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PERSISTENT. UNWAVERING.

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August 18, 2015

*Via U.S. Mail*

Honorable Daniel Shearouse  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**

AUG 19 2015

**S.C. Supreme Court**

Re: *Hammer v Hammer et. al.*  
Appellate Case No: 2015-000945

Dear Mr. Shearouse:

Enclosed please find for filing the original and seven (7) copies of the **Supplemental Motion to Dismiss in Whole or in Part** in the above-referenced matter. Please return a filed-stamped copy to us in the enclosed self-addressed, stamped envelope. Enclosed with this letter is a check for \$25.00 for the cost of this motion.

If you have any questions or concerns, please do not hesitate to contact me or Desa Ballard. With warm personal regards, I am,

Sincerely yours,

Beth Cogan, Paralegal  
[beth@desaballard.com](mailto:beth@desaballard.com)

cc: Thomas W. Bunch, II, Esquire (via U.S. mail)  
Shirley Hammer (via email)

RECEIVED

AUG 19 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM RICHLAND COUNTY  
Joseph M. Strickland, Master-in-Equity  
Case No. 2013-CP-40-6898  
Appellate Tracking No. 2015-000945(2)

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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

Howard Hammer is

Appellant.

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SUPPLEMENTAL MOTION TO DISMISS  
IN WHOLE OR IN PART

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Respondent Shirley Hammer (hereafter "Shirley") files this supplemental motion to dismiss, in whole or in part, the instant appeal on the merits<sup>1</sup>. Howard Hammer (hereafter "Howard"), through his counsel Tommy Bunch, is claiming this appeal prevents Shirley from conveying clear title to the property, the sale of which is scheduled to close (with a third purchaser)

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<sup>1</sup> The Motion to Dismiss which is currently pending seeks dismissal on the basis that the appeal is not from a final judgment, and therefore not appealable pursuant to S.C. Code Ann. Section 14-3-330.

in mid-September. The purpose of Howard's efforts to stop the sale, of course, is to delay (or prevent) the satisfaction of judgments dating to 2012 that Shirley holds against him and an entity previously controlled by him.

In support of her supplemental motion, Shirley will show:

1. Shirley was awarded certain real and personal property by Master-in-Equity Joseph M. Strickland by order dated January 21, 2014 in Case No. 2009-CP-40-05911 and Case No. 2020-CP-40-2889. The order instructed her to market and sell the real property in a commercially-reasonable manner and apply the sales proceeds to the judgments she held against Howard Hammer and 1634 Main LP, and to payment to her of related costs. That order was affirmed by this Court (as to all issues except sanctions) by Memorandum Opinion No. 2014-MO-045 issued on November 6, 2014.
2. During the pendency of the appeal of Judge Strickland's January 21, 2014 order, the initial contracted purchaser backed out. After several subsequent attempts at a private sale of the property, Shirley elected to auction the property. Shirley obtained an order from Judge Strickland approving the minimum sales price<sup>2</sup> and auction to be held on May 13, 2015.
3. A single party submitted a bid for the minimum amount at the auction on May 13, 2015, and signed a sales contract at that price on the same date.
4. The bidder later refused to consummate the sale unless Shirley agreed to indemnify him from any suits that Howard might file against him after he bought the property. The sale transaction did not proceed and the bidder was released from the contract.

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<sup>2</sup> The minimum sales price was set at \$837,000, the last sales price a private purchaser had agreed upon (but later refused to close). The existence of the planned auction was aggressively marketed by McGee Auction Company.

5. A second auction<sup>3</sup> was held on July 22, 2015 with a minimum price of \$847,000. There were no bidders<sup>4</sup>.
6. Subsequent to the second auction, Shirley entered into a contract to sell the real property to yet another purchaser at a price of \$825,000. Closing is scheduled for mid-September, 2015.
7. In a meeting with the purchaser<sup>5</sup> on August 12, 2015, Bunch warned and advised the purchaser that Shirley cannot convey clear title to the property because of an issue he (Bunch) has raised in the instant appeal
8. Bunch's apparent purpose for stating as much was to both scare off the purchaser and inhibit the purchaser's ability to obtain title insurance for the transaction.

#### THE INSTANT APPEAL<sup>6</sup>

9. The instant case is a foreclosure action brought by Shirley in 2013 as a secondary method of seeking to collect her judgments against Howard and 1634 Main LP. Numerous parties were dismissed from the action by order dated March 16, 2015. **Exhibit A.**
10. On the same date, Judge Strickland issued a charging order in the instant case granting Shirley a charging order pursuant to S.C. Code Ann. § 33-44-504 against Howard's

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<sup>3</sup> The second auction was also handled by McGee, with similar aggressive marketing beforehand.

<sup>4</sup> The minimum bid was increased by \$10,000 in an attempt to obtain sufficient funds to make Shirley whole, and prevent the necessity of her seeking to collect additional funds via the charging order she obtained in the instant matter, after payment of Howard's IRS lien and unpaid real property taxes due to Richland County. Shirley's intent was to recover sufficient funds to conclude this litigation without having to seek additional recovery from Howard's assets, thereby finally bringing these proceedings to a conclusion.

<sup>5</sup> Also present at the meeting was Charlie M. "Bru" Pender, Esquire, who had agreed to provide the purchaser with title insurance through First American Title Insurance Company.

<sup>6</sup> Howard (through Bunch) raises four (4) issues in the instant appeal. Only Issue IV, which Bunch asserts prevents Shirley from being able to convey clear title, is addressed here. The remaining issues, which do not affect the proposed sale, can be heard at a later date.

distributional interest in HASCI, LLC and another LLC, both named as defendants in the action. **Exhibit B.**

11. The dismissed parties appealed the granting of the charging order by appeal filed with the Court of Appeals on April 15, 2015. That appeal was assigned Appellate Case No. 2015-000835.
12. Howard, through counsel Bunch, also filed a motion to reconsider the granting of the charging order, and raised a new issue: Howard filed a motion asking the court to mandate a sale of the real property to HASCI, LLC (one of the dismissed defendants in which Howard owned a small distributional interest). **Exhibit C.** Judge Strickland denied Howard's motion to mandate a sale of the real property. **Exhibit D.**
13. Howard, through Bunch, filed a Notice of Appeal with the Court of Appeals from the order granting a charging lien and the order denying a mandate of the sale of real property. The Court of Appeals assigned that appeal as Appellate No. 2015-000945.
14. Shirley filed motions to dismiss both appeals in the Court of Appeals. She also sought an order from this Court certifying both appeals to this Court for disposition.
15. Before this Court addressed the Motion to Certify the appeals, Bunch filed his initial brief in Appellate Case No. 2015-000945. In the brief, he argues the trial court erred in failing to mandate a sale of the real property to HASCI, LLC. (Initial Brief, Issue IV).
16. This Court certified both appeals by order dated July 327, 2015. In doing so, this Court stated it would address the pending motions to dismiss after certification.
17. Since Howard, through Bunch, is claiming that Shirley is prevented from conveying clear title to the real property because of this appeal, it is now urgent that this Court address Howard's appeal (at least on that issue) on the merits (rather than dismissing the appeal

based on it being premature, as Shirley had earlier requested). Howard and Bunch are attempting to derail the pending sales contract, to prolong the pendency of these proceedings, and to yet again frustrate Shirley's attempt to collect funds due to her<sup>7</sup>.

18. Set forth below is Shirley's response to Issue IV of Howard's initial brief, with exhibits as referenced<sup>8</sup>. Shirley asks that this Court review Issue IV of the instant appeal and rule on the merits, so Howard cannot continue to contest Shirley's ability to convey clear title.

#### RESPONSE TO ISSUE IV

At the same time Howard filed for reconsideration of Judge Strickland's order granting a charging order in the 2013 foreclosure action, he included for the first time in any of the three actions, a motion that Judge Strickland order a transfer of the property to HASCI, LLC. In his brief, Howard cites to transcripts of January, 2015, which were hearings in the earlier cases, *i.e.*, 2009-CP-40-5911 and 2010-CP-40-2889, and to correspondence which has never been made a part of the record.

It is true that, at Judge Strickland's request, the parties engaged in settlement discussions in January and February, 2015, under the umbrella of the 2009 and 2010 cases, however, no agreement was reached. **Exhibit F**. Instead, Howard raised the issue for the first time in the instant 2013 (foreclosure) case in March, 2015, only after Judge Strickland granted the charging order against Howard's distributional interest in several LLCs and after Judge Strickland reported to this

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<sup>7</sup> On information and belief, Howard will file one additional appeal. He currently has a motion to reconsider pending before Judge Strickland, filed on June 18, 2015, which relates to Judge Strickland's approval of the accounting submitted by Shirley in advance of the first auction. The order Howard will likely still appeal is the Order Approving Accounting, filed on May 29, 2015. **Exhibit E**.

<sup>8</sup> The remaining issues address money, which can be argued after the sale is completed.

Court on March 23, 2015 that he would be hearing Shirley's motion for sanctions against Howard in the 2009 and 2010 cases. **Exhibit G**<sup>9</sup>.

Bunch asserts in his initial brief (page 14) that a letter dated January 26, 2015 (which is not a part of the record, but included in his designations<sup>10</sup>) confirms a settlement occurred. He knows this is a blatantly false statement. Bunch's own letter to Judge Strickland dated January 29, 2015, which is a proper part of the record (**Exhibit H**) refutes any suggestion a settlement was reached. During a hearing on Shirley's motion for sanctions (in the 2009 and 2010 cases) against Howard, Bunch confirmed that the settlement that had earlier been discussed "was rejected" and "[t]hey rejected it for whatever reason." See Transcript of Proceedings on April 2 and April 3, 2015, attached as **Exhibit I, page 222, line 20; p. 333, line 25**. During that same hearing, Shirley's counsel confirmed the settlement discussions with Howard and HASCI, LLC had yielded nothing and she had made a separate offer to Alvin Hammer in February, 2015 to which no response had been received. **Exhibit I, p. 167, lines 15-20; p. 175, lines 1-8**.

As he had previously, Judge Strickland again attempted to discuss settlement with the parties, and Bunch did argue that the court should mandate that Shirley transfer the property to HASCI, LLC (not to Howard; HASCI, LLC was not a party to the 2009-2010 cases). **Exhibit I, p. 168, line 3 – p. 169, line 8; p. 171, line 11 – page 173, line 10; p. 175, lines 1-17; p. 220, line 5 – p. 222, line 6**. Shirley, through counsel, correctly pointed out that mandating a transfer of the property was not before the court. **Exhibit I, p. 177, lines 13-19**. Bunch also argued that sanctions should be eliminated or reduced because Shirley had refused to sell the property to HASCI, LLC. **Exhibit I, p. 333, line 9- p. 334, line 8**.

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<sup>9</sup> Judge Strickland's status report was dated March 23, 2015. **Exhibit G**. Howard's motion to reconsider the order granting a charging order in the 2013 case was filed on March 26, 2015.

<sup>10</sup> The exhibits to which Bunch refers that are in the record, are only in the record of the 2009-2010 case, in the transcript of the sanctions hearing. **Exhibit I, page 5**.

The paradox of Howard's argument here is that he is trying to force a sale of the property to someone other than himself. (Initial Brief of Appellant, page 14, line 3). He is attempting to force a settlement with a company in which he admittedly has no management or control, and for which he not authorized to speak. **Exhibit I, P. 169, lines 3-13, lines 23-25; p. 220, lines 8-11.**

The Court cannot overlook that there is a separate appeal in which HASCI, LLC is an appellant, Appellate Case No. 2015-000835. While HASCI, LLC has not yet filed its initial appellants' brief, it has filed a Memorandum in response to the Court of Appeals' inquiry as to whether it had standing to appeal since the relief it sought, *i.e.*, dismissal from the foreclosure action, was granted. (Memorandum of Appellants, May 4, 2015). In its memo, HASCI, LLC does not seek to consummate any alleged contract of sale; it argues it has standing to know the amount of the charging order granted to Shirley, even though it has been dismissed as a party from the foreclosure on its own motion.

This Court should dismiss *with prejudice* Howard's appeal insofar as it attempts to enforce a sale that Howard and his attorney know full well, and have acknowledged previously before a presiding judge at hearings in the 2009 and 2010 actions, had been rejected. *See Exhibit I* portions referenced above.

Moreover, Howard did not seek this stated relief at the trial level until after the charging order was granted. He sought it in the 2013 action when there were never settlement discussions regarding transferring the property in that action. Howard also does not have standing to make any arguments on behalf of or force a sale to HASCI, LLC.

It could not be clearer that Howard and his counsel are attempting to prevent the sale of the property, solely for the purpose of delaying the recovery of funds due to Shirley. Their efforts

should be soundly rejected by this Court so the pending sale can be completed without interference or obstruction.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Desa Ballard" followed by a horizontal line and the initials "by HWW".

Desa Ballard

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ATTORNEY FOR RESPONDENT  
SHIRLEY HAMMER

August 18, 2015

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.)

RICHLAND COUNTY  
FILED  
2015 MAR 16 AM 10:00  
JEANNETTE W. HOBRIDE  
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 Hammer<sup>1</sup>, 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.

<sup>1</sup>As 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:

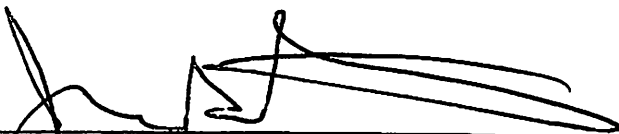
On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a Court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. (Emphasis added).

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 16<sup>th</sup> day of March 2015.

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

Columbia, South Carolina

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

**ORDER GRANTING  
CHARGING ORDER**

2015 MAR 16 AM 10: 01  
JEANETTE W. MURPHY  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

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.

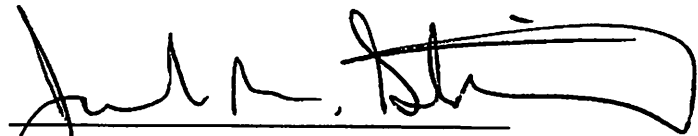
Mrs. Hammer is entitled to a charging order against Mr. Hammer's distributional interest in any of the defendant LLCs in which he has an ownership, membership, or distributional interest. He acknowledges a distributional interest in HASCI, LLC and Chateau Deville LLC, as well as HOC, LLC, which is not a named defendant in this action<sup>1</sup>.

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

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

GRANTED.

IT IS SO ORDERED.



Joseph M. Strickland  
Master in Equity  
Richland County

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

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 )

Eleanor Hammer; Joye Elizabeth Life Estate; Stanley )

Hammer; Department of Treasury - IRS; Chateau )

DeVillie Association, Inc. and/or Chateau DeVillie )

Horizontal Property Regime; David Hammer, a )

minor under the age of 14 )

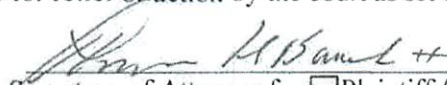
Defendants (in bold) )

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-40-06898

MOTION AND ORDER INFORMATION FORM  
AND COVER SHEET

Plaintiff's Attorney: Desa Ballard, Bar No. Address: 226 State Street West Columbia, SC 29169 phone: (803) 796-9299 fax: (803) 796-1066 e-mail: desa@desaballard.com other:	Defendant's Attorney: See attached
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Motion to Reconsider Order Granting Charging Order Estimated Time Needed: Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order -- I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendants in bold	26 March 25, 2015 Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____



**CLERK'S VERIFICATION**

Date Filed: \_\_\_\_\_

Collected by: \_\_\_\_\_

MOTION FEE COLLECTED: \_\_\_\_\_

CONTESTED – AMOUNT DUE: \_\_\_\_\_

**DEFENDANTS' ATTORNEYS**

**Thomas W. Bunch, II Esquire (for Howard Hammer, 1634 Main, LP,  
SH5, LLC; SH4, LLC; and SH3, LLC)**  
Robinson McFadden & Moore, PC  
PO Box 944  
Columbia, SC 29202

**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 Hammer)**  
PO Box 607  
Columbia, SC 29202

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Shirley Hammer,	)	Case No.: 2013-CP-40-6898
	)	
Plaintiff,	)	<b>MOTION FOR COURT TO</b>
	)	<b>RECONSIDER</b>
v.	)	<b>ORDER GRANTING CHARGING</b>
	)	<b>ORDER AND TO</b>
Howard Hammer, 1634 Main, LP;	)	<b>ALTER OR AMEND SAME</b>
Alvin Hammer; SH5, LLC; SH4,	)	
LLC; SH3, LLC; HASCI, LLC; D&M	)	<b>AND</b>
Chateau, LLC; Heart of Columbia,	)	
LLC Eleanor Hammer; Joye	)	<b>MOTION FOR SALE</b>
Elizabeth Life Estate; Stanley	)	<b>OF 1634 MAIN ST. PROPERTY</b>
Hammer; Department of Treasury -	)	
IRS; Chateau DeVille Association,	)	
Inc. and/or Chateau DeVille	)	
Horizontal Property Regime; David	)	
Hammer, a minor under the age of	)	
14,	)	
	)	
Defendants.	)	

Pursuant to Rules 59 and 60, SCRPC, Defendant Howard Hammer moves that the Court reconsider, vacate, or alter its Order Granting Charging Order ("Order") filed March 16, 2015. In addition, Mr. Hammer moves that given the Court's authority to convey the real property to Mrs. Hammer under the now-affirmed January 21, 2014, Order, that the Court has similar authority to either (1) order that the property be sold to HASCI, LLC under terms similar to the attached documents (Exhibits A, B and C) (assuming HASCI still wishes to proceed), or (2) simply order a public sale of the property after making an updated determination of amounts due Mrs. Hammer. These determinations and a sale will bring finality to this case and case nos. 2009-CP-40-05911 and 2010-CP-40-02889. This motion is made on the following grounds:

- a. It was an error of law to grant a charging order since the court had executed

on the 1634 Main Street property it its January 21, 2014 Order in case nos. 2009-CP-40-05911 and 2010-CP-40-02889. See, e.g. *National Bank of Newberry v. Kinard*, 28 S.C. 101 (1888) (holding 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 was otherwise unproductive, without fault of the judgment creditor).

Under the January 21, 2014 Order the judgments against both 1634 Main, L.P. and Mr. Hammer upon which the charging order issued total \$335,168.76, with Mr. Hammer's judgment being only \$202,064.53. Plaintiff's counsel stipulated at the hearing on this motion that the 1634 Main St. property recently appraised for \$1,475,000.00.

- i. The Plaintiff has not presented any evidence that the execution by this Court on 1634 Main was insufficient. To the contrary, the execution was clearly sufficient, over four times the amount of the aggregate judgments.
- ii. The Plaintiff has not presented any evidence to show that any proceeds, rents, or profits from the property have been applied to some other lien.
- iii. The Plaintiff did not present any evidence that the levy was unproductive, and if it was, that she was without fault. To the contrary, this court has been made well aware of Mr. Hammer's multiple attempts to fully satisfy Mrs. Hammer's judgments only to be stymied by Mrs. Hammer's additional demands or refusal to

negotiate. In fact, Mrs. Hammer recently refused an offer by HASCI, LLC to buy the property at a price that would make Mrs. Hammer whole. See, e.g., letter to Mrs. Hammer's counsel dated January 26, 2015 attached hereto as Exhibit A, after which a signed agreement and contract of sale (Exhibits B and C) were presented to, but rejected by Mrs. Hammer.

The Court erred when it held that Mrs. Hammer "retains the right to recover against other assets of Mr. Hammer." Order at pp. 3, 4. Mrs. Hammer has no such right unless and until she presents evidence that the Court's execution in its January 21 Order was ineffective. *National Bank of Newberry v. Kinard*.

- b. By Order entered on March 16, 2015, this Court dismissed Alvin Hammer and four other Defendants from this case because Mrs. Hammer did not have a judgment against them. Likewise, other than the judgments which are deemed satisfied in the law (point "a" above), Mrs. Hammer does not hold any judgment against Mr. Howard Hammer at the present time. Although the January 21 Order provides for the recovery of additional costs, these amounts are unspecified and cannot constitute a judgment because "a final money judgment must be certain and definite as to the amount thereof." *Squires v. Nat'l Grange Mut. Ins. Co.*, 247 S.C. 58, 71, 145 S.E.2d 673, 679 (1965). Because Mrs. Hammer does not have a judgment, only the right to potentially recover some uncertain and indefinite amount in the future, the Order should be vacated.

- c. The Order relies upon Mrs. Hammer's ability to potentially recover additional costs against Mr. Hammer for the sale of the building as set forth in the January 21 Order. Although the January 21 Order provides for the recovery of additional costs by Mrs. Hammer, that Order specifically provided that they should be recovered from the sale of the proceeds of the property. "6. Mrs. Hammer shall pay herself from the sales proceeds: a. Any and all costs incurred in connection with the sale of the building." January 21 Order, p. 12. Other than sanctions, this order has been affirmed on appeal, is the law of the case, and is *res judicata*; therefore, it is inappropriate for the Court to grant a charging order based on the potential recovery of additional costs when the method for that recovery has already been ordered and affirmed by the Supreme Court. To the extent that Mrs. Hammer recovers any amount under a pending sanctions motion, there is no reason that such sanctions cannot also be recovered from Mrs. Hammer's court-ordered sale of the property. In point of fact, that is what the Court already provided in the January 21 Order.
- d. The Order overlooked stating a proper amount, and in fact any amount, of the lien granted by the Order. The Order provides that Mr. Hammer's distributional interests in HASCI, LLC, and Chateau DeVille, LLC (and perhaps other LLCs) are charged with a lien. Although Mr. Hammer contends that Mrs. Hammer's judgments against him have been satisfied or do not exist because amounts are not yet determined (arguments a, b, and c above), the Order fails to specify the amount of the lien against his distributional interests. The January 21 Order set his liability on the judgments at \$202,064.53 (p. 2)

and stopped the running of interest thereon (p. 12, para. 6.b). Therefore, even if the Court is unwilling to vacate the Order, it should be modified to set the charging lien to the amount of \$202,064.53.

- e. The Order overlooked and did not consider this Court's bench order of January 9, 2014 that Mrs. Hammer judgments would be satisfied by the transfers in the January 21, Order. This ruling is *res judicata* as to the fact that the Plaintiff should have satisfied the judgment. See, e.g., *Catawba Indian Nation v. State*, 407 S.C. 526, 756 S.E.2d 900 (2014). To the extent that the issue was not addressed on appeal, it is the law of the case. See, e.g., *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997).

**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.  
Tr., p. 11, ll. 8-12.

**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.**

Tr. p. 96, ll. 8-13. (emphasis added)

- f. The Order overlooked and did not consider Mrs. Hammer's previous assertions to this Court that the judgments had been satisfied. Mrs. Hammer acknowledges that the judgments have been satisfied; therefore, the Order mistakenly granted a 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. (Emphasis added) (Plaintiff's motions dated 12/18/14 and 12/23/14)

- g. The Order overlooked and did not consider the on-record stipulation by Mrs. Hammer's counsel on January 9, 2014 that this case was rendered moot and would be dismissed.

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.** 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** . . . . 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.** Tr. 73, ll. 1-6. (emphasis added)

The Order also overlooked the finding in the January 21 Order that this case would be rendered moot and be dismissed. January 21 Order, p. 5, 6. There, the Court reiterated Mrs. Hammer's counsel's stipulation that this case was moot. This ruling is *res judicata* as to the fact that this suit is moot. See,

*e.g., Catawba Indian Nation, supra.* To the extent that the issue was not addressed on appeal, it is the law of the case. See, *e.g., ML-Lee Acquisition Fund, L.P.*

- h. The court overlooked and did not consider that Plaintiff is estopped from asserting a charging lien in light of the stipulations on the record, the orders of this court, the reliance of this Court and the parties on her stipulations and this Court's orders, and the fact that the Supreme Court affirmed the January 21 Order providing that this case was moot.
- i. The Order inaccurately states that neither Mr. Hammer nor any other party asserts that Mrs. Hammer has received any money toward her judgments. Mr. Hammer asserts that Mrs. Hammer has, in fact, accumulated approximately \$150,000 in rental income from the 1634 Main St. since she took ownership thereof.<sup>1</sup> There has been no accounting of this income to the Court or Mr. Hammer, but it is simply inaccurate to state that Mr. Hammer does not assert that Mrs. Hammer has not received money toward the satisfaction of Mrs. Hammer's judgments. Further, Mrs. Hammer is currently seeking additional tenants for the property and the monthly income may increase. Shortly, Mrs. Hammer will have accumulated enough income to pay the judgments against Mr. Hammer in full.
- j. Without the presentation of any evidence whatsoever, the Order erroneously

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<sup>1</sup> Presumably, Mrs. Hammer has incurred operating expenses as well, but since there is no accounting there is no ability for this court to find or opine that she has not received money to be applied to her judgments. One expense that Mrs. Hammer has not paid are property taxes to Richland County for the past two years, thus, putting in jeopardy the very asset the Court transferred to her for satisfaction of her judgments.

found that Mrs. Hammer has made diligent efforts to sell the property. In fact, Mrs. Hammer has refused to provide any details to Mr. Hammer or his counsel about efforts to sell the building. She has withheld that information and did not provide any such evidence, or at least any admissible evidence, to the Court that would allow the Court to make such a finding. Further, the order is in direct conflict with the efforts of Mr. Hammer to acquire the property and pay the judgment lien in full (plus all other amounts claimed to be owed). The Court is well aware of these efforts going back to May of 2014. Further, the finding is in direct conflict with Exhibits A, B and C where HASCI, LLC offered to buy the property, and Mr. Hammer agreed that such a conveyance was commercially reasonable.

- k. At page 3 the Order makes an inappropriate finding that the January 21 Order was made necessary by Mr. Hammer intentionally withholding information regarding his assets, a matter which will presumably be addressed in a sanctions hearing scheduled for April 2. This finding was irrelevant to the determination of granting a charging lien. Further, there was no evidence related to this finding which was presented to the Court. As there is currently pending a motion for sanctions in the supplementary proceedings cases in which this issue is to be addressed, the comment should be removed from the Order. Effectively, the Court is making findings in a collateral proceeding, findings about which Mr. Hammer has been denied an opportunity to address. Such findings are the exact reason why the Supreme Court reversed the sanctions awarded in the January 21 Order in supplementary proceedings

because findings and sanctions were made against Mr. Hammer without giving him an opportunity to defend the accusations.<sup>2</sup> The finding should be stricken from the Order.

- I. The Order makes findings without evidentiary support, makes findings on matters not presented to the court, makes findings on issues without giving Mr. Hammer an opportunity to respond and ultimately issues a charging lien on assets of Mr. Hammer despite the fact that Mrs. Hammer has already been conveyed an asset valued at almost five times the amount of her judgment. The inappropriate findings deny Mr. Hammer an opportunity to defend, and deny due process of law under the South Carolina and United States Constitutions. The charging lien is an excessive seizure of property and an unlawful taking.


The March 16, 2015 Order Granting Charging Order should be vacated in its entirety. To the extent that the Court is unwilling to vacate the Order, all inappropriate findings and findings on which no admissible evidence was presented should be removed from the Order.

In addition, Mr. Hammer moves that given the Court's authority to convey the real property to Mrs. Hammer under the now-affirmed January 21 Order, that the Court has the authority to either (1) order that the property be conveyed to HASCI under the terms

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<sup>2</sup> The proposed order which Mrs. Hammer's counsel submitted and from which this finding came reminds the undersigned of Mrs. Hammer's counsel's unfounded accusation in an earlier email to the Court: "Mr. Bunch wants an order denying the motion for contempt so he can argue at the new sanctions hearing that there is issue preclusion (which we disagree with, but I've been at this a long time)." (See Exhibit D). Here, there is no doubt that opposing counsel will seek to use this finding, irrelevant to the issue before the court of whether to grant a charging lien, against Mr. Hammer in other proceedings.

of the attached documents, or (2) order a public sale of the property after making an updated determination of amounts due Mrs. Hammer.

A handwritten signature in black ink, appearing to read "Thomas W. Bunch, II", is written over a horizontal line.

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

March 26, 2015



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

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January 26, 2015

**VIA E-MAIL**

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

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

Dear Desa:

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

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



Desa Ballard, Esquire  
January 26, 2015  
Page 2

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

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

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.

  
Thomas W. Bunch, II

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

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant.

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

**Settlement Agreement**

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,

Additional Defendant on Counterclaim

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

**Settlement Agreement**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- d. Notify all tenants at 1634 Main Street that the ownership of the property has transferred and that rents including any past due rents are due and payable to the new owner as of the date of transfer. Rents and utilities shall be pro-rated as of the day of closing, and the Parties of the Second Part are responsible for payment of any utility expenses incurred, but not paid as of the date of closing.
- e. Authorize and direct Danville Business Advisors LLC to release to HASC1, LLC any and all keys and alarm codes to the building located at 1634 Main Street and all suites therein.

- 7. Subject to closing and conveyance of the Real Property and Leases, and compliance with all other terms of this Agreement by the Parties of the Second Part, Howard Hammer releases Shirley Hammer a/k/a Shirley Grace Hightower and her agents, servants, employees, personal representatives, and assigns from any and all claims, demands, actions, and damages of any nature, at law or in equity, arising out of the conveyance of the Real Property, their taking of the Real Property, their management of the Real Property, and their disposal of the contents therein.
- 8. Howard Hammer waives any and all rights he may have had at any time in the past or will have at any time in the future, to seek reconsideration, appeal,

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

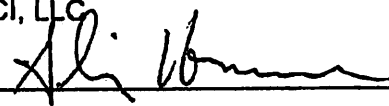
9. This document shall not be construed as having been authored by any party over the other and shall at all times be construed as the product of the parties jointly, and no ambiguities regarding construction of the terms of this agreement shall be construed against any party to this agreement.
10. Should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

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

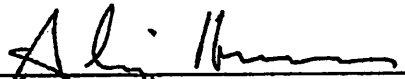
16. The signatures of the undersigned reflect that this agreement is entered into voluntarily by the parties, that all parties understand the effect of this agreement, and each has had the opportunity to consult with any counsel or other person or entity with whom that party may wish to consult prior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

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

  
\_\_\_\_\_  
Howard Hammer

HASCI, LLC  
By:   
\_\_\_\_\_

Its: \_\_\_\_\_

  
\_\_\_\_\_  
Alvin Hammer

\_\_\_\_\_  
Shirley Hammer a/k/a  
Shirley Grace Hightower

1634 Main, L.P.

By: \_\_\_\_\_

Its: \_\_\_\_\_

SH5, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Hightower, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

## CONTRACT OF SALE

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

### RECITALS

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

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

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

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

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

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

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

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

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

**EXHIBIT**

**C**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 14. **Default.**

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

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

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

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

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

**If to the Buyer, to:**

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

**With copy to:**

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

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

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

**If to the Seller, to:**

Shirley Hammer  
412 River Club Drive  
Lexington, SC 29072

**With copy to:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW.]

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

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SELLER:**

\_\_\_\_\_  
**Shirley Hammer a/k/a Shirley Grace  
Hightower**

Date: \_\_\_\_\_

**1634 Main, L.P.**

By: \_\_\_\_\_ (L.S.)

Date: \_\_\_\_\_

**BUYER:**

**HASCI, LLC**

By: \_\_\_\_\_ (L.S.)

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, generally known as *1634 Main Street*, being shown and designated as **Parcel A and Parcel B**, collectively containing **0.50 acre** on plat prepared for Downtown Associates by Cox and Dinkins, Inc. dated February 5, 1996, recorded in the office of the RMC for Richland County in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ (the failure to record said plat or to insert the recording data herein shall not affect the validity hereof) said plat being incorporated herein by reference, said parcels being collectively described as follows:

BEGINNING at a Bldg. Corner at the westernmost corner of Parcel B whereat said property corners with property now or formerly of Martha W. Fowler, et al, along the eastern margin of the right-of-way of Main Street a distance of 107.4 feet, more or less, from its intersection with Blanding Street, and running along property now or formerly Martha W. Fowler, et al N70°16'01"E – 209.01 feet to a 1/2" rod; thence turning and running along property now or formerly of Lexington State Bank, as follows: S19°27'00" "E – 17.80 feet to a point; N71°09'40"E – 211.75 feet to an "X" on concrete; thence turning and running along the western margin of the right-of-way of Sumter Street S19°25'59"E – 42.33 feet to an "X" on concrete; thence turning and running along property now or formerly of James L. Tapp Co., Inc., as follows: S71°06'28"W – 211.73 feet to an "X" on concrete: S19°27'00"E – 0.77 feet to an "X" on concrete; thence turning and running along property now or formerly of Kimbrell's Investment, Co. S70°17'08"W – 208.84 feet to an "X" on concrete; thence turning and running along the eastern margin of the right-of-way of Main Street N19°36'31"W – 61.03 feet to the POINT OF BEGINNING.

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

**Tax Map # 09014-04-19**

**EXHIBIT B**

**PERMITTED EXCEPTIONS**

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

## Thomas W. Bunch, II

---

**From:** Thomas W. Bunch, II  
**Sent:** Thursday, November 13, 2014 9:04 AM  
**To:** stricklandj@rcgov.us  
**Cc:** Robin Reibold; Art Aiken; 'Desa Ballard'  
**Subject:** RE: Hammer cases; 09-5911 and 10-2889

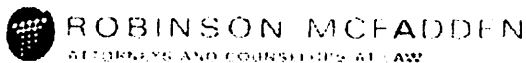
Judge Strickland,

The only issue preclusion I have considered would be the denial of Mrs. Hammer's contempt motion, which is the only issue addressed in the proposed order you requested from me. In Ms. Ballard's email altering the proposed order we submitted, not only is Ms. Ballard "putting words in my mouth" as to a motion she has not yet filed, she suggests that I have some ulterior purpose in presenting the proposed order denying the contempt motion. I do not practice law that way.

As to the order presented by Ms. Ballard, it is erroneous when it states that the award of sanctions was remanded for a new hearing. There was nothing for the court to remand since no motion was previously filed. As Ms. Ballard acknowledged at Monday's hearing, a motion needs to be filed if Mrs. Hammer intends to pursue sanctions.

Thank you for your consideration of the order I have presented on behalf of Mr. Hammer.

Tommy Bunch



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

Post Office Box 944  
Columbia, South Carolina 29202  
P: (803) 779-8900



**From:** Desa Ballard [mailto:desab@desaballard.com]  
**Sent:** Monday, November 10, 2014 4:47 PM  
**To:** stricklandj@rcgov.us  
**Cc:** Robin Reibold; Art Aiken; Thomas W. Bunch, II; Beth Cogan; Mara Ballard  
**Subject:** RE: Hammer cases; 09-5911 and 10-2889

I have made some changes to the order to more properly address the dismissal as based on mootness. As I told you, Mr. Bunch wants an order denying the motion for contempt so he can argue at the new sanctions hearing that there is issue preclusion (which we disagree with, but I've been at this a long time).

db

**From:** Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]  
**Sent:** Monday, November 10, 2014 4:38 PM  
**To:** stricklandj@rcgov.us



**Cc:** Robin Reibold; Desa Ballard; Art Aiken  
**Subject:** Hammer cases; 09-5911 and 10-2889

Dear Judge Strickland,

Attached is the proposed order you requested at today's hearing denying Mrs. Hammer's Motion for Contempt.

Tommy Bunch

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

Post Office Box 944  
Columbia, South Carolina 29202

P: (803) 779-8900

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Shirley Hammer,	)	Case No.: 2013-CP-40-06898
	)	
Plaintiff,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Howard Hammer, 1634 Main, LP;	)	
Alvin Hammer; SH5, LLC; SH4,	)	
LLC; SH3, LLC; HASCI, LLC; D&M	)	
Chateau, LLC; Heart of Columbia,	)	
LLC Eleanor Hammer; Joye	)	
Elizabeth Life Estate; Stanley	)	
Hammer; Department of Treasury -	)	
IRS; Chateau DeVille Association,	)	
Inc. and/or Chateau DeVille	)	
Horizontal Property Regime; David	)	
Hammer, a minor under the age of	)	
14,	)	
	)	
Defendants.	)	

This is to certify that I, Amy L. Westbrook, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **Howard Hammer's Motion to Reconsider Order Granting Charging Order and to Alter or Amend Same and for Sale of 1634 Main Street. Property in the foregoing matter as follows:**

**Via electronic mail and first class mail**  
**Desa Ballard (for Plaintiff)**  
**Law Offices of Desa Ballard**  
**Post Office Box 6338**  
**West Columbia, SC 29171**

**Via electronic mail and first class mail**

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

**Via electronic mail and first class mail**

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

**Via first class mail**

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

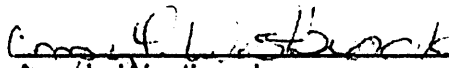
**Via first class mail**

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

**Via first class mail**

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

Dated at Columbia, South Carolina this 26th day of March, 2015.

  
\_\_\_\_\_  
Amy L. Westbrook

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. )

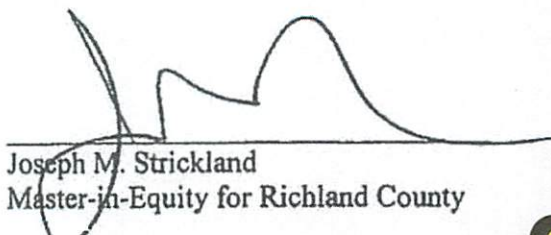
ORDER DENYING MOTION  
TO RECONSIDER GRANTING  
CHARGING ORDER AGAINST  
HOWARD HAMMER AND TO  
ORDER SALE OF 1634  
MAIN STREET PROPERTY

RICHLAND COUNTY  
FILED  
2015 MAR 31 PM 12:08  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Defendant Howard Hammer, pursuant to Rules 59 and 60 SCRCP, asked the Court to reconsider, vacate, or alter its Order Granting Charging Order ("Order") filed March 16, 2015. Additionally, he asked that I order sale of the 1634 Main Street property.

These motions are denied.

IT IS SO ORDERED this 30<sup>th</sup> day of March, 2015.

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

Columbia, South Carolina



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Shirley Hammer )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Howard Hammer )  
 )  
Defendant. )

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Shirley Hammer )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
1634 Main, LP )  
 )  
Defendant, )  
 )

IN THE MASTER-IN-EQUITY COURT  
CA# 2009-CP-40-05911  
CA# 2010-CP-40-2889

ORDER APPROVING ACCOUNTING

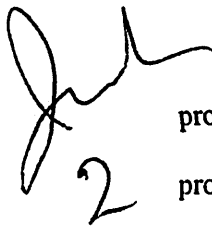
RICHLAND COUNTY  
FILED  
2015 MAY 29 PM 4:12  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Shirley Hammer (hereafter "Shirley") moves for an order approving an accounting filed and served on April 29, 2015 (filed May 5, 2015) determining she has fully complied with this Court's order dated January 21, 2014, in connection with marketing of real property located at 1634 Main Street in Columbia. The order also transferred interests held by Howard Hammer in two (2) entities related to ownership of the building as part of collection of judgments held by her against Howard Hammer and against 1634 Main LP.

The parties appeared before me with counsel on May 12, 2015 at a properly-noticed hearing. An auction of the real property is scheduled to be held on May 13, 2015 beginning at 2:00 pm.



Through counsel, Mr. Hammer objected to the hearing on numerous grounds. He argued that Shirley had brought witnesses to testify regarding the issues before the Court and that he did not have notice that witnesses were going to be called, and he was not prepared as a result. He objected to the introduction of any evidence by Shirley on the issues to be decided by the Court. He also filed a demand for jury trial on issues related to the accounting. Pursuant to Rule 38 and 53, SCRCPP, he argued he was entitled to a jury trial to determine whether Shirley's marketing of the real property had been commercially-reasonable, and whether certain costs Shirley seeks to recover in connection with the marketing and sale were proper. Lastly, he argued he should be entitled to an offset against the judgments he owed to Shirley for rents she may have collected from tenants at 1634 Main Street during the time she was marketing the property for sale.

 Mr. Hammer is not entitled to a jury trial. This is an accounting following a transfer of property which concluded supplemental proceedings. The Supreme Court expressly approved the process of this court dealing with the accounting in connection with the sale in its November, 2014 opinion. Mr. Hammer waived a jury trial prior to the trial of these actions in 2012 before Judge James, and he cannot resurrect the request at this time.

Similarly, he is not entitled to an offset of any kind. This Court's order of January 21, 2014 specifically provided that Shirley was not required to account to Mr. Hammer for "the income or assets or the proceeds of sale, other than the accounting that is required [after the sale]." (Order Page 11, Paragraph 4). If Mr. Hammer objected to this provision of this order he could have raised in on appeal.

Mr. Hammer proffered, including a copy of prior correspondence with this Court dated May 8, 2014 and an appraisal done during the marketing of the property. Shirley introduced two

(2) notes executed by Mr. Hammer in favor of 1634 Main LP, and a copy of a letter from Mr. Hammer to the Richland County Tax Assessor's Office dated November 8, 2013.

After a full review of the files and prior orders in this matter, and considering the arguments of council, I determined that no additional evidence was necessary to address the orders before the Court.

I conclude that Shirley's marketing of the property has been aggressive and consistent, and specifically that she has engaged in commercially-reasonable efforts to sell the property. It is undisputed that she has had the property listed and marketed ever since the property was transferred to her, and that continues through the hearing and up to the auction on May 13, 2015. She is not responsible for market forces that influence the market, and the determination of the minimum bid was done through consultation with professionals with experience in the area and based on offers received while the property was on the market. While Mr. Hammer disputes that the minimum auction price of \$837,000.00 is a commercially-reasonable price, he does not dispute the efforts to market the property have been deficient in any way. In fact, he has previously offered to stipulate to the court that a price of approximately \$540,000 was a commercially-reasonable price if Shirley would sell the property to him.

Shirley's accounting accurately sets forth the judgments noted in the January 21, 2014 order, the Supreme Court's judgments entered in both appeals, plus interest on those appeals at the post-judgment rate, expenses she has incurred in paying unpaid and overdue bills for 1634 Main LP that were found to exist when the property and Mr. Hammer's interests in the entities were conveyed to her. She has detailed the expenses incurred in marketing the property. In prior litigation in this case, Judge James determined that Mr. Hammer had not paid rent for many years while he occupied the building, and Mr. Hammer conceded rent was due. Mr. Hammer does not

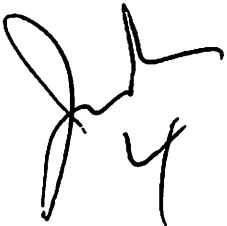
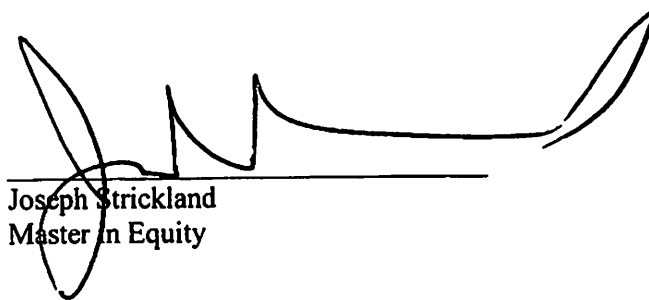
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Jm  
R 3

dispute that the two (2) notes he executed in favor of 1634 Main LP are unpaid, although he argued after my ruling that some limitations period may apply to prevent recovery of those notes. However, no pleading has been filed raising that objection, despite more than ten (10) days having passed since the accounting was served.

The accounting appears proper in all respects, and provides sufficient detail for any objections to individual items to have been raised. No objections were filed, and all oral objections raised at the hearing have been addressed above.

For the reasons set forth above, I find and conclude that Shirley Hammer has satisfied all obligations imposed upon her by the January 21, 2014 order, save the final accounting after sales proceeds are collected. Her accounting is approved. She is instructed to file a final accounting of the sales proceeds within ten (10) days after disbursement of the sales proceeds.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'JH' with a large flourish.A handwritten signature in black ink, appearing to be 'Joseph Strickland' with a large flourish.

Joseph Strickland  
Master in Equity

May 13, 2015

**From:** Desa Ballard  
**To:** "Thomas W. Bunch, II"  
**Cc:** Keith M. Babcock; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard  
**Subject:** RE: Status  
**Date:** Tuesday, February 03, 2015 10:53:00 AM

---

Ok, I'll go with the 13<sup>th</sup>, by noon but by that I mean documents executed and money paid. I don't mean to be unsympathetic, but Mrs. Hammer has waited a long time to get this matter concluded, with no cooperation until you and Keith got involved and we started making SOME progress (but still not enough to be considered cooperative). These judgments are OLD. The only reason I'm in a hurry is because Mrs. Hammer has waited so long with NOTHING to show for it.

I didn't appreciate your letter to Judge Strickland suggesting I had lied to the court, but I let it pass. Lawyers who fuss with each other are every judge's nightmare. If you represented a normal person, I have no doubt we would not have had the difficulty we have had. Keith and I have no such issues; he's a good lawyer and I always heard that you were too, but your positions in this case have been extreme and have added to the harsh feelings.

Let's please get this done. I will request a hearing with Judge Strickland for the week of 2-16-2015 for the sanctions hearing in case we don't finish.

db

---

**From:** Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]  
**Sent:** Tuesday, February 03, 2015 10:44 AM  
**To:** Desa Ballard  
**Cc:** Keith M. Babcock  
**Subject:** RE: Status

Desa,

I was just drafting another email to you to give you an update. I worked off of the documents you sent over last week until it just became too confusing to revise them and put our offer and discussions at the January 27 hearing into a revised document. Thus, I drafted a new settlement agreement in accordance with the offer we made. I finished a draft on Sunday, coordinated with my client yesterday, and sent the documents to Keith after that. Once I have his clients' comments and approvals, I'll send them to you.

Also, as you know, the offer was for transfer of the property to HASCI. I believe HASCI either has or will engage its own real estate counsel to review a contract for the sale of the property as part of the offer we have made.

We all have issues outside of this case. You have surgery scheduled and a teaching gig. I am dealing with a medical matter and other issues with my mother that took me out some last week, and may take me out later this week. Keith has a speaking engagement across the country that takes him out after today for the rest of the week. We are working as hard as we can to get something done. The settlement includes not just Shirley and Howard, but two other parties, HASCI and Alvin. Our schedules (yours included) will not always coincide to get something accomplished as quickly as Shirley wants. I hope your medical procedure goes well.

Tommy





---

**Thomas W. Bunch, II**  
P: 803-227-1103  
F: 803-744-1545  
[TBunch@robinsonlaw.com](mailto:TBunch@robinsonlaw.com)  
[v-card](#)

Post Office Box 944  
Columbia, South Carolina 29202  
P: (803) 779-8900



---

**From:** Desa Ballard [<mailto:desab@desaballard.com>]  
**Sent:** Tuesday, February 3, 2015 10:16 AM  
**To:** Thomas W. Bunch, II; [KMB@lewisbabcock.com](mailto:KMB@lewisbabcock.com)  
**Cc:** Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard  
**Subject:** Status

Today is my last day in the office this week, since I have surgery tomorrow. If we are going to finish the documents and have everything signed by the 9<sup>th</sup>, I need to have your suggested changes today. Earlier rather than later, since I teach my class tonight at the law school.

db

Desa Ballard  
Ballard & Watson  
Attorneys at Law  
Telephone 803.796.9299  
Facsimile 803.796.1066  
E-mail: [desab@desaballard.com](mailto:desab@desaballard.com), copy to [mara@desaballard.com](mailto:mara@desaballard.com)

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2015 the Report #1 on Cases Number 2009-CP-40-05911; 2010-CP-40-02889; and 2013-CP-40-6898 were served on the parties noted on the list below by e-mail.

Fristella Cornelius

Fristella Cornelius

Equity Court Coordinator

Richland County Master in Equity's Office

1701 Main Street, Suite 212

Columbia, South Carolina 29201

(803)576-1900

2015 MAR 23 PM 2:13  
J. ANNETTE W. PRYOR, CLERK  
C.C.P. & G.S.  
FILED  
RICHLAND COUNTY

Brenda Shealy

Chief Deputy Clerk [bshealy@sccourts.org](mailto:bshealy@sccourts.org)

The Honorable James R. Barber, III.-HAND DELIVERED

The Honorable Joseph M. Strickland

Desa Ballard, Esquire

Pope D. Johnson, Esquire

Stephanie Nichole Weissenstein, Esquire

Susan Batten Lipscomb, Esquire

Arthur Kerr Aiken, Esquire

Keith M. Babcock, Esquire

Thomas Whatley Bunch, II., Esquire



**Joel Morris Deason, Esquire**

**Matthew J. Modica, Esquire**

**Stephanie Carol Trotter, Esquire**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Joseph M. Strickland, Master in Equity  
Pending in Richland County

---

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-40-02889

In re: Shirley Hammer v. Howard Hammer  
Case No. 2013-CP-40-6898

FILED  
2015 MAR 23 PM 2:13  
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C.C.P. & G.S.

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**SECOND**

**MASTER IN EQUITY STATUS REPORT**

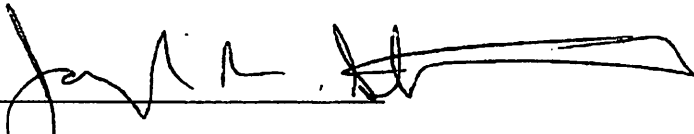
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This is the status report submitted by the undersigned on:

- March 23, 2015

I hereby report the status of the cases referenced above in accord with your order. Counsel for the parties exchanged e-mail regarding the hearing schedule. The hearing on sanctions will take much of the time allocated for the hearing.

Finally, I hope the parties remember they can resolve these cases without our input. Copies of this status report shall be filed in the Richland County Clerk of Court's file in each of the referenced cases.

  
\_\_\_\_\_  
Joseph M. Strickland  
Master-in-Equity

March 23, 2015



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

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

**Thomas W. Bunch, II**  
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FAX  
(803) 744-1545

tbunch@RobinsonLaw.com

January 29, 2015

**VIA EMAIL ONLY**

The Honorable Joseph M. Strickland  
Richland County Court of Common Pleas  
Post Office Box 192  
1701 Main Street  
Columbia, SC 29202

**Re: Shirley Hammer v. Howard Hammer, 1634 Main, LP; Alvin Hammer; SH5, LLC; SH4, LLC; SH3, LLC; HASCI, LLC; D&M Chateau, LLC; Heart of Columbia, LLC Eleanor Hammer; Joye Elizabeth Life Estate; Stanley Hammer; Department of Treasury - IRS; Chateau DeVille Association, Inc. and/or Chateau DeVille Horizontal Property Regime; David Hammer, a minor under the age of 14  
Case No.: 2013-CP-40-06898**

Dear Judge Strickland:

I wish that today I was working on settlement documents and more productively seeking a global resolution of the Hammer cases which are pending before you. Unfortunately, I am compelled to object to the proposed order Mrs. Hammer's counsel emailed to you yesterday granting Mrs. Hammer's motion for a charging lien.

Putting aside the facts (a) that this Court already conveyed to Mrs. Hammer property which she stipulated recently appraised for \$1,475,000.00 in satisfaction of judgments of \$335,000.00 (approximately \$390,000 if one were to include the now reversed, but previously awarded sanctions), and (b) that this Court directed Mrs. Hammer's counsel to satisfy the judgments after the property was transferred, the proposed order granting the charging lien is inappropriate because:

- (1) The proposed order contains findings for which no argument was made or evidence presented;
- (2) The proposed order omits certain significant facts;



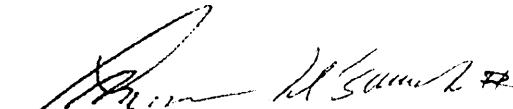
(3) The proposed Order contains findings which would be the subject of Mrs. Hammer's contested sanction's motion pending in the supplementary proceedings cases. Mrs. Hammer would certainly seek to use these findings to her advantage in the sanction's motion even though Mr. Hammer has yet to be heard in defense of that motion, which is the exact reason findings and award for sanctions were reversed by the Supreme Court; and

(4) The proposed order does not limit the charging lien which is sought only against Mr. Hammer's interests to the amount of the judgments which had been entered against him (\$202,064.53 according to your January 21, 2014 Order at page 2).

It is beyond me how Ms. Ballard can contend that this court of equity should issue a charging lien when her client was conveyed ownership of property with a current appraised value of over \$1,000,000.00 more than the judgments. Nevertheless, if you are inclined to grant the motion for the charging lien (and deny Defendants' two motions to dismiss this foreclosure case), I am submitting a revision of Ms. Ballard's proposed order, both a redlined and clean version, which will at least address the inaccurate and omitted facts from Ms. Ballard's proposed order.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Thomas W. Bunch, II

Enclosures: Revised redlined version of Ballard Order and Clean revised version of Ballard Order

cc: (w/enclosures)  
Desa Ballard  
Keith M. Babcock  
Howard Hammer

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF RICHLAND )

Howard Hammer, ) CASE #: 2009-CP-40-5911  
 )  
Plaintiff/Respondent, )  
v. )  
 )  
Shirley Hammer, et al., )  
 )  
Defendant/Petitioner, )

1634 Main, LP, ) CASE #: 2010-CP-40-2889  
 )  
Plaintiff/Respondent, )  
v. )  
 )  
Shirley Hammer, et al., )  
 )  
Defendant/Petitioner, )

## HEARING

\*\*\*\*\*

Thursday, April 2, 2015  
9:58 a.m. to 4:27 p.m.

\*\*\*

Friday, April 3, 2105  
9:27 a.m. to 2:55 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, commencing on the 2nd day of April, 2015, and concluding on the 3rd day of April, 2015, before Robin K. Reibold, Curt Reporter and Notary Public in and for the State of South Carolina.

**Official Court Reporter**  
Master in Equity, Richland County  
1701 Main Street – Post Office Box 192 (29202)  
Columbia, South Carolina 29201



**APPEARANCES**

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Columbia, South Carolina 29205  
Attorney for the Plaintiff/Respondent

**Desa Ballard, Esquire**

Ballard & Watson, Attorneys at Law  
226 State Street  
West Columbia, South Carolina 29169  
Attorney for the Defendant/Petitioner

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1 Exhibit Number 37, this is when Mr. Bunch started  
2 appearing. And Mr. Bunch began saying, We're simply  
3 going to satisfy the judgments. This was a full  
4 four months after Your Honor had transferred the  
5 property to Mrs. Hammer with instructions to sell  
6 the property, pay herself certain funds, and pay the  
7 money back into the court. This is the first of Mr.  
8 Bunch's repeated efforts, and Mr. Babcock's to a  
9 lesser degree, efforts to try to settle the  
10 judgments. The judgments could have been settled at  
11 any time prior to the issuance of Your Honor's  
12 January 21st, 2014, issue. That's all they were at  
13 that point, judgments. Once Your Honor transferred  
14 the property, then, and only then, did we have some  
15 suggestion, oh, well we might want to pay the  
16 judgments. Long after that cat was already out of  
17 the bag, and it was far too complicated at that  
18 point. Regardless, and I'll get to this later, we  
19 did, at Your Honor's request, in January of this  
20 year attempt repeatedly to come up with a settlement  
21 for this case. And I have responded repeatedly to  
22 settlement proposals from a number of people on Mr.  
23 Hammer's behalf. Exhibit Number 38 is Mr. Aiken's  
24 letter dated September 9th requesting a hearing.  
25 Well, again, it looks like he mis-dated it. We

1           you compiled the summaries which are part of Exhibit  
2           43, up until the present time? You say the fees go  
3           through time. In supplementary proceedings?  
4   A:       Very much so. At the outset Ms. Ballard laid out  
5           what minimum requirements that were going to be made  
6           in order to do a settlement with Mr. Hammer, if one  
7           could be done. She's made it clear that settlement  
8           had already -- that the period for settlement had  
9           already passed because the building had been  
10          transferred. But she was willing to allow the  
11          opportunity for settlement to be discussed, but she  
12          gave set parameters. And from what I could tell,  
13          all of subsequent negotiations, if you want to call  
14          them that, many of them are more demands, never even  
15          met the minimum. And so they were kind of a waste  
16          of time for everybody.  
17   Q:       So you would say failing to meet settlement demands  
18           would be sanctionable conduct; is that what you're  
19           saying?  
20   A:       He didn't even rise to the level of the making a  
21           settlement demand.  
22   Q:       Okay. We'll get into that later. Any other conduct  
23           that you're aware of, that you have knowledge of  
24           that would lead you to believe that Mr. Hammer  
25           engaged in any sanctionable conduct in the

1 **THE COURT:** Okay.

2 **MR. BUNCH:** I've turned him over to Ms. Ballard.

3 **THE COURT:** All right, Ms. Ballard?

4 **MS. BALLARD:** I have no questions, Your Honor.

5 **THE COURT:** Okay. Thank you, sir, you may come down.

6 A: Thank you.

7 **THE COURT:** Watch your step coming down. All right, now  
8 in that case, it's 4:20 and I think everybody's  
9 tired from the day's activities. This is my theme,  
10 I mean, y'all have given up on settlement? I mean,  
11 you've said ---

12 **MS. BALLARD:** Absolutely.

13 **THE COURT:** Absolutely no settlement?

14 **MS. BALLARD:** No settlement.

15 **THE COURT:** Okay. Let me ask while we're on the record,  
16 out of curiosity, now, Ms. Ballard, you said off the  
17 record y'all had an offer.

18 **MS. BALLARD:** We do.

19 **THE COURT:** But no contract on the ---

20 **MS. BALLARD:** We've agreed on a number, but we have not  
21 met and signed the contract.

22 **THE COURT:** Okay. And, Mr. Bunch, I think you indicated  
23 that HASCI will have funds to buy the building  
24 because of another deal they're involved in, a real  
25 estate deal?

1 **MR. BUNCH:** The deal is in the due diligence period. And  
2 it's my understanding now that they've extended the  
3 closing to May 30th. Let me put it this way,  
4 extended the closing until sometime in May in order  
5 to get the money in and get the -- close on what we  
6 would propose as for payment of the judgment, it  
7 would -- you know, we just -- we don't want to set a  
8 date of May 1 if the closing -- we don't want to set  
9 a date of May 5th if the closing's May 1, or May  
10 10th if it's May 15th. You know, I think maybe one  
11 way to do it put a deadline of May 30. But, you  
12 know, if the Court is concerned about timing we  
13 could get a -- we could say we could close within 10  
14 days of the previous closing, with a deadline of May  
15 30th.

16 **THE COURT:** Now, what's the nature of the property that  
17 HASCI's involved with?

18 **MR. BUNCH:** This property as I understand it is -- you  
19 know where the Bernstein law firm is, Your Honor, on  
20 Assembly Street?

21 **THE COURT:** Yes, sir.

22 **MR. BUNCH:** I understand the property is contiguous to  
23 that property, on Assembly Street. It's a vacant  
24 area right now. I'm not a hundred percent sure and  
25 -- but that's where I believe the property to be.

1 **THE COURT:** Who is the purchaser?

2 **MR. BUNCH:** I don't know. I haven't seen the contract.

3 **THE COURT:** Do you know, Mr. Hammer?

4 **MR. HAMMER:** No, sir, I was not -- I'm not part of the  
5 management committee, and I haven't been privy to  
6 any of the -- what's going on, I'm sorry. If you  
7 want me to find out, to try to find out ---

8 **THE COURT:** I was going to ask, if possible, I'm sure --  
9 of course, a lot of people close at 5:00, if you  
10 could get a copy of the contract, the sales  
11 contract, I'd like to look at it. And, of course,  
12 Ms. Ballard, you indicated y'all don't have a  
13 contract yet but you have a ---

14 **MS. BALLARD:** We have a verbal agreement as to a number,  
15 yes, sir.

16 **THE COURT:** Is that possible?

17 **MR. BUNCH:** Your Honor, I can't speak for HASCI, okay.  
18 I'm not their attorney, Mr. Babcock is.

19 **THE COURT:** I understand.

20 **MR. BUNCH:** I'm certain that HASCI, in light of recent  
21 developments, would have significant concerns about  
22 releasing that contract to Ms. Ballard. If you  
23 want, you know, they may be agreeable to allowing  
24 the Court an in camera inspection of the contract  
25 but ---

1 November 17th, 2104. It was provided to you by Mr.  
2 Hammer.

3 **THE COURT:** Hold on a minute. I'm sorry, do y'all need to  
4 talk outside? We're not having any more testimony  
5 but I just wanted some information. My question is  
6 going to be, Mr. Bunch, does HASCI have the funds  
7 now to make a legitimate offer for this building?

8 **MR. BUNCH:** No.

9 **THE COURT:** Okay.

10 **MR. BUNCH:** HASCI doesn't have -- the exact exhibits that  
11 you were looking at shows that HASCIA actually has  
12 been operating at a loss. And I think Mr. Alvin  
13 Hammer came and testified before you in August of  
14 2012 that HASCI may not even have a bank account.  
15 It's simply an LLC that owns property, and those  
16 properties are not generating any income. In fact,  
17 they're operating at a loss. And my understanding,  
18 the only way they have survived so far is through  
19 loan made by people other than Mr. Howard Hammer.

20 **THE COURT:** Okay. And, Ms. Ballard, who made the offer  
21 for that building?

22 **MS. BALLARD:** Your Honor, I'm not going to divulge that  
23 information.

24 **THE COURT:** You're not going to divulge it?

25 **MS. BALLARD:** No, sir. I have an order from Judge James

1           indicating that Mr. Howard Hammer intentionally  
2           interfered with the sale by Mrs. Hammer of the  
3           former marital home. I'm not going to take that  
4           chance again.

5 **THE COURT:** So you're telling the Court you think he's  
6           going to get involved and interfere again?

7 **MS. BALLARD:** If he knows the details I suspect he will,  
8           yes, sir.

9 **MR. HAMMER:** Your Honor, you can issue an order  
10           preventing me from doing that, and I'll be glad to  
11           be held in contempt if I said a word to anybody  
12           about it because I haven't said a word to anybody  
13           about anything else.

14 **MR. BUNCH:** Your Honor, first of all, I knew who the  
15           purchaser was, who the original contracting party  
16           was for the Main Street property before they backed  
17           out recently. And Mr. Hammer deduced that as well.  
18           And neither one of us had any contact with them  
19           until after we were told through either The  
20           Children's Trust directly, who was the contracting  
21           party, or their attorney. Until after we were told  
22           that the contract was dead back in November. So we  
23           certainly have -- Mr. Hammer understands your order.  
24           In fact, you've already ordered him not to interfere  
25           in the sale of the property in your January 21,

1           2014, order. I really don't care who their so-  
2           called buyer is at the present time. The name of  
3           the buyer may or may not have some legitimacy to it.  
4           That's their business. I would point out that  
5           unless they think they can have a closing date on  
6           that property before May 30, they've got a bird in  
7           the hand with HASCI, as well as the guarantee of Mr.  
8           Alvin Hammer, as opposed to something that will  
9           happen down the road. And it will end these  
10          proceedings later -- I mean, I'm sorry, it'll end  
11          these proceedings earlier because there's no money  
12          to pay these judgments until either they sell the  
13          property on Main Street or HASCI could sell the  
14          property and convert that money into assisting  
15          Howard Hammer to pay the debt.

16 **THE COURT:** All right, Ms. Ballard, is there any chance of  
17           closing on the building by the 24th of April?

18 **MS. BALLARD:** By the 24th of April?

19 **THE COURT:** Yes, ma'am.

20 **MS. BALLARD:** Yes, sir. My understanding from the  
21           property manager is they plan to close by April 30,  
22           but they could -- they're aware of the Supreme  
23           Court's deadline of April 24th, and they are working  
24           on that.

25 **THE COURT:** All right. We'll stand in recess ---

1 **MS. BALLARD:** The only thing I would add, Your Honor, to  
2 the discussions about what we've attempted to do, is  
3 after our last efforts with Mr. Hammer and HASCI  
4 fell apart, I called, I think it was the third week  
5 of February, I called Mr. Babcock and told him that  
6 we would sell the building straight out to Alvin  
7 Hammer for a sum of \$800,000. And he said I'll get  
8 back to you, and he never did.

9 **THE COURT:** Okay.

10 **MS. BALLARD:** So we proceeded with the other purchasers  
11 that we'd been dealing with. So we've done  
12 everything in our power, Your Honor, to try to do  
13 something to resolve this before we got here. But  
14 it's just not going to happen. And I feel obligated  
15 to this purchaser, who has indicated a willingness  
16 to close in time to satisfy the Supreme Court's  
17 order.

18 **MR. BUNCH:** Your Honor, I don't have any obligation to  
19 that purchaser. And I would point out that two  
20 months ago, Ms. Ballard, on the record in this  
21 court, agreed to a structured contract selling it to  
22 HASCI for 4\$25,000. And for whatever reason, in  
23 that two months the price apparently has now gone up  
24 \$275,000.

25 **MS. BALLARD:** Your Honor, we were discussing ---

1 kept saying, well, we can't close until April 30th,  
2 we can't close until May 15th, we can't until May  
3 30th. So even while we were discussing proposed  
4 discounted numbers back in January at your request,  
5 they were not willing to meet the terms that we were  
6 requiring at that point. And that's why we withdrew  
7 our discussions. Where -- again, HASCI is not  
8 before this Court. HASCI is not a party to these  
9 proceedings. The only issue that's before Your  
10 Honor is the award of sanctions, if any, and if so,  
11 how much. I don't see any way for an order to come  
12 out of this court requiring Mrs. Hammer to transfer  
13 this property to anybody. She's under an order that  
14 has been affirmed by the Supreme Court, that  
15 requires her to sell this building, and that's what  
16 we plan to do.

17 **THE COURT:** Okay. Mr. Bunch, call your next witness.

18 **MR. BUNCH:** Can I just have one second with Mr. Hammer,  
19 please, sir?

20 **THE COURT:** Yes.

21 **MR. BUNCH:** Your Honor, I'd call Ms. Desa Ballard to the  
22 stand.

23 **THE COURT:** Okay. Ms. Ballard.

24 (Witness is sworn.)

25 **THE COURT:** Mr. Bunch, why do you need Ms. Ballard's

1           now, within a reasonable time.

2 **MR. BUNCH:** My guess is that at that number, and I don't  
3 know this because I don't have a direct line of  
4 communication with Alvin Hammer, my guess is at that  
5 number Mr. Alvin Hammer can come up with the money.  
6 Now, the numbers we've been talking about more  
7 recently, I think something else needs to be done in  
8 order to get that done.

9 **THE COURT:** So if I rule that this amount should be paid  
10 by April 24th, your client to do it?

11 **MR. BUNCH:** Yes. I believe he could, Your Honor.

12 **THE COURT:** Okay. Please proceed.

13 **MR. BUNCH:** All right. So that was presented to the  
14 Court, and we had a hearing I believe May the 12th  
15 or something like that. The Court encouraged us to  
16 engage in some settlement -- or wanted us to engage  
17 in some settlement -- I don't know if the Court  
18 wanted to or the parties decided to. In any event,  
19 the \$439,000 was rejected, but then we get a new  
20 accounting, which is Exhibit Number Nine, and we've  
21 gone from \$430,000 to \$534,000. So -- and a good  
22 bit of that was taken -- was -- they included, and  
23 this would have been again for the transfer of the  
24 building back to and Mr. Hammer and 1634 Main. Your  
25 Honor, a good bit of that increase is taken up by a

1 commission that Ms. Ballard thought would be owed to  
2 Danville Business Advisors, I believe is their name,  
3 for the sale of the property. And that commission  
4 was calculated at \$1,475,000 alleged sales price. I  
5 believe he's getting five percent of the sales  
6 price, or was at that time. I don't know what he's  
7 getting now. So that was communicated, Exhibit  
8 Eight was as of May 13th. If you will look at  
9 Exhibit Ten, Your Honor. And let's go to the second  
10 page of Exhibit Ten to start with. It's a two-way  
11 email exhibit. On May 14, 2014, Ms. Ballard wrote  
12 me and explained how there is a \$73,000 increase in  
13 the price, primarily related to the sales  
14 commission. There were also other expenses  
15 increased. But Ms. Ballard wrote me and represented  
16 that they had brought -- Marion Turbeville, who's  
17 the listing agent, has brought two ready, willing,  
18 and able buyers to the table already for the  
19 purchase at the appraised price, in addition to  
20 Alvin who made an informal offer yesterday at  
21 \$1,475,000.

22 **THE COURT:** Could Alvin pay that today?

23 **MR. BUNCH:** No.

24 **THE COURT:** Could he pay it by April 24th?

25 **MR. BUNCH:** Not that amount, no. But the idea is, Your

1 Honor, the point is, Your Honor, that Ms. Ballard  
2 said they were had two ready, willing, and able  
3 buyers to buy the property for 1,475,000. And they  
4 were ready to sign a contract with those buyers. So  
5 I wrote her, going back to the first page of Exhibit  
6 Ten, I wrote her and said here's what we'll do,  
7 we'll accept the sale by Mrs. Hammer at the  
8 \$1,475,000 price. Go ahead and sell the property,  
9 and then we'll just worry about the accounting  
10 later, as your January 21, 2014, order indicated.  
11 And we said, as an alternative we will pay the  
12 \$534,000 indicated in Exhibit Nine. Okay? So we  
13 said, either sell the property or we'll come up with  
14 the money to pay the \$534,000. Again, that offer  
15 was rejected. Your Honor, going to Tab 11 -- so  
16 we've gone now from May 15th up to June 17th.  
17 There's another accounting presented in Exhibit  
18 Number 11. You might note that the -- two things of  
19 interest here, the due would have been \$537,000, so  
20 it's increased. But the Danville Commission has  
21 gone down to another number, \$66,000, so there's  
22 been an increase in some other amounts Ms. Ballard  
23 felt like Ms. Hammer was entitled to. And she  
24 communicates that. Exhibit 12 is a series of emails  
25 in which we said -- what happened with Exhibit 12,

1           there was an indication that the building would sell  
2           for \$1,195,000.       And so Mr. Hammer said, for  
3           purposes of getting this matter settled he will  
4           accept that as a commercially reasonable sales  
5           price, and then Mrs. Hammer would net the amount  
6           asserted to be due on June 17th, 2013 -- June 17,  
7           2014, that Ms. Hammer would net \$537,000.   Ms.  
8           Ballard wrote back immediately and said that sticks  
9           Mrs. Hammer with tax liens that were incurred by Mr.  
10          -- which she would -- I think there's an income tax  
11          lien out there, an IRS lien.       There was also  
12          property taxes that were owed, that had not been  
13          paid last year.   Or this year for that matter.   But  
14          I wrote her back immediately and said, I overlooked  
15          those, not a problem.   She'll still her 534 and  
16          those amounts will be paid.   Trying to get this  
17          matter resolved, Your Honor, and trying to pay the  
18          judgment in full.   But we're been through a handful  
19          of offers here in which the -- every time we offer  
20          the amount of money that is said to be owed, we  
21          can't get the judgment paid, we can't get the  
22          property transferred back.   As I mentioned at the  
23          hearing in the foreclosure case recently, we have  
24          attempted multiple times to do this, but in order to  
25          get it done Mrs. Hammer has to be willing to sign

1 the property over to somebody. At that time we  
2 wanted it back in the name of 1634 or Mr. Howard  
3 Hammer. But even so, at the present time, and we'll  
4 get to this -- we actually presented her with a  
5 proposed contract for the sale of HASCI. In any  
6 event, she's got the -- she's holding the actual  
7 trump card because without -- I mean, there's -- we  
8 can't pay the money unless we're assured that we're  
9 going to get the property back or transferred to  
10 someone. And so, Your Honor, that brings me now to  
11 our Exhibit Number 13. What happened from our offer  
12 of payment, on July 3rd there was an objection  
13 raised that they weren't going to limit themselves  
14 to that amount of money. I said fine, we will agree  
15 that -- we will agree that Shirley would recover an  
16 amount of money, plus the five percent real estate  
17 commission, I think that was a concern of Mrs.  
18 Hammer, that the realtor also get paid even though  
19 he wouldn't have been involved in this transaction.  
20 And we said, well, we will include that -- let me  
21 see the documentation here. We will include the  
22 amount of the real estate commission, and also pay  
23 the liens existing at the time of the transfer, and  
24 the balance will be paid at Mr. Hammer. That's  
25 Exhibit Number 13, Your Honor. Whatever we

1 presented wasn't acceptable because on the 15th of  
2 July, 2014, Ms. Ballard, Desa Ballard, wrote back  
3 and said we're not going to settle unless you give  
4 us a release. And if you're not going to give us a  
5 release, you've got to pay us \$100,000 over and  
6 above what Shirley already has in the matter. Okay?  
7 So whatever number they were at, unless we were  
8 willing to give them a full release, Your Honor, the  
9 demand was an additional \$100,000. And it's our  
10 contention that they're entitled to payment of their  
11 judgments. It's Ms. Ballard's contention that the  
12 judgments were paid and therefore there's -- they  
13 don't have to convey the property back to us. Well,  
14 I understand they don't have to unless the Court  
15 intervenes. Okay? So, again, they want the amount  
16 of money she's entitled to, plus an additional  
17 \$100,000. So, Your Honor, you know, those talks  
18 broke down, those discussions broke down, those  
19 offers went away. And when I call them offers, Your  
20 Honor, they're really attempts to pay a judgment.  
21 There's -- you can call them settlements if you want  
22 to, but they are really attempts to pay a judgment.  
23 And structure a way to get the judgment paid. So  
24 that brings us to August of last year, when these --  
25 when we couldn't, you know, she -- we weren't going

1 resolved, and with no success. So I think that needs  
2 to be taken into account. There are unclean hands in  
3 the supplemental proceeding, as well as there are no  
4 mitigation to try to get the matter resolved. You  
5 know, in reality, I think if you go back and look at  
6 it, at what happened over the history of time, even  
7 though Mrs. Hammer would come in and tell the Court  
8 that she was agreeable to considering settlement, I  
9 don't think she really ever wanted to settle. She  
10 had a wonderful opportunity in front of her just two  
11 months ago, less than that, February 9th, so less  
12 than two months ago, where a contract was presented  
13 to her to sell the property. Mr. Hammer was going to  
14 agree that that was a commercially reasonable sale,  
15 and everything would have been done with and over  
16 with. They rejected it for whatever reason. And  
17 she's had other opportunities and has rejected those  
18 as well, so. There was also a release included in  
19 that contract that was presented to them on February  
20 9th of 2015 I believe, so.

21 **MS. BALLARD:** I just want to respond to that. There's  
22 never been a full general release offered. And as  
23 indicated by Exhibit Number One, a general full  
24 release from Mr. Hammer doesn't mean much.

25 **MR. BUNCH:** And, Your Honor, I haven't actually finished

1           on that point either.

2   **THE COURT:** I don't need -- I was hoping to wind things up  
3           a minute ago.

4   **MR. BUNCH:** The release that we gave her in that document  
5           was exactly what she asked for on the record at the  
6           January 27th hearing, so we gave them what they asked  
7           for. All right. Thank you, Your Honor.

8   **THE COURT:** Okay. Thank you all.

9   **MS. BALLARD:** Thank you, Your Honor.

10

11

12           **(There being nothing further, the hearing was concluded**  
13           **at 2:55 p.m.)**

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY

Joseph M. Strickland, Master-In-Equity

Case No. 2013-CP-40-6898

Appellate Case No. 2015-000945(2)

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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.

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I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that I served a copy of the **Supplemental Motion to Dismiss in Whole or in Part** in the above-captioned case on the following individuals by placing same in United States Mail, with sufficient first-class postage affixed, addressed as follows:

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

  
Beth Cogan, Paralegal

August 18, 2015