

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. 2015-000945(2)

RECEIVED

JUL 15 2015

SC Court of Appeals

Shirley Hammer,

Respondent,

v.

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

Defendants,

Of Whom

Howard Hammer is

Appellant.

MEMORANDUM OF RESPONDENT SHIRLEY HAMMER

Respondent Shirley Hammer submits this memorandum in response to the letter from the Clerk of Court dated July 10, 2015. The background of this case is set forth in detail in Shirley's Memorandum of Respondent Shirley Hammer and Motion to Dismiss in Appellate Case No. 2015-000835 filed on May 6, 2015, which includes exhibits. She does not repeat it here verbatim, with exhibits, since the Court has been overwhelmed with paperwork in these cases already.

BACKGROUND

Respondent Shirley Hammer (hereafter "Shirley") incorporates the background set forth in her Memorandum in Appellate Case No. 2015-000835. The following is a very brief summary of the background, as it is relevant to the instant appeal.

Shirley's ex-husband Howard Hammer (hereafter "Howard") filed two (2) lawsuits in circuit court against Shirley. Both were dismissed, and Shirley obtained judgments (in 2012 and 2013) on her counterclaims for abuse of process against Howard and an entity previously controlled by him (1634 Main LP). The judgements were affirmed by the Supreme Court.

As a result of supplemental proceedings against Howard, title to certain real property and entities owned by Howard were transferred¹ to Shirley to sell, for the purpose of generating funds to satisfy her judgments. The sale of the real property has not yet been consummated, but an auction is scheduled for later this month. Shirley's judgments against Howard remain unsatisfied.

While the supplemental proceedings were pending, Shirley initiated this foreclosure action, seeking to foreclose on (unexempt) 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.

Shirley's motion for a charging order against Howard was granted, and the current appeal is an appeal by Howard of the charging order. We are advised by Keith Babcock, counsel for the dismissed parties, that one of the entities in which Howard owns a percentage interest, HASCI, LLC, sold a piece of real estate on Assembly Street in June, 2015 for a large sum. The charging order likely prevents HASCI, LLC from disbursing any net sales proceeds to Howard for his small

¹ Transfer was effected by order of Master In Equity Joseph M. Strickland by order dated January 21, 2014. Judge Strickland's order has been affirmed by the Supreme Court.

interest in the company until Shirley's judgments are satisfied. Mr. Babcock has filed an appeal from the charging order as well².

The foreclosure action remains pending against Howard Hammer. So, the order on appeal is not a final order pursuant to S.C.Code Ann. Section 14-3-330(a). The order is not otherwise immediately appealable under any statute or rule. Any appeal from the charging order can be appealed, if at all, after final judgment in the foreclosure action, should it proceed to that point. It likely will not.

Moreover, until the real property which was transferred to Shirley by Judge Strickland is actually sold, it is unknown whether it will be necessary for Shirley to foreclose her charging order against Howard. If the sale of the real property nets sufficient funds to Shirley to satisfy all judgments and other funds due her from Howard, it will not be necessary for her to seek additional funds through the charging order issued in this case. In that event, Shirley will likely be able to dismiss the foreclosure action and the charging order will be nullified. At this point, the efficacy of the charging order simply prevents distribution of the funds that represent Howard's distributional share of HASCI, LLC (if any) until the foreclosure action is finalized. Shirley hopes that the sale of the real property will make enforcement of the charging order unnecessary and the foreclosure action can be dismissed. We do not know that yet.

The status of this case is an example of the very reason why the appellate courts rarely undertake reviews of interlocutory orders. There is a significant possibility that the questions being asserted by Howard on appeal will never have to be answered, because Shirley may be made whole from the sales proceeds of the real property transferred to her. Howard's appeal here is more of

² Mr. Babcock's appeal is Appellate Case No. 2015-000835. A motion to dismiss that appeal is also pending. Appellants did not timely file a response to the Motion to Dismiss that appeal.

the same frivolous litigation that he has engaged in for years against Shirley (and others). This Court need not hear his appeal at this time.

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.

Shirley reserves the right to file an initial respondent's brief in this appeal if the appeal is not dismissed or withdrawn.



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ATTORNEY FOR RESPONDENT
SHIRLEY HAMMER

July 15, 2015.

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Defendants,

Of Whom,

Howard Hammer is

Appellant.

I an employee of Ballard & Watson, Attorneys at Law certify that I have served the **Memorandum of Respondent Shirley Hammer** on counsel for Howard Hammer depositing a copy of it in the United States Mail, postage prepaid, on July 14, 2015, addressed as follows:

Thomas W. Bunch, II, Esquire
Robinson McFadden & Moore, PC
Post Office Box 944
Columbia South Carolina 29202

July 14, 2015


Mara T. Ballard, CFE/CMA



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
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Tuesday, July 14, 2015

Via U.S. Mail

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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JUL 15 2015

SC Court of Appeals

Re: *Hammer v Howard et al Appeal #2015-000945*
Case No: 2015-000945

Dear Ms. Kitchings:

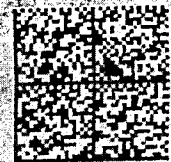
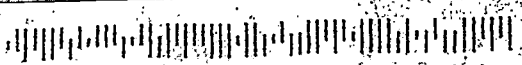
Please find enclosed for filing an original and seven (7) copies of Respondent Shirley Hammer's Memorandum as requested by the Court of Appeals by letter of the Honorable V. Claire Allen on July 10, 2015. Please return a file stamped copy of this memorandum to us in the enclosed self-addressed, stamped envelope.


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: Thomas W. Bunch, II, Esquire



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SC Court of Appeals

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To:
 Honorable Jenny Abbott Kitchings
 South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201