps they are aggrieved, as would be any creditor of Howard's who does not hold a judgment against him. However, Howard's general creditors have no right to seek to collect against Howard's distributional interest in HASCI, LLC unless they have judgments against Howard.

The law is clear that unless a party is aggrieved, it cannot appeal from a judgment. *Fairchild v Department of Transportation*, 385 S.C. 344, 683 S.E.2d 818 (Ct.App. 2009); *Shaw v City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (Ct.App. 2002). *See also Bivens v Knight*, 254 S.C. 10, 173 S.E.2d 150 (1970). Appellants are not aggrieved by the order they attempt to appeal, especially when their motion seeking to have themselves dismissed as parties to the action has been granted. (Exhibit D).

For the reasons set forth above, Shirley answers this Court's question as "no," the order that is the subject of this appeal is not appealable. For those reasons as well, Shirley moves to dismiss this appeal⁶.

⁴ Appellants' other argument is that they must know how much Shirley's charging order is, not just that it exists. Shirley has filed the numbers of her charging order with the trial court and served copies on all counsel.

⁵ Based on representations made to the trial court, Shirley is informed and believes that Howard's ownership interest in HASCI, LLC is twelve percent (12%) (Exhibit H).

⁶ Shirley does not address here whether this appeal should have been filed with the Supreme Court, based on the Supreme Court's September 7, 2012 order (Exhibit A).



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ATTORNEY FOR RESPONDENT
SHIRLEY HAMMER

May 6, 2015

The Supreme Court of South Carolina

Ex Parte: Shirley Hammer, Petitioner.

In re: Shirley Hammer,

v.

Howard Hammer.

Case No. 2005-DR-40-2871

In Re: Howard Hammer,

v.

Shirley Hammer.

Case No. 2009-CP-40-05911

In re: 1634 Main LP,

v.

Shirley Hammer.

Case No. 2010-CP-40-2889

In Re: Howard Hammer,

v.

Shirley Hammer.

Case No. 2010-DR-40-3712

In re: Howard Hammer,

v.

Shirley Hammer and Richard Whiting.

Case No. 2011-DR-40-1094

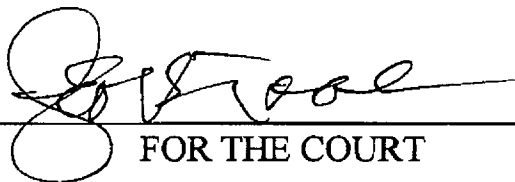


ORDER

Petitioner has filed a document with this Court entitled "Petition and Complaint for Consolidation and Assignment for Full and Final Adjudication" in which she asks this Court to consolidate the above referenced matters for adjudication, assign them to one judge for adjudication in a single proceeding, subject to the jurisdiction of this Court, for a full and final resolution of all issues. While we cannot grant the relief petitioner seeks, we can take other measures in an effort to curtail Howard Hammer's abuse of the judicial system.

First, all appeals currently pending before the Court of Appeals involving petitioner, Mr. Hammer or 1634 Main LP shall be transferred to this Court. Rule 204(b), SCACR. After the appeals are transferred to this Court and their status assessed, instructions will be given to the parties for expediting the appeals.

Second, the Honorable James R. Barber, III, and the Honorable Dana A. Morris are hereby assigned to oversee any actions involving petitioner, Mr. Hammer or 1634 Main LP currently pending in the circuit court and family court respectively, and any subsequent actions involving the parties that may be filed, and shall expedite any such actions and provide status reports to the Chief Justice every thirty days from the date of this order until all litigation between the parties has been resolved.



FOR THE COURT C.J.

Columbia, South Carolina

September 7, 2012

cc:

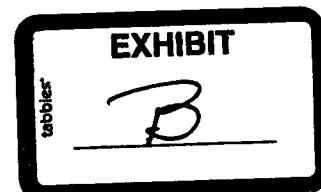
Robert T. Bockman

Arthur Kerr Aiken

Desa Allen Ballard

Pope D. Johnson, III

Susan Batten Lipscomb
Timothy E. Madden
Howard Hammer, Esq
Richard Giles Whiting
The Honorable Jenny Abbott Kitchings



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Howard Hammer, Appellant,

v.

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

And

1634 Main, L.P., Appellant,

v.

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

v.

Howard Hammer, Appellant.

Appellate Case No. 2013-001634

Appeal from Richland County
The Honorable George C. James, Jr., Circuit Court Judge
The Honorable James F. Barber,
Supervising Circuit Court Judge

Memorandum Opinion No. 2014-MO-007
Heard March 6, 2014 – Filed March 19, 2014

AFFIRMED

Susan B. Lipscomb, of Lipscomb Law Firm, P.A.,
Arthur K. Aiken, of Aiken & Hightower, P.A., both of
Columbia, and M. Dawes Cooke, Jr., of Barnwell
Whaley Patterson & Helms, LLC, of Charleston, for
Appellant.

Desa A. Ballard and Stephanie N. Weissenstein, both of
Ballard Watson Weissenstein, of West Columbia, for
Respondent.

PER CURIAM: In this consolidated case, the appellants argue the trial court erred in awarding damages for frustration to the respondent because she expressly waived any claim to damages for emotional distress under her abuse of process claim. Additionally, 1634 Main, L.P. argues the evidence does not support a finding for abuse of process against it. The appellants also claim the trial court erred in awarding sanctions against them because the motion for sanctions was not timely filed and there is no evidence to support the award. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. Evidence supporting the abuse of process claim: *Pope v. Gordon*, 369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006) (noting that in an action tried at law without a jury, the trial judge's findings of fact will not be disturbed unless the findings are wholly unsupported by the evidence or controlled by an erroneous conception of the application of the law); *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) ("The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding.").
2. Damages: *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 362, 166 S.E.2d 297, 301 (1969) ("Damages recoverable for abuse of process are compensatory for the natural results of the wrong, and may include recompense for physical or mental injury; expenses; loss of time; and injury to business, property or financial standing."); Rule 220(c), SCACR ("The

appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

3. Sanctions: *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294–95, 721 S.E.2d 430, 432 (2012) ("The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard."); *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) ("[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard.").

AFFIRMED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

1634 Main, LP, Appellant,

v.

Shirley Hammer, Respondent,

v.

Howard Hammer, Appellant,

and

Howard Hammer, Appellant,

v.

Shirley Hammer, Respondent.

Appellate Case No. 2014-000965

Appeal from Richland County
The Honorable Joseph M. Strickland, Master-in-Equity,

Memorandum Opinion No. 2014-MO-045
Heard October 22, 2014 – Filed November 6, 2014

AFFIRMED IN PART AND REVERSED IN PART

Thomas W. Bunch, II, of Robinson McFadden & Moore,
PC, of Columbia, and Arthur K. Aiken, of Aiken &
Hightower, P.A., of Columbia, for Appellants.

Desa A. Ballard, of Ballard & Watson, Attorneys at Law,
of West Columbia, for Respondent.

PER CURIAM: Howard Hammer and 1634 Main, LP (collectively, Appellants) appeal the order of the master-in-equity transferring various properties to Shirley Hammer in satisfaction of the judgments she has against Appellants. Specifically, Appellants argue the master lacked personal jurisdiction due to improper service and lacked the authority to require the transfer title to real property to Shirley and Howard also contends the imposition of sanctions against him was improper because the master failed to comply with the provisions of the South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA). We affirm in part pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. Personal Jurisdiction: Rule 5, SCRCR (providing that service of "all (1) written orders; (2) pleadings subsequent to the original summons and complaint . . . ; and (11) other similar papers" shall be served "upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address . . .").
2. Authority to Transfer Title to Real Property: S.C. Code Ann. § 15-39-10 (2005) ("There shall be three kinds of executions, (a) against the property of the judgment debtor, (b) against his person and (c) for the delivery of the possession of real or personal property or such delivery with damages for withholding the property. They shall be deemed the process of the court."); *Lynn v. Int'l Bhd. of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955) ("Proceedings supplementary to execution, in addition to providing for examination of the judgment debtor for the purpose of discovering property out of which the judgment against him may be satisfied, furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution . . ."); *see also* 30 Am. Jur. 2d Executions, Etc. §

12 ("A court of equity will always find the means of enforcing its decree against a delinquent defendant and its power in this respect is as extensive as the exigencies of the case.").

Additionally, we reverse the award of sanctions pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 15-36-10(D) (Supp. 2013) ("A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of [the FCPSA]."; *Burns v. Universal Health Servs. Inc.*, 340 S.C. 509, 514, 532 S.E.2d 6, 9 (Ct. App. 2000) ("We hold that a signing party or attorney is entitled to notice and an opportunity to respond prior to imposition of sanctions under Rule 11, SCRCP."). However, we note our reversal is without prejudice as to allow Shirley to raise this issue before the master in the subsequent accounting proceeding. Furthermore, we order Howard to file a financial disclosure of all his assets and income with the master within fifteen days of the filing of this opinion.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

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EXHIBIT

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO 2013-CP-40-6898

Shirley Hammer,)
Plaintiff,)

vs.)

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 Hammer, a minor under the)
age of 14,)
Defendants.)

ORDER GRANTING MOTION
TO DISMISS BY DEFENDANTS
ALVIN HAMMER, ELEANOR HAMMER,
STANLEY HAMMER, HASCI, LLC,
AND HEART OF COLUMBIA, LLC,
(MORE PROPERLY KNOWN AS
HEART OF COLUMBIA, INC.)

FILED
2015 MAR 16 AM 10:00
JANET E. WILSON
C.C.P. & G.S.

This matter is before me by way of three motions which were heard on January 14, 2015.

The first is a Motion to Dismiss by Defendants Alvin Hammer, Eleanor Hammer¹, Stanley Hammer, HASCI, LLC, and Heart of Columbia, LLC (more properly known as Heart of Columbia, Inc.). These Defendants were represented at the hearing by Keith M. Babcock, Esquire. Finally, an Amended Motion for Charging Lien against Corporate Defendants and Appointment of a Receiver was filed on behalf of the Plaintiff. The Plaintiff is represented by Desa Ballard, Esquire:

¹As reflected in the caption, since the filing of the motion, Mrs. Hammer passed away and Alvin J. Hammer, as Personal Representative of her estate, has been substituted for her.

After considering arguments of counsel, I have determined the Motion to Dismiss Defendants Alvin Hammer, Eleanor Hammer,

Stanley Hammer, HASCI, LLC, and Heart of Columbia, LLC (properly known as Heart of Columbia, Inc.) , should be granted and the Amended Motion for a Charging Lien should be denied as to these defendants only.

On January 21, 2014, this Court issued an Order directing the transfer of real property to satisfy various judgments. This Order involved the cases of *Shirley Hammer v Howard Hammer* (Civil Action No. 2009-CP-40-05911) and *Shirley Hammer v 1634 Main, LP* (Civil Action No. 2010-CP-40-2889). On page two of that Order, this Court included a chart showing the total of the judgments against 1634 Main, LP and Howard Hammer.

The January 21, 2014, Order that was issued by this Court followed a hearing earlier in January of 2014. As this Court stated:

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 to satisfy the judgments.

Order of January 21, 2014, p 5. As the Order further stated:

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 the foreclosure matter was filed in order to attach other property to the judgment if it became necessary to do so

Order of January 21, 2014, p. 5-6

The foreclosure matter referenced above is the very same foreclosure matter Defendants seek to dismiss. In the January 21, 2014, Order, this Court ordered that any and all interest of Howard Hammer and 1634 Main, LP in real property located at 1634 Main Street, Columbia, South Carolina, be transferred to Shirley Hammer.

In order to obtain a charging lien, a Plaintiff must have an unsatisfied judgment. S.C. Code Ann. § 33-44-504(a), S.C. Code Ann. provides that:

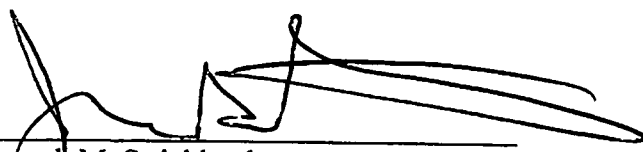
On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a Court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. (Emphasis added).

The Plaintiff is not entitled to a charging lien against defendants Alvin Hammer, Eleanor Hammer, Stanley Hammer, HASCI, LLC, and Heart of Columbia, LLC (more properly known as Heart of Columbia, Inc.) Defendants' Motion to Dismiss by these Defendants Alvin Hammer, Eleanor Hammer, Stanley Hammer, HASCI, LLC, and Heart of Columbia, LLC (more properly known as heart of Columbia, Inc.) is granted.

THEREFORE, IT IS ORDERED that:

1. The Plaintiff's Amended Motion for Charging Lien against these defendants Alvin Hammer, Eleanor Hammer, Stanley Hammer, HASCI, LLC, and Heart of Columbia, LLC (more properly known as Heart of Columbia, Inc.), is denied, and
2. The Motion to Dismiss the Plaintiff's Verified Complaint for Attachment and Foreclosure of Judgment by Defendants Alvin Hammer, Eleanor Hammer, Stanley Hammer, HASCI, LLC, and Heart of Columbia, LLC (more properly known as Heart of Columbia, Inc.), is granted.

IT IS SO ORDERED this 16th day of March, 2015.



Joseph M. Strickland
Master-in-Equity for Richland County

Columbia, South Carolina

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EXHIBIT

E

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)
Hammer, a minor under the age of 14,)

Defendants.)

**ORDER GRANTING
CHARGING ORDER**

FILED
2015 MAR 16 AM 10:01
CLERK OF COURT
C.C.P. & C.S.

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.

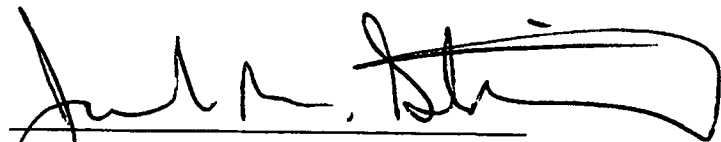
Mrs. Hammer is entitled to a charging order against Mr. Hammer's distributional interest in any of the defendant LLCs in which he has an ownership, membership, or distributional interest. He acknowledges a distributional interest in HASCI, LLC and Chateau Deville LLC, as well as HOC, LLC, which is not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

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

Joseph M. Strickland
Master in Equity
Richland County

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Shirley Hammer,)

Plaintiff,)

v.)

Case Number: 2013-CP-40-6898

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)
DeVile Association, Inc. and/or Chateau)
DeVile Horizontal Property Regime; David)
Hammer, a minor under the age of 14,)
Defendants.)

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 ST.

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 conscious 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.

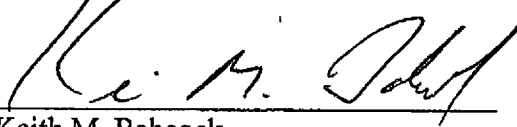
For the foregoing reasons it is respectfully submitted that the within motion to alter or amend should be granted as set forth above.

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 dark 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



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 black ink, reading "Mara Ballard". The signature is fluid and cursive, with the first name "Mara" and last name "Ballard" clearly distinguishable.

Mara Ballard, CFE, 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)
Hammer, a minor under the age of 14,)
Defendants.)

**ORDER GRANTING
CHARGING ORDER**

FILED
2013 MAR 16 AM 10:01
JANICE E. HUBBARD
C.C.P. & C.S.

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.

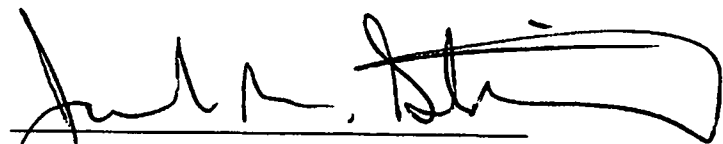
Mrs. Hammer is entitled to a charging order against Mr. Hammer's distributional interest in any of the defendant LLCs in which he has an ownership, membership, or distributional interest. He acknowledges a distributional interest in HASCI, LLC and Chateau Deville LLC, as well as HOC, LLC, which is not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

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

Joseph M. Strickland
Master in Equity
Richland County

1 There's a pending contract. There's
2 money that's going to be coming shortly if this
3 sale closes and to kick him out at that point --

4 THE COURT: And Mr. Hammer gets
5 12 percent of it?

6 MR. BABCOCK: My understanding is he
7 has a 12 percent interest. I don't know what other
8 issues there are within the LLC in terms of what
9 loans may have been made to Mr. Hammer. If there
10 are any, those would need to be taken into account
11 contrary to the position in Exhibit B. You have to
12 take all that into account.

13 THE COURT: You can do that without an
14 order from me, though, right? I mean, the LLC
15 could do it themselves, right?

16 MR. BABCOCK: That's not the problem.
17 The amount of the charging lien is the problem,
18 Your Honor. That's the problem.

19 THE COURT: Okay.

20 All right. Mr. Bunch?

21 MR. BUNCH: Your Honor, if I could, the
22 most telling thing from Ms. Ballard is, we're not
23 going to settle. We've tried over and over to
24 settle. I wouldn't have spent hundreds of hours or
25 dozen and dozens and dozens of hours trying to

From: Keith M. Babcock
To: Desa Ballard
Subject: RE: HASCI et al appeal
Date: Tuesday, April 21, 2015 3 20 48 PM
Attachments: image001.png

I do not believe that they have judgments, but I will check.
Keith

Keith M. Babcock
Attorney



Lewis, Babcock & Griffin, L.L.P.
1513 Hampton Street
Columbia, SC 29201
o 803 771 8000 f 803.733 3534
KMB@LBGLegal.com

www.LBGLegal.com

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From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, April 21, 2015 2:57 PM
To: Keith M. Babcock
Cc: Beth Cogan; Mara Ballard
Subject: RE: HASCI et al appeal

I am concerned that, if the auction doesn't bring enough money to make Shirley whole, we will need to use Howard's distributional interest in HASCI or some other entities in which he has an interest in order to make her whole. In that regard, I'm concerned about personal loans made by members of the extended family to Howard being repaid out of the sales proceeds from the Assembly Street property, thereby diminishing the funds available to satisfy Shirley's judgments. You mentioned during oral arguments that there were "loans" to be paid from the proceeds, and I am assuming that all these generous family members who have been supporting Howard (and who also own interests in HASCI) are intending to be paid from Howard's share of the sales proceeds.

Do any of those lenders (family members) have judgments against Howard? If so, can I have copies?

db

From: Keith M Babcock [<mailto:kmb@lbglegal.com>]

Sent: Tuesday, April 21, 2015 2:49 PM

To: Desa Ballard

Subject: RE: HASCI et al appeal

Desa,

We had to do that to protect our position concerning the charging lien amount. It really is more of a problem for us than you think. But I do not think it is a problem per se for the sale of the property. I have shared our conversation the other day concerning the auction contract and hope to be able to get with you soon on that.
Keith

Keith M. Babcock

Attorney



Lewis, Babcock & Griffin, L.L.P.
1513 Hampton Street
Columbia, SC 29201
o 803 771 8000 f 803 733 3534
KMB@LBGLegal.com

www.LBGLegal.com

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

Sent: Tuesday, April 21, 2015 2:26 PM

To: Keith M. Babcock

Cc: Mara Ballard; Beth Cogan; Beth Cogan; Mara Ballard

Subject: HASCI et al appeal

I'm so disappointed – I called you specifically to make sure there was nothing we were doing that was a problem for the sale of HASCI of the property on Assembly, and you promised to check and let me know. Then you called me and asked if we could still do a deal with HASCI and you asked if I could cancel the auction contract. Then I get the notice of appeal. I am not adversarial to your clients. What in the world do your clients want?

db

Desa Ballard

Ballard & Watson

Attorneys at Law

Telephone 803 796 9299

Facsimile 803 796 1066

E-mail desab@desaballard.com, copy to mara@desaballard.com

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAY 06 2015
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Joseph M. Strickland, Master-in-Equity
Case No. 2013-CP-40-6898
Appellate Tracking No. 2015-000835

Shirley Hammer,

Respondent,

v.

Howard Hammer; 1634 Main LP; Alvin Hammer; SH5, LLC; SH4, LLC; HASCI LLC; D&M Chateau, LLD; 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, and David H., a minor.

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.

CERTIFICATE OF SERVICE

I, Mara Ballard, an employee of Ballard & Watson Attorneys at Law, do hereby certify that on May 6, 2015, I served a copy of the **Memorandum of Respondent Shirley Hammer and Motion to Dismiss** in the above-captioned case on the following individuals

by electronic mail and by regular United States Mail, with sufficient first class postage
affixed, addressed as follows:

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

**Tommy Bunch, Esquire
Robinson McFadden
Post Office Box 944
Columbia, South Carolina 29202**

**Ariail E. King, Esquire
Keith Babcock, Esquire
Lewis Babcock & Griffin, LLP
1513 Hampton Street
Columbia South Carolina 29201**

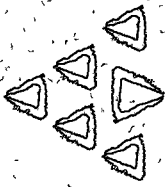
**Matthew Modica
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston South Carolina 29402**

**Stephanie Trotter, Esquire, Esq.
McCabe, Trotter & Beverly, PC
Post Office Box 212069
Columbia South Carolina 29221-3200**

**John "Jay" D. Elliott, Esquire
Post Office Box 607
Columbia South Carolina 29202**


Mara T. Ballard

May 6, 2015
West Columbia, South Carolina



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

Wednesday, May 06, 2015

RECEIVED
MAY 06 2015
SC Court of Appeals

Via Hand Delivery Only
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Shirley Hammer vs Howard Hammer, 1634 Main, LP, et al*
Appellate Case No.: 2015-000835

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of the **Memorandum of Respondent Shirley Hammer and Motion to Dismiss** in regards to the above referenced matter for filing with your office. Please return a clocked copy via our courier. Also enclosed is our Certificate of Service on all known counsel of record and our filing fee for the Motion to Dismiss.

If you should have any questions, please do not hesitate to contact us. With kindest regards, I am,

Sincerely yours,

Mara T. Ballard, CFE, CMA
Forensic Accountant
mara@desaballard.com

c: (Via US Mail and Email)
Arthur K. Aiken, Esquire
Thomas W. Bunch, II, Esquire
Ariail E. King, Esquire
Keith Babcock, Esquire
Matthew Modica, Esquire
Stephanie Trotter, Esquire
John D. Elliott, Esquire
Shirley Hammer (via email only)