

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

Appeal from Richland County  
Joseph M. Strickland, Master-In-Equity  
Case No.: 2003-CP-40-6898  
Appellate Case No. 2015-000945

---

RECEIVED

JUN 19 2015

SC Court of Appeals

Shirley Hammer,

Respondent,

v.

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

Defendants,

Of Whom,

Howard Hammer is

Appellant.

---

**INITIAL BRIEF OF APPELLANT**

---

Thomas W. Bunch, II  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900  
Attorneys for Appellant Howard Hammer

June 17, 2015

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Statement of Issues of Appeal ..... iii

Statement of the Case ..... 1

Statement of Facts..... 3

Argument ..... 8

**I. The Lower Court erred in granting a charging lien when by Court Order Respondent’s judgments had been satisfied by a transfer of property. ....8**

A. The Lower Court erred in granting a charging lien after it had executed on property and there was no evidence presented that the execution was insufficient .....9

B. The Lower Court erred in granting a charging lien after it had executed on property valued at \$1,475,000.00 to satisfy judgments of \$335,168.76 .....9

C. The Lower Court erred in granting a charging lien after the South Carolina Supreme Court had affirmed the transfer of property in satisfaction of the judgments against Appellant ..10

**II. The Lower Court erred in granting a charging lien against Appellant in an undetermined amount. ....12**

**III. The Lower Court erred in making factual findings unsupported by any evidence in the record when respondent failed to support her motion by affidavit or deposition, and failed to present any evidence at the motion hearing. ....12**

**IV. The Lower Court erred in failing to compel the sale of the real property to HASCI, LLC after Respondent had agreed on the record in open court to do so.....14**

Conclusion ..... 15

**TABLE OF AUTHORITIES**

**Cases**

*Catawba Indian Nation v. State*, 407 S.C. 526, 756 S.E.2d 900 (2014).....11

*National Bank of Newberry v. Kinard*, 28 S.C. 101 (1888).....9

**Statutes**

S.C. Code Ann. § 15-39-10(c) (Rev. 2005).....2, 8

S.C. Code Ann. § 18-9-130(A)(2) .....1

S.C. Code Ann. § 33-44-504(a) (Rev. 2006).....12

**Rules**

Rule 43(k), SCRCP.....15

**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE LOWER COURT ERR IN GRANTING A CHARGING LIEN TO RESPONDENT WHEN BY COURT ORDER HER JUDGMENTS HAD BEEN SATISFIED BY A TRANSFER OF PROPERTY?**
  - A. DID THE LOWER COURT ERR IN GRANTING A CHARGING LIEN AFTER IT HAD EXECUTED ON PROPERTY AND THERE WAS NO EVIDENCE PRESENTED THAT THE EXECUTION WAS INSUFFICIENT?**
  - B. DID THE LOWER COURT ERR IN GRANTING A CHARGING LIEN AFTER IT HAD EXECUTED ON PROPERTY VALUED AT \$1,475,000.00 TO SATISFY JUDGMENTS OF \$335,168.76?**
  - C. DID THE LOWER COURT ERR IN GRANTING A CHARGING LIEN AFTER THE SOUTH CAROLINA SUPREME COURT HAD AFFIRMED THE TRANSFER OF PROPERTY IN SATISFACTION OF THE JUDGMENTS AGAINST APPELLANT?**
- II. DID THE LOWER COURT ERR IN GRANTING A CHARGING LIEN AGAINST APPELLANT IN AN UNDETERMINED AMOUNT?**
- III. DID THE LOWER COURT ERR IN MAKING FACTUAL FINDINGS UNSUPPORTED BY ANY EVIDENCE IN THE RECORD BECAUSE RESPONDENT FAILED TO SUPPORT HER MOTION BY AFFIDAVIT OR DEPOSITION, AND FAILED TO PRESENT ANY EVIDENCE AT THE MOTION HEARING?**
- IV. DID THE LOWER COURT ERR IN FAILING TO COMPEL THE SALE OF THE REAL PROPERTY TO HASCI, LLC AFTER RESPONDENT HAD AGREED ON THE RECORD IN OPEN COURT TO DO SO?**

## STATEMENT OF THE CASE

This case commenced by the filing of a Summons and Complaint on November 13, 2013, and was brought by the Respondent to foreclose on certain real and personal property interests of Howard Hammer and 1634 Main, L.P. who were judgment debtors of Respondent Shirley Hammer. (R. pp. \_\_ - \_\_, Summons and Complaint). This case will be referred to as the "Foreclosure Case," as distinguished from two other cases in supplementary proceedings described herein. The Complaint requested foreclosure sales of defendants' properties even though Respondent did not have a judgment lien against any defendants except Howard Hammer and 1634 Main, L.P. Respondent did not initially seek a charging lien. The Complaint in the Foreclosure Case alleged judgments in the original amounts of \$190,744.30 against Howard Hammer and \$127,032.87 against 1634 Main, L.P. from case numbers 2009-CP-40-05911 and 2010-CP-40-02889 (the "Supplementary Proceedings Cases").

The Defendants Howard Hammer, 1634 Main, LP, SH5, LLC, SH4, LLC, and SH3, LLC (the "Howard Hammer Defendants") initially moved to dismiss the Complaint in the Foreclosure Case for insufficiency of service of process. However, the Howard Hammer Defendants thereafter accepted service of the Summons and Complaint and filed an Answer on January 6, 2014. (R. \_\_, Answer). The Answer asserted a general denial, and further asserted that the judgments were on appeal so the Respondent was obligated under S.C. Code Ann. § 18-9-130(A)(2) to post bond in order to proceed with any sale of property. The South Carolina Supreme Court later affirmed the judgments in the Supplementary Proceedings cases in 2014-MO-007 filed March 19, 2014. (R. \_\_)

Prior to filing the Foreclosure Case, Respondent had initiated supplementary proceedings to enforce her judgments in the Supplementary Proceedings cases. On January 21, 2014, while this Foreclosure Case was pending, the Honorable Joseph M. Strickland issued an “Order Directing Transfer of Real Property to Satisfy Judgments” in the Supplementary Proceedings Cases. (R. \_\_ - \_\_).

The order transferring property to satisfy judgments executed on and directly transferred to Respondent real property located at 1634 Main St. in Columbia and also executed on and transferred the entity 1634 Main, L.P., including all of Mr. Hammer’s ownership interest in the transferred property. The order arose out of a series of hearings in the supplementary proceedings, the most recent of which occurred on January 9, 2014. At the January 9 hearing, the lower court stated it was transferring the property in satisfaction of all amounts owed and directed Respondent to dismiss the Foreclosure Case. Respondent’s counsel affirmed to the lower court that the Foreclosure Case would be dismissed upon entry of an order transferring the property to satisfy the judgments. (R. \_\_ - \_\_, the January 9 hearing transcript). The South Carolina Supreme Court affirmed the execution against the property to satisfy the judgments under S. C. Code Ann. 15-39-10(c) (Rev. 2005) (“Kinds of Execution”) in opinion number 2014-MO-045, filed November 6, 2014. (R. \_\_ - \_\_.)

Despite Respondent’s counsel’s affirmation at the January 9, 2014 hearing and the Supreme Court opinion affirming the property transfer in satisfaction of the judgments, Respondent moved for a charging lien against the interests of Howard Hammer in the Foreclosure Case. (R. \_\_ - \_\_, motion filed December 18, 2014 and amended on December 23, 2014). On January 2, 2015, the Howard Hammer Defendants moved to

dismiss the Foreclosure Complaint on the ground that the judgments had been satisfied. (R. \_\_\_ - \_\_\_). On January 14, 2015, the Howard Hammer Defendants responded to the motion for charging lien (R. \_\_\_ - \_\_\_) and moved for Judge Strickland to disqualify himself from hearing the case on the basis that he was not impartial.<sup>1</sup> (R. \_\_\_ - \_\_\_)

Judge Strickland ruled from the bench that he would not disqualify himself, indicated that a written order would follow, but never issued the written order. He granted the motion for charging lien against Mr. Hammer by Order dated March 16, 2015. (R. \_\_\_ - \_\_\_). Howard Hammer moved for reconsideration of this order on March 26, 2015, and also moved to compel the sale of 1634 Main St. property to HASCI, LLC in accordance with an agreement placed on the record at hearings on January 16 and 27, 2015, held before Judge Strickland in the Supplementary Proceedings Cases. (R. \_\_\_ - \_\_\_). The lower court denied both motions on March 31, 2015. (R. \_\_\_ - \_\_\_). On April 30, 2015, Mr. Hammer appealed the orders of March 16 and 31.<sup>2</sup>

### **STATEMENT OF FACTS**

In the January 21, 2014 Order Directing Transfer of Real Property to Satisfy Judgments (“the January 21 Order”), the judgments including interest were set at \$202,064 against Howard Hammer and \$133,104.23 against 1634 Main. L.P., for a total of \$335,168.76. In addition, the lower Court awarded \$55,385.70 in sanctions against Mr. Hammer. In 2014-MO-045, the South Carolina Supreme Court affirmed the execution against and transfer of property in satisfaction of judgments, but reversed the sanctions award without prejudice. The January 21 Order directed Mrs. Hammer to

---

<sup>1</sup> At the same time, they also moved that Judge Strickland also disqualify himself in the Supplementary Proceedings Cases.

<sup>2</sup> There is no order of denying the motion to disqualify at the present time; therefore, no appeal is presented as to that pending motion.

conduct a commercially reasonable sale of the transferred property, escrow proceeds above the amount of the judgments plus her costs of sale and marketing, then account to the lower court for the excess proceeds.

After acquiring the real property located at 1634 Main St. by the January 21 Order, Mrs. Hammer secured an appraisal of that property in the amount of \$1,475,000.00. (R. \_\_\_ - \_\_\_, Summary of Appraisal) Thus, the transferred property appraised at approximately \$1,140,000 more than the judgments (\$1,475,000 – \$335,168.76), the actual appraised value of the property being more than four times the amount of the judgments.<sup>3</sup> In addition, through the time of the hearing on her charging lien motion, Respondent had been collecting rent from tenants at 1634 Main St. since she acquired it. The monthly rent roll is approximately \$10,000, so Mrs. Hammer should have accumulated fourteen months of rent payments of approximately \$140,000 through the time of the hearing to either apply to her judgments or apply to expenses of the sale of the property. Even though Mrs. Hammer presented no evidence of her collection of rents that should be applied to her judgments or sales' expenses, the lower court *sua sponte* determined improperly that Mr. Hammer did not contend that Mrs. Hammer had received any money payable toward her judgments.

---

<sup>3</sup> At the time of the orders now on appeal in this Foreclosure Case, Mrs. Hammer had filed a another motion for sanctions in the Supplementary Proceedings, but that motion had not been heard and no sanctions were in effect which could have added to the judgments against Mr. Hammer. Later, on April 24, 2015, Judge Strickland granted the new motion for sanctions and those were paid in full on June 8, 2015 as required by the lower court. Therefore, aside from the earlier, but now extinguished, \$202,064.53 judgments, Mrs. Hammer holds no judgments against Mr. Hammer. It is the enforceability of these former judgments which is part of this appeal.

Neither the motion for charging lien, nor the amended motion, were supported by an affidavit or other admissible evidence. Respondent did not present any testimony or documentary evidence at the hearing on the motion. Further, Respondent did not present proof of any additional judgments in either her motion for a charging lien or at the hearing on her motion. Respondent did not submit any evidence that the transfer of property in the January 21 Order was insufficient to satisfy the judgments. Mrs. Hammer did not present any evidence that the transfer was unproductive. To the contrary, in an effort to bring both the Foreclosure Case and the Supplementary Proceedings Cases to a conclusion, HASCI, LLC agreed to purchase the property for \$525,000, an amount well above the judgments and any recoverable costs Mrs. Hammer could reasonably incur for the sale of the property.<sup>4</sup> Further, for purposes of this sale, Mr. Hammer had agreed that the purchase by HASCI would be commercially reasonable. (R. \_\_\_ - \_\_\_, Transcript of January 27, 2015 hearing; R. \_\_\_, January 26 letter). After Respondent stated in her motion for a charging lien that her claim against Mr. Hammer was for approximately \$500,000, Respondent's counsel stipulated that payment of the \$525,000 would satisfy all claims of Respondent against Mr. Hammer.

**THE COURT:** Now, what's on the table, does that include everything? Is this an omnibus settlement, takes care of the judgments, takes care of the sanctions, everything else?

**MS. BALLARD:** Everything else.

**THE COURT:** Everything's taken care of?

**MS. BALLARD:** Yes.

---

<sup>4</sup> Although she did not present any admissible evidence in her motion or at the hearing on the motion, Mrs. Hammer did assert in her motion that the judgments and the amounts allowed in the January 21 Order totaled approximately \$500,000. (R. \_\_\_\_).

(R. \_\_\_ - \_\_\_, January 27, 2015 Tr., p. 21, ll. 2-8).

Although there were and are no judgments held by Respondent against Mr. Hammer, and although Respondent did not present any evidence in support of her motion for a charging lien, the lower court granted the motion. However, the order left the amount thereof indefinite and subject to no parameters or means of satisfaction. After the order granting the charging lien was issued by the lower court, Respondent's counsel filed a document which purported to be an order in which Respondent claimed new amounts due for a total of \$1,120,796.49, or \$785,627.73 more than the original, but already satisfied, judgments. (R. \_\_\_, Charging Order of Shirley Hammer against Howard Hammer).

In granting the motion for a charging lien, the lower court failed to recognize its own directives from the bench at the January 9, 2014 hearing, its January 21 Order, and the certifications of Respondent's counsel that the judgments would be and were satisfied by the January 21 Order. The directive and representations are quoted from the January 9 transcript, and Mrs. Hammer's motions for the charging lien:

**January 9 Directives of the Court:**

**THE COURT:** Let's make the record clear as well. The transfer of the property would **satisfy the judgment ...**

**MS. WEISSENSTEIN:** It would.

**THE COURT:** in the case and this would all be over.

(R. \_\_\_ - \_\_\_, January 9 Tr., p. 11, ll. 8-12). (emphasis added)

**THE COURT:** And also point out that once this transfer is complete or consummated, all the judgments will be satisfied, the judgments that were cited here today. Of course, that's ... **your clients need to go ahead and have them marked satisfied after the transfer is consummated.**

(R. \_\_\_ - \_\_\_, January 9 Tr. p. 96, ll. 8-13). (emphasis added)

**Certifications and Representations of Respondent's Counsel**

So what we would show Your Honor is right now, today, you can order that either they transfer the title to that property to the judgment holder, Mrs. Hammer, or you can order that that property be executed for judicial sale by the sheriff's department. And we're okay with either one of those options, Your Honor. The ... if that were the case, **then the foreclosure matter that has been filed, but the answer period has not even lapsed at this point yet, can be dismissed because we don't need anything else.**

(R. \_\_\_ - \_\_\_, January 9 Tr. 29, ll. 14-24). (emphasis added)

... we've taken the step to go ahead and try to foreclose against other properties. In order to do that we had to file a foreclosure matter because there are other judgment creditors out there against these other properties and we needed to protect them. Now, again, **all that would be rendered moot and dismissed if we can satisfy the judgments in this action** . . . .

(R. \_\_\_ - \_\_\_, January 9 Tr. 49, ll. 2-10). (emphasis added)

... these matters [the Supplementary Proceedings Cases] were filed first, that the rule to show cause was for purposes of finding property upon which there can be execution and that if these matters are resolved **then that foreclosure matter will be rendered moot and dismissed by the plaintiff.**

(R. \_\_\_ - \_\_\_, January 9 Tr. 73, ll. 1-6). (emphasis added)

**Certification in Respondent's Motion for Charging Lien**

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.

(R.    , Amended Motion for Charging Lien).

**The January 21 Order**

Counsel for [Shirley Hammer] noted that the foreclosure matter would be rendered moot if these supplementary proceedings resulted in an execution against property owned by the judgment debtors. . . .

(R. \_\_, January 21 Order, p. 6).

The lower court then executed on the property under S.C. Code Ann. § 15-39-10(c), and that execution was affirmed on appeal, thus rendering moot this Foreclosure Case.

**ARGUMENT**

**I. THE LOWER COURT ERRED IN GRANTING A CHARGING LIEN WHEN BY COURT ORDER RESPONDENT'S JUDGMENTS HAD BEEN SATISFIED BY A TRANSFER OF PROPERTY.**

On January 21, 2014 in the Supplementary Proceedings Cases, the lower court issued an “**ORDER DIRECTING TRANSFER OF REAL PROPERTY TO SATISFY JUDGMENTS.**” (emphasis in original) This order transferred to Respondent real property located at 1634 Main St. in Columbia and the entity 1634 Main, L.P., including all of Mr. Hammer’s ownership interest in the transferred properties. The Order stopped interest from accruing on the judgments against Mr. Hammer. The order was unconditional. Nothing in the order indicates that the judgments were conditionally satisfied. Nothing can be read into the order to give Respondent authority to continue with other litigation to collect the judgments against Howard Hammer and 1634 Main St. The January 21 Order specifically noted that the Foreclosure Case was rendered moot by the entry of the order. (R. \_\_.) The judgments were absolutely satisfied by the

January 21 Order which was affirmed on appeal by the Supreme Court. The plain language of the January 21 Order controls and the lower court erred in failing to dismiss the Foreclosure Case and in granting the charging lien.

**A. THE LOWER COURT ERRED IN GRANTING A CHARGING LIEN AFTER IT HAD EXECUTED ON PROPERTY AND THERE WAS NO EVIDENCE PRESENTED THAT THE EXECUTION WAS INSUFFICIENT.**

*National Bank of Newberry v. Kinard*, 28 S.C. 101 (1888), held that it is a presumption of law that a levy is a satisfaction of judgment, unless it be shown that it was insufficient, or the proceeds were applied to some other lien, or it is otherwise unproductive, without fault of the judgment creditor. Since the lower court had executed on the 1634 Main Street property by its January 21, 2014 Order, the judgments are deemed satisfied absent proof on the above factors, not any of which was presented.<sup>5</sup>

In the absence of any proof from Respondent that the property which was executed upon by the lower court was insufficient or unproductive (through no fault of the respondent), the judgments are presumed to be satisfied by the transfer of property, and it was error to grant a charging lien.

**B. THE LOWER COURT ERRED IN GRANTING A CHARGING LIEN AFTER IT HAD EXECUTED ON PROPERTY VALUED AT \$1,475,000.00 TO SATISFY JUDGMENTS OF \$335,168.76.**

Mrs. Hammer argued below that she was entitled to payment of the \$335,168.76 in judgments against Howard Hammer and 1634 Main, L.P. plus

---

<sup>5</sup> In Respondent's motion for the charging lien, she incorrectly blamed Mr. Hammer for preventing the sale of the property when she entered into a contract in anticipation of a speedy decision by the Supreme Court to affirm the transfer of property. The lower court correctly issued no finding on this false accusation.

additional sums for costs of sale and marketing of the property. She represented to the lower court that the amount of both Mr. Hammer's and 1634 Main's judgments, adding in other costs provided for in the January 21 Order, was approximately \$500,000. (R. \_\_, Amended Motion for Charging Lien, n. \_\_.) Assuming arguendo the accuracy of Respondent's representation, which is certainly not going to be understated, the property still has an appraised value of three times the amount to which Respondent claimed she would be entitled in her motion.

Having already transferred property valued at three times the amount claimed to be owed to Respondent in her motion, it was error to grant the charging lien.

**C. THE LOWER COURT ERRED IN GRANTING A CHARGING LIEN AFTER THE SOUTH CAROLINA SUPREME COURT HAD AFFIRMED THE TRANSFER OF PROPERTY IN SATISFACTION OF THE JUDGMENTS AGAINST APPELLANT.**

Appellant Howard Hammer and 1634 Main, L.P. appealed the authority of the lower court to make the transfer of property in satisfaction of the judgments. In 2014-MO-045, the South Carolina Supreme Court stated: "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.**" (emphasis added) The Supreme Court affirmed the transfer in satisfaction of the judgments. Respondent did not appeal any matters in the January 21 Order which would include the transfers "to satisfy judgments," and she cannot now claim that the judgments are unsatisfied. The January 21 Order, as affirmed by the Supreme Court, is a bar under the doctrines

of *res judicata* and collateral estoppel to Respondent's current assertion that the judgments were not satisfied by the transfer of property. *See, Catawba Indian Nation v. State*, 407 S.C. 526, 756 S.E.2d 900 (2014).

Respondent is precluded from contending that the property transfer was not made in satisfaction of the judgments as that issue has already been decided between the parties. The issue was clearly contemplated and decided when the lower court transferred the property as indicated in the quotes in the Statement of the Case, including:

**THE COURT: Let's make the record clear as well. The transfer of the property would satisfy the judgment ...**

**MS. WEISSENSTEIN:** It would.

**THE COURT:** ... in the case and this would all be over.

(R. \_\_ - \_\_, January 9 Tr., p. 11, ll. 8-12). (emphasis added)

**THE COURT:** And also point out that once this transfer is complete or consummated, all the judgments will be satisfied, the judgments that were cited here today. Of course, that's ... **your clients need to go ahead and have them marked satisfied after the transfer is consummated.**

(R. \_\_ - \_\_, January 9 Tr. p. 96, ll. 8-13). (emphasis added)

The issue of satisfaction of the judgments was clearly before the courts among the parties to this appeal, and it was clearly decided by the Order Directing Transfer of Real Property to Satisfy Judgments. It was before, and it was decided by, the Supreme Court in its decision. Therefore, Respondent is barred from proceeding with the Foreclosure Case. The charging lien motion should have been denied, and the case should have been dismissed.

**II. THE LOWER COURT ERRED IN GRANTING A CHARGING LIEN AGAINST APPELLANT IN AN UNDETERMINED AMOUNT.**

A charging lien against a limited liability member's interest may only be granted "to satisfy the judgment." S.C. Code Ann § 33-44-504(a) (Rev. 2006) states:

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.

Not only have the judgments against Mr. Hammer been satisfied as set forth in Argument I, but moreover the charging lien is defective for failing to state its amount or limitations.

The error of the lower court and its effect are demonstrated by Respondent's abusive conduct in filing with the Court a document titled "**CHARGING ORDER OF SHIRLEY HAMMER AGAINST HOWARD HAMMER**" (emphasis in original) wherein Respondent's counsel filed an "Order" *executed by counsel* asserting a charging lien against Mr. Hammer of over ONE MILLION DOLLARS - \$1,120,796.49 to be precise and \$785,627.73 more than the amount of the satisfied judgments. R. \_\_\_.

**III. THE LOWER COURT ERRED IN MAKING FACTUAL FINDINGS UNSUPPORTED BY ANY EVIDENCE IN THE RECORD WHEN RESPONDENT FAILED TO SUPPORT HER MOTION BY AFFIDAVIT OR DEPOSITION, AND FAILED TO PRESENT ANY EVIDENCE AT THE MOTION HEARING.**

Respondent's motion for a charging lien was not supported by or filed with any affidavits, depositions, or other sworn testimony. Respondent failed to offer

any testimony at the hearing on her motions. Respondent did not introduce any documents into evidence. Instead, Respondent's counsel made bare conclusory arguments which the lower court adopted as findings in its order, or in some cases the lower court simply made *sua sponte* findings.

Appellant contests the following findings as being either unproven by any evidence or inaccurate:

- Mr. Hammer was the general partner of 1634 Main, L.P. by virtue of his sole ownership of SH5, LLC.

This finding is an inaccurate statement of the law, and inconsistent with the January 21 Order in which the Court found SH5, LLC to be the general partner of 1634 Main, L.P.

- The judgments were conditionally satisfied.

The judgments against Mr. Hammer and 1634 Main, L.P. were unconditionally satisfied at the request of Respondent by the January 21 Order and affirmed by the Supreme Court.

- Despite Mrs. Hammer's diligent efforts, as sale has not been concluded, so she has not yet received any funds to satisfy either the earlier judgments or the judgment entered January 21, 2014.

Mrs. Hammer has not made diligent efforts to sell the building, and there was no evidence presented to the Court of her efforts.

- Neither Mr. Hammer nor any other party asserts that Mrs. Hammer has received any money toward her judgments against Mr. Hammer and 1634 Main, L.P.

At the time of hearing Respondent's motion, Mrs. Hammer had received approximately \$140,000 in rental income to apply to her judgments, and that amount is increasing at approximately \$10,000 per month.

The unsupported findings of the lower court should be stricken and removed from order on appeal, and the order should be reversed.

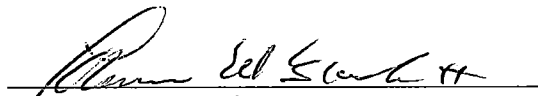
**IV. THE LOWER COURT ERRED IN FAILING TO COMPEL THE SALE OF THE REAL PROPERTY TO HASCI, LLC AFTER RESPONDENT HAD AGREED ON THE RECORD IN OPEN COURT TO DO SO.**

At hearings on January 16 and 27, 2015, Respondent, through counsel and in Respondent's presence, agreed in open court and on the record to convey the real property at 1634 Main St. to HASCI, LLC. The sale price was \$525,000.00, and according to her counsel, that amount would have satisfied all amounts owed Respondent, and was \$25,000 above the amount claimed by Respondent in her motion for the charging lien. (R. \_\_ - \_\_, Transcripts of January 16 and 27, 2015 hearing, and R. \_\_\_\_, Amended Motion for Charging Lien). Documents consistent with the parties' agreement were delivered by Mr. Hammer's counsel to Respondent's counsel. (R. \_\_\_\_, January 26, 2015 letter accepting offer, \_\_\_\_, February 9, 2015 e-mail including signed settlement agreement, contract of sale, and quit claims deeds, \_\_\_\_, February 17, 2015 e-mail including revised settlement agreement ).

Respondent refused to complete the sale. The lower court refused to compel the sale and denied Mr. Hammer's motion for same. That denial was error and this court should order that the sale be completed in accordance with Respondent's stipulation agreed to in open court and placed on the record. Rule 43(k), SCRPC.

**CONCLUSION**

The Order granting the charging lien should be reversed and the Foreclose Case should be dismissed.

  
Thomas W. Bunch, II  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900  
Attorneys for Appellant Howard Hammer

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from Richland County  
Joseph M. Strickland, Master-In-Equity  
Case No.: 2003-CP-40-6898  
Appellate Case No. 2015-000945

RECEIVED

JUN 19 2015

SC Court of Appeals

Shirley Hammer,

Respondent,

v.

Howard Hammer; 1634 Main, LP; Alvin Hammer; SH5, LLC; SH4, LLC; SH3, LLC;  
HASCI, LLC; D&M Chateau, LLC; Heart of Columbia, 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  
DeVile Association, Inc. and/or Chateau DeVile Horizontal Property Regime; David H.,  
a minor under the age of 14,

Defendants,

Of Whom,

Howard Hammer is

Appellant.

---

**PROOF OF SERVICE**

---

I certify that I have served Appellant's Initial Brief and Appellant's Designation of Matter to be Included in the Record on Appeal upon opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on **June 17, 2015** addressed as follows:

Desa Ballard (**for Plaintiff**)  
Law Offices of Desa Ballard  
Post Office Box 6338  
West Columbia, SC 29171

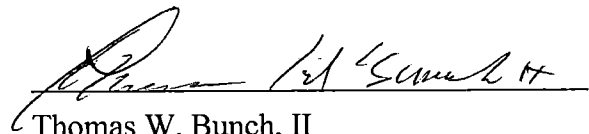
Keith M. Babcock, Esquire (for Alvin Hammer, Stanley Hammer, HASCI, LLC, Heart of Columbia, Eleanor Hammer)  
Lewis, Babcock & Griffin, LLP  
Post Office Box 11208  
Columbia, SC 29211

Arthur K. Aiken, Esquire  
Aiken & Hightower  
2231 Devine Street, Suite 201  
Columbia, SC 29205

Matthew Modica, Esquire (for Department of Treasury – IRS)  
Assistant United States Attorney  
151 Meeting Street, Suite 200  
Charleston, SC 29402

Stephanie Trotter, Esquire (for Chateau DeVille Association and Chateau DeVille Horizontal Property Regime)  
McCabe Trotter & Beverly, PC  
PO Box 212069  
Columbia, SC 29221

John D. Elliott, Esquire (for David H.)  
PO Box 607  
Columbia, SC 29202



Thomas W. Bunch, II  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900

June 17, 2015



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.  
COLUMBIA, SOUTH CAROLINA

**RECEIVED**

JUN 19 2015

SC Court of Appeals

June 17, 2015

**Thomas W. Bunch, II**  
1901 MAIN STREET, SUITE 1200  
POST OFFICE BOX 944  
COLUMBIA, SOUTH CAROLINA 29202

PH  
(803) 779-8900 | (803) 227-1103 *direct*

FAX  
(803) 744-1545

tbunch@RobinsonLaw.com

The Honorable Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**Re: Shirley Hammer vs. Howard Hammer, et al.**  
**Richland County Case No. 2013-CP-40-06898**  
**Appellate Case No. 2015-000945**  
**Our File No. 31141-0001**

Dear Ms. Kitchings:

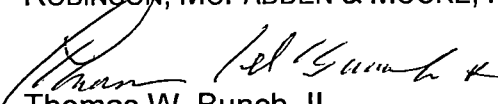
Enclosed please find the original and one copy of Appellant's Initial Brief and Appellant's Designation of Matter to Be Included in the Record on Appeal and Proof of Service in the above-referenced case. Please file these documents and return a clocked copy in the envelope provided.

By copy of this letter, I am serving all counsel of record.

Thank you for your attention to this matter.

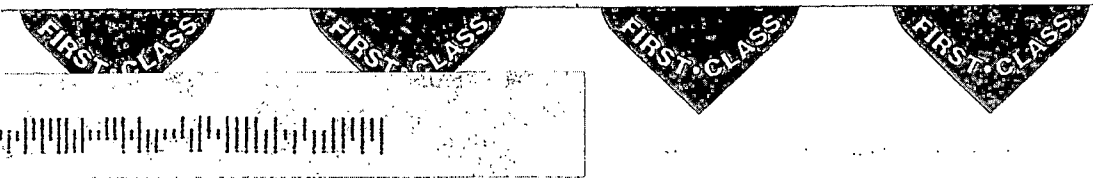
Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.

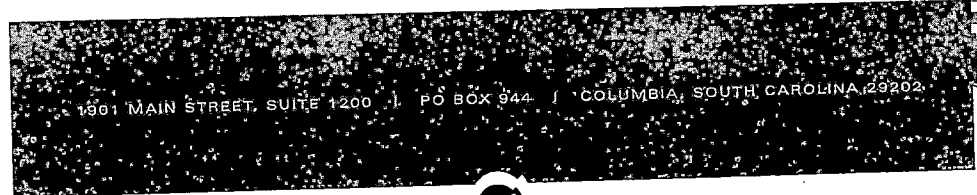
  
Thomas W. Bunch, II

TWB:aelw  
Enclosures

cc: (w/enclosures)  
Desa Ballard, Esquire  
Keith M. Babcock, Esquire  
Arthur K. Aiken, Esquire  
Matthew Modica, Esquire  
Stephanie Trotter, Esquire  
John D. Elliott, Esquire



neopost<sup>TM</sup> FIRST-CLASS MAIL  
06/17/2015  
**US POSTAGE** \$02.96<sup>00</sup>  
ZIP 29201  
041L11219729



AMW



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**First Class Mail**  
**First Class Mail**

**RECEIVED**  
JUN 19 2015  
SC Court of Appeals

