

5

710203

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

JUN 05 2015

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

SC Court of Appeals

The Honorable Letitia Verdin, Circuit Court Judge

Case No.: 2013-CP-23-5575  
(Appellate Case No. 2015-000159)

HHH Ltd. of Greenville, ..... Respondent,

v.

Randall S. Hiller, Robert E. Hiller and Randall S. Hiller, P.A. .... Appellants.

RESPONDENT'S MOTION FOR ORDER  
GRANTING PARTIAL RELIEF REQUESTED AND  
TO DISMISS APPELLANT'S ISSUE ON APPEAL NUMBER 3

Respondent, HHH, Ltd. of Greenville, by and through its undersigned attorney and pursuant to Rule 240, SCACR, hereby moves for an Order Granting Partial Relief Requested on Appellant's Issues on Appeal numbered I and II; and for an Order to Dismiss Appellants' Issue on Appeal numbered III, in accordance with the complete and overwhelming authority found in South Carolina law in support thereof.

*Issues I and II*

Respondent has offered Appellants the Respondent's consent to the partial relief requested by Appellants under Appellant's Issues I and II, as outlined in Appellant's Statement

of Issues on Appeal. Specifically, the Respondent has offered its consent to the Appellant's request under Issues I and II (respectively) that the case not be referred to the Master in Equity.

However, despite these offers and requests upon Appellants by Respondent, Appellants have refused to consent to the partial relief that Appellants are requesting under its own Issues on Appeal I and II.

### *Issue III*

In accordance with the Appellants' Issue III, as outlined in Appellants' Statement of Issues on Appeal, it is Respondent's understanding that Appellants are seeking an order from this Court to determine that "[t]he Court erred in failing to grant Defendants' Motion for Summary Judgment, the error being that the Defendant was entitled to such ruling as a matter of law because Plaintiff relied solely on the pleadings."

It is well established in South Carolina that Motions for Summary Judgment are not immediately appealable. The Courts of this State have "repeatedly held that the denial of summary judgment is not directly appealable." *Willis v. Bishop*, 276 S.C. 156, 276 S.E.2d 310 (1981); *Mitchell v. Mitchell*, 276 S.C. 44, 275 S.E.2d 1 (1981); *Neal v. Carolina Power and Light*, 274 S.C. 552, 265 S.E.2d 681 (1980); *United States Fidelity & Guaranty Co. v. City of Spartanburg*, 267 S.C. 210, 227 S.E.2d 188 (1976); *Medlin v. W.T. Grant, Inc.*, 262 S.C. 185, 203 S.E.2d 426 (1974); *Greenwich Savings Bank v. Jones*, 261 S.C. 515, 201 S.E.2d 244 (1973); *Geiger v. Carolina Pool Equipment Distributors, Inc.*, 257 S.C. 112, 184 S.E.2d 446 (1971); see also *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986); *Associates Financial Services Co. of South Carolina, Inc. v. Gordon Auto Sales*, 283 S.C. 53, 320 S.E.2d 501 (Ct.App.1984);

quoting *Ballenger v. Bowen*, 313 S.C. 476, 476-7, 443 S.E.2d 379, 380 (1994). Therefore, the Respondent requests an Order to Dismiss Appellants' Issue on Appeal numbered III.

This Motion is further based upon the submissions of Respondent, the applicable South Carolina Appellate Court Rules and their related authority, and upon such supporting memorandum and affidavits as are submitted in connection herewith.

It is further requested, pursuant to Rule 240(b), that all time be held in abeyance during the pendency of this motion.

Respectfully Requested,



---

John T. Crawford, Jr. (SC Bar # 69682)  
M. Stokely Holder (SC Bar # 73892)  
Kenison, Dudley & Crawford, LLC  
704 East McBee Avenue  
Greenville, SC 29601  
(864) 242-4988  
*Attorneys for Respondent*

June 1, 2015

5

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

JUN 05 2015

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Letitia Verdin, Circuit Court Judge

Case No.: 2013-CP-23-5575  
(Appellate Case No. 2015-000159)

HHH Ltd. of Greenville, ..... Respondent,

v.

Randall S. Hiller, Robert E. Hiller and Randall S. Hiller, P.A. .... Appellants.

MEMORANDUM OF RESPONDENT IN SUPPORT OF ITS  
MOTION FOR ORDER GRANTING PARTIAL RELIEF REQUESTED AND  
TO DISMISS APPELLANT'S ISSUE ON APPEAL NUMBER 3

M. Stokely Holder (SC Bar # 73892)  
John T. Crawford, Jr. (SC Bar # 69682)  
Kenison, Dudley & Crawford, LLC  
704 East McBee Avenue  
Greenville, SC 29601  
864-242-4899  
Attorneys for Respondent

Other Counsel of Record:

Randall S. Hiller (SC Bar #2513)  
850 Wade Hampton Boulevard  
Greenville, SC 29609  
864-232-0026  
Attorney for Appellants

Randy A. Skinner  
300 North Main Street, Suite 201  
Greenville, SC 29601

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
FACTS .....	1
ARGUMENT .....	8
MOTION FOR AN ORDER GRANTING PARTIAL RELIEF REQUESTED ON APPELLANT'S ISSUES ON APPEAL NUMBERED I AND II.....	8
MOTION TO DISMISS APPELLANTS' ISSUE III.....	9
CONCLUSION.....	11

## TABLE OF AUTHORITIES

### CASES

Associates Financial Services Co. of South Carolina, Inc. v. Gordon Auto Sales, 283 S.C. 53, 320 S.E.2d 501 (Ct.App.1984) .....	10
Ballenger v. Bowen, 313 S.C. 476, 476-7, 443 S.E.2d 379, 380 (1994).....	10, 11
Geiger v. Carolina Pool Equipment Distributors, Inc., 257 S.C. 112, 184 S.E.2d 446 (1971) .....	10
Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986) .....	10
Good v. Hartford Accident & Indemnity Co., 201 S.C. 32, 21 S.E.2d 209 (1942).....	10
Greenwich Savings Bank v. Jones, 261 S.C. 515, 201 S.E.2d 244 (1973).....	10
Holloman v. McAllister, 289 S.C. 183, 345 S.E.2d 728 (1986) .....	10
Johnston v. Bowen, 313 S.C. 61, 437 S.E.2d 45 (1993) .....	10
Medlin v. W.T. Grant, Inc., 262 S.C. 185, 203 S.E.2d 426 (1974) .....	10
Mitchell v. Mitchell, 276 S.C. 44, 275 S.E.2d 1 (1981) .....	9
Neal v. Carolina Power and Light, 274 S.C. 552, 265 S.E.2d 681 (1980) .....	9
Parker Oil Co. v. Smith, 34 N.C.App. 324, 237 S.E.2d 882 (1977).....	10
PPG Industries v. Orangeburg Paint & Decorating Center, Inc., 297 S.C. 176, 375 S.E.2d 331 (Ct.App.1988) .....	11
Raino v. Goodyear Tire, 309 S.C. 255, 422 S.E.2d 98 (1992) .....	10
United States Fidelity & Guaranty Co. v. City of Spartanburg, 267 S.C. 210, 227 S.E.2d 188 (1976) .....	10
Weil v. Weil, 299 S.C. 84, 382 S.E.2d 471 (Ct.App.1989) .....	10
Willis v. Bishop, 276 S.C. 156, 276 S.E.2d 310 (1981) .....	9

STATUTES

South Carolina Code 1976 § 27-23-10 .....2, 5, 7

OTHER AUTHORITIES

4 Am.Jur.2d Appeal and Error, § 104 (1962 & Supp.1993).....10  
4 C.J.S. Appeal and Error, § 98 (1993).....10  
15 A.L.R.3d 899 (1967 & Supp.1993) .....10  
21 C.J.S. Courts, § 149, p. 183 (1990).....11

COMES NOW, Respondent, HHH Ltd. of Greenville (“HHH”), by and through its undersigned attorney, and files this Memorandum in Support of its Motion for Order Granting Partial Relief Requested on Appellant’s Issues on Appeal numbered I and II; and for an Order to Dismiss Appellants’ Issue on Appeal numbered III.

#### I. FACTS

The Respondent company, HHH Ltd. (“HHH”), was put into receivership via order of the Greenville County Master in Equity on January 16, 2013 pursuant to the supplemental proceedings initiated by Holly Woods Association of Residence Owners (“Holly Woods”), a judgment creditor of HHH. Holly Woods obtained a judgment against HHH on May 14, 2007 in the principal amount of \$971,000.00.

Appellant Robert E. Hiller was a party to the original action filed by Holly Woods. Appellant Randall S. Hiller, who is serving as counsel for Appellants, was in attendance on his own behalf (pursuant to subpoena) and in a representative capacity during the aforementioned supplemental proceedings hearing. Appellant Randall S. Hiller is, upon information and belief, the sole member and practicing attorney of Appellant law firm Randall S. Hiller, P.A. HHH was owned at some point by Joe Hiller, Sr., who died on May 6, 2012. Joe Hiller, Sr. was the father of Appellants Robert E. Hiller and Randall S. Hiller.

By virtue of the powers vested in Randy A. Skinner, as Receiver for HHH, Ltd., the underlying case was initiated against the Appellants on October 16, 2013. The case involves three claims – two of which were brought under the Statute of Elizabeth and one of which was brought for specific performance. The facts as plead by Respondent are as follows:

*There are three pieces of real property (the "Properties") that are the subject of the action. The first property is located off of Old Buncombe Road in the County of Greenville and State of South Carolina, having a Tax Map Number of 0476000100108 (hereinafter "Property 1"); the second property is an undeveloped lot containing approximately 58 acres more or less, having a Tax Map Number of 0464000100132 (hereinafter "Property 2"); and the third property is also an undeveloped lot containing approximately 28.44 acres more or less, having a Tax Map Number of 04640001000108 (hereinafter "Property 3").*

*First Cause of Action for Recovery of Transfer under South Carolina Code 1976 § 27-23-10 as to Property 1*

*On December 12, 1995, Property 1 was deeded by Robert F. Patterson to HHH for \$90,000.00. Also on December 12, 1995, HHH provided a first mortgage on Property 1 to Robert F. Patterson securing an indebtedness of \$80,000.00 (the "Mortgage"). The Mortgage was filed in the Greenville County Register of Deeds Office on December 14, 1995 subsequent to the Deed. On or about September 8, 1999, Robert F. Patterson assigned the Mortgage to Defendant Randall S. Hiller (the "Assignment of Mortgage"). On October 29, 1999, Defendant Randall S. Hiller executed and filed a Release of Mortgage whereby Defendant Randall S. Hiller "release[d] and forever discharge[d]" Property 1 "from the lien of said Mortgage" (the "Mortgage Satisfaction").*

*Later on October 29, 1999, HHH deeded Property 1 to Poinsett Development, LLC ("Deed to Poinsett"). The Deed to Poinsett was filed in the Greenville County Register of Deeds Office subsequent to the filing of the Mortgage Satisfaction. The Deed to Poinsett was not subject to the Mortgage. On May 12, 2000, Poinsett*

*Development, LLC deeded Property 1 back to HHH. The deed from Poinsett Development, LLC back to HHH was not subject to the Mortgage.*

*On February 7, 2007, a verdict was rendered against HHH in the amount of \$971,000.00 in connection with the lawsuit filed in Greenville County, South Carolina under the caption of: Holly Woods Association of Residence Owners v. Joe W. Hiller, HHH Ltd. of Greenville, et al.; 2005-CP-23-2852 (the "Holly Woods Lawsuit"), which became public record (the "Judgment") and was entered in the judgment rolls for Greenville County whereby Property 1 became subject to the Judgment. The Appellants had personal knowledge of the Holly Woods Lawsuit and the verdict that was rendered in the Holly Woods Lawsuit.*

*On March 15, 2007, Judge Edward W. Miller issued an order in the Holly Woods Lawsuit (the "March 15, 2007 Order") making clear that:*

*"Mr. [Joe] Hiller and HHH [Ltd. of Greenville] be and are hereby enjoined from selling, transferring, secreting, encumbering, disposing of or otherwise impairing the value of any and all real and personal property owned by the Defendants either individually or jointly. If it shall become necessary in the course of defendants' business to dispose of, transfer or encumber any property, defendants [Joe] Hiller and HHH [Ltd. of Greenville] may make application to this court for an order allowing such disposition."*

*The March 15, 2007 Order became public record on that March 15, 2007 date and has remained public record to this day.*

*Prior to December 30, 2011, the Defendants were on notice of both the Judgment and the March 15, 2007 Order. On or about December 30, 2011, Defendant Randall S. Hiller prepared and Defendant Robert E. Hiller signed a Deed in Lieu of Foreclosure on behalf of HHH Ltd. of Greenville whereby Property 1 was purportedly deeded from HHH Ltd. of Greenville to Defendant Randall S. Hiller (the*

*“Deed in Lieu”). Defendant Randall S. Hiller executed an “Affidavit” that was filed with the Deed in Lieu whereby Randall S. Hiller “duly swor[e], depose[d] and sa[id]” that the Deed in Lieu was “exempt from the deed recording fee because [of] Exemption 13”. “Exemption 13” is defined as:*

*transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.*

*Pursuant to the sworn terms of the Affidavit executed by Defendant Randall S. Hiller, Property 1 was still subject to the Mortgage as of December 30, 2011. The only consideration referenced in the Deed in Lieu was the forgiveness of the debt remaining on the Mortgage.*

*Neither HHH Ltd. of Greenville, Defendant Randall S. Hiller nor Defendant Robert E. Hiller made application to Judge Edward W. Miller prior to Defendant Robert E. Hiller’s execution of the Deed in Lieu on behalf of Plaintiff and in favor of Defendant Randall S. Hiller.*

*The Deed in Lieu represents a transfer and a conveyance of land subject to the rights of an existing creditor. HHH, the grantee on the Deed in Lieu, received no lawfully sufficient and reasonably equivalent valuable consideration or alternatively less than equivalent value for the transfer of the Property under the Deed in Lieu due to the Release of Mortgage described above. The Defendants Randall S. Hiller and Robert E. Hiller, whose signatures appear on the Deed in Lieu on behalf of the parties to the Deed in Lieu and by whose voluntary acts Property 1 was purportedly transferred as described without valuable consideration, are family members. The Defendants Randall S. Hiller and Robert E. Hiller knew or had reason to know of the*

*existence of the creditor's Judgment lien on Property 1 prior to Defendants Randall S. Hiller and Robert E. Hiller causing the Deed in Lieu to be filed.*

*The Defendants Randall S. Hiller and Robert E. Hiller knew or had reason to know of the existence of Judge Miller's March 15, 2007 Order prior to Defendants Randall S. Hiller and Robert E. Hiller causing the Deed in Lieu to be filed. Property 1 transferred by the Deed in Lieu was in violation of Judge Miller's March 15, 2007 Order.*

*Upon information and belief, Defendant Robert E. Hiller did not have the requisite authority to execute the Deed in Lieu in the name of, or on behalf of, HHH. The transfer of Property 1 under the Deed in Lieu has prevented HHH from selling the property to satisfy the judgment rendered against HHH in the Holly Woods Lawsuit.*

*The transfer and conveyance of Property 1 by Defendants was with the intent or purpose to delay, hinder and defraud a judgment creditor, and has in fact delayed, hindered and defrauded a judgment creditor, of its just and lawful attempts to satisfy the judgment against HHH, such that the transfer should be deemed clearly and utterly void and of no effect.*

*Second Cause of Action for Recovery of Transfer under South Carolina Code 1976 § 27-23-10 as to Properties 2 & 3*

*On May 21, 2012 (just over two weeks after the death of Joe Hiller, Sr.), one-half of Plaintiff's interest in Property 2 and one-half of Plaintiff's interest in Property 3 were deeded by Robert E. Hiller, allegedly on behalf of HHH, to Defendant Randall S. Hiller, P.A. for \$5.00. This deed was not filed in the Greenville County Register of Deeds Office until October 10, 2012. Defendant Randall S. Hiller drafted and*

*prepared the Deed. Defendant Robert E. Hiller executed the Deed on May 21, 2012 whereby Defendant Robert E. Hiller represented he was executing the Deed on behalf of HHH Ltd. of Greenville.*

*Defendant Randall S. Hiller, on behalf of Defendant Randall S. Hiller, P.A. executed an "Affidavit" that was filed with the Deed whereby Randall S. Hiller "duly swor[e], depose[d] and sa[id]" that the Deed was "exempt from the deed recording fee because [of] Exemption 8". "Exemption 8" provides,*

*transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust.*

*Neither Defendant Robert E. Hiller, HHH Ltd. of Greenville nor Defendant Randall S. Hiller made application to Judge Edward W. Miller prior to Defendant Robert E. Hiller's execution of the Deed on behalf of Plaintiff and in favor of Defendant Randall S. Hiller, P.A.*

*The Deed represents a transfer and a conveyance of land subject to the rights of an existing creditor. HHH received no lawfully sufficient and reasonably equivalent valuable consideration or alternatively less than equivalent value for the transfer of the Property to the Defendant Randall S. Hiller, P.A. under the Deed. The Defendants Randall S. Hiller and Robert E. Hiller, whose signatures appear on the Deed on behalf of the parties to the Deed and by whose voluntary acts Properties 2 and 3 were transferred without valuable consideration, are family members.*

*The Defendant Randall S. Hiller is the sole principal and owner of the Defendant Randall S. Hiller, P.A. The Defendants Randall S. Hiller, Randall S. Hiller, P.A., and Robert E. Hiller knew or had reason to know of the existence of the creditor's Judgment lien on Properties 2 and 3 prior to Defendants Randall S. Hiller, Randall S. Hiller, P.A., and Robert E. Hiller causing the Deed to be filed. Properties 2 and 3 transferred by the Deed was in violation of Judge Miller's March 15, 2007 Order.*

*The Defendants Randall S. Hiller, Randall S. Hiller, P.A., and Robert E. Hiller knew or had reason to know of the existence of Judge Miller's March 15, 2007 Order prior to Defendants Randall S. Hiller, Randall S. Hiller, P.A., and Robert E. Hiller causing the Deed to be filed. Upon information and belief, Defendant Robert E. Hiller did not have the requisite authority to execute the Deed in the name of, or on behalf of, HHH.*

*The transfer of Properties 2 and 3 under the Deed has prevented HHH from selling the property to satisfy the judgment rendered against HHH in the Holly Woods Lawsuit. The transfer and conveyance of Properties 2 and 3 by Defendants was with the intent or purpose to delay, hinder and defraud a judgment creditor, and has in fact delayed, hindered and defrauded a judgment creditor, of its just and lawful attempts to satisfy the judgment against HHH such that the transfer should be deemed clearly and utterly void and of no effect.*

*Third Cause of Action for Specific Performance as to Property 1, 2 and 3*

*The Deed in Lieu for Property 1 and the Deed as to Properties 2 and 3 were transferred in violation of Judge Edward W. Miller's March 15, 2007 Order. Both Deeds were transferred in violation of South Carolina Code 1976 § 27-23-10. Both*

*Deeds between Defendants were not arm's length transactions; were not fair, just nor equitable; and included material flaws in the bargaining process. Fraud, injustice, and hardship will result if both Deeds are not set aside. Judicial economy is best served in this case if specific performance is granted whereby it is ordered that both Deeds are set aside.*

*Because of the unique nature of the real Property and the peculiar value of the Property, Plaintiff requested both Deeds be cancelled of record, set aside and be rendered null and void.*

[Complaint].

After service of the Complaint, Appellants filed a Motion to Dismiss which was denied. Thereafter, the Respondent filed a Motion for Reference to Master in Equity and the Appellants filed a Motion for Summary Judgment, both of which were heard at the same time by the Honorable Letitia H. Verdin. Judge Verdin granted the Respondent's Motion for Reference and denied the Appellants' Motion for Summary Judgment. After Appellants' Motion to Reconsider was denied, this appeal immediately followed.

## II. ARGUMENT

### *A. Motion for an Order Granting Partial Relief Requested on Appellant's Issues on Appeal numbered I and II*

Respondent has offered Appellants the Respondent's consent to the partial relief requested by Appellants under Appellant's Issues I and II, as outlined in Appellant's Statement of Issues on Appeal. Specifically, the Respondent has offered its consent to the Appellant's request under Issues I and II (respectively) that the case not be referred to the Master in Equity.

However, despite these offers and requests upon Appellants by Respondent,

Appellants have refused to consent to the partial relief that Appellants are requesting under its own Issues on Appeal I and II.

Notwithstanding the fact that the Respondent is hereby offering its consent to have the case tried in Circuit Court, it is worth noting that the Appellants' representations in its Initial Brief regarding the Honorable Edward Miller purporting to retain jurisdiction over this matter is entirely untrue. As the Appellants themselves have apparently conveniently ignored, Judge Miller notified the parties (including counsel for Appellants) - prior to the supplemental proceedings matter referenced by Appellant - that he was relinquishing jurisdiction. Moreover, contrary to the Appellants' position that the Master in Equity is not best served nor best suited to preside over this matter, the Master in Equity intended to retain jurisdiction over this case as evidenced by the Order appointing the Receiver for HHH - but for an oversight on the Respondent's part when filing, the case would have initiated in his office. Notably, each of the Appellants had a representative in attendance at the aforementioned supplemental proceedings/receivership hearing before the same Master in Equity.

*B. Motion for an Order Dismissing Appellants' Issue III*

The Appellants filed a Motion for Summary Judgment in the lower court, which was denied. The case has yet to reach trial in the lower court; yet, the Appellants immediately filed this appeal in an attempt to have this court rule on the lower court's denial of Appellants' Motion for Summary Judgment.

The Courts of this State have "repeatedly held that the denial of summary judgment is not directly appealable." *Willis v. Bishop*, 276 S.C. 156, 276 S.E.2d 310 (1981); *Mitchell v. Mitchell*, 276 S.C. 44, 275 S.E.2d 1 (1981); *Neal v. Carolina Power*

*and Light*, 274 S.C. 552, 265 S.E.2d 681 (1980); *United States Fidelity & Guaranty Co. v. City of Spartanburg*, 267 S.C. 210, 227 S.E.2d 188 (1976); *Medlin v. W.T. Grant, Inc.*, 262 S.C. 185, 203 S.E.2d 426 (1974); *Greenwich Savings Bank v. Jones*, 261 S.C. 515, 201 S.E.2d 244 (1973); *Geiger v. Carolina Pool Equipment Distributors, Inc.*, 257 S.C. 112, 184 S.E.2d 446 (1971); *see also Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986); *Associates Financial Services Co. of South Carolina, Inc. v. Gordon Auto Sales*, 283 S.C. 53, 320 S.E.2d 501 (Ct.App.1984); quoting *Ballenger v. Bowen*, 313 S.C. 476, 476-7, 443 S.E.2d 379, 380 (1994).

A majority of the other jurisdictions have reached this same conclusion. *Ballenger, supra*; 4 C.J.S. *Appeal and Error*, § 98 (1993); 4 Am.Jur.2d *Appeal and Error*, § 104 (1962 & Supp.1993); 15 A.L.R.3d 899 (1967 & Supp.1993). Further, the South Carolina Supreme Court has held that the denial of summary judgment is not reviewable even in an appeal from final judgment. *Ballenger, supra*; *Raino v. Goodyear Tire*, 309 S.C. 255, 422 S.E.2d 98 (1992); *Holloman v. McAllister*, 289 S.C. 183, 345 S.E.2d 728 (1986).

Furthermore, a denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. *Ballenger, supra*; *Parker Oil Co. v. Smith*, 34 N.C.App. 324, 237 S.E.2d 882 (1977); *cf. Geiger v. Carolina Pool Equipment Distributors, Inc., supra*. The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict. *Ballenger, supra*; *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993) (motion to reconsider); *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d 471

(Ct.App.1989) (statement made while denying summary judgment is not the law of the case); *PPG Industries v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct.App.1988) (motion to reconsider); 21 C.J.S. *Courts*, § 149, p. 183 (1990).

The denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. *Ballenger v. Bowen*, 313 S.C. 476, 476-78, 443 S.E.2d 379, 380 (1994). Therefore, an order denying a motion for summary judgment is not appealable. *Id.*; *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942).

The Appellant has even made clear in its Initial Brief that it is “cognizant of the inability to appeal either the granting or denial of summary judgment”. Yet, the Appellant has done so, claiming (without citing any authority whatsoever) that “this case justifies an exception to the general rule”.

### III. CONCLUSION

Based on the arguments heretofore made together with the precedential authority in South Carolina relevant to the issues addressed herein and the overriding fundamental principles of judicial economy, the Respondent respectfully requests an Order from this Court granting the relief requested by Appellants in their Issues on Appeal numbered I and II, and dismissing the Appellants’ Issue on Appeal Numbered III.

[SIGNATURE ON NEXT PAGE]

Respectfully Requested,



June 1, 2015

---

M. Stokely Holder (SC Bar # 73892)  
John T. Crawford, Jr. (SC Bar # 69682)  
KENISON, DUDLEY & CRAWFORD, LLC  
704 East McBee Avenue  
Greenville, SC 29601  
Ph. (864) 242-4899  
Fax (864) 242-4844

*Attorneys for Respondent*

8

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

JUN 05 2015

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Letitia Verdin, Circuit Court Judge

Case No.: 2013-CP-23-5575  
(Appellate Case No. 2015-000159)

HHH Ltd. of Greenville, ..... Respondent,

v.

Randall S. Hiller, Robert E. Hiller and Randall S. Hiller, P.A. .... Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Respondent's Motion for Order Granting Partial Relief Requested and To Dismiss Appellant's Issue on Appeal Number 3 and Memorandum of Respondent in Support of Its Motion for Order Granting Partial Relief Requested and To Dismiss Appellant's Issue on Appeal Number 3 in the above-referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 1<sup>st</sup> day of June, 2015, addressed as follows:

Randall S. Hiller  
Randall S. Hiller, P.A.  
850-B Wade Hampton Boulevard  
Greenville, SC 29609

Randy A. Skinner, Esq.  
300 North Main Street, Suite 201  
Greenville, SC 29601



John T. Crawford, Jr. (SC Bar # 69682)  
M. Stokely Holder (SC Bar # 73892)  
Kenison, Dudley & Crawford, LLC  
704 East McBee Avenue  
Greenville, SC 29601  
(864) 242-4988  
*Attorneys for Respondent*



KENISON, DUDLEY & CRAWFORD, LLC

A T T O R N E Y S A T L A W

KEVEN K. KENISON  
Practicing Attorney in South Carolina and Georgia

THOMAS E. DUDLEY, III  
Practicing Attorney in South Carolina and North Carolina

JOHN T. CRAWFORD, JR.  
Practicing Attorney in South Carolina

M. STOKELY HOLDER  
Practicing Attorney in South Carolina

TOWNES B. JOHNSON, III  
Practicing Attorney in South Carolina

F. LEE PRICKETT, III  
Practicing Attorney in South Carolina

JAMES C. BLAKELY, JR.  
of Counsel  
Practicing Attorney in South Carolina

June 1, 2015

Hon. Jenny Abbott Kitchings  
Clerk of Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: *HHH Ltd of Greenville, et al. vs. Randall S. Hiller, et al.*  
*Appeal from Greenville County*  
*Case No.: 2013-CP-23-5575*  
*Appellate Case No.: 2015-000159*

To Whom It May Concern:

Please find enclosed an original and six (6) copies of Respondent's Motion for Order Granting Partial Relief Requested and To Dismiss Appellant's Issue on Appeal Number 3 and Respondent's Memorandum in Support of its Motion for Order Granting Partial Relief Requested and To Dismiss Appellant's Issue on Appeal Number 3 with Certificate of Service in the above referenced matter, as well as our check in the sum of \$25.00 as and for the filing fee.

Thank you for your assistance in this matter and please do not hesitate to contact our office if you have any questions.

Very truly yours,

KENISON, DUDLEY & CRAWFORD, LLC

Laurie Warren  
Legal Assistant

/lkw

Enclosures

cc: Randy A. Skinner, Esq.  
Randall S. Hiller, Esq.

GREENVILLE  
704 East McBee Avenue ■ Greenville, South Carolina 29601  
Phone 864.242.4899 ■ Fax 864.242.4844

CHARLESTON  
534 B Oristo Ridge ■ Edisto Beach, South Carolina 29438  
Phone 843.869.1000

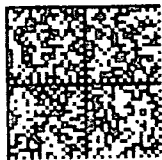
ATLANTA  
2775 Cruse Road ■ Suite 201 ■ Lawrenceville, Georgia 30044  
Phone 770.923.9609 ■ Fax 770.638.3239



**KENISON DUDLEY & CRAWFORD, LLC**

**A T T O R N E Y S A T L A W**

704 East McBee Avenue ■ Greenville, South Carolina 29601



UNITED STATES POSTAGE  
PITNEY BOWES  
\$ 005.950  
02 1P JUN 01 2015  
0001702233  
MAILED FROM ZIP CODE 29601

**RECEIVED**

JUN 05 2015

**SC Court of Appeals**

Hon. Jenny Abbott Kitchings  
Clerk of Court of Appeals  
1220 Senate Street  
Columbia, SC 29201