

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
Case No.: 2013-CP-40-6898
Appellate Case No.: 2015-001086

RECEIVED

AUG 27 2015

S.C. Supreme Court

Shirley Hammer,

Respondent,

v.

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

Of Whom,

Howard Hammer is

Appellant.

**RETURN TO SUPPLEMENTAL MOTION TO DISMISS
IN WHOLE OR IN PART**

Summary Response

Appellant Howard Hammer submits this return to Respondent Shirley Hammer's supplemental motion to dismiss. For the reasons stated herein, this Court should address the merits of Argument IV of Howard Hammer's appeal, hold oral argument thereon, and order the sale of property as stipulated by Respondent's counsel on the record in open court.

In the alternative, the motion should be denied, and this appeal should move forward under the applicable appellate court rules, and not the ad hoc, piecemeal approach which Respondent is employing at both the lower court and this court. In addition, this appeal should be stayed as Appellant Howard Hammer in this appeal will appeal a recent order of the lower court in the underlying supplementary proceedings which determined that Respondent was entitled to an additional \$459,358.51 from the proceeds of sale of 1634 Main St., this amount being in addition to the judgments totaling \$335,168.76. This order of the lower court is the subject of a pending motion to reconsider filed by Mr. Hammer and the order will be appealed to this Court if the motion to reconsider is denied.

Procedural History and Facts

a. The Supplementary Proceedings Cases

In 2013 Shirley Hammer obtained judgments against Howard Hammer in the amount of \$190,744.30, and against 1634 Main, L.P. in the amount of \$127,032.87 (case numbers 2009-CP-40-5911 and 2010-CP-40-2889). The judgments were referred to the Honorable Joseph M. Strickland, Master-in-Equity, to conduct supplementary proceedings for the sole purpose of enforcing Respondent's judgment collection rights. These cases and the proceedings before Judge Strickland are referred to herein as the Supplementary Proceedings Cases. In January 2014 Judge Strickland issued an **ORDER DIRECTING TRANSFER OF PROPERTY IN SATISFACTION OF JUDGMENTS (Exhibit 1)** (emphasis in original) in which he transferred property (including 1634 Main St. in Columbia and referred to herein as the "Property") stipulated by Respondent to be worth at least \$900,000. (**Exhibit 2**). Respondent later had the real

estate appraised at \$1,475,000.00 by a certified MAI appraiser (**Exhibit 3**). This Court then affirmed the transfer of “various properties to Shirley Hammer in satisfaction of the judgments she has against [Howard Hammer and 1634 Main, L.P.]” Memorandum Opinion No. 2014-MO-045. **Exhibit 4**. Pursuant to the Opinion, the only actions which remained open for the lower court were to (1) to determine if sanctions should be awarded against Mr. Hammer and (2) conduct an accounting after the sale of the Property.

As to the open issue of sanctions, this Court had reversed the award in the January 21 Order without prejudice. The lower court later awarded them on Respondent’s subsequent motion after remand, and those have been paid. **Exhibit 5**.

As to the open issue of the accounting, the January 21 Order which transferred the Property in satisfaction of the judgments provided that the Property would be sold in a commercially reasonable manner and that from the proceeds of sale Respondent could recover:

- (1) costs incurred in connection with the marketing and sale of the Property,
- (2) the monetary amount of her judgments, and
- (3) attorney’s fees and costs (the sanctions) awarded in the January 21 Order.

Exhibit 1, p. 12 of 13 at ¶ 6.

Since the sanctions have been paid, the accounting remains as the only open issue for the lower court in the Supplementary Proceedings Cases. Moreover, pursuant to the affirmed January 21 Order, the only amounts due to Respondent from the sale of the Property would be costs incurred for sale and marketing, and the monetary amount of the judgments which had been set at \$335,168.76 (interest included) in the January 21 Order.

At oral argument on the appeal of the transfers made in the January 21 Order, the Chief Justice indicated that she thought the costs of sale ordered by Judge Strickland were limited in nature:

Justice Toal: All he's talking about as I understand it in terms of any expenses is the expenses of sale. Commissions, closing expenses and the like. I don't see anything other than that that gives you any discretion in this matter.

Mr. Bunch: And the problem with that is that because the Order is not as specific as I think it should be. I think it leaves that door open.

Justice Toal: Well, if we interpret it in that fashion, it is very specific and that the costs that you are talking about are not discretionary, they are ordinary costs of selling a piece of property. The commissions, deed stamps and other matters involving a closing. If that's the way we interpret it, then all the rest of it must be escrowed and wait for further direction of the court. Then, what is the complaint?

Oral Argument conducted October 2, 2014 at approximately 52 minutes, 30 seconds as archived at this Court's video portal (<http://media.sccourts.org/videos/2014-000965.mp4>)

Although Respondent had not closed on a sale of the Property, she prematurely filed a Motion to Approve Accounting. **Exhibit 6.** In that motion, Respondent requested findings on matters related to the commercial reasonableness of a sale which at that time had not even occurred. Respondent also asserted, among other things, that Mr. Hammer owed \$247,016.50 to 1634 Main, L.P. Even though this alleged debt is neither part of any judgment owed Respondent, nor is it a cost of sale and marketing, Respondent sought approval of the lower court to include this amount as money she was entitled to from the sale of the Property. Mr. Hammer disputed liability for the alleged \$247,016.50 claim to 1634 Main, L.P. **Exhibit 7.** Without taking any evidence from Respondent and without allowing Mr. Hammer to present any evidence refuting the new \$247,000 claim, the

lower court ruled that the alleged debt could be collected by Mrs. Hammer from the proceeds of sale of the Property.¹ **Exhibit 8.** The lower Court also approved – without presentation of any evidence whatsoever - other alleged expenses and set the amount Respondent would be entitled to from the sale of the Property at \$794,527.27 – which is \$459,358.51 more than the monetary amount of the judgments. Moreover, the lower Court failed to recognize the rental income Respondent had collected on the Property, approximately \$10,000 per month since February 2014, which totals \$170,000 through the date of this return.

Mr. Hammer filed a motion for Judge Strickland to reconsider the Order Approving Accounting on June 18, 2015. **Exhibit 9.** The next day, the undersigned counsel for Mr. Hammer requested that the lower court promptly hear the motion and made a follow up request on July 22. **Exhibit 10.** The motion has not been heard or decided; therefore, the appeal is not ripe for what is effectively a new judgment without a trial on matters never referred to the lower court.

b. The Foreclosure Case

While the supplementary proceedings were pending, Respondent commenced an action in November 2013 to foreclose her judgments against 1634 Main St. and certain personal property interests of Mr. Hammer. This case is referred to as the “Foreclosure Case,” has case number 2013-CP-40-6898, and is the case presently on appeal to this Court.

The Foreclosure Case should have been dismissed in January 2014 (or December

¹ Subsequent to Judge Strickland announcing his ruling, Respondent made a proffer of evidence of three exhibits without authenticating any of the exhibits or presenting any testimony to substantiate the contents of what at this point would be nothing more than hearsay.

18, 2014 when the remittitur issued for the appeal challenging the transfers of Property to satisfy Respondent's judgments). At a January 9, 2014 hearing in the supplementary proceedings, in order to induce the Court to transfer the Property, Respondent's counsel represented and stipulated that she would dismiss the Foreclosure Case and that it would be moot once the lower court transferred the Property:

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.**

(Exhibit 11, January 9 Tr. p. 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**

(Exhibit 12 January 9 Tr. p. 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.**

(Exhibit 13 January 9 Tr. p. 73, ll. 1-6). (emphasis added)

Rather than dismissing the Foreclosure Case as her counsel had stipulated, Respondent's counsel sought a charging lien on interests of Mr. Hammer in various limited liability companies, one of which is HASCI, LLC. **Exhibit 14**, Amended Motion for Charging Lien. However, even in her motion for the charging lien Respondent's

counsel acknowledged that the judgments against Mr. Hammer were satisfied. Specifically, Ms. Ballard stated:

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.

(*Id.*, footnote 2, p. 2) (emphasis added).

In addition to Respondent's counsel's stipulations and representations, the lower Court recognized in its January 21 Order that the Foreclosure Case was rendered moot by the transfer of the Property. The lower court stated as follows:

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

(**Exhibit 1**, January 21 Order, p. 6).

Moreover, at the January 9, 2014 hearing, the lower court had directed Respondent to have the judgments marked satisfied in the public records:

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.

Exhibit 15, January 9 Tr., p. 11, ll. 8-12). (emphasis added)

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

(**Exhibit 16**, January 9 Tr. p. 96, ll. 8-13). (emphasis added)

Despite the stipulation by Respondent's counsel, the lower court's directive at the a

January 9 hearing, the lower court's January 21 Order acknowledging that the foreclosure case was mooted by transfer of the Property valued by Respondent's MAI appraisal more than a million dollars above the monetary amount of the judgments, and this Supreme Court's Opinion stating the Property was transferred in satisfaction of the judgments, the lower court erroneously granted the charging lien.

c. The Settlement Placed on the Record

On January 16, 2015, the lower court convened a hearing to consider Respondent's renewed motions for sanctions. At that hearing, the lower court suggested that the parties consider their settlement options. The transcript (**Exhibit 17**) shows a lengthy colloquy before and with Judge Strickland, the upshot of which is that Respondent's counsel conveyed certain terms of settlement to Mr. Hammer's counsel. The terms were not part of the record at the January 16 hearing; however, Mr. Hammer's counsel accepted the terms in a letter dated January 26, 2015. **Exhibit 18.**

The lower court reconvened the sanctions hearing on January 27, inquired about the status of settlement, and allowed the parties further time to discuss settlement. At the hearing on January 27, the terms of settlement were stated on the record, and accepted by both parties. Transcript excerpts from the parties' counsel made in open court are quoted below.

Initially, Respondent's counsel explains that the purchase price to be paid by HASCI is \$525,000 with interest running from Friday, January 30th, and that HASCI would be responsible for payment of tax liens on the property, over and above the \$525,000 payable to Respondent.

MS. BALLARD: The money to me is 525 and -- this is not on the record. The money to me is XXX to Shirley. We cannot give you marketable,

insurable title. We can only give you the title that we have, and that's what we got in the deed. 7.25 percent interest will run starting Friday.

THE COURT: Hold on a second. Didn't she want this off the record -- just the numbers, not the whole ---

MS. BALLARD: Not the numbers. Yeah, just not the numbers.²

THE COURT: All right, thank you.

COURT REPORTER: Okay, thank you.

MS. BALLARD: Because you're talking about XXX, which means the taxes. I'm not paying the taxes. Y'all are paying the taxes, y'all are paying the tax lien or assuming the tax lien. We're not going to have any responsibility for the tax lien. It's going to be an amount of money to Mrs. Hammer that does not include the property taxes, does not include the tax lien.

Exhibit 19, January 27 Trans., p. 19, l. 20 – p. 20, l. 14.

Mr. Hammer's counsel explains to the lower court that the tax liens were estimated to be \$50,000, and that Mr. Hammer had included those liens as part of the purchase price in the January 26 letter accepting Respondent's terms conveyed on January 16. In addition, Mr. Hammer had agreed to all other terms set forth by Respondent's counsel.

Ms. Ballard made three demands January 16th. She made a monetary demand that was money due to -- that would come to Mrs. Hammer. She said Mr. Hammer would be responsible for payment of taxes and tax liens, which we understood to be approximately \$50,000. And she said she wanted a release to Shirley and her agents regarding the building and contents. To which, after Mr. Hammer consulted with his tax folks, we went back to them yesterday and said we will meet every one of those demands, we will structure the deal with HASCI buying the property, and HASCI is scheduled to close on some other property in less than a month. That buyer has a 30-day -- they can ask for 30 additional days before they close. And if HASCI does not close, if that HASCI sale does not close, Mr. Alvin Hammer will fund the payment and we'll pay you by the end of April.

Exhibit 19, January 27 Trans., p. 11, l. 14 – p. 12, l. 7.

² Based on Respondent's counsel's request, the court reporter began inserting "XXX" for the amount of the purchase price in the transcript. Nevertheless, it is clear from following the transcript and exhibits that the agreed upon purchase price was \$525,000, that \$525,000 would be the "money to me."

Mr. Hammer's counsel notes that Respondent's counsel demanded the payment of interest if the purchase would not be consummated until the end of April.

Ms. Ballard added an additional term this morning if we want to wait to pay the money in April. Nevertheless, as I understand -- and I don't have full authority from HASCI, but I will say that based on my understanding of the numbers, we're not significantly far apart, even if interest is not acceptable to HASCI. Okay. In other words, Ms. Ballard said, here's the number, if you don't pay it until April add 7.25 percent to it, I believe, which is the judgment rate, I believe that's what she said.

Id., January 27 Trans., p. 17, ll. 1-12.

Respondent's counsel confirms to the lower court that the terms of the agreement expressed in open court take care of all matters that were pending in the lower court.

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

MS. BALLARD: Everything else.

THE COURT: Everything's taken care of?

MS. BALLARD: Yes.

Exhibit 19 January 27 Trans., p. 21, ll. 2-8.

Respondent's counsel then confirms the terms of settlement to the lower court.

THE COURT: And I'd certainly accommodate the wishes of both parties by just vacating the previous order or modifying it or whatever.

MS. BALLARD: I don't think that's what we're asking you to do. I think what we're asking, assuming we agree on the numbers, and the number is solid and immoveable, except for the 7.25 percent, we pay no taxes, we pay no liens, we pay nothing. We give you the title we have, interest would start running on the number that is not changing at 7.25 percent starting Friday, and Alvin Hammer would guarantee that the payment would occur no later than whatever the date in April that is in your letter.

Exhibit 19 January 27 Trans., p. 22, ll. 6-18.

After conferring with HASCI's counsel, Mr. Hammer's counsel confirmed to the lower court that HASCI was agreeable to the payment of interest (a new demand made by

Respondent on January 27), and Mr. Hammer's counsel reiterated the already expressed terms of the agreement presented on the record.

Anyway, after speaking with Mr. Babcock, HASCI is agreeable to the sales price at XXX; the seller would not be responsible for paying the tax liens on the property, but the -- but otherwise, you know, the deal remains the same, the assignment of leases, there would be no conveyance of 1634 or SH5, that'd be 1634, LP or SH5, LLC. We're agreeing to pay the interest on the purchase price at 7.5 percent up until the date of closing, the closing to occur not later than April 30th. Okay. There would be -- we still need to iron out the issue of marketable or insurable title, which I understand that Ms. Ballard offered a previous prospective purchaser the property so they're the ones that kind of had the deal structured the way they wanted to in your order, so I would assume they can give good title to the property. If it's not insurable, then the deal's going to fall apart, okay. That's really all I can -- I mean, we can't say it's insurable, they can't say it's insurable, some title abstractor and insurance company and title lawyer can make that determination. In addition, Mr. Hammer would release Shirley, her agents, servants and employees from all matters dealing with the building and its contents, which is what was conveyed to us on January 16th. And if I've left out anything from my previous recitation of where we were, I would incorporate those as well. (emphasis added)

Exhibit 19, January 27 Trans., p. 34, l. 8 – p. 35, l.10.

Respondent's counsel asserts that she cannot guarantee marketable or insurable title. However, Mr. Bunch explains that HASCI (and no other purchaser) would purchase real property and pay a \$525,000 purchase price (plus the \$50,000 needed to clear tax liens), if the buyer would not receive an insurable title. It becomes apparent that Ms. Ballard is agreeable to her client conveying the property by quitclaim deed, which, as discussed below, quitclaim deeds were presented to Respondent for execution after HASCI's real estate counsel determined that title was insurable.

MS. BALLARD: Your Honor, I can't agree to that. I can't agree to marketable and insurable title, I'm sorry. Can we proceed with our hearing?

THE COURT: Mr. Bunch indicated that's still open.

MR. BUNCH: She doesn't -- she doesn't have to agree to it, Your

Honor. That would be determined by whoever does the closing work for the purchaser.

MS. BALLARD: I've offered a quit claim deed.

MR. BUNCH: If they can't get, Your Honor, if they can't get insurance or marketable title, HASCI can't buy the property.

MS. BALLARD: Sorry.

THE COURT: Or they wouldn't buy it.

MR. BUNCH: Right.

THE COURT: Not they couldn't, they wouldn't.

MR. BUNCH: Right. They wouldn't.

MS. BALLARD: It's with a quit claim deed or nothing.

Exhibit 19, January 27 Trans., p. 35, l. 11 – p. 36, l. 2

The lower court asks if all issues for the agreement are resolved except whether Respondent can convey marketable title. Respondent's counsel confirms the agreement. Again, the marketable title issue was resolved by HASCI's agreement to accept the quitclaim deed.

THE COURT: Everything's agreed to except the issue of marketable title, is that -- I mean, is that correct?

MS. BALLARD: The last offer, when they last came back in the courtroom -- yes.

THE COURT: That's the only issue left?

MS. BALLARD: Yes.

Exhibit 19 January 27 Trans, p. 45, ll. 15 – 21.

A review of the January 27, 2015 hearing transcript shows that the "last offer, when they came back in the courtroom" were the terms stated in the transcript at page 34, line 8 to page 35, line 10, as quoted above. The purchase price also included payment of sanctions, which at that time had not been determined or awarded.

THE COURT: And for clarity of the record, the proposed settlement would in fact include any amount for sanctions; is that correct?

MS. BALLARD: That is correct.

Exhibit 19 January 27 Trans., p. 46, l. 25 - - 47, l. 3.

On Tuesday, February 3, Respondent's counsel backtracked from the agreement placed on the record by changing the payment deadline stipulated to in open court from

April 30, 2015 to February 13, 2015. She also demanded that all settlement documents be executed by February 13. **Exhibit 20.**

On February 9, 2015 - after coordination with Mr. Hammer, HASCI, LLC, HASCI's counsel in this litigation, and HASCI's real estate counsel – Mr. Bunch submitted to Respondent's counsel the documentation needed to conclude settlement, including a settlement agreement signed by Howard Hammer, his brother Alvin Hammer, and HASCI, and quitclaim deeds as stipulated to by Ms. Ballard. **Exhibit 21.** Consistent with the January 27th agreement, the payment deadline was set at April 30th with interest accruing at the judgment rate until payment was made. However, again on February 11, Respondent's counsel reiterated that she had changed the terms of the agreement by moving the payment deadline from April 30th to February 13. **Exhibit 22.** HASCI's payment of the purchase price (as guaranteed by Alvin Hammer) was tied to the sale of a property owned by HASCI which was not going to close until after February 13. See **Exhibit 18.** When HASCI was unable to fund the purchase price by the changed deadline of February 13, Respondent's counsel confirmed that Respondent would not honor the agreement made in open court on January 27. **Exhibit 23.** Later, Respondent's counsel admitted – again in open court – that Respondent would never settle with Howard Hammer.

We have absolutely zero interest in settling with Mr. Howard Hammer. * *

* We're not going to enter into a settlement agreement with Mr. Howard Hammer. It's not going to happen.

Exhibit 24, March 27, 2015 Trans., at pp. 38-39.

d. The Meeting with the Prospective Purchaser

Earlier this month (August 2015), the undersigned received a telephone call from

a prospective purchaser of the Property. I was asked to meet with the prospective purchaser whom I was told had a contract to purchase the Property, and with Mr. Bru Pender whom I was told was real estate counsel for Respondent hired to handle a closing on the sale of the Property. I did not seek out this meeting. I accommodated the potential purchaser and Respondent's real estate counsel by meeting at their request. At the meeting, I was asked if I was aware of any issues which might affect title to the Property. I mentioned one issue concerning the possible interest of a minor (which Mr. Pender did not seem concerned about). As I was asked, I also candidly stated that Mr. Hammer had filed an appeal several months ago and that Respondent's counsel had agreed on the record in open court to sell the building to HASCI, LLC. I was asked what Mr. Hammer would need to settle this matter, and gave them my thoughts as his attorney (although I had not discussed settlement with Mr. Hammer for months). Mr. Pender advised that he would discuss the situation with Ms. Ballard and/or the Respondent and get back with me. I reminded them of Ms. Ballard's statement that she would never settle with Mr. Hammer, but wished them well. Mr. Pender did not get back with me. Instead, the instant motion is now before this Court falsely accusing me and Mr. Hammer of "attempting to derail the pending sales contract." Motion, ¶ 17, p. 4.

The author of Respondent's instant motion did not attend the meeting. Those who did attend the meeting have not filed any affidavit of what transpired at the meeting. Those who did attend the meeting have not accused Mr. Hammer or the undersigned of any improper conduct or any attempt to derail anything. Mr. Hammer's appeal, and his initial brief, were filed prior to Respondent entering a contract with the potential purchaser, that contract being executed after July 22, 2015 per Respondent's motion.

Instead of advising the potential purchaser of Respondent's previous agreement to sell to HASCI, or instead of tying a closing date to the resolution of this appellate issue, the potential purchaser had to learn from me about the previously filed appeal and the

issue which Respondent seeks to have this Court immediately address. The fact of the matter is that Respondent refused to honor the agreement made on the record to sell the property to HASCI with closing to occur by April 30, and Respondent wishes for this Court to drop other pending matters and address one issue in an appeal in piecemeal fashion for the problem she created.

Argument

I. The agreement of Respondent's counsel placed on the record in open court to sell the Property to HASCI should be enforced.

We respectfully submit that this Court should order the sale of the property to HASCI, LLC, and decree that any contracts which Respondent sought to enter into for sale of the Property after January 27 are null and void.

Respondent's counsel entered into an agreement to quitclaim the Property to HASCI for \$525,000 (plus interest from January 30th) with a closing date by April 30th. This sale would end all proceedings with Mr. Hammer, an "omnibus settlement" which would take care of the judgments, the sanctions, and everything else. **Exhibit 19**, January 27 Trans., p. 21, ll. 2-8. However, instead of honoring the agreement made on the record in open court, Respondent's counsel unilaterally moved the payment date from April 30th to February 13th, a date which she knew the purchaser could not meet since it was funding the purchase price by the sale of other property. Respondent's counsel subverted a clearly defined term of the agreement placed on the record, and admitted as much when she – again on the record – stated she would never settle with Mr. Hammer.

An agreement of counsel placed on the record in open court is enforceable under Rule 43(k), SCRPC. "To be enforceable, settlement agreements must either be entered into the court's record or acknowledged in open court and placed upon the record." *Motley v. Williams*, 374 S.C. 107, 110, 647 S.E.2d 244, 246 (Ct. App. 2007). An agreement of counsel which is stated on the record in open court is binding. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002).

In *Cheap-O's Truck Stop*, the Court of Appeals affirmed the following settlement:

Yes, Sir. The terms are as follows: The defendants in those cases will pay to the plaintiffs in those cases the sum of Eighty-Thousand Dollars (\$80,000.00). Sixty-Thousand Dollars (\$60,000.00) of that eighty will be paid immediately; twenty thousand will be paid within the next two weeks. So this week, we'll have sixty, the balance will be within the next two weeks. There will be mutual releases, mutual orders for dismissals. Neither party will-after the payment of the eighty-thousand dollars, neither party owes anybody any money. They are completely released from any liability to each other. And the court can go ahead, if it would, and do a form order.

Like the instant matter, the amount of the payment and the timing of the payment were stated on the record and the courts enforced the terms of settlement.

Here the terms of sale were agreed to on the record by Respondent's counsel. Respondent's counsel agreed to payment of \$525,000 by April 30, 2015 and in exchange she would deliver a quitclaim deed to the real estate being purchased.

Further, as stated on the record by Respondent's counsel, the sale to HASCI would end the Foreclosure Case and the Supplementary Proceedings Cases, and Respondent would have recovered \$290,000 more than her judgments. All proceedings in the cases and orders entered after January 27, 2015 would be voided and vacated once HASCI completes the purchase.

II. Alternatively, Respondent's motion to dismiss should be denied, this appeal should be held in abeyance, and this appeal should be consolidated with an appeal in the Supplementary Proceedings Cases.

Alternatively, if this Court does not wish to address one of four issues presented on appeal in piecemeal fashion advocated by Respondent, we submit that the Court should deny Respondent's motion to solely address Argument IV of the instant appeal. There is no procedure in the South Carolina Appellate Court Rules to handle appeals in this manner. Further, Respondent does not cite any procedure or case law to handle this

appeal in the manner requested by the motion. Under the SCACR parties are required to file initial briefs, designate matter for the record on appeal, prepare final briefs, and orally argue cases as permitted by the appellate courts.

Not only should all arguments in the instant appeal be addressed after a full record is developed and presented to the Court, it is also urged that the Court should hold this appeal in abeyance and consolidate it with a forthcoming appeal in the Supplementary Proceedings cases wherein the lower court has added \$459,358.51 for Respondent over the \$335,168.76 monetary amount of the judgments that the Property transfer satisfied.³

The reason this Court is faced with this procedural quagmire is because Respondent failed to dismiss the Foreclosure Case in accord with her counsel's representations in open court. Further, contrary to even the lower court's order stating that Respondent's judgment was satisfied and recognition that the Foreclosure Case was moot, Respondent filed a motion for a charging lien in the Foreclosure Case. Respondent could have sought a charging lien in Supplementary Proceedings Cases. The parties and this Court would not now be burdened by appeals in two cases arriving at this Court at different times had respondent's counsel dismissed the Foreclosure case as she stipulated she would do.

Contrary to Respondent's unsubstantiated assertion in her motion that Mr. Hammer seeks to delay or prevent the satisfaction of the judgments, those judgments were satisfied by Judge Strickland's January 21 Order as affirmed by this Court. Mr. Hammer's counsel has sought review on two occasions by the lower court of his motion to reconsider in the Supplementary Proceedings Cases, in an effort to bring these matters to a head.

³ Of this \$459,358.51, almost \$250,000 comes from a new claim not within the jurisdiction of the lower court. It was awarded without the issuance of a summons, without an order of reference, without presentation of any evidence, and without Mr. Hammer being permitted to testify.

It is a perversion of the actual facts for Respondent's counsel to claim that Mr. Hammer's request to enforce an agreement made in open court on the record to end these cases and sell the Property is for delay. If there has been any delay and unnecessary continuation of this litigation, it is caused by Respondent's failure to honor the agreement to sell the property to HASCI. Moreover, had Respondent honored the agreement, this court would not be entertaining another appeal for the lower court's erroneous award of the additional \$459,000. It is the actions of Respondent that are the cause of any claimed delay by her. Respondent's monetary recovery could have been in hand months ago if her counsel's agreement "made in open court and noted upon the record" on January 27, 2015, had not been wrongfully breached. Rule 43(k), SCRCF. As noted in the January 27 transcript, that sale would take care of everything, including sanctions against Mr. Hammer. It was an "omnibus settlement." **Exhibit 19**, January 27 Trans., p. 21, ll. 2-8. It is not Mr. Hammer delaying anything, but the assertion reminds one of the saying that the best defense is a good offense. "Generally, the idea is that strong offensive action will preoccupy the opposition and ultimately hinder its ability to mount an opposing counterattack, leading to a strategic advantage." Wikipedia.

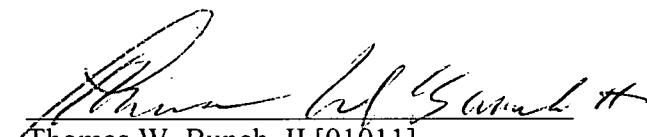
It is, in fact, Mr. Hammer's complete desire to have these judgments, and his former wife's monetary recovery, put behind them. However, his former wife's claim (excluding sanctions which have been satisfied) has been embellished and improperly inflated. It has gone from \$335,000 on January 21, 2014, to \$525,000 in January 2015 (the full amount demanded by Respondent's counsel), then \$794,000 in April 2015 (the erroneous Order Approving Accounting). Respondent has indicated she intends to seek more when she presents a final accounting to the lower court.⁴ It is posited that this Court intended for Respondent's costs of sale and marketing to be limited in scope, and

⁴ It is unclear why Respondent's counsel prematurely filed a motion to approve an accounting before a sale was consummated, or why the lower court entertained the motion and issued an order thereon.

that it never intended for Respondent to recover an additional \$459,000 in costs of sale and marketing, 137% of the judgments.

Conclusion

It is respectfully urged that the sale to HASCI be directed by this Court, or that the Court deny Respondent's motion, direct the lower court to address Mr. Hammer's motion to reconsider, and that this Court then address both the Foreclosure Case and the Supplementary Proceedings Cases at the same time. This will conserve judicial resources and provide for a final resolution of these cases, which is exactly what the Court intended in its Opinion of November 6, 2014. Mr. Hammer is ready for these cases to end. He is ready for Respondent to recover the rightful and lawful monetary amount of her judgments. If this Court is unwilling to compel the sale of Property to HASCI, he is prepared for Mrs. Hammer to recover reasonable and limited costs of sale, but not an additional \$459,000 over the judgments, now approved by the lower court.



Thomas W. Bunch, II [01011]

ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
Attorney for Howard Hammer

August 27, 2015

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
Case No.: 2013-CP-40-6898
Appellate Case No.: 2015-001086

RECEIVED

AUG 27 2015

S.C. Supreme Court

Shirley Hammer,

Respondent,

v.

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

Defendants,

Of Whom,

Howard Hammer is

Appellant.

PROOF OF SERVICE

I certify that I have served the **Return of Howard Hammer to Supplemental Motion to Dismiss in Whole or in Part** upon opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on **August 27, 2015** addressed as follows:

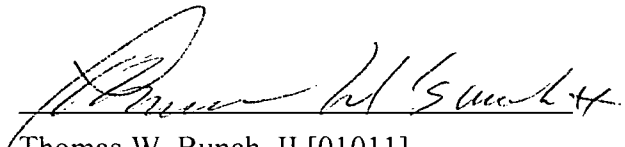
Desa Ballard **(for Shirley Hammer)**
Law Offices of Desa Ballard
Post Office Box 6338
West Columbia, SC 29171

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

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

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

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



Thomas W. Bunch, II [01011]
ROBINSON, McFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
Attorney for Howard Hammer

EXHIBIT 1

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009- CP-40-05911&
2010-CP-40-2889

Shirley Hammer,

Howard Hammer,

Shirley Hammer

1634 Main,LP,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stephanie Weissenstein, Esquire

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

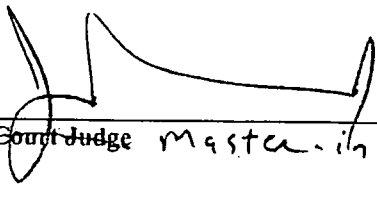
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
TAX Map No: 09014-04-19

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge Master in Equity

2097
Judge Code

1-21-14
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephanie Weissenstein, Esquire

Howard Hammer, Pro se

Art Aiken, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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 COURT OF COMMON PLEAS

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

**ORDER DIRECTING TRANSFER
OF REAL PROPERTY
TO SATISFY JUDGMENTS**

RICHLAND COUNTY
FILED
2014 JAN 21 AM 9:05
JEANETTE M. JOHNSON
C.C.P.

The matter before the court is a hearing in the nature of supplemental proceedings.

Present at the hearing on January 9, 2014 were the Plaintiff and her counsel, Stephanie

Weissenstein. Also present was Howard Hammer, who appeared *pro se* in the Hammer v.

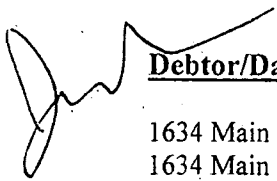
Hammer matter, and as agent for 1634 Main, LP. Art Aiken appeared as counsel for 1634 Main,

LP and as counsel for Howard Hammer for the 1634 Main matter.

STATEMENT OF THE CASE

These supplemental proceedings were initiated by verified petitions and Rules to Show Cause issued by Judge Casey Manning on April 22, 2013, based on executions against property issued dated January 29, 2013. On June 25, 2013, execution against property were issued for additional judgments, and returned by the Richland County Sheriff *nulla bona*. Throughout these proceedings, including hearings, Plaintiff has alleged her judgments are in the principle amount of \$317,777.17, as set forth below. The defendants made no objections to Plaintiff's assertion or this Court's consideration of the all judgments in these proceedings until oral arguments at the final merits hearing on January 9, 2014. Defendants' oral objections to this Court's consideration of the entirety of Plaintiff's judgments against Defendant's are untimely, and overruled.

Plaintiff holds judgments against the defendant debtors, as follows:



<u>Debtor/Date</u>	<u>Principal</u>	<u>Interest¹</u>	<u>Total</u>
1634 Main LP (01/29/2013 Judgment)	\$25,000.00	\$ 1,673.46	\$ 26,673.46
1634 Main LP (06/03/2013 Judgment)	\$102,032.87	\$ 4,397.90	\$106,430.77
	<u>\$127,032.87</u>	<u>\$ 071.36</u>	<u>\$133,104.23</u>
Howard Hammer (01/29/2013 Judgments)	\$130,000.00	\$ 701.99	\$138,701.99
Howard Hammer (06/03/2013 Judgments)	\$ 60,744.30	\$ 2,618.25	\$ 63,362.55
	<u>\$190,744.30</u>	<u>\$11,320.23</u>	<u>\$202,064.53</u>
Total due Shirley Hammer	<u>\$317,777.17</u>	<u>\$17,391.59</u>	<u>\$335,168.76</u>

These proceedings are conducted under Chapter 39 of Title 15 of the South Carolina Code, for the purpose of executing on property owned by debtor to satisfy judgments against them. The Rules to Show Cause and Order of Reference required defendants, Howard Hammer (Mr. Hammer) and 1634 Main LP (1634 Main), a limited partnership controlled by Mr. Hammer

¹ Post-judgment interest is calculated through January 9, 2014.

(via his ownership of the general partner, SH5, LLC, to appear before the Court on May 30, 2013, pursuant to S.C. Code Ann. Section 15-39-310 and bring records which would establish the existence of real and personal property so that the Master could execute against such discovered property for purposes of satisfying the judgments. Neither Mr. Hammer nor any representative of 1634 Main appeared as ordered by Judge Manning on May 30, 2013. Arthur Aiken appeared as counsel for Mr. Hammer and 1634 Main, but gave no explanation for Mr. Hammer's absence or his failure to appear. This Court continued the matter and ordered both defendants to appear at a hearing on June 4, 2013.

At the June 4, 2013 hearing, Mr. Hammer appeared, but brought no documents as had been ordered by Judge Manning; Mr. Aiken similarly produced no documents in response to the RTSC. Besides motions to dismiss, which were denied, no responsive pleadings were filed then, or since. At the June 4, 2013 hearing, Mr. Hammer was sworn in as a witness, but he was evasive, and did not provide substantive information about his assets. Additionally, he invoked the Fifth Amendment regarding questions related to 1634 Main LP and the real estate located at 1634 Main Street in Columbia.

The Court granted Mrs. Hammer's request to continue the examination by written discovery. By order dated June 10, 2013, this Court ordered both Mr. Hammer and 1634 Main LP to answer questions via written interrogatories and requests to produce to enable the Court to determine what assets exist against which the underlying judgments in these cases can be satisfied.

On or around June 11, 2013, Mrs. Hammer's counsel thereafter served written questions, consisting of interrogatories and requests to produce, on both Mr. Hammer and 1634 Main. The court's order also required Mr. Hammer and 1634 to file copies of their discovery responses with

this Court. This court also granted the Plaintiff's motion to consolidate these matters and all judgments awarded against these defendants in favor of plaintiff.

Neither Mr. Hammer nor 1634 Main LP served or filed any responses to the written discovery.

At a third hearing on August 12, 2013, Mr. Hammer again failed to appear. Mr. Aiken stated he was representing both Mr. Hammer and 1634, and reported that Mr. Hammer had gone to the Bahamas on a vacation with his children. At the hearing, Mr. Aiken presented to Mrs. Hammer's counsel answers to the interrogatories, but he did not provide any response to the requests to produce that were also due by that date. The court record reflects no responses to the written questions.

 The written responses handed to Mrs. Hammer's counsel on August 12, 2013 were untimely and contained objections. The information was provided was non-substantive and provided no information useful to the Court in these proceedings. Neither Mr. Aiken on behalf of his client nor Howard Hammer, *pro se*, supplemented the responses prior to the hearing on January 9, 2014.

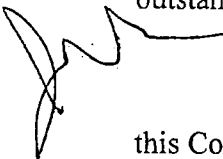
Neither Mr. Hammer nor 1634 Main LP has filed any responses to the written discovery served upon them, as they were required to do by this court's order dated June 10, 2013.

Mrs. Hammer's counsel subpoenaed documents from several witnesses with no response. She also subpoenaed several of those witnesses to appear at the August 12, 2013 hearing to give testimony and provide documentation about the assets of defendants Howard Hammer and 1634 Main, LP., only Alvin Hammer and Debra Covington appeared at the August 12, 2013 hearing. Ms. Covington provided the Court and Mrs. Hammer's counsel with documents responsive to the subpoena.

Alvin Hammer stated he had provided loans to Howard Hammer, but indicated he had no documentation responsive to the subpoenas that were served upon him. Alvin Hammer also volunteered he would be willing to discuss settlement options on behalf of Howard Hammer. Witness Bernard Ackerman did not appear and did not provide documents which were required to be provided.

The hearing on August 12, 2013 was concluded without resolution of the remaining motions, to give the parties time to try to work out a settlement. On September 9, 2013, the court was informed no settlement could be reached, and counsel for Plaintiff submitted a proposed order to the court for the transfer of certain real property located at 1634 Main Street to Plaintiff.

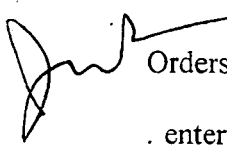
On September 9, 2013, the defendant debtors filed a motion for summary judgment alleging that transfer of the real property is beyond the power of this court, under S.C. Code §15-31-310, *et. seq.* A hearing was scheduled for January 9, 2014 for purposes of addressing all outstanding issues, and notice of the hearing was sent to all counsel of record October 14, 2013.



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, LP to satisfy the judgments. Mr. Hammer made an oral motion to dismiss Plaintiff's claim for execution against property on the basis that a separate action seeking foreclosure of judgments filed by Plaintiff on November 4, 2013 (Case No. 2013-CP-40-06898) divested this court of its jurisdiction over the supplemental proceedings. Counsel for 1634 Main, LP joined in the motion, and argued that only a foreclosure proceeding could divest his client of property for purposes of satisfying a judgment. 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 that the foreclosure matter was filed in order to attach other property to the

judgment if it became necessary to do so. Both the oral Motion to Dismiss and Motion for Summary Judgment are denied.

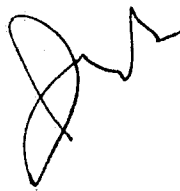
The powers of the Master in Equity are defined by State law and by an Order of Reference, and the South Carolina Rules of Civil Procedure. In this case, Judge Manning issued Orders of Reference after the Executions Against Property owned by the judgment debtors were returned by the sheriff *nulla bona* under S.C. Code Ann. 15-39-130. In South Carolina, upon proof to the satisfaction of the court is received that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, then “such . . . *proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.*” S.C. Code §15-39-310.

 It was for this purpose the Orders of Reference were executed by Judge Manning. The Orders of Reference also specifically gave this court the “authority to enter into final judgment. . . entertain and *rule upon all motions necessary to dispose of this matter, to include but not be limited to:* motions to dismiss, motions to appoint a receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of Plaintiff’s debt.” (emphasis added).

The judgment debtors own property which may be attributed to satisfy Plaintiff’s debt. S.C. Code §15-39-10 (c) specifically states one manner of execution includes “the delivery of the possession of real or personal property or such delivery with damages for withholding the property”. Such executions “may issue upon final judgments or decrees.” S.C. Code §15-39-30. Separate foreclosure proceedings and judicial sale are not required.

Mrs. Hammer has introduced into evidence exhibits that reflect the real property owned in part by Mr. Hammer personally and in part by 1634 Main LP, located at 1634 and 1632 Main Street in Columbia, South Carolina, has a fair market value of \$900,000.00. At the hearing on January 9, 2014, Mr. Hammer stipulated to the estimated value, and testified there is a tax lien against the property. The real property is more fully identified as:

Those certain parcels of land, with improvements thereon, situate in Richland County, South Carolina, 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 of record to 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 ½" 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.

This being a portion of the same property conveyed to Shirley Hammer by deed of 1634 Main, L.P., a South Carolina limited partnership dated February 11, 2002, and recorded in the office of the Register of Deeds for Richland County, South Carolina, in Deed Book 00627, at page 1909.

This being a portion of the same property conveyed to Howard Hammer by deed of Shirley Hammer dated February 27, 2013, which was not recorded. The deed was properly delivered to Howard Hammer via letter from Timothy E. Madden to Thomas H. Pope dated February 27, 2013, effecting delivery transfer of title.

Tax Map #09014-04-19

This conveyance is made subject to all easements, conditions, covenants, restrictions and rights-of-way which are a matter of public record and/or actually existing upon the grounds affecting the abovedescribed property.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

According to evidence of record in these proceedings and the public records, Mr. Hammer owns, among other assets:

- 52.75 % undivided interest in real property located at 1634 Main Street in Columbia, which was transferred to him as a result of a settlement of the family court action involving Mr. and Mrs. Hammer. The quit claim deed executed by Mrs. Hammer deeding the 52.75% interest in the real property to Mr. Hammer was executed on February 27, 2013 and delivered to Mr. Hammer via letter from Mrs. Hammer's attorney Timothy E. Madden dated February 27, 2013. That deed has not been recorded in Richland County.
- An unknown percentage of ownership in a limited partnership identified as 1634 Main LP. Some portion of this interest was transferred from Mrs. Hammer to Mr. Hammer by instrument dated February 27, 2013, and delivered to Mr. Hammer via letter from Mrs. Hammer's attorney Timothy E. Madden dated February 27, 2013. Mr. Hammer also owns some percentage interest in 1634 Main LP independent of and in addition to that which was transferred to him by Mrs. Hammer.

- Some portion or all of a limited liability corporation named SH5, LLC, a South Carolina limited partnership, which is the general partner of defendant 1634 Main, LP.

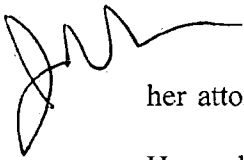
According to the evidence and documents of record, 1634 Main LP owns an unknown percentage of the real estate located at 1634 and 1632 Main Street, Columbia, SC, as described above.

As set forth below, all right, title and interest in these assets is transferred to Shirley Hammer. Transfers of real property are fee simple absolute. The transfer Mr. Hammer's interest in the identified entities is unconditional and permanent. These transfers are for the purpose of being applied to the unsatisfied judgments, the attorney's fees and costs awarded herein, and all costs related to the sale or transfer of these assets, as set forth below. Mrs. Hammer, as transferee, has no obligations of any kind to the transferors (Howard Hammer and 1634 Main LP) to account for the income or assets or the proceeds of sale, other than the accounting that is required as set forth below. Specifically, Mrs. Hammer is not a fiduciary to either Mr. Hammer or 1634 Main LP.

The Plaintiff moved that Howard Hammer be found in criminal contempt of court for his and 1634 Main, LP's failure to obey the orders of this court in numerous respects by not providing truthful or complete responses to the Plaintiff's questions and/or interrogatories and by not providing the documentation they were ordered to produce by the RTSC and this Court's order dated June 10, 2013. That motion is denied.

At the conclusion of these proceedings, plaintiff moved she be awarded attorney's fees and costs for these proceedings as sanctions against Howard Hammer and 1634 Main LP under the terms of the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. Section 15-36-10 *et*

seq. and Rule 11, SCRC. Plaintiff alleges that because of the defendant's actions in these proceedings, including interfering with her ability to obtain discovery, refusing to answer questions as required by statute and as ordered by this Court, she incurred unnecessary and extraordinary legal expense for the prosecution of these supplemental proceedings. These proceedings have been extraordinary and multiplied in complexity as a direct result of Howard Hammer's intentional actions to thwart these proceedings as well as the actions of 1634 Main LP, acting through Howard Hammer. The willful failure to cooperate in these proceedings unnecessarily complicated and delayed these proceedings, some positions advanced by the judgment debtors were frivolous and were intended to delay these proceedings. I find that the fees and costs incurred by Mrs. Hammer in prosecuting this action, in the amount of \$55,385.70, are reasonable and were necessarily incurred to conclude this matter.



Therefore, pursuant to S.C. Code Ann. Section 15-36-10 *et seq.* plaintiff's request that her attorney's fees and cost in the amount of \$55,385.70 be assessed against judgment debtor Howard Hammer as sanctions is hereby GRANTED. Additionally, the fees shall be paid on or before February 28, 2014 at 5:00 p.m.

When the Court orally announced its intent to grant Plaintiff's request for execution against property, Defendant Howard Hammer orally moved for the undersigned's recusal. Mr. Hammer's Motion for Recusal is denied.

ORDERS

All subpoenas issued in this matter are hereby quashed, rule 45, SCRC.

Howard Hammer's Motion to Dismiss, made at the January 9, 2014 hearing, is DENIED.

Defendants' Motion for Summary Judgment is DENIED.

Howard Hammer's Motion for Recusal is DENIED.

Plaintiff's Motion for Attorney's Fees and Costs pursuant to S.C. Code Ann. Section 15-39-10 is GRANTED and judgment is entered against the judgment debtors for an additional \$55,385.70.

Plaintiff's Motion to Hold Howard Hammer in Criminal Contempt is denied.

IT IS FURTHER ORDERED:

- 
1. Any and all interest of Howard Hammer and 1634 Main, LP in real property located at 1634 Main Street in Columbia, SC, and as more fully identified hereinabove, shall be transferred to Shirley Hammer, her heirs, successors and assigns, in fee simple absolute, pursuant to a Master's Deed.
 2. Any and all legal and equitable ownership interest of Howard Hammer in 1634 Main LP, a limited partnership under South Carolina law, including any and all income, bank accounts, and other assets, is transferred by this order to Shirley Hammer.
 3. Any and all legal and equitable ownership interest of Howard Hammer in SH5, LLC, a limited liability corporation under South Carolina law, including any and all income, bank accounts, and other assets, is transferred by this order to Shirley Hammer.
 4. Mrs. Hammer, as transferee, has no obligations of any kind to the transferors (Howard Hammer and 1634 Main LP) to account for the income or assets or the proceeds of sale, other than the accounting that is required as set forth in Paragraph 7 below. Specifically, Mrs. Hammer is not a fiduciary to either Mr. Hammer or 1634 Main LP.

5. Mrs. Hammer shall immediately take such action as she deems necessary or appropriate to market and sell the assets transferred to her in this order in a commercially-reasonable manner (including such treatment as is necessary of the limited partnership and corporate entity for purposes of selling the assets. Mrs. Hammer may use any income from the building for regular maintenance and operating expenses of the real property.

6. Mrs. Hammer shall pay to herself from the sales proceeds:

a. Any and all costs incurred in connection with the marketing and sale of the property;

b. The total amount of the judgments held by her against Howard Hammer and 1634 Main LP as set forth above. Post-judgment interest on the judgments shall stop on the judgments upon execution of this order.

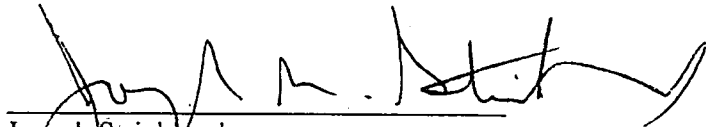
c. The attorney fees and costs awarded herein plus post-judgment interest at the rate established by Order of the Supreme Court dated January 3, 2014.

7. Mrs. Hammer shall escrow any additional funds that remain after the above disbursements, until an accounting can be performed and distributions ordered by this Court.

8. Mrs. Hammer is and has all powers as an owner of the real and personal property conveyed to her in this order, and she may collect rents or other income and take such other actions as may be appropriate to manage, market and sell the real property located at 1634 and 1632 Main Street, Columbia, South Carolina.

9. While they may seek whatever legal remedies may be available to them by way of appeal, Howard Hammer and 1634 Main LP shall not interfere with the management or sale by Shirley Hammer of the assets transferred herein.

IT IS SO ORDERED.



Joseph Strickland,
Master In Equity
For Richland County

January 21, 2014

EXHIBIT 2

1 THE COURT: Now, list those assets again for me.

2 MS. BALLARD: He owns 1634 Main Street, unencumbered, the
3 office building right over here.

4 THE COURT: How much is that worth?

5 MS. BALLARD: During the testimony in the trial before
6 Judge James, the testimony was that it was worth
7 between \$900,000 and a million dollars. There's no
8 encumber, no mortgage or anything on it. And what
9 happened with that property, Your Honor, is as part
10 of the domestic settlement Mrs. Hammer agreed to
11 transfer ... she owned 52.75 percent of that real
12 estate unencumbered, and she transferred that to Mr.
13 Howard Hammer. The deed for that was sent to Mr.
14 Howard Hammer's attorney, Tom Pope, in March of this
15 year. But the deed has not been recorded, so
16 according to the public records in Richland County
17 the 52.75 percent of the real estate still belongs
18 to Shirley Hammer and to 1634 Main, a Limited
19 Partnership.

20 THE COURT: So ...

21 MS. BALLARD: ... but he owns it, the deed has been
22 delivered to him. That 52.75 percent is probably
23 sufficient to satisfy the judgments, at least that
24 Mrs. Hammer owns against Howard Hammer. Now, she
25 also has judgments against 1634 Main, LP. It owns

EXHIBIT 3



APPRAISAL OF:

**OFFICE BUILDING
1634 MAIN STREET
COLUMBIA, RICHLAND COUNTY, SC, 29201**

**THE URSO COMPANY, INC.
REAL ESTATE APPRAISERS & CONSULTANTS
21 SURREY COURT
COLUMBIA, SOUTH CAROLINA 29212**

THE URSO COMPANY, INC.

REAL ESTATE APPRAISERS & CONSULTANTS

21 SURREY COURT

COLUMBIA, SOUTH CAROLINA 29212

PHILIP URSO, MAI
SUSAN URSO, CR
TELEPHONE: (803) 750-1870

MAIL: 21 SURREY COURT
COLUMBIA, SOUTH CAROLINA 29212
FAX: (803) 750-1388
WWW.URSOCOMPANY.COM

April 10, 2014

Ms. Shirley Hammer
1634 Main Street
Columbia, SC 29201

SUBJECT: Market Value Appraisal
Office Building
1634 Main Street
Columbia, Richland County, SC 29201
Urso Company File No. 03-14-13.PU

Dear Ms. Hammer:

The Urso Company, Inc. is pleased to submit the accompanying appraisal of the referenced property. The purpose of the appraisal is to develop an opinion of the market value of the leased fee interest in the property. The client for the assignment is Ms. Shirley Hammer and the intended use is for private asset management.

The appraisal is intended to conform with the Uniform Standards of Professional Appraisal Practice (USPAP), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, applicable state appraisal regulations.

The subject property is a 13,875 square foot office building that was 55% occupied as of the effective date of value. The improvement was built in 1934 and was in good overall condition. The property is located on a 0.50 acre or 21,780 square foot land parcel.

I have valued the subject property at stabilized occupancy as the remaining area to be leased to achieve stabilized occupancy can be leased within the next 12 months.

Ms. Shirley Hammer
April 10, 2014
PAGE TWO

Based on the valuation analysis in the accompanying report, and subject to the definitions, assumptions, and limiting conditions expressed in the report, my opinion of value is as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value as Stabilized	Leased Fee	April 1, 2014	\$1,475,000

Your attention is directed to the Limiting Conditions and Assumptions section of this report. Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, I note the following:

EXTRAORDINARY ASSUMPTIONS & HYPOTHETICAL CONDITIONS
The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. An extraordinary assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraisers opinions or conclusions. If the assumption is found to be false as of the effective date of the appraisal, I reserve the right to modify my value conclusions. 1. There are no extraordinary assumptions affecting this appraisal report. The value conclusions are based on the following hypothetical conditions that may affect the assignment results. A hypothetical condition is a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purpose of analysis. 1. There are no hypothetical conditions affecting this appraisal report.

The facts and data which led to the above stated value conclusion can be found in the attached Appraisal Report.

Respectfully Submitted,
THE URSO COMPANY, INC.



Philip Urso, MAI
South Carolina Certified General
Real Estate Appraiser, CG-193

EXECUTIVE SUMMARY	
Property Name	Office Building
Address	1634 Main Street
	Columbia, Richland County, SC 29201
Property Type	Office
Owner of Record	High Tower, LLC
Tax ID	R09014-04-19
Land Area	.50 Acres or 21,780 SF
Land Area (Usable)	0.00 acres; 0 SF
Gross Building Area	13,875 SF
Gross Leasable Area	13,875 SF
Percent Leased	55%
Year Built	1934
Zoning Designation	C-5, Central Business District
Highest and Best Use - As if Vacant	Office Use
Highest and Best Use - As Improved	Continued Office Use
Exposure Time; Marketing Period	12 months, 12 months
Effective Date of the Appraisal	April 1, 2014
Date of the Report	April 10, 2014
Property Interest Appraised	Leased Fee
Market Value Indications	
Cost Approach	Not Used
Sales Comparison Approach	\$1,250,000
Income Capitalization Approach	\$1,475,000
Reconciled	\$1,475,000

MARKET VALUE INDICATION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value as Stabilized	Leased Fee	April 1, 2014	\$1,475,000

EXTRAORDINARY ASSUMPTIONS & HYPOTHETICAL CONDITIONS
The value conclusions are subject to the following extraordinary assumptions that may affect the assignment results. An extraordinary assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraisers opinions or conclusions. If the assumption is found to be false as of the effective date of the appraisal, I reserve the right to modify my value conclusions. 1. There are no extraordinary assumptions affecting this appraisal report. The value conclusions are based on the following hypothetical conditions that may affect the assignment results. A hypothetical condition is a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purpose of analysis. 1. There are no hypothetical conditions affecting this appraisal report.

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THE URSO COMPANY, INC.
21 SURREY COURT
COLUMBIA, SOUTH CAROLINA 29212

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EXHIBIT 4

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

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

1634 Main, LP, Appellant,

v.

Shirley Hammer, Respondent,

v.

Howard Hammer, Appellant,

and

Howard Hammer, Appellant,

v.

Shirley Hammer, Respondent.

Appellate Case No. 2014-000965

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

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

AFFIRMED IN PART AND REVERSED IN PART

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

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

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

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

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

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

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

EXHIBIT 5

**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

) **RECEIPT FOR PAYMENT OF**
) **SANCTIONS AND**
) **SATISFACTION OF ORDER**
) **AWARDING SAME**

**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

) **RECEIPT FOR PAYMENT OF**
) **SANCTIONS AND**
) **SATISFACTION OF ORDER**
) **AWARDING SAME**

JUN -9 AM 11:28
CP 2010-CP-40-2889

The undersigned as counsel for Shirley Hammer a/k/a Shirley Grace Hightower acknowledges receipt of payment of \$88,088.81 from Howard Hammer as ordered by the Honorable Joseph M. Strickland by his order dated and filed April 24, 2015, in full satisfaction of the obligations imposed on Howard Hammer by said order. To the extent that the Clerk of


6.8.15

Court has enrolled any judgment against Howard Hammer arising from the April 24, 2015 order, this document acts as a satisfaction thereof and Mr. Hammer's counsel may file it with the court.


Desa Ballard 6-8-2015

Ballard & Watson

Post Office Box 6338

West Columbia, SC 29171

(803) 796-9299

(803) 796-1066 (fax)

desab@desaballard.com

EXHIBIT 6

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

**MOTION TO APPROVE
ACCOUNTING BY
SHIRLEY HAMMER**

Shirley Hammer (hereafter "Shirley") moves for an order approving the within accounting to establish full compliance by her and her agents with this Court's order dated January 21, 2014, in which assets previously held by Howard Hammer were transferred to Shirley Hammer as part of collection of judgments held by her against Howard Hammer and against 1634 Main LP. In support of her accounting, Shirley submits the following:

1. Pursuant to this Court's order of January 21, 2014, Shirley and her agents have actively and aggressively marketed the real estate that was transferred to her for sale to satisfy the judgments she holds and have managed it during this period. In the absence of a contract of sale brought to conclusion, Shirley has listed the property for sale by way

of public auction through McGee Auction Company, LLC. The auction is currently being advertised and will take place on May 13, 2015 at 2:00 p.m. with a minimum bid of \$837,000.00.

2. The minimum bid was arrived at through consultation with the auctioneer and the listing agent, based on an appraisal, as well as activity on the property during the past 15 months since it was offered for sale and the offers that have been made (and in some cases, accepted). Shirley is informed and believes that the minimum bid of \$837,000.00 is a commercially-reasonable minimum bid for a sale of the building by auction.
3. Pursuant to Paragraph 6 of the Court's order, Shirley will receive the sum of \$794,527.27 from the sales proceeds¹. A breakdown of the judgments and other costs due to Shirley from the sales proceeds is attached hereto as Exhibit A.
4. Any remaining proceeds, after payment by the closing attorney of encumbrances (including tax liens), commissions and other costs of sale not yet known, will be held in escrow pending an order of distribution by this Court as required by Paragraph 7 of the Order dated January 21, 2014. A supplemental accounting of residual funds will be submitted following final closing after auction and disbursement, for further action by this Court.

¹ The order of payment of the amounts due as set forth in Exhibit A shall be payable from the sales proceeds as follows: (1) Payment of all amounts due from Howard Hammer to Shirley Hammer under applicable judgments and orders; (2) Next, payment of any and all remaining proceeds for all amounts due from 1634 Main LP to Shirley Hammer under applicable judgments and orders; (3) Next, payment of funds due from Howard Hammer to 1634 Main LP, including rent. Any residual funds from the sales proceeds will be set forth in the supplemental accounting provided to the Court pursuant to Paragraph 4.

5. The within is submitted for the Court's approval and determination that Shirley and her agents have complied with all obligations imposed by the January 21, 2015 including the accounting required therein.

Wherefore, Shirley moves for an order approving the accounting and confirming that she and her agents have fully complied with the obligations imposed by the January 21, 2014 order of the Court, in advance of sale of the real property by public auction, on May 13, 2015, and that the only remaining obligation is to provide a supplemental accounting of residual funds, if any, after the auction is concluded and all real estate, broker and auction fees are paid.



Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

April 29, 2015

ATTORNEY FOR SHIRLEY HAMMER

I, an employee of Desa Ballard, P.A., do
certify that I have this date served a copy of:

Motion to Expire Accounting by Shirley Hammer
on all opposing counsel by depositing a copy
properly addressed with sufficient First Class
Postage affixed to each, in the United States Mail.
Date: 4/29/15 Signed: Desa Ballard

**Judgments due to Shirley Hammer from Howard Hammer
(Incl interest as applicable):**

Order of Judge James dated 1/29/2013	\$ 139,011.85	
Order of Judge James dated 6/6/2013	63,513.57	
Bill of Costs as approved by the Supreme Court 06/12/2014	\$3,559.19	
Post Judgment Interest on Bill of Costs (04/30/2015)	\$227.64	
Bill of Costs as approved by the Supreme Court 03/10/2015	\$1,221.44	
Post Judgment Interest on Bill of Costs (04/30/2015)	\$12.37	
Sanctions awarded by MIE 04/24/2015	\$88,088.81	
Total due to Shirley Hammer from Howard Hammer		\$ 295,634.88

Judgments due from 1634 Main LP (Incl. interest as applicable):

Order of Judge James dated 1/29/2013	\$ 26,733.05	
Order of Judge James dated 6/6/2013	106,673.97	
		133,407.02

**Costs of Marketing and Sale of 1634 Main pursuant to paragraph
6A of Order dated 01/21/2014**

Costs

B&W Attorney Fees through 04-27-2015	\$ 67,220.00
B&W Attorney Fees (Est. to close)	10,000.00
Aries Advisor's Lease Contract Buyout as of 04-30-2015	6,292.74
Appraisal	1,500.00
Survey	1,612.50
Lock Change (Key Shop)	2,959.50
Security for HH move (Barton)	443.75
Security for HH move (Middleton)	1,000.00
Removal of property left by HH (Got Junk)	1,434.00
New Bank Acct Check Chg	91.27
Insurance on Building (Expires 01/24/2016)	2,522.99
Umbrella Policy (Expires 04/28/2016)	1,196.80

EXHIBIT A

Weels Painting	1,400.00	
Sign A Rama	430.17	
Title Insurance	1,176.60	
Seal Maxx	625.00	
Frank Varn (Landscaping)	2,500.00	
LLC Set up charges	110.00	
Total Costs		\$ 102,515.32
Operating Expenses Unpaid by 1634 Main LP upon transfer now due to Shirley Hammer		
Danville	\$ 907.15	
Central Midlands Cleaning	4,865.00	
Madison Fludd	135.00	
Crawford Electric	350.00	
City of Columbia	210.61	
AT&T	218.09	
ThyssenKrupp	3,068.06	
ADT Security	335.24	
Air Cond	1,368.00	
Gregory Pest	438.79	
SCE&G	4,057.62	
Total Operating Expenses		\$ 15,953.56
Total Cost of Marketing and Sale Due to Shirley Hammer		\$ 118,468.88
Debts due from Howard Hammer to 1634 Main, LP		
Past Due Rent from Howard Hammer (2/2011 - 1/2014)	206,667.48	
Note 1 Due from Howard Hammer	30,059.92	
Note 2 Due from Howard Hammer	10,289.10	
Total Debts due from Howard Hammer to 1634 Main, LP		247,016.50
Total amounts due to Shirley Hammer pursuant to Order of 01/21/2014		\$ 794,527.27

EXHIBIT 7

based on personal knowledge, must set forth facts which would be admissible in evidence, and must affirmatively show that the witness is competent to testify as to the matters alleged therein. Rule 56(c), SCRCP. See also, e.g., *David v. McLeod Regional Medical Center*, 367 S.C. 242, 626 S.E.2d 1 (2006). Other than the final judgments which are of public record, Mrs. Hammer has failed to show by any admissible evidence that the Court may approve her alleged accounting.

2. The Motion claims disputed amounts which have not been approved by order of any court as being owed by Howard Hammer to Shirley Hammer. Further, this Court's January 21 Order in these cases provides only for payment to Mrs. Hammer of "costs incurred in connection with the marketing and sale of the property." See Order at p. 12, para. 6. a. No other costs are recoverable, but Mrs. Hammer claims in the motion amounts which are neither costs of sale nor costs of marketing. Chief Justice Toal of the South Carolina Supreme Court has interpreted this provision of the January 21 Order as follows: "All [Judge Strickland is] talking about as I understand it in terms of any expenses is the expenses of sale. Commissions, closing expenses and the like. I don't see anything other than that that gives you any discretion in this matter." (Emphasis added). See Shirley Hammer's Exhibit 47 from hearing conducted April 2 and 3, 2015, and <http://media.sccourts.org/videos/2014-000965.mp4> at approximately 52 minutes, 30 seconds.

3. The amounts claimed in the Motion fail to account for any rental receipts since Mrs. Hammer acquired ownership of 1634 Main St. and 1634 Main, L.P. on January 21, 2014. Those receipts should be in excess of \$150,000. See, **Exhibit A** ^A **attached hereto**. The January 21 Order allows Mrs. Hammer ^A to only use the income

from the building for "regular maintenance and operating expenses of the real property."

Pg. 12, Para. 5.

4. Exhibit A to the motion to approve accounting includes over \$247,000 in unestablished claims which Mrs. Hammer asserts are debts due 1634 Main, LP by Howard Hammer. The obligation to pay such amounts has never been established by any suit and these claims are denied by Mr. Hammer. Further, the limited partnership was transferred to Mrs. Hammer for the specific and sole purposes of satisfying the judgments she holds against Mr. Hammer and the limited partnership. There was no intent or contemplation that this Court was sanctioning additional claims against Mr. Hammer by the transfer. To the extent that 1634 Main might be able to recover the amounts, they should be offset and applied against the amount of the judgments. An accounting allowing for the payment of this \$247,016.50 claim is a double recovery and windfall to Mrs. Hammer. The claims for over \$247,000 are subject to defenses and Mr. Hammer would be entitled to a jury trial on such claims.

5. In May, 2014, Mrs. Hammer provided a listing of amounts she claimed were owed to her at that time. The amount totaled \$439,619.91. Mr. Hammer offered to pay the judgment in the amount demanded, \$439,619.91. See letter dated May 8, 2014, **Exhibit B hereto**. Thereafter, Mrs. Hammer increased the amount owed to \$461,120.58, and Mr. Hammer agreed to pay that amount. See, Amended Petition for Writ of Supersedeas filed May 23, 2014.¹ See **Exhibit C hereto**. Given that Mr. Hammer offered full payment of the amounts claimed by Mrs. Hammer, she should be estopped from asserting anything more than she demanded as of May 2014. This court

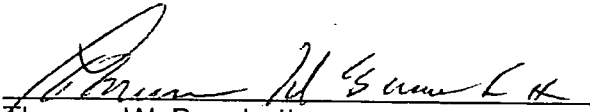
¹ This Court has never heard or ruled on this Petition.

of equity should not permit her to continuously incur expenses to the detriment of Howard Hammer and his equity interest in the property which the Court clearly sought to protect in its January 21 Order by requiring a commercially reasonable sale and an accounting of the sale's proceeds.

6. The claimed attorney's fees of \$77,220 are outrageous. To date, Mrs. Hammer has not concluded a sale of the property, and to the best knowledge of the undersigned, Mrs. Hammer reviewed one contract for the sale of the property which did not bind the purchaser to close or even forfeit any earnest money. The contract was drafted by the purchaser's attorney, with some modifications by Mrs. Hammer's counsel. By way of comparison, the undersigned conducted a title examination, drafted and coordinated a contract of sale for HASCI to purchase the property, reviewed and offered suggested revisions to deeds for legal fees estimated to be less than \$2,500. Mrs. Hammer is entitled to her actual and reasonable costs of sale (see the January 21 Order and Chief Justice Toal's statement quoted in paragraph 2 above). Mrs. Hammer is not entitled to gouge Mr. Hammer and be paid untold and hidden amounts of what the alleged \$77,220 might entail (as to what said claim might entail see paragraph 1 above regarding the failure to substantiate the motion with any admissible evidence).

7. To the extent that Mrs. Hammer comes to the motion hearing and presents evidence of the amounts stated in the accounting, Mr. Hammer is entitled as a matter of due process to have an opportunity to review said evidence and determine an appropriate legal response to the newly divulged evidence. This appropriate legal response might include offering testimony from himself and other witnesses, subpoenaing documents and the like. Mrs. Hammer has failed to comply with the

applicable rules of procedure. If she attempts to cure that failure at the hearing, Mr. Hammer will need an appropriate time to evaluate and determine his response.

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

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

May 8, 2015

1634 MAIN STREET

RENT ROLL

AS OF 12-1-13

PREPARED BY: MARION TURBEVILLE, PROPERTY MANAGER

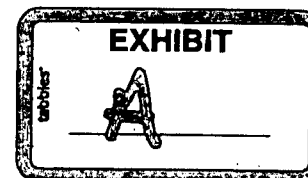
<u>TENANT</u>	<u>LOCATION</u>	<u>SQ FT</u>	<u>TERM</u>	<u>MOS 1-8</u>	<u>MOS 9-20</u>	<u>MOS 21-32</u>
CHILDREN'S TRUST FUND ANNUALIZED	SUITE 100	5,578	2 YR 8 MOS	\$12.50 \$69,725	\$12.75 \$71,120	\$13.50 \$75,303
CHILDREN'S TRUST FUND ANNUALIZED	SUITE 203	900	2 YR 8 MOS	\$12.50 \$11,250	\$13.80 \$12,420	\$14.95 \$13,455
<u>TENANT</u>	<u>LOCATION</u>	<u>SQ FT</u>	<u>TERM</u>	<u>MOS 1-6</u>	<u>MOS 7-18</u>	<u>MOS 19-30</u>
OLIVER GOSPEL MISSION ANNUALIZED	SUITE 202	1,200	2 YR 6 MOS	\$11.50 \$13,800	\$12.00 \$14,400	\$12.50 \$15,000
<u>TENANT</u>	<u>LOCATION</u>	<u>SQ FT</u>	<u>TERM</u>	<u>Per Year</u>		
LIPSCOMB LAW FIRM ANNUALIZED	SUITE 200	1,373	MTM	\$12.24 \$16,800.00		
VACANT	SUITE 201	2,206				
VACANT	BASEMENT	2,750				

NOTES

CHILDREN'S TRUST FUND HAS BEEN A TENANT SINCE 7-16-07

OLIVER GOSPEL MISSION HAS BEEN A TENANT SINCE 4-12-10

LIPSCOMB LAW FIRM HAS BEEN A TENANT SINCE 2-1-10





ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

Thomas W. Bunch, II

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

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

FAX

(803) 744-1545

tbunch@RobinsonLaw.com

May 8, 2014

VIA FACSIMILE ONLY

The Honorable Joseph M. Strickland, Master in Equity
Richland County Master In Equity
Post Office Box 192
1701 Main Street
Columbia, SC 29202

Re: **Shirley Hammer v. Howard Hammer and Shirley Hammer v. 1634
Main, LP
Case No.: 2009-CP-40-05911 and 2010-CP-40-2889**

Dear Judge Strickland:

I have been assisting Mr. Hammer in recent weeks concerning the supplementary proceedings held before you and your January 21, 2014 order ("the Order") transferring certain property interests as well as the real estate at 1634 Main St. in Columbia to Shirley Hammer. You may recall that Mr. Aiken and I submitted a Petition for a Writ for Supersedeas in early March in these cases. As such, Ms. Ballard copied me on her letter to you in which she requested that you provide guidance on determining the amount of an appeal bond (sic) needed by Mrs. Hammer in order to sell the building.

We may be able to avoid the appeal bond issue in its entirety and put these cases to rest. Howard Hammer has arranged for a loan from his brother (Alvin Hammer, who is represented by Keith Babcock) in which Howard is offering to pay Shirley Hammer the amount of the underlying judgments, the \$55,000 in attorney's fees assessed against Howard in the supplementary proceedings, as well as some incidental expenses specified to Mr. Babcock by Ms. Ballard. The total amount to be paid is \$439,619.91. Although we believe this amount is more than Mrs. Hammer would be entitled to under the Order, we are willing to pay this amount to put these cases behind us by having the property restored to the owners prior to the Order and withdraw the appeal of the Order. In short, Mrs. Hammer would be paid in full and this litigation would end.

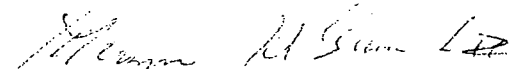


The Honorable Joseph M. Sturckland, Master in Equity
May 8, 2014
Page 2

As such, we are seeking your assistance on a methodology or procedure for making this payment. Please advise if you would be available for a conference among the parties to discuss and implement this suggestion.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.


Thomas W. Bunch, II

cc: Keith M. Babcock, Esq. (via email only)
Desa Ballard, Esq. (via email only)
Arthur K. Aiken, Esq. (via email only)
Howard Hammer (via email only)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Howard Hammer

☒ Plaintiff/Petitioner

v.

Shirley Hammer a/k/a Shirley Grace Hightower,

☐ Defendant/ Respondent

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1634 Main, L.P.,

☒ Plaintiff/Petitioner

v.

Shirley Hammer a/k/a Shirley Grace Hightower,

☐ Defendant/ Respondent

v.

Howard Hammer,

Additional Defendant on Counterclaim/Petitioner

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-40-05911

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-40-2889

2014 MAY 23 PM 4:11
RECEIVED
CLERK'S OFFICE

Plaintiff's Attorney:

Arthur K. Aiken

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

Thomas W. Bunch, II, Bar No. 1011

Address: PO Box 944

Columbia, SC 29202

phone: (803) 779-8900 fax: (803) 771-9411

e-mail: tbunch@RobinsonLaw.com other:

Defendant's Attorney:

Desa Ballard

Stephanie Weissenstein

Address: 226 State Street (29169),

Post Office Box 6338

West Columbia, SC 29171

phone: (803) 796-9299 fax: (803) 796-1066

e-mail: stephanie@desaballard.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amended Petition for Writ of Supersedeas

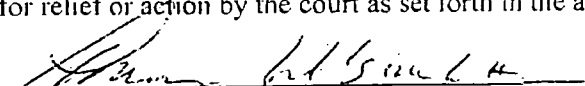
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached

☐ 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 ☒ Plaintiff / ☐ Defendant

March 5, 2014

Date submitted

EXHIBIT



SECTION III: Motion Fee☒ PAID – AMOUNT: \$25.00

☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ 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: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,
Plaintiff/Petitioner,

vs.

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

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,
Plaintiff/Petitioner,

vs.

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

vs.

Howard Hammer,
Additional Defendant on Counterclaim/Petitioner

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

) **AMENDED PETITION OF**
) **HOWARD HAMMER FOR A**
) **WRIT OF SUPERSEDEAS WITH**
) **ANNEXED MEMORANDUM IN**
) **SUPPORT**

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

) **AMENDED PETITION OF**
) **HOWARD HAMMER AND 1634**
) **MAIN, LP FOR A WRIT OF**
) **SUPERSEDEAS WITH ANNEXED**
) **MEMORANDUM IN SUPPORT**

TO: ALL OTHER COUNSEL OF RECORD

PETITION

Your Petitioners, Plaintiff/Third-Party Defendant, Howard Hammer (HH) and the Plaintiff, 1634 Main, LP (1634 Main) (collectively petitioning parties) hereby petition, in accordance with Rule 241 SCACR, and Rule 62, SCRPC, for a writ of supersedeas as follows:

PARTIES

1. Petitioner, Howard Hammer (HH), is a judgment debtor to Respondent, Shirley Hammer (SH), in both of the cases captioned above.

2. Petitioner, 1634 Main, LP (1634 Main), is a judgment debtor to Respondent, Shirley Hammer (SH), in case number 2010-CP-40-2889.

3. Respondent, SH, is a judgment creditor of HH in both of the cases captioned above, and she is a judgment creditor of 1634 Main in case number 2010-CP-40-2889

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this Petition under Rule 62 SCRCF and Rule 241 SCACR, and this Court has personal jurisdiction over the Respondent.

5. Venue is proper in this Court.

FACTUAL ALLEGATIONS

6. Petitions for Writs of Supersedeas were previously filed in these cases on March 5, 2014 with copies being served on all non-moving parties and provided to the Honorable Joseph M. Strickland. At that time the Judgments in the above captioned cases were on appeal, and those appeals were set for oral argument before the South Carolina Supreme Court on March 6, 2014.

7. After oral argument, the South Carolina Supreme Court affirmed the judgments by an unpublished opinion filed March 19, 2014.

8. While these cases were on appeal, this Court presided over supplementary proceedings arising from the judgments.

9. In the supplementary proceedings, this Court entered an Order on January 21, 2014 ("the January 21 Order") in which this Court, inter alia, ordered transfer of real property known as 1634 Main Street (building) from HH and 1634 Main to SH.

10. HH and 1634 Main are informed and believe that on or about January 21, 2014, this Court executed and delivered to SH, a Deed ("the January 21 Deed") making the transfer of 1634 Main St. alleged in Paragraph 9 above, and that SH has recorded the deed.

11. HH and 1634 Main are informed and believe that this Court's January 21, 2014 Deed (Deed) is void under Rule 62(a) SCRCP because it was executed, delivered, and recorded within ten (10) days of this Court's Order entered on January 21, 2014.

12. HH and 1634 Main further contend that the January 21 Order directing the transfer of property is flawed because, inter alia, the Court failed to set and SH failed to post a bond as required by S.C. Code Ann. §18-9-130(A)(2) for the transfer of the property while the appeal was pending.

13. Further, contrary to the 10 day stay of Rule 62(a) and since the transfer by deed alleged in Paragraph 10 above, SH and her confederates changed the locks to the building at 1634 Main St. without prior notice to HH, and inappropriately deprived HH of access to the building except during unreasonably abbreviated intervals.

14. In addition to their refusal to give HH access to his offices, files, and belongings within the building, SH and her confederates gave HH an arbitrary deadline of Thursday February 14, 2014, to remove his possessions, property and furnishings from the building, but then refused to grant sufficient access to the property so that HH could meet the so-called deadline.

15. On February 3, 2014, HH and 1634 Main timely filed Motions to Alter or Amend Judgment under Rule 59(e) that were directed at this Court's Order entered on January 21, 2014. Those motions were denied by Judge Strickland. HH and 1634 Main have filed an appeal of the denial of these motions and the January 21 order.

16. Despite the pendency of the appeal of the underlying judgments, Judge Strickland's January 21 order transferred the property interests described in paragraph 9 above in satisfaction of, at that time, the non-final judgments. Said order also directed SH to sell the transferred property, and thereafter account to the Court for the proceeds of sale.

17. After the ruling by the Supreme Court and the judgments becoming final, SH provided an accounting of sums she contended were owed to her by HH including the judgments, \$55,385.70 awarded by Judge Strickland in the January 21 Order, and other sums SH contended would be due to her by said order. The amount provided by SH was \$439,619.91.

18. By letter dated May 6, 2014, SH belatedly acknowledged that a bond was required for conveyance of the property. She notified Judge Strickland that she was readying the property for sale, and expected an offer of sale "shortly."¹ She notified the court that it was necessary for the court to determine the amount of an appeal bond (sic) which SH needed to post, presumably under S.C. Code Ann. § 18-9-130(A)(2) which states that "A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment."

19. Thereafter, on May 19, 2014 SH filed a Motion for Appeal Bond in which she represented that 1634 Main St. recently appraised for \$1,450,000.00. SH has not provided a copy of that appraisal to either the Court or HH, although her counsel has also represented to counsel for HH and 1634 Main that 1634 Main St. appraised for \$1,475,000, or \$25,000 more than the representation made to the court by SH's motion.

¹ Now, more than two weeks later, no offer has been made on the property.

20. In response to SH's counsel's May 6 letter to Judge Strickland, HH notified Judge Strickland on May 8, 2014 that he would pay the \$439,619.91 amount in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s). SH declined the offer of full payment of all amounts owed to her according to the accounting provided by her counsel, and continues to request a bond for her to sell 1634 Main St.

21. Thereafter, SH increased her accounting to \$461,120.58. Although HH disputes both accountings, his counsel notified counsel for SH that HH would pay the \$461,120.58 in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s). SH will not accept the payment unless HH will make non-monetary concessions not included in the judgments and the January 21 order. Alternatively, HH and 1634 Main notified the Court at a status conference on May 19 that they had no objection to the sale of the property for the alleged listing price of \$1,475,000.00.²

22. SH contends that she is required to sell the building by the January 21 Order which is not final and is on appeal, but she is willing to forego such contention in exchange for conditions and concessions outside the court proceedings.

23. HH is prepared to pay the amounts owed to SH on the judgments and this court's January 21 Order, is prepared to dismiss the appeal of the January 21 order, and is prepared to end the litigation related to the judgments in these cases. Alternatively, HH is agreeable to SH selling the building at the appraised value of \$1.475 million (or \$1.450 million if that is what it

² Like the appraisal, SH has not provided the court or HH with a copy of the listing agreement.

actually is). Conversely, SH apparently wishes to continue the litigation despite being made whole.

24. The granting of these Petitions is necessary to bring this litigation to a close, conserve judicial and the parties' resources, and to avoid forfeiture of HH's property.

25. A more detailed description of the grounds and the legal basis for this Petition is set forth in the Memorandum annexed to this Petition

WHEREFORE, HH and 1634 Main pray that this Court grant this Petition by (1) allowing HH to fully pay the amounts properly owed to SH, declaring void the Master's deed dated January 22, 2014, to SH, and any transfers made thereafter, and by vacating its January 21 Order; or (2) permitting the sale of the property at the alleged list price of \$1.475 million.

MEMORANDUM IN SUPPORT

ARGUMENT

I. INTRODUCTION

The above are actions in which SH sought supplementary proceedings to enforce Judgments in her favor and against HH and 1634 Main. The Judgments that are the subjects of these actions have been affirmed by the South Carolina Supreme Court. This Court heard the supplementary proceedings on May 30, 2013, June 4, 2013, August 12, 2013 and January 9, 2014 (collectively hearings). The subject Order which was entered on January 21, 2014, provides for a transfer by deed of all right title and interest of HH and 1634 Main in 1634 Main, LP, real property commonly known as 1634 Main Street in Columbia, SC and SH5, LLC (transferred

property).³ On January 21, 2014, this Court executed and delivered a Master's Deed making these transfers. The transfers in the January 21 Order and in the Master's deed by-passed the statutory safeguards that should have been afforded to not only the judgment debtors, but also others who had interests in the property transferred who were not joined in any proceeding. Those parties should have been joined or at a minimum given notice to protect their interests in the due course of a sale of the property. Now, HH is prepared to pay the amounts owed to SH and conclude these cases, but SH refuses to accept the payment.

II. RULE 241, SCACR

Rule 241(c)(1), SCACR, provides that any party may move for a supersedeas as to matters which are not stayed on appeal such as enforcement of money judgments, judgments directing the sale or delivery of possession of real property, etc. (Rule 241(b)). The rule further provides that the court may not only grant or lift a stay of the matters which have been decided, but that the court may also "order other affirmative relief upon such terms and conditions as are deemed appropriate." 241(c)(3). The procedure for obtaining a supersedeas is to first apply to the lower court except in extraordinary circumstances. Rules 241(d) and 205, SCACR. Thus, the Circuit Court has jurisdiction over these petitions and the matters contained herein, including the requested relief.

III. THE PURPOSES OF A WRIT OF SUPERSEDEAS.

The writ of supersedeas serves one main purpose and three subsidiary purposes. First, the main purpose of writ is "to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal." Graham v. Graham. 301 S.C. 128, 130, 390 S.E.2d 469, 470

³ Counsel for SH represented to this Court more than once that the property transferred had a value of between \$900,000 and \$1,000,000.

(1990) (quoting, 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)). Second, the preservation of the status quo serves the subsidiary purpose of preserving to the appellant “the fruits of a meritorious appeal where they might otherwise be lost to him.” Graham, 301 S.C. at 130, 390 S.E.2d at 470 (quoting, 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)). Third, the writ may be granted “to preserve the jurisdiction of the appeal.” Rule 241(c)(2) SCACR. Fourth, the writ may be granted “to prevent a contested issue from becoming moot.” Rule 241(c)(2) SCACR.

IV. THE STATUS QUO TO BE PRESERVED BY SUPERSEDEAS IS THE POSITION OF THE PARTIES BEFORE THIS COURT EXECUTED AND DELIVERED THE DEED TO 1634 MAIN ST. BECAUSE THAT DEED IS VOID AND SHOULD NOT HAVE BEEN DELIVERED TO SH.

“No execution shall issue on a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.” Rule 62(a) SCRCP. By executing and delivering the Master’s Deed on the same date as the January 21 Order, this Court undertook proceedings for enforcement of the January 21, 2014 Order. Thereafter, SH undertook enforcement of the order by locking HH out of 1634 Main St. within the same 10 day period. The Master’s Deed is void because it was executed and delivered within ten (10) days of the entry of the January 21, 2014 Order. The proper status quo to be preserved by supersedeas is the position of the parties before the execution and delivery of the Master’s Deed.

V. SUPERSEDEAS IS NECESSARY TO PRESERVE TO THE PETITIONERS THE FRUITS OF A MERITORIOUS APPEAL.

“The Supreme Court ... may reverse the judgment, decree, or order appealed from..., and the judgment shall be remitted to the court below to be enforced according to law.” S.C. Code § 18-9-270. “When the judgment is reversed or modified the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.” S.C. Code § 18-1-140. Reversal of the judgment in this case will require restoration to HH and 1634 Main of all

property lost by the January 21 Order. In other words, all property lost by HH and 1634 Main as a result of the January 21 Order will have to be restored to him if the Order is reversed.

The Order requires the execution and delivery to SH of a deed granting her fee simple absolute title in the building. The day after the Order was entered, this Court executed and delivered the fee simple absolute Deed to SH. Of course the Deed gives SH title sufficient to support transfer of the building in fee simple absolute to another. Transfer to a third party makes recovery of title to the building by HH on a successful appeal problematic. This risk to HH's right to recover title to the building is not theoretical. SH has formed a limited liability corporation, and she has transferred title to the building to that corporation. Further, she asserts that she has "three prospects who are ready, willing and able to purchase the building" even though she has refused to divulge their identity or present a contract of sale. Nor, does she detail how she determined the prospects' readiness, willingness or ability to purchase the building. SH Motion for Appeal Bond.

The January 21 Order authorizes SH to sell the building, and by that Order, she has apparent ownership and right to sell the building. The Order further provides that SH has no duties to HH with respect to any sale of the building. The Order incorporates no provisions for protecting HH's rights should he win the appeal. Therefore, a supersedeas is essential to protect HH's interest in the building in case the judgment is reversed. Otherwise, there is a grave risk that HH will be deprived of the fruits of a successful appeal.

VI. SUPERSEDEAS IS NECESSARY TO PREVENT THE CONTESTED ISSUES IN THE APPEAL FROM BECOMING MOOT.

The issues in the appeal in these cases contest the ownership of SH of transferred property. Indeed, the arguments raised by HH and 1634 Main, if successful, will require an outright reversal of the January 21 Order and will void the transfers of the real and personal

property interest of HH and 1634 Main. For the reasons more fully discussed above, the authority given SH by the January 21 Order threatens to deprive HH and 1634 of their right to recover the building in case their appeal is successful.

VII. GRANTING THE REQUESTED RELIEF MOOTS ALL OWNERSHIP AND APPELLATE ISSUES, MAKES SH WHOLE, AND PRESERVES HH's INTERESTS

By granting these petitions and the relief requested by HH and 1634 Main, the issue of SH's void ownership of the transferred property and the possibility of further void transfers being made by SH can be avoided. Granting of these petitions promotes judicial economy by mooting further proceedings at the Circuit Court in these cases and the appeal pending at the South Carolina Supreme Court. Granting these petitions saves the parties thousands of dollars in mounting legal fees. Permitting payment by HH and making SH whole is a far better alternative than continuing litigation and stripping HH and 1634 Main of their property. Alternatively, authorizing a sale of the property at the price of \$1.475 (or even \$1.45) million makes SH whole and provides HH and 1634 Main recovery of their equity in 1634 Main St.

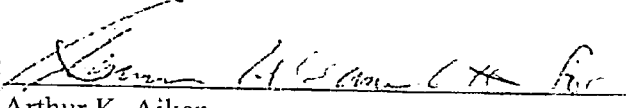
CONCLUSION

For the reasons set forth above, this Court should (1) allow HH to fully pay the amounts properly owed to SH, cancel the deed transferring the property to SH, and vacate its January 21 Order, or (2) order the sale of the property to the ready, willing and able prospect for at least the appraised value of the property.

Signature block on following page

Respectfully submitted,

AIKEN & HIGHTOWER, PA

By: 

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ATTORNEYS FOR THE PETITIONERS

May 23, 2014

3. The foregoing cases were appealed to the South Carolina Supreme Court, and while these cases were on appeal, this Court presided over supplementary proceedings arising from the judgments.

4. In the supplementary proceedings, this Court entered an Order on January 21, 2014 ("the January 21 Order") in which this Court, inter alia, ordered transfer of real property known as 1634 Main Street (building) from HH and 1634 Main to SH. The Court also issued a Master's Deed to SH transferring 1634 Main St. to SH, and that deed has been recorded.

5. In an unpublished opinion dated March 19, 2014, the Supreme Court affirmed the judgments in these cases.

6. After denial by this court of a Rule 59, SCRCp, motion directed to the January 21 Order, HH and 1634 Main timely appealed the denial of the motion and the January 21 Order.

7. After the ruling by the Supreme Court affirming the underlying judgments and the judgments becoming final, counsel for SH provided an accounting of sums she contended were owed to her by HH including the money judgments, \$55,385.70 ordered by Judge Strickland in the January 21 Order, and other sums SH contended would be due to her by said order. The amount provided by SH was \$439,619.91. Although not conceding the full amount was owed, HH offered to pay SH the \$439,619.91 in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s). SH refused to accept the offer of full payment of all amounts she alleged were owed to her.

8. Not satisfied with an offer or full payment to make SH whole, by letter dated May 6, 2014, counsel for SH notified Judge Strickland that she was readying the property for sale, and

expected an offer of sale "shortly."¹ She notified the court that it was necessary for the court to determine the amount of an appeal bond (sic) which SH needed to post, presumably under S.C. Code Ann. § 18-9-130(A)(2) which states that "A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed."

9. In response to SH's counsel's May 6 letter to Judge Strickland, HH's counsel notified Judge Strickland on May 8, 2014 that HH would pay the \$439,619.91 amount in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s).

10. Thereafter, SH increased her claim of amounts owed to her to \$461,120.58. Although HH disputes both accountings, his counsel notified counsel for SH that HH would pay the \$461,120.58 in satisfaction of the judgments, and dismiss the appeal of the January 21 Order upon the property being restored to the ownership of record prior to entry of the January 21 Order and subsequent deed(s). SH will not accept full payment to make her whole unless HH will make non-monetary concessions not included in the judgments and the January 21 Order.

11. Despite an offer of full payment being communicated to both counsel for SH and the Court, on May 19, 2104 SH continued to pursue her bond request by filing a Motion for Appeal Bond. In the motion, counsel for SH represents that 1634 Main St. recently appraised for \$1,450,000.00. SH has not provided a copy of that appraisal to either the Court or HH, although

¹ Now, more than two weeks later, no offer has been made on the property.

her counsel has also represented in writing to counsel for HH and 1634 Main that 1634 Main St. appraised for \$1,475,000, or \$25,000 more than the representation made to the court in SH's motion.

SUBSTANTIVE RESPONSE TO MOTION

S.C. Code Ann. § 18-9-130(A)(2) states: "A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed." The statute is clearly designed to protect a defendant if his property is wrongfully sold, and to protect a defendant for all damages if his appeal is sustained.

Having quoted the statute, the entire request for the bond seems fairly transparent. SH contends that she is required to sell the building by the January 21 Order which is not final and is on appeal. At the same time, she is willing to forego such contention in exchange for conditions and concessions outside the court proceedings. In short, the motion for the bond seems all about what additional concessions SH can extract from HH above being made monetarily whole. SH has not produced the names of a buyer (much less three prospects), an executed offer, or any verifiable facts in support of her motion.

There seem to be three possible alternatives to SH's motion:

First, the appeal bond issue may be avoided in its entirety and these cases put to rest. HH has arranged for a loan from his brother (Alvin Hammer, who is represented by Keith Babcock) in which HH would pay SH in full in the amount of \$461,120.58. Although HH and 1634 Main believe this amount is more than Mrs. Hammer would be entitled to under the January 21 Order and the judgments, they are willing to pay this amount to put these cases behind them by having

the property restored to the owners prior to the Order and withdraw the appeal of the Order. In short, Mrs. Hammer would be paid in full and this litigation would end.

Second, if SH has a buyer at the alleged appraised price of the property, she may produce a firm contract and HH would agree to a sale at that price without the need for a bond to be posted.

Under either of the first two alternatives, there is no cost for the bond – which someone will have to pay for and the expectation is that SH will seek to tax that cost to HH even though he is willing to pay her in full for her loss. Further, the increases in amounts SH's counsel contends are payable to SH may end, and certainly would end if the judgments were paid in full.

Third, if SH insists on proceeding with sale at an amount less than the appraised value, then the court should order bond be posted in twice the value of the appraisal. To post in any lesser amount would not give HH the statutory protection he is entitled to as directed by the State Legislature. The protection is to cover "all damages."

SH suggests a bond of just \$922,241.16 which is not even two-thirds of the appraised value of the property. SH submits two flawed arguments in support of her request for the low bond amount. First, she states that HH will receive some of the sales proceeds after they are deposited in the court. (Motion, para. 11). Her assertion is no different than an execution sale by a Sheriff or a Master's foreclosure sale. Any excess proceeds of sale would also go back to a judgment debtor or mortgagor under these sales. SH's first argument lends no support to her request. Second, SH argues that because she would not receive the full sales price (even though there is no pending contract to make this determination) that the bond should be in a lower amount. SH misses the point as the purpose of the statute is to protect the defendant, HH. Nothing in the statute can be construed to protect what the judgment creditor might recover for

the sale of the property. Further, as already pointed out, SH's excess proceeds argument is specious in any event. Cutting to the chase, a bond in the amount suggested by SH would not even cover the value of the property being sold, much less cover any other damages HH may sustain. In order to follow the purpose and spirit of the statute and protect the judgment debtor (HH), if the court sets a bond, it must be in twice the value of the property.

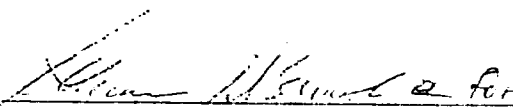
CONCLUSION

HH is prepared to pay the amounts owed to SH on the judgments and this court's January 21 Order, is prepared to dismiss the appeal of the January 21 order, and is prepared to end the litigation related to the judgments in these cases. Alternatively, HH is agreeable to SH selling the building at the appraised value of \$1.475 million (or \$1.450 million if that is what it actually is) without the need for SH to post a bond. However, if SH is prepared to continue the litigation despite being made whole and she desires to move forward with a sale at a lower price than she has represented to the Court, then bond should be set at the statutory amount of twice the appraised value in order to afford HH the protections built into the statute for a judgment debtor.

{signature page follows}

Respectfully submitted,

AIKEN & HIGHTOWER, PA

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ATTORNEYS FOR THE PETITIONERS

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff/Petitioner,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant/Respondent,

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff/Petitioner,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant/Respondent,

vs.

Howard Hammer,

Additional Defendant on Counterclaim/Petitioner

) **COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

) Case No.: 2009-CP-40-05911

) **ORDER ON MOTION OF
SHIRLEY HAMMER FOR
APPEAL BOND**

) **COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

) Case No.: 2010-CP-40-2889

) **ORDER ON MOTION OF
SHIRLEY HAMMER FOR
APPEAL BOND**

Before the Court is the Motion for Appeal Bond filed by counsel for Shirley Hammer on May 19, 2014 (and her May 6, 2014 letter request for the same). Having considered the matter, the court makes the following findings and order:

1. In supplementary proceedings, this Court entered an Order on January 21, 2014 ("the January 21 Order") in which this Court, *inter alia*, ordered transfer of real property known as 1634 Main Street from Howard Hammer and 1634 Main, L.P. to Shirley Hammer. The Court also issued a Master's Deed to Shirley Hammer transferring 1634 Main St. to her, and that deed has been recorded.

2. In the January 21 Order the Court ordered Shirley Hammer to sell the assets transferred to her including the real property at 1634 Main St., Columbia, S.C. The January 21 Order has been appealed by Howard Hammer and 1634 Main, L.P.

3. Shirley Hammer has represented to the Court that she has three prospects who are ready, willing, and able to purchase the building, and that 1634 Main St. has recently appraised for \$1,450,000.00. The appraisal has not been provided to the Court and Ms. Hammer's counsel has represented to opposing counsel that the building appraised for \$1,475,000.00.

4. Howard Hammer and 1634 Main, L.P. responded to the motion for appeal bond. In their response, they indicated (1) that they were willing to allow the sale of 1634 Main St. for the appraised value without the necessity for posting a bond, (2) that alternatively they would pay the amounts owed on the underlying judgments and the January 21 Order upon the property being restored to the ownership as it existed before the January 21 Order, or (3) if Shirley Hammer sought to sell the property for less than the appraised value that bond should be posted in twice the appraised value of the property as required by S.C. Code § 18-9-130(A)(2).

5. S.C. Code § 18-9-130(A)(2) states, *inter alia*, "A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed." The statute is drawn to protect a defendant if his property is wrongfully sold, and to protect a defendant for all damages if his appeal is sustained.

6. Here the protection of the judgment debtors is at stake in the event that the property is not sold in a commercially reasonable manner or if the January 21 Order is reversed on appeal. Nevertheless, Shirley Hammer argues that bond should be set in the amount of what

she contends are the “net” judgments in these cases. However, even if the underlying judgments or “net” judgments were doubled for a bond amount, such a bond would not compensate Howard Hammer and 1634 Main for the loss of the property¹, much less all damages they may sustain if the January 21 Order were to be reversed. The statute specifically states that the bond is to “pay all damages.”

Therefore, based on the record in this matter,

IT IS ORDERED that if a contract for the sale for 1634 Main St. is executed for less than the amount of \$1,450,000.00 that Shirley Hammer give an undertaking or bond to Howard Hammer and 1634 Main, L.P. with two good sureties, in double the appraised value of the property, \$2,900,000.00.²

Joseph M. Strickland
Master In Equity, Richland County

May _____, 2014

¹ Shirley Hammer proposes a bond of only \$922,241.16 when she acknowledges that 1634 Main St. has appraised for at least \$1,450.00.

² If Shirley Hammer’s appraisal is actually \$1,475,000.00, then the bond amount shall be \$2,950,000.00.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer
☒ Plaintiff/Petitioner

Shirley Hammer
a/k/a Shirley Grace Hightower,

☐ Defendant/ Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

1634 Main, L.P.,

☒ Plaintiff/Petitioner

Shirley Hammer a/k/a Shirley Grace
Hightower,

☐ Defendant/ Respondent

v.
Howard Hammer,

Additional Defendant on
Counterclaim/Petitioner

IN THE COURT OF COMMON PLEAS

Case No.: 2009-CP-40-05911

CERTIFICATE OF SERVICE

Case No.: 2010-CP-40-2889

CERTIFICATE OF SERVICE

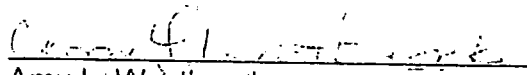
2014 MAY 23 PM 4:11
FILED
CLERK OF COURT
SOUTH CAROLINA

This is to certify that I, Amy L. Westbrook, paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the Amended Petition of Howard Hammer for a Writ of Supersedeas with Annexed Memorandum in Support and the Amended Petition of Howard Hammer and 1634 Main, LP for a Writ of Supersedeas with Annexed

Memorandum in Support in the foregoing matter by placing a copy of same via hand delivery as follows:

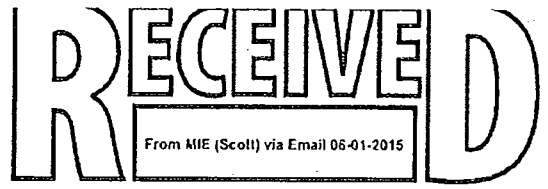
Stephanie Weissenstein, Esq
Desa Ballard, Esq..
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

Dated at Columbia, South Carolina this 23rd day of May, 2014.



Amy L. Westbrook

EXHIBIT 8



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

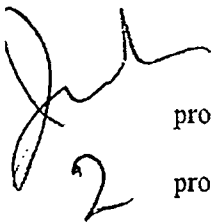
ORDER APPROVING ACCOUNTING

RICHLAND COUNTY
FILED
2015 MAY 29 PM 4:12
JEANETTE M. 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.

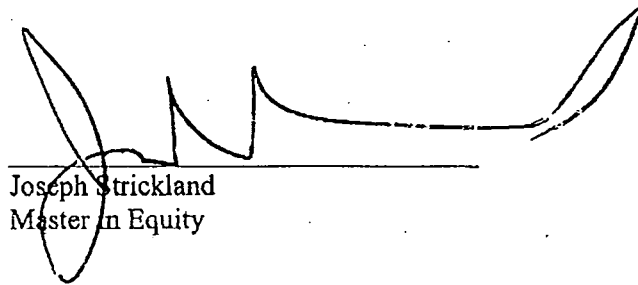
Shirley's accounting accurately sets forth the judgments noted in the January 21, 2014 order, the Supreme Court's judgments entered in both appeals, plus interest on those appeals at the post-judgment rate, expenses she has incurred in paying unpaid and overdue bills for 1634 Main LP that were found 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

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 'SH' with a large '4' below it.A handwritten signature in black ink, appearing to be 'J Strickland', written over a horizontal line.
Joseph Strickland
Master in Equity

May 13, 2015

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

**MOTION TO APPROVE
ACCOUNTING BY
SHIRLEY HAMMER**

Shirley Hammer (hereafter "Shirley") moves for an order approving the within accounting to establish full compliance by her and her agents with this Court's order dated January 21, 2014, in which assets previously held by Howard Hammer were transferred to Shirley Hammer as part of collection of judgments held by her against Howard Hammer and against 1634 Main LP. In support of her accounting, Shirley submits the following:

1. Pursuant to this Court's order of January 21, 2014, Shirley and her agents have actively and aggressively marketed the real estate that was transferred to her for sale to satisfy the judgments she holds and have managed it during this period. In the absence of a contract of sale brought to conclusion, Shirley has listed the property for sale by way

of public auction through McGee Auction Company, LLC. The auction is currently being advertised and will take place on May 13, 2015 at 2:00 p.m. with a minimum bid of \$837,000.00.

2. The minimum bid was arrived at through consultation with the auctioneer and the listing agent, based on an appraisal, as well as activity on the property during the past 15 months since it was offered for sale and the offers that have been made (and in some cases, accepted). Shirley is informed and believes that the minimum bid of \$837,000.00 is a commercially-reasonable minimum bid for a sale of the building by auction.
3. Pursuant to Paragraph 6 of the Court's order, Shirley will receive the sum of \$794,527.27 from the sales proceeds¹. A breakdown of the judgments and other costs due to Shirley from the sales proceeds is attached hereto as Exhibit A.
4. Any remaining proceeds, after payment by the closing attorney of encumbrances (including tax liens), commissions and other costs of sale not yet known, will be held in escrow pending an order of distribution by this Court as required by Paragraph 7 of the Order dated January 21, 2014. A supplemental accounting of residual funds will be submitted following final closing after auction and disbursement, for further action by this Court.

¹ The order of payment of the amounts due as set forth in Exhibit A shall be payable from the sales proceeds as follows: (1) Payment of all amounts due from Howard Hammer to Shirley Hammer under applicable judgments and orders; (2) Next, payment of any and all remaining proceeds for all amounts due from 1634 Main LP to Shirley Hammer under applicable judgments and orders; (3) Next, payment of funds due from Howard Hammer to 1634 Main LP, including rent. Any residual funds from the sales proceeds will be set forth in the supplemental accounting provided to the Court pursuant to Paragraph 4.

5. The within is submitted for the Court's approval and determination that Shirley and her agents have complied with all obligations imposed by the January 21, 2015 including the accounting required therein.

Wherefore, Shirley moves for an order approving the accounting and confirming that she and her agents have fully complied with the obligations imposed by the January 21, 2014 order of the Court, in advance of sale of the real property by public auction, on May 13, 2015; and that the only remaining obligation is to provide a supplemental accounting of residual funds, if any, after the auction is concluded and all real estate, broker and auction fees are paid.


Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

April 29, 2015

ATTORNEY FOR SHIRLEY HAMMER

I, an employee of Desa Ballard, P.A., do
certify that I have this date served a copy of:

Notice to move accounting by Shirley
on all opposing counsel by depositing a copy
properly addressed with sufficient First Class
Postage affixed, to each, in the United States Mail.
Date: *4/29/15* Signed: *Desa Ballard*

Judgments due to Shirley Hammer from Howard Hammer
(Incl interest as applicable):

Order of Judge James dated 1/29/2013	\$ 139,011.85	
Order of Judge James dated 6/6/2013	63,513.57	
Bill of Costs as approved by the Supreme Court 06/12/2014	\$3,559.19	
Post Judgment Interest on Bill of Costs (04/30/2015)	\$227.64	
Bill of Costs as approved by the Supreme Court 03/10/2015	\$1,221.44	
Post Judgment Interest on Bill of Costs (04/30/2015)	\$12.37	
Sanctions awarded by MIE 04/24/2015	\$88,088.81	
Total due to Shirley Hammer from Howard Hammer		\$ 295

Judgments due from 1634 Main LP (Incl. interest as applicable):

Order of Judge James dated 1/29/2013	\$ 26,733.05
Order of Judge James dated 6/6/2013	106,673.97

133

Costs of Marketing and Sale of 1634 Main pursuant to paragraph
6A of Order dated 01/21/2014

Costs

B&W Attorney Fees through 04-27-2015	\$ 67,220.00
B&W Attorney Fees (Est. to close)	10,000.00
Aries Advisor's Lease Contract Buyout as of 04-30-2015	6,292.74
Appraisal	1,500.00
Survey	1,612.50
Lock Change (Key Shop)	2,959.50
Security for HH move (Barton)	443.75
Security for HH move (Middleton)	1,000.00
Removal of property left by HH (Got Junk)	1,434.00
New Bank Acct Check Chg	91.27
Insurance on Building (Expires 01/24/2016)	2,522.99
Umbrella Policy (Expires 04/28/2016)	1,196.80

Weels Painting	1,400.00	
Sign A Rama	430.17	
Title Insurance	1,176.60	
Seal Maxx	625.00	
Frank Varn (Landscaping)	2,500.00	
LLC Set up charges	110.00	
Total Costs		\$ 102,515.32

Operating Expenses Unpaid by 1634 Main LP upon transfer
now due to Shirley Hammer

Danville	\$ 907.15	
Central Midlands Cleaning	4,865.00	
Madison Fludd	135.00	
Crawford Electric	350.00	
City of Columbia	210.61	
AT&T	218.09	
ThyssenKrupp	3,068.06	
ADT Security	335.24	
Air Cond	1,368.00	
Gregory Pest	438.79	
SCE&G	4,057.62	
Total Operating Expenses		\$ 15,963.56
Total Cost of Marketing and Sale Due to Shirley Hammer		\$ 118,

Debts due from Howard Hammer to 1634 Main, LP

Past Due Rent from Howard Hammer (2/2011 - 1/2014)	206,667.48	
Note 1 Due from Howard Hammer	30,059.92	
Note 2 Due from Howard Hammer	10,289.10	
Total Debts due from Howard Hammer to 1634 Main, LP		247,

Total amounts due to Shirley Hammer pursuant to Order of 01/21/2014

\$ 794,

EXHIBIT 9

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff/Petitioner,

vs.

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

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2009-CP-40-05911

MOTION AND ORDER
INFORMATION FORM

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

1634 Main, L.P.,
Plaintiff/Petitioner,

vs.

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

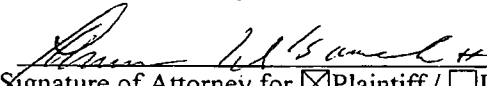
vs.

Howard Hammer,
Additional Defendant on Counterclaim/Petitioner

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-2889

MOTION AND ORDER
INFORMATION FORM

Plaintiff's Attorney: Thomas W. Bunch, II, Bar No. 1011 Address: PO Box 944 Columbia, SC 29202 phone: (803) 779-8900 fax: (803) 771-9411 e-mail: tbunch@RobinsonLaw.com other:	Defendant'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:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Reconsider Order Approving Accounting Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion Type ☒ Written motion attached ☐ 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 ☒ Plaintiff / ☐ Defendant June 18, 2015 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP), ☐ 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: ☐ Other:	

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE _____
☐ Other: _____	CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED – AMOUNT DUE: _____	

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

**MOTION TO RECONSIDER
ORDER APPROVING
ACCOUNTING**

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

**MOTION TO RECONSIDER
ORDER APPROVING
ACCOUNTING**

Pursuant to Rules 59 and 60, SCRCP, Howard Hammer respectfully moves that the Court reconsider its Order Approving Accounting which was filed May 29, 2015 (Attached hereto as **Exhibit A**). The undersigned learned of the filing of this Order on June 8, 2015, and received written notice of its entry from Shirley Hammer's counsel when she served it by mail on June 12, 2015.

1. As part of the accounting, Movant Shirley Hammer claimed \$247,016.50 in new, previously unasserted, claims against Howard Hammer. The Court lacked subject matter jurisdiction over these claims.

This Court acquired jurisdiction of these cases on April 22, 2013 under S.C. Code Ann. § 15-39-310 for the purpose of (1) discovering assets of the judgment debtors (one of whom was Howard Hammer) which could be applied toward satisfaction of the judgment creditor's (Shirley Hammer's) judgments, and (2) entertaining matters necessary to dispose of enforcement of the judgments. See the Rule to Show Cause filed April 22, 2015, and attached hereto as **Exhibit B**. Section 15-39-310 provides for supplementary proceedings and permits that "...such proceedings may thereupon be had for the application of the property of the judgment debtor **towards the satisfaction of the judgment**" There was no judgment for the new claims of \$274,016.50, and there still is not. These new claims have not been adjudicated before any court in order to become a judgment subject to this court's jurisdiction in supplementary proceedings. These new claims have never been referred to this court for any disposition since no civil action has ever been filed on the claims.

Section 15-39-310 is not a means to allow new suits, claims, or causes of action to be asserted. It is not permitted by the statute and there was no reference for supplementary proceedings to this Court to adjudicate any suits, causes of action or claims other than the judgments arising out of these captioned cases. Supplementary proceedings are just that – supplementary to the case already adjudicated. They are not a new case to assert new claims. However, the Motion to Approve Accounting effectively did just that – i.e., impermissibly attempted to commence a suit on new claims. It asserted new claims not within the jurisdiction of this Court for \$247,016.50.

To the extent the parties might have other claims among themselves, those need to be commenced by the filing of a summons and complaint (Rule 3, SCRCP), not handled by this Court which lacked jurisdiction.

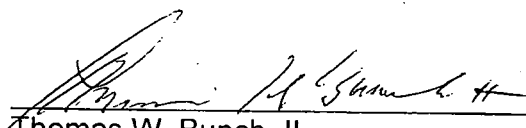
2. Allowing the recovery of new claims by way of motion is contrary to and a denial of due process under state and federal constitutions. No summons and complaint for these claims was filed. No complaint setting forth the basis of the claims was filed. It is improper to grant relief where a complaint does not assert a cause of action or theory of recovery. *Blackburn v. Dudley*, 289 S.C. 415, 338 S.E.2d 151 (1985). No discovery was allowed. No evidence as to the validity of the new claim was presented before the court ruled. No opportunity to defend these claims was allowed. The impact of the inability to present a defense is demonstrated by the limited documents improperly placed in the record by Mrs. Hammer's counsel and relied upon by the Court. These documents show that the statute of limitations had already lapsed on substantially all of Mrs. Hammer's new claims. These documents fail to establish that Mrs. Hammer is even the holder of the new claims she asserted. A demand for a jury trial was denied, although there is no question that the new claims seeking money damages are claims at law and would be subject to a demand for a jury trial. In total, Mr. Hammer was denied any process, much less due process to defend these new claims.

3. Movant, Shirley Hammer, did not present any evidence by way of affidavit, deposition or testimony to substantiate the assertions made by her motion – either as to monetary claims or factual matters. After the Court ruled, Mrs. Hammer's counsel asked the Court without any authentication to admit three documents into the record. The Court erroneously granted the request.

4. The Movant did not have standing to assert the new claims. Based on two of the documents the Court improperly received in the record, the claims belonged to 1634 Main, L.P., not Mrs. Hammer. Further, no documentation whatsoever concerning the rent claim was produced, not even a lease agreement, but that also would have been a claim of 1634 Main, L.P.

5. In further support of this motion, Mr. Hammer reasserts all arguments and defenses previously submitted to this Court orally and in writing.

From the sale of the 1634 Main St. property, Mrs. Hammer is entitled only to payment of her judgment amounts, and the costs and sale and marketing of property. January 21, 2014 Order. The judgments were set at \$335,168.74 in the January 21, 2014 Order. Since then, Mrs. Hammer has been granted court costs of \$5,784.35 bringing the total amount of the judgments and court costs to \$340,953.09. However, in light of Mrs. Hammer's failure to present any admissible evidence in support of her accounting motion, she is not entitled to deduct from the sale's proceeds of 1634 Main St. any amount over \$340,953.09. Moreover, she is not entitled to deduct additional monies (damages) for the new claims she has improperly attempted to assert. The Order Approving Accounting should be vacated and the motion should be approved in the amount of \$340,953.09.



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

June 18, 2015

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,

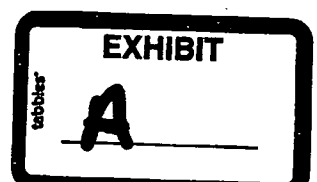
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CA# 2009-CP-40-05911
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ORDER APPROVING ACCOUNTING

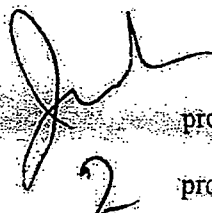
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The parties appeared before me with counsel on May 12, 2015 at a properly-noticed hearing. An auction of the real property is scheduled to be held on May 13, 2015 beginning at 2:00 pm.



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, SCRCP, 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.

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(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.

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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.



May 13, 2015



Joseph Strickland
Master in Equity



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

June 12, 2015

Via U.S. Mail Only
Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

Re: *Shirley Hammer vs. Howard Hammer and Shirley Hammer vs. 1634 Main, LP*
Case Nos.: 2009-CP-40-05911 and 2010-CP-40-2889

Dear Ms. McBride:

Please find enclosed for filing an original and one (1) copy of a Certificate of Service for the Order Approving Accounting in the above-referenced matter. Please file the original and return the filed stamped copy to me in the enclosed self-addressed, stamped envelope.

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

Sincerely yours,

Beth Cogan
Beth Cogan, Paralegal
beth@desaballard.com

Enclosure

cc: via U.S. Mail
Arthur K. Aiken, Esquire
Tommy Bunch, Esquire
Shirley Hammer (via email)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

Howard Hammer)

Defendant,)

STATE OF SOUTH CAROLINA)

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Shirley Hammer)

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Defendant,)

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

**CERTIFICATE OF SERVICE
ORDER APPROVING
ACCOUNTING**

The undersigned certifies that she, on June 12, 2015, caused to be served the Order

Approving Accounting on Counsel of Record by electronic mail and by placing it in the US Mail,

first class delivery, with sufficient postage to the following addresses:

Arthur K. Aiken Esquire
art@aikenandhightower.com
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

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

June 12, 2015

Beth Cogan
Beth Cogan, Paralegal

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendants

IN THE COURT OF COMMON PLEAS

J.R. 2009-CP-40-05911
2010-CP-40-02889

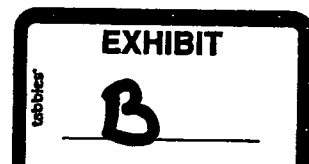
**RULE TO SHOW CAUSE AND
ORDER OF REFERENCE AS TO
HOWARD HAMMER**

Judgments having been rendered, and executions issued, with *nulla bona* returned to said executions, the Plaintiff having moved for an examination of the Defendant Howard Hammer pursuant to the provisions of S.C. Code Ann., Section 15-39-310, et seq. (S.C. Code 1976), as amended, and an Order of Reference having been issued, it is therefore,

ORDERED that the within matter is hereby referred with finality to the Honorable Joseph M. Strickland, Master-in-Equity for Richland County. It is further

ORDERED that the Defendant Howard Hammer, DO APPEAR before the Master in Equity for Richland County at the Richland County Judicial Center, Courtroom 2D, located at 212 Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 30 day of May, 2013 at 2:00 o'clock in the P.m. to answer under oath questions concerning your assets; TO SHOW CAUSE why your property should not be applied toward satisfaction of the judgments set out in the Petition; and TO SHOW CAUSE why a Receiver of your property should not be appointed, pursuant to the provisions of S.C. Code Ann., Section 15-39-430 (S. C. Code 1976).

The Master-in-Equity shall have the authority to enter final judgment, and an appeal, if



any, must be made directly to the South Carolina Supreme Court. Pursuant to S.C. Rules of Civil Procedure, Sections 14-11-90 and 15-39-390 (1976, as amended) and to Rule 53, S.C. Rules of Civil Procedure, the Master shall entertain and rule upon all motions necessary to dispose of this matter, to include but be not limited to: motions to dismiss, motions to appoint a receiver, motions to continue the matter, and motions to sell all or certain property of judgment debtor in satisfaction of the Plaintiff's debt.

IT IS FURTHER ORDERED that you are hereby **restrained** of disposing of any assets which are the subject of this Judgment.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING THE FOLLOWING:

- a. All records, titles, etc., concerning any and all real estate, automobiles, trucks, trailers and other vehicles owned or being purchased by you or any corporations, partnerships or business in which you own an interest, or did so own, in the last year;
- b. All records concerning bank accounts owned by you, including checking account checkbooks and savings account passbooks;
- c. Any written financial statements that have been prepared by or for you within the past five years.
- d. List of current assets and their approximate market value;
- e. List of any property owned by you that is in the hands of a third party;
- f. Transfers by you of any property, owned by you as business assets or personal assets within the past five years;
- g. Withdrawals, in any form (including compensation, bonuses and loans) that have

been made to you within the past five years; and

- j. Such other and further records as may disclose your assets and liabilities, or of any corporations, partnerships or business in which you own an interest.

IF YOU DO NOT APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE and/or JAIL SENTENCE.



The Honorable ~~Dr. Andrea G. Benjamin~~ *L. Casey Manning*
Chief Administrative Judge for
Court of Common Pleas, Fifth Judicial Circuit

April 18, 2013
Columbia, South Carolina

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

Case No.: 2009-CP-40-05911

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

Case No.: 2010-CP-40-2889

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

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

Dated at Columbia, South Carolina this 18th day of June, 2015



Amy L. Westbrook

EXHIBIT 10

Amy Westbrook

From: Thomas W. Bunch, II
Sent: Friday, June 19, 2015 9:28 AM
To: stricklandj@rcgov.us
Cc: 'scottj3@rcgov.us'
Subject: Hammer; Motion to Reconsider Order Approving Accounting
Attachments: Mtn Reconsider Accounting w_ transmittal.pdf

Dear Judge Strickland,

I filed and served the attached motion yesterday. In the event you wish to hear this motion sooner than later, in the near term I am available today, Monday morning and Tuesday.

Yours Truly,

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

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

 **MERITAS' LAW FIRMS WORLDWIDE**

Amy Westbrook

From: Thomas W. Bunch, II
Sent: Wednesday, July 22, 2015 9:48 AM
To: 'JOHN SCOTT'
Cc: JOSEPH STRICKLAND; Desa Ballard; Amy Westbrook
Subject: Hammer cases; Order re accounting and motion to reconsider
Attachments: Motion to Reconsider Order Approving Accounting.pdf; Order Approving Accounting.pdf

John,

Thank you for the email and sending the filed order denying Mr. Hammer's Motion to Reconsider Sanctions. There is one additional motion which the Judge needs to address.

Judge Strickland mentioned in a teleconference with counsel yesterday that he had executed an order denying a motion by Mr. Hammer to reconsider. I thought he was referring to his most recent order approving accounting and Mr. Hammer's most recent motion to reconsider that order. The motion to reconsider was filed and delivered to chambers on June 18. For your reference the order and motion are attached. Please let Judge Strickland know that there remains one unresolved motion which needs to be addressed. For scheduling purposes, I will be out of town Thursday and Friday of this week.

Thank you for your assistance in this matter.

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
P: 803-227-1103
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TBunch@robinsonlaw.com
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Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900

MERITAS LAW FIRMS WORLDWIDE

From: JOHN SCOTT [mailto:SCOTTJ3@rcgov.us]
Sent: Wednesday, July 22, 2015 9:05 AM
To: Desa Ballard <desab@desaballard.com>
Cc: Thomas W. Bunch, II <TBunch@robinsonlaw.com>
Subject: FW: Message from KMBT_223

Attached is the scanned copy of the Order Denying Motion to Reconsider. 803-576-1901 John Scott, III if there are any questions.

From: scan@rcgov.us [mailto:scan@rcgov.us]
Sent: Wednesday, July 22, 2015 9:07 AM
To: JOHN SCOTT
Subject: Message from KMBT_223

EXHIBIT 11

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

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

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

HEARING

Thursday, January 9, 2014
9:58 a.m. to 12:15 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, on the 9th day of January, 2014, before Robin K. Reibold, Court 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

1 **MS. WEISSENSTEIN:** These are the statutes that address
2 executions against property. And under 15-39-10,
3 when a judgment holder can, through the court,
4 execute against any property, and that includes,
5 subsection C, delivery of possession of real
6 property, which is where my original claim of
7 transfer the deed over and then we can market and
8 sell the property, deposit the funds into the court,
9 if there's any surplus after the judgments have been
10 satisfied then that can be litigated. Under 15-39-
11 310, in a rule to show cause hearing, the
12 application of the property towards satisfaction of
13 the judgment may be had. And 15-39-410, any
14 property may be applied. So what we would show Your
15 Honor is right now, today, you can order that either
16 they transfer the title to that property to the
17 judgment holder, Mrs. Hammer, or you can order that
18 that property be executed for judicial sale by the
19 sheriff's department. And we're okay with either
20 one of those options, Your Honor. The ... if that
21 were the case, then the foreclosure matter that has
22 been filed, but the answer period has not even
23 lapsed at this point yet, can be dismissed because
24 we don't need anything else. We won't need any
25 other property because we're informed and believe,

EXHIBIT 12

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

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

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

HEARING

Thursday, January 9, 2014
9:58 a.m. to 12:15 p.m.

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

1 responsive materials that would give us that
2 information, on our own investigation we've taken
3 the step to go ahead and try to foreclose against
4 other properties. In order to do that we had to
5 file a foreclosure matter because there are other
6 judgment creditors out there against these other
7 properties and we needed to protect them. Now,
8 again, all that would be rendered moot and dismissed
9 if we can satisfy the judgments in this action the
10 way we intended to do back in April. And as ...

11 **THE COURT:** What's the total amount of all the judgments?
12 What's the total amount?

13 **MS. WEISSENSTEIN:** I'm sorry?.

14 **THE COURT:** Of the ... there's more than one judgment
15 against Mr. Hammer that your client ...

16 **MS. WEISSENSTEIN:** Right. There are ...

17 **THE COURT:** What's the total amount involved?

18 **MS. WEISSENSTEIN:** The total amount of the judgments, with
19 interest, is about \$355,000. To be specific,
20 \$355,168.76. We would also ask that the Court award
21 Mrs. Hammer damages in the collections matter for
22 her attorneys' fees because of the requirement that
23 we go through so many subpoenas and hoops to try to
24 find the information that Howard himself was
25 required to answer by a court order. Those

EXHIBIT 13

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

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

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

HEARING

Thursday, January 9, 2014
9:58 a.m. to 12:15 p.m.

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

1 **MS. WEISSENSTEIN:** ... these matters were filed first,
2 that the rule to show cause was for purposes of
3 finding property upon which there can be execution
4 and that if these matters are resolved then that
5 foreclosure matter will be rendered moot and
6 dismissed by the plaintiff.

7 **MR. HAMMER:** Your Honor, what she has ... I asked for a
8 stipulation, not an argument. The pure stipulation
9 that I ask that the Court make is they stipulated
10 that a foreclosure action asking for foreclosure of
11 all the properties was filed on November 6th. Do
12 you stipulate to that?

13 **MS. WEISSENSTEIN:** Yes.

14 **MR. HAMMER:** In open court. All right. So we now have a
15 stipulation that the foreclosure action was filed
16 prior to any motion and prior to the setting of this
17 hearing, as a matter of fact.

18 **MS. WEISSENSTEIN:** I did not stipulate to that, that is
19 incorrect.

20 **MR. HAMMER:** Your Honor did not set this hearing for
21 December the ... actually January the 9th until
22 after November the 6th. You had set it for another
23 time and then you changed it.

24 **THE COURT:** There was a reason we changed it, Mr. Hammer,
25 because it was the week of Thanksgiving week. And

EXHIBIT 14

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MASTER IN EQUITY COURT
Case No. 2013-CP-40-40-6898

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; 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.

AMENDED¹
**MOTION FOR CHARGING LIEN
AGAINST CORPORATE DEFENDANTS
AND APPOINTMENT OF A RECEIVER**

Plaintiff moves for an order establishing a charging lien against any interest owned by Howard Hammer and/or 1634 Main LP in any of corporate defendants named herein, including but not limited to HASCI LLC and/or Heart of Columbia, LLC, for satisfactions of judgments she holds against Howard Hammer and 1634 Main LP. In addition, she seeks an order appointing a receiver to take control of any distributions that are being made or will be made in the future to Howard Hammer as a result of his percentage ownership in the corporate defendants named herein, if any. In support of her motion, Plaintiff will show:

¹ This motion replaces the motion in this matter dated December 18, 2014

1. Plaintiff currently holds a judgment that remain unsatisfied² against defendants Howard Hammer and 1634 Main Street LP³; there is also a pending motion for sanctions against Howard Hammer which is scheduled to be heard on January 14, 2015 by virtue of an order of remand from the South Carolina Supreme Court in Case No. 2009-CP-40-05911 and 2010-CP-40-2889. Any sanctions awarded will be an additional judgment in favor of plaintiff against Howard Hammer, and perhaps others.
2. Howard Hammer's continued filings with the Supreme Court, after its order affirming Judge Strickland's order of January 21, 2014 have prevented Plaintiff from consummating a sale of the real property that was ordered by Judge Strickland. Plaintiff obtained a purchaser and a contract of sale for the building, but Howard Hammer has, to date, prevented the closing, leaving the judgment held by Plaintiff unsatisfied. As a result of the delays caused by Howard Hammer, the proposed purchaser has terminated the contract of sale.
3. On information and belief, Defendant Howard Hammer is 20 % owner of HASCI, LLC, or he owns some other fractional interest therein, which owns certain unencumbered real property located at 1011 Assembly Street in Columbia, South Carolina, bearing TMS #R08916-09-08, and being more fully described as

² 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. In addition, the order awarded Plaintiff certain other costs funds by way of judgment, which continue to accrue at present. The current amount of the judgment is approximately \$500,000, but fees and costs continue to be incurred.

³ Howard Hammer managed 1634 Main LP by virtue of being the sole member of SH5, LLC, the general partner of the limited partnership. Mr. Hammer's interests in 1634 Main LP and SH5, LLC were transferred to Plaintiff by Judge Strickland's order dated January 21, 2014 in Case No. . That order has been affirmed by the

follows:

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on the Western side of Assembly Street between Senate and Pendleton Street in the City of Columbia County of Richland, State of South Carolina, being shown and designated as 1011 Assembly Street and 1013 Pendleton Street on a plat prepared for Bessie Bernstein and Jane Gibbes Edens by William Wingfield, Registered Surveyor, dated October 25, 1957, revised January 3, 1958, and later revised February 24, 1959, and having the following metes and bounds: commencing at a point on said Assembly Street Two Hundred Nine and 75/100 (209.75') feet North of the Northwest corner of Pendleton Street and Assembly Street and running along said Assembly Street South 18 degrees 50 minutes East for a distance of One Hundred Forty (140') feet; thence turning and running South 70 degrees 59 minutes West for a distance of Two Hundred Eight and 25/100 (208.25') feet; and being bounded on the South along said line by property now or formerly of Leventis; thence turning and running South 19 degrees no minutes East for a distance of Sixty-nine and 75/100 (69.75') feet; thence turning and running along Pendleton Street South 71 degrees seven (7) minutes West for a distance of One Hundred Twelve and 64/100 (112.64') feet; thence turning and running North 18 degrees 52 minutes West for a distance of Twenty-nine (29') feet, and being bounded on the West along said line by property now or formerly of Rivkin; thence turning and running South 71 degrees 7 minutes West for a distance of Ninety-six (96') feet to Park Street and being bounded on the South along said line by property now or formerly of Rivkin; thence turning and running North 18 degrees 52 minutes West for a distance of One Hundred Seventy-nine and Eight-tenths (179.8') feet along said Park Street; thence turning and running North 70 degrees 56 minutes East for a distance of Four Hundred Sixteen and Nine-tenths (416.9') feet to the point of commencement, be all measurements a little more or less and being bounded on the North along said line by property of Bookman, Caughman and Sebastian, all of which is shown on said plat.

This being the identical property conveyed to Alvin L. Hammer, Howard Hammer and Stanley F. Hammer by deed recorded December 30, 1961 in Book 316 Page 288, in the Office of the Register of Deeds for Richland County; and deed recorded January 3, 1985, in Book 724 Page 408, in the Office of the Register of Deeds for Richland County; and deed recorded December 18, 2007, in Book 1385 Page 1719, in the Office of the Register of Deeds for Richland County.

4. Pursuant to S.C. Code Ann. Section 33-44-504, Plaintiff is informed and believes her judgments against Howard Hammer entitle her to a charging order against any

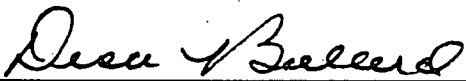
interest that Howard Hammer has in any of the corporate defendants which are limited liability corporations.

5. Additionally, Plaintiff is informed and believes that her judgments against Howard Hammer entitle her to obtain the appointment of a receiver over Howard Hammer's interest in any corporate defendants which are limited liability corporations for purposes of using any distributions that may be due to Howard Hammer be paid to her in satisfaction of the judgment(s) she holds and will obtain against Howard Hammer in proceedings currently pending.
6. In the alternative, Plaintiff is informed and believes that her judgment attaches to Howard Hammer's interest in any of the corporate defendants named herein.
7. On information and belief, the judgment(s) held by Plaintiff against Howard Hammer is a judgment(s) enforceable against the distributional interest of Howard Hammer of HASCI, LLC, and against any distributional share due Howard Hammer from a sale of any real or personal property owned by HASCI, LLC, including real property located at 1011 Assembly Street. Plaintiff is informed and believes that a charging order should be issued for the purposes of encumbering Howard Hammer's distributional share of any real or personal property owned by HASCI, LLC and a receiver appointed for purposes of examining the sales documents and taking possession of any distributional share to which Howard Hammer may entitled.
8. On information and belief, HASCI, LLC has entered into a contract of sale for the property located at 1011 Assembly Street, TMS No. 08916-09-08, which contract of sale is scheduled to close at an undetermined date in the future.

9. Plaintiff is informed and believes that the property subject to the order sought herein is not exempt from execution, attachment, or sale to satisfy a judgment or order. See S.C. Code Ann. §15-41-30.
10. Plaintiff is informed and believes that the issuance of a charging order and appointment of a receiver are necessary to protect her interests in distributions that are being made or may be made to Howard Hammer in connection with his interest in HASCI, LLC and any other corporate defendant named herein.

WHEREFORE, Plaintiff moves for:

- a) A charging order pursuant to Section 33-44-504 entitling her to receive any distributional interest that may be paid to Howard Hammer as a result of his interest, whatever percentage that interest may be, in real property owned by HASCI, LLC or any other corporate defendant named herein.
- b) An order appointing a receiver to take control of any distributions that are being made or will be made in the future to Howard Hammer as a result of his percentage ownership in HASCI, LLC or any other corporate defendants named herein, if any, and compensating the receiver from the distributional interest that would otherwise be paid to Howard Hammer.
- c) For the costs incurred by Plaintiff in bringing this motion; and
- d) For such other relief as the Court deems necessary to protect the rights of the plaintiff herein.


12.23.2014
Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171

Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com

Attorney for the Plaintiff

December 23, 2014

Handwritten signature or initials in cursive script.

IN THE MASTER-IN-EQUITY COURT
FOR THE FIFTH JUDICIAL CIRCUIT
Case No. 2013-CP-40-6898

The undersigned certifies that she, on December 23, 2014 caused to be served a copy of the **Amended Motion for Charging Lien against Corporate Defendants and Appointment of a Receiver** by electronic mail and by depositing all in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Arthur K. Aiken, Esquire
art@aikenandhightower.com
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

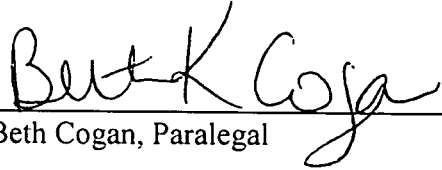
Keith Babcock, Esquire
kmb@lbglegal.com
Lewis & Babcock, LLP
Post Office Box 11208
Columbia, South Carolina 29211

**Thomas Bunch, Esquire
TBunch@robinsonlaw.com
Robinson McFadden
Post Office Box 944
Columbia, South Carolina 29202**

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McCabe, Trotter & Beverly, PC
Post Office Box 212069
Columbia, South Carolina 29221

John D. Elliott, Esquire
jayel@mindspring.com
Post Office Box 607
Columbia, South Carolina 29202


Beth Cogan, Paralegal

December 23, 2014

EXHIBIT 15

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

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

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

HEARING

Thursday, January 9, 2014
9:58 a.m. to 12:15 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, on the 9th day of January, 2014, before Robin K. Reibold, Court 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

1 claiming essentially that such a, just a transfer
2 like that could not happen under the South Carolina
3 Code. And so essentially in that regard, settlement
4 discussions failed. Of course, we are still willing
5 to discuss with them the transfer of that real
6 property, but if it's ... if that's not possible,
7 then we'll need to proceed with this ...

8 **THE COURT:** Let's make the record clear as well. The
9 transfer of the property would satisfy the judgment
10 ...

11 **MS. WEISSENSTEIN:** It would.

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

13 **MR. AIKEN:** Almost nine times over, Judge.

14 **THE COURT:** Okay. Nine times over?

15 **MR. AIKEN:** Just about.

16 **MS. WEISSENSTEIN:** Yes. The ...

17 **THE COURT:** How much is the property worth?

18 **MR. AIKEN:** I've heard various numbers. Howard can
19 probably ...

20 **MR. HAMMER:** This ...

21 **THE COURT:** Yes, sir, Mr. Hammer?

22 **MR. HAMMER:** Mrs. Ballard represented to you that the
23 property was worth somewhere between \$900,000 and \$1
24 million. Mrs. Weissenstein has represented to you
25 that we're here on \$150,000. In that regard, Your

EXHIBIT 16

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

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

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

HEARING

Thursday, January 9, 2014
9:58 a.m. to 12:15 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, on the 9th day of January, 2014, before Robin K. Reibold, Court 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

1 need to prepare an order in that regard. And also
2 go ahead and prepare a deed, a master's deed
3 however, which ...

4 **MS. WEISSENSTEIN:** I'm sorry, could you repeat that last
5 part, sir?

6 **THE COURT:** As master's deed. I certainly don't have the
7 power to give you a general warranty deed or
8 anything like that, but. And also point out that
9 once this transfer is complete or consummated, all
10 the judgments will be satisfied, the judgments that
11 were cited here today. Of course, that's ... your
12 clients need to go ahead and have them marked
13 satisfied after the transfer is consummated. Now, I
14 don't know what's going to happen after I sign the
15 order. You're going to see it before it gets
16 signed, you'll see it before it gets signed.

17 **MR. HAMMER:** I have another matter to take up, Your Honor.

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

19 **MR. HAMMER:** We would move they put up a bond in double
20 the amount of the value of the property. They have
21 indicated that the property is worth 900 to \$1
22 million; we'd ask that they put up a bond, since
23 it's on appeal, in the amount of \$1,950,000.

24 **THE COURT:** Now, this particular matter isn't on appeal.
25 I suspect it may be one day, but ...

EXHIBIT 17

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

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

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

HEARING

Friday, January 16, 2015

2:30 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was held in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 16th day of January, 2015, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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EXHIBITS

(There were no exhibits marked during this hearing.)

1 **THE COURT:** We're here pursuant to a remittitur, and the
2 lower case numbers were Civil Action Number 2009-CP-
3 40-5911 and Civil Action Number 2010-CP-40-2889.
4 The Supreme Court, of course, reversed my award of
5 sanctions against Mr. Hammer in this case, and we're
6 back for a hearing. Let me ask the attorneys
7 though, because I said in another proceeding I
8 thought that when I imposed sanctions I was doing it
9 pursuant to Rule 11, but actually it was a little
10 broader than that. Now, would it cause anybody any
11 heartburn if I were just to alter or amend my order
12 imposing sanctions to make it pursuant to Rule 11
13 only; would that cause anybody any heartburn? Mr.
14 Bunch?

15 **MR. BUNCH:** Yes, Your Honor. I think Rule 11 is out the
16 door. I think there was no motion to reconsider
17 filed by Ms. Ballard on Rule 11. I think it was not
18 appealed to the Supreme Court, and the sanctions
19 that were awarded were awarded under South Carolina
20 Frivolous Civil Proceedings Act. And, to me, that's
21 the only basis upon which a motion for sanctions
22 should be going forward.

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

24 **MS. BALLARD:** I'm not quite sure I understand Mr. Bunch's
25 argument on Rule 11, but the motion for sanctions

1 that we filed on December 12th, which was after the
2 Supreme Court's order reversing the sanctions, seeks
3 sanctions under Rule 11, as well as the Frivolous
4 Civil Proceedings Sanctions Act, as well as the
5 inherent authority of this Court. The result of the
6 Supreme Court's reversal and remand, as they
7 indicated during oral argument, was that Mrs. Hammer
8 has of course incurred additional fees in this
9 proceeding. And my motion for sanctions includes a
10 complete outline of those sanctions -- those fees
11 that we are requesting as sanctions. And the number
12 is 75,000 -- it's more than \$75,000. So, to answer
13 your question, we wouldn't have any objection to you
14 substituting Rule 11, which I think you could do sua
15 sponte since you could award sanctions sua sponte
16 under the Bon Secours case. So we wouldn't have any
17 objection to that, but we would like the opportunity
18 to show our additional attorney's fees and request
19 for sanctions and to provide an additional factual
20 basis for Mr. Hammer's misconduct.

21 **THE COURT:** Okay. And, also, let's deal with the issue
22 that was raised at another previous hearing, the
23 notion that the award of sanctions was actually
24 tendered to Mrs. Hammer, through you, and that it
25 was rejected because Mr. Hammer wouldn't sign a

1 release or make any promises that were not part of
2 my original ruling. And I think you pointed out
3 that as part of the settlement you were trying to
4 get a release.

5 **MS. BALLARD:** Correct.

6 **THE COURT:** Yeah. Yeah.

7 **MS. BALLARD:** It was well after Judge James' orders awarded
8 these judgments to Mrs. Hammer. And well after your
9 order imposing sanctions against Mr. Hammer. Mr.
10 Hammer's lawyers decided that they were going to try
11 to settle the underlying judgments, and those were
12 the ones that were awarded by Judge James and -- no
13 money's ever been offered to us, but we've been
14 told, well, we will satisfy the judgments. And then
15 later discussions were, we will -- I think he, Mr.
16 Bunch filed a motion to pay the amount of sanctions
17 into the court, but that motion was never heard.
18 And, yes, I've answered both this Court and the
19 Supreme Court that we're not willing to settle this
20 matter without a release from Mr. Hammer because of
21 the incessant and endless litigation that he has
22 subjected Mrs. Hammer to. We feel like it's
23 necessary to have either a release from him, if
24 we're going to settle the case, or an order from the
25 Court that we have complied with all of the Court's

1 directives, which would give Mrs. Hammer a level of
2 protection from future suits that will be filed
3 against her, either by Mr. Hammer or at his
4 instance. Among the things we have asked for in our
5 motion for sanctions today, Your Honor, is an
6 injunction against Mr. Hammer regarding future
7 litigation and a requirement of a bond should he
8 file future litigation. Those are non-monetary
9 sanctions that we believe the Court can order,
10 either under Rule 11 or the Frivolous Civil
11 Proceedings Sanctions Act.

12 **THE COURT:** Now, now, is that -- again, this is a
13 challenging case. It's taking me back before law
14 school, but can you enjoin somebody from bringing a
15 law suit? I'm not ---

16 **MS. BALLARD:** What I've asked for, Your Honor, is that as
17 a precondition -- to answer your question, yes. The
18 Supreme Court has done it on a number of occasions.
19 I've had several cases involving pro se litigants,
20 and other lawyers have had them as well, where the
21 Supreme Court has been requested to enjoin people
22 from filing. A lot of prisoners have filed multiple
23 lawsuits pro se, and the court has enjoined a number
24 of those from filing any future lawsuits. They've
25 also issued orders in at least one civil case that

1 I'm aware of, where they have enjoined the filing of
2 any new lawsuits regarding a particular subject
3 matter.

4 **THE COURT:** And that's our state Supreme Court?

5 **MS. BALLARD:** Yes, sir, that's the state Supreme Court.

6 **THE COURT:** Now, has the U.S. Supreme Court addressed this
7 issue?

8 **MS. BALLARD:** I don't know, Your Honor. I haven't looked
9 at that. I'll be happy to look at that, but I have
10 not looked at that.

11 **THE COURT:** Okay. Yeah. That was my first reaction.
12 Again, something I thought I knew, but I'm not sure
13 I remember. I'm getting so old now, I forget what I
14 learned in school.

15 **MS. BALLARD:** What we asked for specifically is not a
16 blanket injunction, but it is a permanent injunction
17 enjoining him from bringing any actions without
18 first posting a bond in the amount of \$100,000 that
19 would be held by the court to pay Mrs. Hammer's
20 attorney's fees should the Court determine that
21 litigation to be without merit and award her
22 attorney's fees. And we also have asked that he be
23 enjoined from instituting any actions against Mrs.
24 Hammer or her agents in a pro se matter. That he be
25 required to have counsel. And the Supreme Court has

1 done that as well in prisoner cases and in one civil
2 case I'm aware of, the South Carolina Supreme Court.

3 **THE COURT:** Okay. Mr. Bunch?

4 **MR. BUNCH:** Yes, Your Honor. Let me address -- I think
5 there were two issues that are enveloped in your
6 discourse with Ms. Ballard. The first issue dealt
7 with attempts to pay the judgment, and they weren't
8 necessarily settlement offers. They weren't
9 settlement discussions. They were attempts to
10 actually pay the judgment. And I believe these
11 discussions started -- let's back up. The
12 underlying judgments on which this Court entered
13 into supplementary proceedings were actually on
14 appeal, and that appeal never even concluded until
15 March of 2014. Okay? Your order of January 21
16 awarding sanctions came out on January 21, 2014, so
17 the underlying case was on appeal. Once that appeal
18 was denied, okay, there was -- a discussion
19 commenced a short time later with Ms. Ballard as to
20 what was due on the judgments. Mr. Babcock actually
21 initiated those discussions in his role as
22 representative for Mr. Alvin Hammer, brother of
23 Howard Hammer. And I believe those discussions
24 started to get some traction in May. It wasn't
25 substantially later than your order. Those

1 discussions started to take traction in May. And
2 Ms. Ballard came up with an accounting at that time
3 I believe of \$439,000. Okay? We indicated to Ms.
4 Ballard that we had the ability to pay that
5 \$439,000. That \$439,000 included the total amount
6 of the judgments that were on appeal and that were
7 before you in supplementary proceedings. It
8 included some expenses that Mrs. Hammer had incurred
9 after she took ownership of the property, and those
10 -- that amount of money included approximately
11 \$55,000 in sanctions, plus post-judgment interest.
12 Now, those discussions didn't get very far. There
13 was a follow-up demand for something in the nature
14 of \$462,000, all of which were -- all of these
15 demands were accompanied by a release required by
16 Mrs. Hammer, which were not part of the judgments.
17 There were -- and then there were a couple other
18 numbers bandied about. All of those numbers were
19 under the \$500,000 range. And throughout the course
20 of last summer, we were offering to pay that amount
21 of money, the condition on which would be that the -
22 - that your Master's deed would need to be rescinded
23 so Mr. Hammer could take ownership of the property,
24 because she's not entitled to the property and the
25 money. She's entitled to one or both. Okay? Well,

1 at the conclusion of those discussions and what
2 terminated those discussions, and I think I entered
3 this into evidence at a hearing on Wednesday in the
4 ancillary foreclosure case, what terminated those
5 discussions was Ms. Ballard kept increasing the
6 amounts of money owed, and ultimately she said if
7 you're not going to give us a release, even though
8 she wasn't entitled to it under the judgments, if
9 you're not going to give us a release you can pay us
10 an additional \$100,000. So by then, and I think
11 this was in July, the figure had gone from \$439,000
12 to something over \$500,000, plus an additional
13 \$100,000 since we were unwilling to grant a release.

14 **THE COURT:** All right. Now, is the \$439,000 offer still
15 available, still on the table?

16 **MR. BUNCH:** I feel confident that 439 could be secured.
17 That money would be coming from Mr. Alvin Hammer.
18 Feel confident that money could be secured.

19 **THE COURT:** And that would settle, settle the supplemental
20 proceedings?

21 **MR. BUNCH:** Well, subject to your order, subject to Your
22 Honor then rescinding the January 21 order, which
23 resulted in these -- and the Master's deed that was
24 issued. In other words, put Mr. Hammer back -- or
25 1634 Main, whoever it is, back in ownership of that

1 piece of property.

2 **THE COURT:** Okay. So let me, let my try to translate for
3 clarity of the record. Y'all paid -- y'all. Mr.
4 Hammer will pay \$439,000, and all he asks in return
5 is that he get the building back, and that would
6 resolve this matter?

7 **MR. BUNCH:** And, in fact, Your Honor, in connection with
8 those offers last summer, there were -- there were
9 kind of two sets of, and I call them offers even
10 though -- yeah, these were offers to pay the
11 judgment. In connection with those offers, between
12 me and Ms. Ballard, I said that Mr. Hammer would
13 give you a release as to anything dealing with the
14 transfer of the building. Their response was, we
15 want a release of everybody, of everything from the
16 beginning of time till, you know, until the end of
17 time essentially. So they wanted a release of
18 everything. We said, we'll give you a limited
19 release as to anything dealing with the transfer of
20 the building. But they would not accept that. Now,
21 we also filed with the court, and I actually need to
22 back up and -- well, we also ultimately filed with
23 the Supreme Court a supersedeas motion, which you
24 may have seen. I don't know if you've seen it or
25 not. Which said we still have the ability to pay

1 the \$400,000-something. I don't remember what was
2 in that motion, I don't have it with me today -- or
3 in that writ, that is. But we're still willing to
4 pay the \$400,000 and -- but nothing in that was
5 mentioned about a release. So, anyway, that's where
6 we are. When the Supreme Court heard oral argument
7 in the supplementary proceedings case concerning the
8 transfer of the building and the sanctions and the
9 argument over the sufficiency of process, those were
10 the three issues, but the day, I think it was the
11 day after they heard those arguments, they just
12 issued essentially a one-line order saying that the
13 petition for writ of supersedeas is denied. That
14 doesn't mean, I don't think, that you can't
15 undertake further action in reference to accepting
16 or directing that Mrs. Hammer take the \$439,000 in
17 satisfaction of the judgment. Now, I will also tell
18 the Court that presumably, I don't know -- oh, one
19 other thing about that 439 offer and 462 offer that
20 were out there, this included a listing of all
21 expenses that Mrs. Hammer had incurred since she
22 acquired the property in January. And we were
23 willing to pay those expenses as well, without
24 arguing or quibbling over whether they were
25 legitimate or valid or anything like that. So

1 everything they gave us in an accounting, and I can
2 document all this for the Court, everything they
3 gave us with an accounting, up until last summer, we
4 were willing to pay. The only thing we weren't
5 willing to pay were the, you know, when it became --
6 in July, when they had increasing amounts owed and
7 they had -- and they demanded \$100,000 if we would
8 not give them a release. One other thing I should
9 point out about that 439, the 439 included a
10 commission owed to the listing agent on the
11 property. Okay? I believe that's -- and again, I'd
12 have to go back and look at my records because I
13 don't have them in front of me. But I believe the
14 439, as well as the 432, included commissions that
15 would be owed to the listing agent upon sale of the
16 property. Okay? Well, the property hasn't been
17 sold yet so I'm going to have to go back and look at
18 the accountings that were provided to us last
19 summer, or the list of expenses, whatever you want
20 to call them, and figure out whether that money --
21 figure out whether that's within those or not within
22 those numbers. So, are we willing to pay something
23 in the \$400,000 range? Yes. I think that the --
24 and that's what Mr. Babcock mentioned on Wednesday,
25 is that if you could review the expenses and get us

1 to a number, we might be able to settle -- or, we
2 might be able to pay that money. But every time we
3 try to deal with Ms. Ballard, it's gone up from
4 \$400,000 to -- 439 to 462 to 500-something, and in
5 the exhibit I put into evidence at Wednesday's
6 hearing, the number's now almost \$800,000. It's 750
7 or 770, I don't know what it is but it's, you know,
8 it's a moving target and it's unreasonable to think
9 that she would -- when she started out with
10 judgments of \$291,000, that she ought to get paid
11 close to \$800,000.

12 **THE COURT:** Now, is it worth investing any of our time
13 this afternoon for settlement negotiations? We have
14 a jury room right across the hall that could give
15 you privacy if y'all want to go in there and talk or
16 ---

17 **MR. BUNCH:** I would certainly ---

18 **THE COURT:** Hopefully not fight but, physically fight, but
19 talk. Do you think that's worth investing any of
20 our time?

21 **MR. BUNCH:** Your Honor, I am certainly willing to engage
22 in any settlement negotiations of reasonable amounts
23 of money. I think that the \$700,000 number is
24 certainly unreasonable. And then in addition I have
25 -- at some point in time I would have to get

1 confirmation from Alvin Hammer as to what his
2 financial situation still is and that he has the
3 ability to pay. Now, I think I understand the
4 financial situation. Or, whether -- not ability to
5 pay, but willingness to pay.

6 **THE COURT:** That was going to be my next question, do you
7 have any authority to commit to anything today.

8 **MR. BUNCH:** I don't have the authority as I stand in this
9 courtroom to commit to something. I know, based on
10 discussions between me and Mr. Babcock, that Mr.
11 Alvin Hammer, even up until the time we got this
12 accounting for \$700,000-something being owed, that
13 up until that time he was willing to still pay some
14 money and invest some money and get everything
15 behind Mr. Howard Hammer.

16 **THE COURT:** Okay. Ms. Ballard?

17 **MS. BALLARD:** Your Honor, to answer your last question ---

18 **THE COURT:** Right.

19 **MS. BALLARD:** --- yes, I think there would be some
20 possibility of productive discussions. But before I
21 conclude with that, I do feel it necessary to
22 respond to some of the statements that Mr. Bunch has
23 made regarding the discussions about, quote,
24 settlement and payment of the judgments.

25 **MR. BUNCH:** Your Honor, I did not get an opportunity to

1 get to my second point that y'all have discussed
2 about the injunction. But I want to remember to get
3 back to that.

4 **THE COURT:** Well, actually, I would -- you know, in the
5 spirit of compromise, could you hold that in
6 abeyance until later if we need to argue it any
7 further? I assumed you'd have a response to his --
8 you want to ---

9 **MS. BALLARD:** The only thing I need to put on the record,
10 Your Honor, is that Mr. Babcock and I were making
11 progress last summer. And I produced -- I spent a
12 substantial amount of time producing documents that
13 would reverse your order granting the property,
14 would transfer the property back to Mr. Hammer,
15 would transfer the interests in the limited
16 partnership and the LLC back to Mr. Hammer. A
17 significant amount of time. And we had in fact
18 tentatively agreed on a number. No money has ever
19 been tendered. Mr. Bunch misspoke when he said
20 money had been tendered. No money has ever been
21 tendered to us. There've been, hey, we would pay
22 this or, hey, we would pay that, but no money has
23 ever arrived in our possession or been delivered to
24 us.

25 **THE COURT:** Uh-huh.

1 MS. BALLARD: The other point I wanted to make is the
2 reason those discussions that were very productive
3 with Mr. Babcock fell apart is, I'd talked with Mr.
4 Babcock about the fact that we wouldn't need a
5 release and he said, you know, I think we might be
6 able to do this, let me get Tommy Bunch to get back
7 in touch with you. And a couple weeks later I get
8 an email from Mr. Bunch saying, okay, we'll pay X
9 dollars but Mrs. Hammer has to warrant that she has
10 not done this, she has to warrant that she has not
11 done that, she has to verify that she has not taken
12 any of the money that has been earned from the
13 tenants in the building. I mean, it was basically
14 quite the opposite of what we were asking. Mr.
15 Bunch was asking -- he kind of blew up the
16 settlement negotiations because he then wanted Mrs.
17 Hammer to be the one to warrant to Mr. Hammer that
18 certain things had and had not occurred. And that
19 just simply was not going to happen. And I went
20 back to Mr. Babcock and I said that's not what I was
21 expecting. And he said, well, let me try again.
22 And that's when we started being told we're not
23 going to settle with you anymore, we're going to pay
24 the judgments. And that's when I said the judgments
25 are no longer simply the judgments, the judgments

1 have been incorporated into Judge Strickland's order
2 of January 21st, which includes a requirement that
3 she get paid, Mrs. Hammer get paid for her expenses
4 of marketing the property for sale. And she has
5 incurred substantial money from marketing the
6 property for sale. We're way above the 439 in terms
7 of actual dollars at this point. But I wanted it on
8 the record clearly that, first of all, we were
9 making progress, but what broke it was their request
10 that Mrs. Hammer essentially give Mr. Hammer a
11 release, which was not going to happen. What I
12 wanted to do and what I have said since the
13 beginning is I wanted to carry out Your Honor's
14 order, pay the balance of the money into the Court,
15 as Your Honor required, and let Your Honor issue an
16 order saying Mrs. Hammer has complied with her
17 obligations under Your Honor's order. But that
18 having been said, with Your Honor mediating, I would
19 be happy to meet with the Court and opposing counsel
20 and Mrs. Hammer to discuss settlement negotiations,
21 assuming all those are confidential as they would be
22 under the ADR rules.

23 THE COURT: All right, as a mediator?

24 MS. BALLARD: Yes.

25 THE COURT: I, I, I don't want to label myself as a

1 mediator.

2 **MS. BALLARD:** Correct.

3 **THE COURT:** Quite frankly, I haven't been trained as a
4 mediator. I'm -- well, what I was envisioning was a
5 little more simple. You and Mr. Bunch, Mr. Aiken,
6 and Mrs. Hammer if she wants to, can go across to
7 the jury room and hammer out an agreement or see if
8 there's any chance of an agreement. We can recess
9 until 3:30, and if y'all are making progress let me
10 know, if you're not making progress let me know and
11 we can go forward. I don't know, and -- I don't
12 want to bring it up because I don't want to, how
13 should we say, well, I don't want to make the
14 situation worse. I guess you'd say you don't want
15 to make it pejorative or whatever, I don't know what
16 word to use. But let's not lose sight of the fact
17 of why I imposed sanctions to start with. And, of
18 course, Mr. Bunch has defended Mr. Hammer very
19 vigorously. And the bottom -- has Mr. Hammer backed
20 off of any of the statements he made under oath that
21 I believe are not truthful? Is he going to recant,
22 has he changed his mind or misunderstood what he's
23 supposed to do in supplemental proceedings? Has any
24 of that changed, Mr. Bunch?

25 **MR. BUNCH:** I'm sorry, Your Honor? Is what?

1 **THE COURT:** Has anything changed as far as Mr. Hammer's
2 position is concerned, you know, where he testified
3 under oath that he didn't have anything?

4 **MR. BUNCH:** I think his position will be that he was not
5 untruthful under oath and, when given the
6 opportunity to testify, when he gets back in town,
7 that would be his position. I don't -- there's not,
8 you know, I don't think he's going to back away from
9 that.

10 **THE COURT:** Okay. Because, again, that was the -- I mean,
11 that was the reason for the sanctions, I guess. I
12 don't know if we ever spelled that out in writing,
13 but that was the reason, because I was literally
14 dumbfounded. You know, I can't -- I don't look
15 behind what people say in court, and I was quite
16 frankly dumbfounded when we found out that -- and
17 all I knew at that time was that he had the
18 building. I didn't know about anything else. And,
19 and so that, that -- so let's not lose sight of the
20 fact of why we imposed sanctions to start with.
21 And, of course, as you know, that's -- for me,
22 that'd be unusual to sanction an attorney or a party
23 for something like that. But this was, this was
24 egregious, I mean, I thought it was way, way beyond
25 the pale for him to say what he said and then turn

1 around and be completely -- there was no gray area.
2 He said he didn't have anything and couldn't pay.
3 Now, he did say he'd paid Mrs. Hammer \$3 million or
4 something over the course of time. And he said that
5 under oath as well, so. At any rate, I'll step
6 aside, let y'all talk if you think it's worth your
7 time. And then come get me, you can tell me you're
8 making progress or you're not or -- Yes, sir, Mr.
9 Bunch?

10 **MR. BUNCH:** Last comment on that, and I'm certainly
11 willing to engage in those discussions. Ms. Ballard
12 well knows that those discussions or those requests
13 of Mr. Hammer in connection with a settlement were
14 approximately in the end of May, first of June last
15 year, that he backed off of those fairly quickly.
16 So to say we can't reach an agreement because of
17 that is not really accurate.

18 **THE COURT:** All right. Let's stand in recess until 3:30.
19 I'll go with y'all across the hall. I don't know if
20 you want Mrs. Hammer to be present or not.

21 **MS. BALLARD:** I'm going to speak with her about that
22 before we -- before I, at least, join them.

23 **THE COURT:** Okay. Mr. Aiken, good to see you, as always.

24 **MR. AIKEN:** Nice to see you too, Judge.

25 **THE COURT:** All right. Are you going to be involved too

1 or?

2 MR. AIKEN: Probably in a limited sort of way.

3 (Off the record)

4 THE COURT: All right. Please proceed.

5 MS. BALLARD: Your Honor, we've, as you instructed, we've
6 engaged in some settlement negotiations that are not
7 completed at this time. The holdup, as I understand
8 it, please correct me if I'm wrong, is that Mr.
9 Hammer's accountant is on vacation and will return
10 and Howard has an appointment with him on January
11 26th to meet with him regarding -- apparently he has
12 some concerns about tax consequences if he settles
13 on the terms that we have been discussing. My
14 suggestion to opposing counsel and to Your Honor is
15 that in order to keep this ball rolling, if Mr.
16 Hammer is meeting with his accountant on the 26th,
17 that we reschedule this hearing for the 27th. And
18 if we don't settle the matter after he meets with
19 his accountant, then we go forward on the sanctions.

20 THE COURT: Mr. Bunch, is that okay?

21 MR. BUNCH: Yes, Your Honor, that is -- I'm just trying to
22 double-check my calendar for the 27th before I --
23 and maybe Mr. Aiken would like to do the same thing.

24 MS. BALLARD: He's done it.

25 MR. AIKEN: I've done it. I'm good.

1 MS. BALLARD: I teach a class in the afternoon on the --
2 on Tuesdays, so we would have to do it so that I
3 could be freed up in time to get to my class by
4 4:20.

5 THE COURT: All right. Hold on a second.

6 MS. BALLARD: Thank you.

7 MR. BUNCH: The 27th is fine with me, Your Honor.

8 THE COURT: Okay. One moment.

9 (There being nothing further, the hearing was concluded.)
10

CERTIFICATE

I certify that the foregoing transcript, consisting of 23 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on January 16, 2015, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

June 23, 2015

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

EXHIBIT 18



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January 26, 2015

VIA E-MAIL

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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

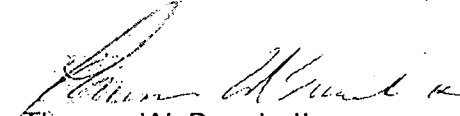
Desa Ballard, Esquire
January 26, 2015
Page 2

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)

EXHIBIT 19

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

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

1634 Main, LP,) CASE #: 2010-CP-40-2889
Plaintiff,)
v.) HEARING
Shirley Hammer, et al.,) Tuesday, January 27, 2015
Defendant.)

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, on the 27th day of January, 2015, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

Thomas W. Bunch, II, Esquire
Robinson McFadden & Moore, PC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Attorney for the Plaintiffs

Desa Ballard, Esquire
Ballard & Watson, Attorney at Law
226 State Street
West Columbia, South Carolina 29169
Attorney for the Defendants

1 **THE COURT:** Okay, go ahead, Mr. Bunch.

2 **MR. BUNCH:** Your Honor, since May of 2014, you know, eight
3 or nine months ago, we've been attempting to
4 negotiate with Ms. Ballard in trying to come to a
5 resolution of this case. Those negotiations center
6 on payment of money through Mr. Howard Hammer's
7 brother, Alvin Hammer, in order to satisfy judgments
8 and have the transactions and your order -- the
9 transactions effectuated by your January 21, 2014,
10 order of the transfer of property, as well as that
11 order being vacated in some respects. Okay. And so
12 we made several settlement offers back in, between
13 May and July of last year to that effect.

14 **THE COURT:** Uh-huh.

15 **MR. BUNCH:** We were not successful. Okay. And so what
16 we're -- we're here today because Friday, two
17 Fridays ago, maybe January 16th, I'm not sure of the
18 exact date, but two Fridays ago we came before you
19 for the sanctions hearing and you asked the parties
20 to see if they could negotiate a settlement. And in
21 connection with that, Ms. Ballard indicated to me
22 that she would accept a settlement of ---

23 **MS. BALLARD:** I don't want the settlement terms put on the
24 record, Your Honor.

25 **MR. BUNCH:** Your Honor, I ---

1 THE COURT: Hold on a minute. You want to say what was on
2 the table?

3 MR. BUNCH: I want to say what was on the table and ---

4 MS. BALLARD: Your Honor, I object.

5 THE COURT: Hold on a second, hold on a second. All
6 right, and you object to that being on the record?

7 MS. BALLARD: I object to anything about the settlement
8 proceedings being on the record, Your Honor. That's
9 inadmissible in any proceeding, trial or appellate.
10 If we want to go off the record and discuss this,
11 I'm fine with that. But I don't want a record made
12 of our settlement discussions, no, sir.

13 MR. BUNCH: Your Honor, Rule 408, I believe it's
14 inadmissible for purposes of determining liability.
15 We're not here trying to determine liability. I'm
16 updating the Court as to where we are on this, and I
17 want to make a record of it.

18 THE COURT: Okay, hold on. Now, let me, you know, all of
19 us remember, we're in supplemental proceedings so
20 we're not in a trial. Of course, we've already been
21 to the Supreme Court once, so. As far as ---

22 MS. BALLARD: Three times.

23 THE COURT: Yeah. Okay, I'm sorry.

24 MS. BALLARD: Three times.

25 THE COURT: Three times. Why don't you want the

1 settlement negotiations on the record?

2 **MS. BALLARD:** Your Honor, the settlement negotiations -- I
3 think Mrs. Hammer's entitled to have confidentiality
4 as to that, but also I think what they're going to
5 attempt to do is say that they've been reasonable
6 and we've been unreasonable. And there's
7 significant dispute about that. The matter before
8 you that is remaining to be heard is a sanctions
9 hearing. And if Your Honor hears what their version
10 of the settlement negotiations have been prior to
11 hearing the sanctions hearing, I don't think it
12 would be appropriate.

13 **THE COURT:** Okay.

14 **MS. BALLARD:** So I don't want a record made of any
15 settlement discussions that we may have had.

16 **THE COURT:** Also, I thought we were going to also hear a
17 motion for recusal as well?

18 **MR. BUNCH:** We ---

19 **MS. BALLARD:** We heard that last week, and you denied it.

20 **THE COURT:** I took it under advisement.

21 **MS. BALLARD:** And my proposed order to you is due
22 tomorrow.

23 **THE COURT:** That's right.

24 **MS. BALLARD:** Yes, sir.

25 **MR. BUNCH:** Your Honor, on that motion for recusal, if you

1 recall, we made it in the earlier case brought by
2 Ms. Ballard, the foreclosure case. That motion
3 still needs to be put on the record for purposes of
4 these proceedings so I'm not sure -- first of all,
5 there is no impediment or rule against putting into
6 the record today what our discussions have been.
7 The rule says you can't use Rule 408 for purposes of
8 determining liability, and we're not using it for
9 that purpose. So, you know, there's no reason ---
10 MS. BALLARD: The sanctions on the table ---
11 MR. BUNCH: --- why I should not be allowed to do that.
12 MS. BALLARD: Your Honor, I object.
13 MR. BUNCH: You asked the parties ---
14 MS. BALLARD: We came in for a status hearing ---
15 MR. BUNCH: --- to negotiate and I'm trying to bring you
16 up to date on where we are.
17 MS. BALLARD: We're unsuccessful in our negotiations.
18 That's where we are.
19 THE COURT: Okay. And you want to put the details on the
20 record?
21 MR. BUNCH: I do, Your Honor. And because we have
22 accepted her offer, and that's ---
23 MS. BALLARD: No, sir, they have not.
24 MR. BUNCH: We have accepted the terms of her offer, and I
25 want you to be aware of that. I want the Court to

1 be aware of that. I want the Court to be aware of
2 the fact that we have attempted on multiple
3 occasions to pay Ms. Ballard, and so if she comes in
4 here today and complains about Mr. Hammer delaying
5 these proceedings I want to be able to counter with
6 the fact that as long as the supplementary
7 proceedings took she's been rejecting offers of full
8 payment for the same amount of time. So don't be
9 complaining about Mr. Hammer delaying proceedings
10 when, in fact he's offered on multiple occasions to
11 try to get this matter resolved.

12 **MS. BALLARD:** See? I told you they're here on sanctions.

13 **THE COURT:** Okay. Okay.

14 **MS. BALLARD:** Your Honor, we've not reached a settlement
15 agreement. We'd like to go forward.

16 **THE COURT:** Now, you don't want to spend any time today
17 trying to settle, spend any time this morning?

18 **MS. BALLARD:** I can give them until 10:00. I've sent them
19 my settlement documents, I got no response.

20 **THE COURT:** That's ten minutes, but I'm not going to ---

21 **MR. BUNCH:** See ---

22 **MS. BALLARD:** Your Honor, these are the same settlement
23 documents I provided them in April.

24 **THE COURT:** All right. I'm not going to be bound by a
25 lawyer-imposed deadline unless you have to be out of

1 here by 10:00. You have to be gone somewhere?

2 **MS. BALLARD:** No, sir, I don't.

3 **THE COURT:** Okay.

4 **MS. BALLARD:** But I want to have enough time to have our
5 sanctions hearing today.

6 **THE COURT:** Oh, yes. We have the whole day if we need to
7 have it. I would ask though that we maintain our
8 civility and our patience.

9 **MS. BALLARD:** I'd like a response to my settlement
10 documents, and I'll be happy to discuss that with
11 them if Your Honor would like to retire.

12 **THE COURT:** I'd like for y'all to -- yeah, take some time
13 to do that.

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

15 **THE COURT:** Hold on, let me, you know, we're jumping the
16 gun a little bit, but. The only thing I remember
17 regarding the sanctions I guess was that, Mr. Bunch,
18 I think you and I think Mr. Babcock was here, Mr.
19 Aiken was here as well, indicated that y'all had
20 tendered the amount and that, Ms. Ballard, you had
21 imposed a condition that I hadn't imposed. And the
22 other side was claiming that that's why the case
23 wasn't settled. Now, is that still the situation we
24 have now?

25 **MS. BALLARD:** Your Honor, the number that we offered two

1 weeks ago to settle with a certain release has not
2 been accepted. The number has been accepted, but
3 the language of the release document has not been
4 commented on and the timing of payment, they're now
5 trying to tie the payment to the sale by HA -- by
6 another corporation, of another piece of property,
7 and this money's been due for over two years. So I
8 told them, no, I would not wait until April to be
9 paid.

10 **THE COURT:** All right. Now, what are y'all going to talk
11 about if I step out, what are you going to say?

12 **MS. BALLARD:** I told them I'd settle if they would pay me
13 by Friday.

14 **THE COURT:** But -- and the issue is how much, right?

15 **MS. BALLARD:** We've agreed on the number if they pay by
16 Friday. If they don't pay by Friday, we don't have
17 an agreement, no, sir.

18 **MR. BUNCH:** Your Honor, that's one of the issues holding
19 up settlement, is that Ms. Ballard -- and I
20 understand this case has been going on for a while,
21 and it dates back to some litigation going back to
22 2010 or something like that. Okay. I understand
23 that. But now we're in a situation where we are
24 agreeable to paying \$575,000 ---

25 **MS. BALLARD:** Your Honor ---

1 THE COURT: Hold on a second, hold on a second. She
2 didn't want ---

3 MR. BUNCH: But I --

4 THE COURT: Wait, no ---

5 MR. BUNCH: But you have to know that because it's such a
6 substantial number, and then Ms. Ballard wants to
7 push this and now, a frantic pace, to demand payment
8 by Friday, as well as give us ten minutes to reach
9 an agreement.

10 THE COURT: Now ---

11 MR. BUNCH: I mean, I don't understand -- if we're talking
12 about that kind of money, other than TV shows and
13 movies for ransom payments, I don't know anybody
14 that can come up with that kind of money within
15 three days.

16 THE COURT: Hold on, hold on. All right, Ms. Ballard,
17 you're upset ---

18 MS. BALLARD: Your Honor, they've been attempting to come
19 up with the money every time we've had settlement
20 discussions. Back to April and May of last year
21 they've said, okay, we can get it by this date, or
22 we can get it by this date. They've been attempting
23 to come up with this money all along. Nobody's
24 suggesting three days, okay. We reduced the number
25 that we were demanding by over \$200,000 when we were

1 here last week. And the idea was that we would
2 either settle it yesterday or we could be here today
3 to try the sanctions hearing. And the suggestion
4 that I've given them three days is just absurd. It
5 is offensive. I have been trying to get this money
6 out of them for -- since the time it was awarded.
7 And, in good faith, Your Honor asked us to sit down
8 and attempt to negotiate week before last, and I
9 did. I reduced the number that we were demanding.
10 I reduced the terms of the release that we were
11 demanding, and we had through yesterday for that to
12 get done and it didn't get done. And so now Mr.
13 Hammer is offering to pay us in April if a building
14 sells, and I told him no, sorry, not going to do
15 that.

16 **THE COURT:** All right. So are you saying negotiations to
17 this point would be futile, or do you need more time
18 or?

19 **MS. BALLARD:** I've brought the settlement documents to be
20 signed. If there's settlement today, settlement is
21 not futile.

22 **MR. BUNCH:** Your Honor, as I -- first of all, I want it
23 noted that Ms. Ballard's now interjecting elements
24 of good faith. She's also told the Court we would
25 not accept certain terms of the settlement that she

0
1 had proposed two weeks ago. Nevertheless, the
2 documents that she's bringing to court today, as I
3 understand it, are based on negotiations that took
4 place in May through July of last year. Okay, so
5 May, June, July, three months last year. They dealt
6 with a unwinding of the transactions in the order of
7 January 1, 2014. The offer we put on the table
8 yesterday, and I wouldn't call it an offer, I'd
9 actually say the acceptance of her offer that we put
10 on the table yesterday was for the property to be
11 conveyed to HASCI. And you've heard that limited
12 liability company, H-A-S-C-I, LLC. Okay. That's a
13 limited liability company that owns various
14 properties around town. Okay. Ms. Ballard made
15 three demands January 16th. She made a monetary
16 demand that was money due to -- that would come to
17 Mrs. Hammer. She said Mr. Hammer would be
18 responsible for payment of taxes and tax liens,
19 which we understood to be approximately \$50,000.
20 And she said she wanted a release to Shirley and her
21 agents regarding the building and contents. To
22 which, after Mr. Hammer consulted with his tax
23 folks, we went back to them yesterday and said we
24 will meet every one of those demands, we will
25 structure the deal with HASCI buying the property,

1 and HASCI is scheduled to close on some other
2 property in less than a month. That buyer has a 30-
3 day -- they can ask for 30 additional days before
4 they close. And if HASCI does not close, if that
5 HASCI sale does not close, Mr. Alvin Hammer will
6 fund the payment and we'll pay you by the end of
7 April. Okay. So what we're here on right now, Your
8 Honor, is -- where we stand right now is that Mrs.
9 Hammer owns the property by virtue of your transfer
10 of the property last January. She's obligated to
11 sell the property. So she's got to go out and find
12 a buyer. She has no contract at the present time
13 that I've been advised of. In fact, she's told the
14 Court that that sale fell through. So what we have
15 offered by way of this response yesterday is to pay
16 her in full, at the outside of 90 days, perhaps as
17 soon as three or four weeks from now. I think it's
18 February 22nd is the estimated closing date at the
19 present time. So we're less than four weeks away
20 from that now. And give her the release that she
21 asked for. And all she has to do is give us
22 marketable title to the property. So that's where
23 we stand, and yet we're having a gun held to our
24 head saying, no, we won't accept this, we want full
25 payment. In fact, the original demand was by today,

1 and then they extended it till Friday.

2 **THE COURT:** Okay. Let me -- Ms. Ballard, when were the
3 judgments entered?

4 **MS. BALLARD:** The judgments were entered in, let me see,
5 your judgment was entered January 21st, 2014. And
6 that was in satisfaction of, I'll tell you -- one
7 second and I'll tell you. Judgments that were
8 entered on January 29th, 2013, and June 3rd, 2013.
9 And the offer that was made to me yesterday was an
10 offer by HASCI. I have not been negotiating with
11 HASCI. My settlement proposal last week was with
12 Mr. Howard Hammer, and that has not been accepted.

13 **THE COURT:** Okay. But the judgments giving rise to these
14 supplemental proceedings were entered when?

15 **MS. BALLARD:** January 29th, 2013, and June 3rd, 2013.

16 **THE COURT:** Okay. Now, as I understand it, those
17 judgments operate as a lien against any real estate
18 owned by the person you have a judgment against; is
19 that ---

20 **MS. BALLARD:** Well, what happened was, Your Honor's order
21 dated January 21st conditionally satisfied those
22 judgments by transferring the property to Mrs.
23 Hammer with instructions to sell it, and that's what
24 we've been trying to do.

25 **THE COURT:** All right, January 21st, 2014?

1 MS. BALLARD: Yes.

2 THE COURT: Okay.

3 MS. BALLARD: Yes, that's what we've been trying to do.
4 And Mr. Bunch says they've accepted our offer. No.
5 We offered to settle with Howard Hammer. We have
6 not offered to settle with HASCI, with any
7 conditions of any kind. That's what our offer was,
8 and they're attempting to manipulate the offer and
9 amend it and add conditions to it, and I'm done.

10 THE COURT: All right. Now, again, I want to make it
11 clear, make sure everybody understood and make sure
12 I understand. Those judgments are liens against any
13 real estate that Mr. Hammer owns?

14 MS. BALLARD: Yes, sir. I think your January 21st order
15 constituted a lien against his real estate, yes,
16 sir.

17 THE COURT: All right. Now, Mr. Bunch, is Mr. Hammer the
18 sole member of the LLC HASCI?

19 MR. BUNCH: No, Your Honor, he's not. He's a minority
20 member, and he doesn't even have -- he doesn't
21 manage the company. He is a minority member.
22 Nevertheless, the management members, one of whom I
23 believe -- I'm not even sure of this, but one of
24 them is Alvin Hammer, has agreed to pay Mrs. Hammer
25 these judgments in full and structure the deal this

1 way -- and, in fact, my letter yesterday says
2 Howard's in a position to meet Mrs. Hammer's
3 settlement demands. It was accepted on behalf of
4 Mr. Hammer, with the consent of HASCI. And their
5 lawyer, Mr. Babcock, is copied on the letter. We
6 suggest -- or we said the deal would be structured
7 in the terms that, once this Assembly Street sale of
8 property is concluded we would pay the money. And
9 if that doesn't get concluded, we would pay it
10 within approximately 90 days, or the end of April
11 2015.

12 **MS. BALLARD:** So that'd be two years.

13 **MR. BUNCH:** Your Honor, it may be two years, but -- from
14 the entry of the judgments. It also includes all
15 the money that Mrs. Hammer contended she was owed
16 under all of the judgments, including legal fees and
17 expenses that she had with the building and the
18 like. So it really doesn't matter how long ago the
19 judgments were entered in terms of the fact that we
20 are making her whole. And, Your Honor, I would ask,
21 since we have -- and since she has, Ms. Ballard says
22 we have not accepted her offer, I would ask that we
23 put both of these documents in and make them a Court
24 exhibit. One is her offer, and Two is our
25 acceptance.

1 THE COURT: Okay. Let's hold that in abeyance for a few
2 minutes. I'm going to step out and let y'all talk.
3 Y'all are so close. You know, I think it's worth
4 investing a little time.

5 MS. BALLARD: Your Honor, I've got buyers looking at this
6 property. If they want me to wait until April, I
7 might sell it by then. I mean, I can't get into an
8 agreement now that doesn't consummate until April
9 because I might sell the building between now and
10 then. I've got buyers looking at it Thursday.

11 THE COURT: Let me come back in at 10:15.

12 MS. BALLARD: Okay.

13 THE COURT: All right. And see if y'all can make any
14 progress at all. So be it, but if not so be it as
15 well. All right, thank you. I'll come back in 15.

16 MR. BUNCH: Thank you, Your Honor.

17 (Off the record from 9:57 a.m. to 10:56 a.m.)

18 MR. BUNCH: Your Honor, getting back to kind of where we
19 left off, I appreciate your indulgence, Your Honor,
20 in allowing us a little bit of extra time, I think
21 about 45 -- almost 45 minutes after the time she
22 said.

23 THE COURT: Oh, no, that's fine.

24 MR. BUNCH: The problem is, I don't represent HASCI, so
25 I'm trying to -- and so I need to get in touch with

1 those folks to see what they're willing to do. Ms.
2 Ballard added an additional term this morning if we
3 want to wait to pay the money in April.
4 Nevertheless, as I understand -- and I don't have
5 full authority from HASCI, but I will say that based
6 on my understanding of the numbers, we're not
7 significantly far apart, even if interest is not
8 acceptable to HASCI. Okay. In other words, Ms.
9 Ballard said, here's the number, if you don't pay it
10 until April add 7.25 percent to it, I believe, which
11 is the judgment rate, I believe that's what she
12 said.

13 **MS. BALLARD:** It's the post-judgment rate.

14 **MR. BUNCH:** The post-judgment rate. So I don't have
15 HASCI's full authority. Nevertheless, I believe
16 what -- and she gave me her documents, which I've
17 gone through and there are some terms in there and
18 she asked me to mark them up. I've marked them up
19 while I was in back there. But to just cut to the
20 chase, Your Honor, HASCI is willing to buy the
21 building at \$575,000 in exchange for marketable or
22 insurable title. There would be no liens on the
23 property when it's conveyed. There's no conveyance,
24 we don't want the conveyance of 1634 Main, LLP or
25 SH5, LLC. That's owned by Ms. Hammer, and we don't

1 want that back. Assuming it's agreeable to HSCI, we
2 would allow interest on the purchase price to be
3 added to the purchase price at 7.25 percent until
4 closing, which would occur not later than April
5 30th. The leases in the building would need to be
6 assigned. And getting back to the request, when we
7 were here on January the 16th, Mr. Hammer's willing
8 to release Mrs. Hammer and her agents, servants and
9 employees from matters dealing with the building and
10 its contents. Okay. The release we've been given
11 is much broader than what was discussed back in --
12 two weeks ago approximately. But we're willing to
13 stick with what the offer was at that time, and
14 ready to move forward assuming -- if you add 7.25
15 percent for three months on the purchase price,
16 you're looking at something probably less than
17 \$10,000. That's HSCI's decision, it's not this
18 gentleman's decision, it's not Mr. Hammer's
19 decision. But I would assume if we're talking about
20 numbers over \$500,000 that \$10,000 would not be an
21 impediment to settlement.

22 **THE COURT:** Okay.

23 **MS. BALLARD:** Your Honor, I'm not going to leave here
24 without an agreement from HSCI. We'll either have
25 to go forward or HSCI will have to come in here and

1 -- what my requirement was for the interest was
2 Alvin Hammer personally guarantee this money, not
3 HASCI. And we're going to reduce it to a court
4 order. And so if they pay ---

5 **THE COURT:** Well, let's ---

6 **MR. BUNCH:** Well, Your Honor, in accordance with our offer
7 yesterday, Mr. Alvin Hammer has said if the HASCI
8 sale doesn't close, which is where they're going to
9 fund this payment from, that he in fact would fund
10 it by April the 30th, so. I certainly have the
11 authority to state that as well.

12 **THE COURT:** Okay. So y'all are very, very close.

13 **MS. BALLARD:** I'm sorry?

14 **THE COURT:** You're very, very close to settling.

15 **MS. BALLARD:** Okay. Now, the one thing he said is not
16 significantly apart on the numbers. What do you
17 mean by that?

18 **MR. BUNCH:** The 575 plus -- as compared to 575 plus 7.25
19 percent interest.

20 **MS. BALLARD:** The money to me is 525 and -- this is not on
21 the record. The money to me is XXX to Shirley. We
22 cannot give you marketable, insurable title. We can
23 only give you the title that we have, and that's
24 what we got in the deed. 7.25 percent interest will
25 run starting Friday.

1 THE COURT: Hold on a second. Didn't she want this off
2 the record -- just the numbers, not the whole ---

3 MS. BALLARD: Not the numbers. Yeah, just not the
4 numbers.

5 THE COURT: All right, thank you.

6 COURT REPORTER: Okay, thank you.

7 MS. BALLARD: Because you're talking about XXX, which
8 means the taxes. I'm not paying the taxes. Y'all
9 are paying the taxes, y'all are paying the tax lien
10 or assuming the tax lien. We're not going to have
11 any responsibility for the tax lien. It's going to
12 be an amount of money to Mrs. Hammer that does not
13 include the property taxes, does not include the tax
14 lien. I cannot guarantee marketable or insurable
15 title. And we're willing to release it in
16 accordance with the terms that we have provided in
17 the written release. If you've got suggested
18 changes to it, I'll be happy to look at them.

19 THE COURT: Okay. Now, this doesn't -- is this ---

20 MS. BALLARD: Yeah, we can't give you any more title than
21 what we have. And Mrs. Hammer has conveyed this
22 building to Mr. Hammer several times, Your Honor.
23 He never recorded those deeds. I can make no
24 representation or warranty as to the validity of
25 this deed. I cannot do it. It's a quit claim deed

1 or it's nothing.

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

6 **MS. BALLARD:** Everything else.

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

8 **MS. BALLARD:** Yes.

9 **THE COURT:** And let me cause a little trouble here.
10 Typically, and I do preside over supplemental
11 procedures all the time, and what normally happens
12 in this court is that if we can identify assets or
13 we have a debtor, a judgment debtor that can
14 actually pay the judgment, I don't spend much time
15 letting people try to settle. I just kind of on my
16 own order that the person, if he has the assets, to
17 pay it. Or has the means to pay it, to make them
18 pay. And sometimes the payer doesn't like it,
19 sometimes the debtor doesn't like it. And I just do
20 that. And I'm tempted to do that in this particular
21 case if y'all can't come to an agreement.

22 **MS. BALLARD:** Well, you did already when you gave us the
23 building.

24 **THE COURT:** Right. Right. But that was -- but we're
25 still here though.

1 MS. BALLARD: Well, we're still here. We still have
2 people looking at the building. I don't know if the
3 leases are assignable or not. That's a new term
4 that I hadn't heard until last night so, I mean, I
5 don't know.

6 THE COURT: And I'd certainly accommodate the wishes of
7 both parties by just vacating the previous order or
8 modifying it or whatever.

9 MS. BALLARD: I don't think that's what we're asking you
10 to do. I think what we're asking, assuming we agree
11 on the numbers, and the number is solid and
12 immoveable, except for the 7.25 percent, we pay no
13 taxes, we pay no liens, we pay nothing. We give you
14 the title we have, interest would start running on
15 the number that is not changing at 7.25 percent
16 starting Friday, and Alvin Hammer would guarantee
17 that the payment would occur no later than whatever
18 the date in April that is in your letter.

19 THE COURT: And you'd need an order. Sounds like -- to
20 me, y'all are so close. All that really needs to be
21 done ---

22 MR. BUNCH: We're close, Your Honor, but I do have one
23 issue.

24 THE COURT: Yes, sir.

25 MR. BUNCH: And that is, when we conveyed the property to

1 Mrs. Hammer, it was done -- I think you may have
2 suggested it, or they may have requested it,
3 regardless, it was represented to the Court that
4 this is how the deal had to be structured in order
5 for Mrs. Hammer to get true title. And that
6 included the transfer of the property from the
7 owner, 1634 Main, or any interest that Mr. Hammer
8 had in it, plus the transfer of 1634 Main, LP, plus
9 the transfer of SH5, LP. So based on what they told
10 the Court, they have full title to the building at
11 the present time. Now, if there are some things
12 that need to be done to clean that up, that's fine.
13 But HASCI is not going to commit itself to pay a
14 whole lot of money to buy this building back if they
15 don't have good title to it. And, in fact, I would
16 reference a letter of intent executed by Ms. Ballard
17 on behalf of Mr. Hammer in connection with the sale
18 of the property last year in which she said title
19 shall be conveyed by general warranty deed and be
20 good and marketable such as may be insured free and
21 clear of all defects and encumbrances. So all we're
22 asking her to do for us is what she already agreed
23 to do with another purchaser, Your Honor. So, I
24 mean, if we can't get marketable or, and I said or
25 insurable title, then I don't think HASCI wants the

1 property. It wouldn't do them any good.

2 **MS. BALLARD:** Then I think we start with our sanctions

3 hearing, Your Honor. I'm ready to proceed.

4 **THE COURT:** Okay. Where's Mr. Babcock today? Is he in

5 town?

6 **MR. BUNCH:** He is in town. He was at his office, however

7 he was meeting with a client when I -- we did

8 briefly speak with him.

9 **THE COURT:** Y'all are so close, I, I -- you know.

10 **MS. BALLARD:** Your Honor, we don't know what kind of title

11 we have. As I said, Mrs. Hammer gave it to him

12 repeatedly. He never recorded the deeds. We have

13 whatever you gave us, that's what we'll give back.

14 What they're trying to do by not taking 1634 Main,

15 LP or SH5 is they're trying to stick us with the

16 property taxes that 1634 is obligated to pay ---

17 **MR. BUNCH:** I would not try -- we're not, Your Honor.

18 We've offered to pay those as a component of the

19 sales price. We've offered to pay them 575.

20 **MS. BALLARD:** I don't want the money coming ---

21 **THE COURT:** Let him finish.

22 **MR. BUNCH:** Their demand was XXX with \$42,000 in real

23 estate taxes owed to Richland County and \$8000 which

24 they represented to us was the amount owed to the

25 IRS. Okay?

1 MS. BALLARD: No, that's not accurate.

2 MR. BUNCH: Maybe it was \$7000.

3 MS. BALLARD: \$9000.

4 THE COURT: Hold on a second.

5 MR. BUNCH: So we increased the purchase price from the
6 XXX, and said that's fine, you pay them and give us
7 clean title.

8 MS. BALLARD: Your Honor, we're not taking anything unless
9 they pay the taxes, they pay -- they satisfy the
10 taxes, whatever they are; they satisfy the tax lien,
11 whatever it is. It's not a settlement to us in that
12 amount because we're not assuming responsibility for
13 paying any taxes, we're not assuming responsibility
14 for paying any lien on the property. And if we
15 don't have the -- we can't give you marketable,
16 insurable title, and so I'm sorry.

17 MR. BUNCH: Your Honor, as customary in any transaction,
18 the taxes were due and payable last January 15th and
19 this January 15th, okay? So you told Mr. Hammer and
20 Mr. Aiken on January 9th last year that you were
21 going to convey the property. All right. The
22 actual conveyance was January 21st. But the
23 responsibility for those taxes lies with the owner
24 of the property, and the owner of the property is
25 not Mr. Hammer now.

1 MS. BALLARD: Right.

2 THE COURT: Talking about the ---

3 MR. BUNCH: So we're willing to pay the owner of the
4 property the amount of money they want plus the
5 taxes. I mean, it's -- I don't understand what -- I
6 mean, it's a benefit to us to have them pay the
7 taxes, okay? It doesn't really -- I'm not trying to
8 hoodwink anybody, that's not the way I do business.

9 THE COURT: Well ---

10 MR. BUNCH: It's of benefit to us to have them pay the
11 taxes and for us to pay the 575. And I know that
12 sounds odd, but in the -- I mean, it all washes out
13 in the end; somebody's going to end up paying the
14 taxes.

15 MS. BALLARD: That's not our proposal, Your Honor, and we
16 are not going to assume responsibility for paying
17 the taxes, period.

18 MR. BUNCH: We're not asking them to assume that
19 responsibility, Your Honor. We're paying them so
20 that ---

21 MS. BALLARD: We're not going to pay the taxes.

22 MR. BUNCH: --- so that we would get clear title.

23 MS. BALLARD: We're not going to pay the taxes. If they
24 want to pay the taxes, they can pay the taxes.

25 MR. BUNCH: Your Honor, Mister ---

1 MS. BALLARD: We are not going to do that.

2 MR. BUNCH: --- Babcock calling in, if you'd like to ---

3 THE COURT: Okay, that's okay. We'll stand at ease for a
4 minute.

5 (Off the record from 11:08 to 11:14 a.m.)

6 THE COURT: Are y'all any closer?

7 MR. BUNCH: Your Honor, all I can do is report what Mr.
8 Babcock had to say, is that he's unable to get in
9 touch with Mr. Hammer, Mr. Alvin Hammer I'm
10 referring to. He's unable to get in touch with
11 Alvin Hammer. Alvin Hammer had some dental surgery
12 yesterday and he's been unavailable, apparently not
13 in his office and not otherwise within
14 communication. So, back to where we were, we are --
15 we really are I think quite close to getting this
16 matter resolved. I don't know why it makes a
17 difference to them as to the -- to us paying the
18 liens included with the purchase price. It was
19 represented to us that through January 30th, 2015,
20 that the liens on the property were -- the tax lien
21 for Richland County was \$21,971.96, that the tax
22 lien owed to the IRS was \$7142.33. So that puts you
23 up at about \$28,000, maybe 29 and some change. If
24 you add the current taxes that were due January 15th
25 to that, those are approximately -- I looked those

1 up and those are 19,000 and change, so just say
2 \$20,000.

3 **THE COURT:** Well, would it make you feel better if when
4 they paid they paid with separate checks, one ---

5 **MS. BALLARD:** No, sir, Your Honor.

6 **THE COURT:** --- check made payable to the Richland County
7 Treasurer, one ---

8 **MS. BALLARD:** Mrs. Hammer's not going to assume
9 responsibility to the IRS, to Richland County, to
10 anyone else.

11 **THE COURT:** Okay. You cut me off though. What I was
12 describing was, when you close, one check goes to
13 you, one check is made payable to Richland County
14 Treasurer which would pay the property taxes, one
15 check is made payable to the Internal Revenue
16 Service I guess -- or the US Treasury, however you
17 do it when you pay taxes, and that would avoid that
18 problem.

19 **MS. BALLARD:** The problem is taxes and penalties that may
20 have been added that I don't know anything about
21 that will get stuck to Mrs. Hammer because they're
22 not accepting ownership of 1634 Main or SH5. The
23 only way we are willing to do it is if they accept
24 responsibility for all taxes, all liens, all
25 anything on the property, I don't care how much they

1 are.

2 **THE COURT:** And take that out of your proposed -- the

3 amount of the proposed settlement, make it -- get an

4 offset.

5 **MS. BALLARD:** The number, as I've said before, is

6 immoveable, and that was -- I mean, it's that

7 simple.

8 **MR. BUNCH:** Your Honor, we don't know what encumbrances

9 Mrs. Hammer may have put on the property so it still

10 needs to come ---

11 **MS. BALLARD:** We have no encumbrances on the property.

12 **MR. BUNCH:** Excuse me, Your Honor.

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

14 **MR. BUNCH:** It still needs, whether it's by way of

15 ^o

16 granting a lien, whether it's by way of a water bill

17 or whatever, it still needs to come to us free and

18 clear of any types of issues.

19 **THE COURT:** But it needs to go to -- except if it's part

20 of the agreement that y'all just pay the taxes with

21 a separate check and make it clear that ---

22 **MR. BUNCH:** I think we'd be happy to pay the ---

23 **MS. BALLARD:** They would do that because their check would

24 not be a sufficient amount, Your Honor, and Mrs.

25 Hammer would get stuck paying the taxes and

 penalties.

1 **THE COURT:** No ---

2 **MS. BALLARD:** They've got to assume responsibility for it.

3 No, we're not accepting any money for taxes.

4 **THE COURT:** Wait a minute, I don't understand. So, all

5 you want is -- I'm sorry, go ahead. She needs to

6 consult with you.

7 **MS. BALLARD:** That's all right. She wants to know what

8 the reason is that they want us to pay the taxes.

9 **THE COURT:** Well, that -- okay, we're hearing varying

10 things.

11 **MR. BUNCH:** Your Honor, there's no nefarious reason of

12 which I'm aware.

13 **THE COURT:** Let me, let me, let me explain what I thought

14 I heard. They would give you a lump sum, or the

15 purchaser, the LLC would give you a lump sum, and

16 the lump sum would contain money that would be

17 earmarked to pay liens and tax liability?

18 **MR. BUNCH:** Correct.

19 **THE COURT:** Okay. My suggestion was, instead of giving a

20 lump sum, giving you separate checks. In other

21 words, a check payable to the Richland County

22 Treasurer to take care of the property taxes, a

23 check payable to the US Treasury to take care of the

24 IRS lien, and so forth. That's what I was

25 suggesting, and I hope you understood that's what I

1 was suggesting.

2 **MS. BALLARD:** I do understand that, Your Honor.

3 **THE COURT:** To make it clear, and you're concerned about

4 liability you don't know about; is that ---

5 **MS. BALLARD:** Liability I don't know about, increased

6 penalties and taxes on these things. I'm not

7 willing to accept, to have Mrs. Hammer accept

8 responsibility for paying any of Mr. Hammer's debts

9 or taxes or liens or anything else.

10 **THE COURT:** All right, Mr. Bunch, can y'all deal with

11 that?

12 **MR. BUNCH:** Your Honor, what I would say to that is, if

13 anybody owns a piece of property -- first of all,

14 the only taxes that would come now are ones that

15 would have been incurred after January 21, 2014.

16 Because to the extent that Mr. Hammer's incurred

17 liability for taxes, they wouldn't attach to this

18 property since it's not in his name.

19 **MS. BALLARD:** See, they want you to pay the taxes.

20 **MR. BUNCH:** Okay? So any time a seller of a piece of

21 property sells a building, they need to convey it

22 with insurable or marketable title. And it's --

23 we're paying the money, and we're willing to say,

24 okay, if the taxes are more, if they're more than

25 the estimated \$50,000 we'll make sure you get paid

1 that so you'll get XXX.

2 **THE COURT:** Now, what we normally do in the foreclosure
3 context is I make an announcement before we even
4 have the auction that if you purchase the property,
5 you purchase it subject to taxes, subject to
6 property taxes. And that's what Ms. Ballard and her
7 client want.

8 **MS. BALLARD:** We'll convey it subject to, yes.

9 **THE COURT:** Yeah, that's what they want to do.

10 **MS. BALLARD:** We're not selling it to anybody. We're
11 conveying it in settlement of a civil lawsuit. And,
12 again, we -- I can't say it enough times, we are not
13 going to assume responsibility for paying any taxes
14 on the building, whether they were incurred while
15 they were in the name of Hightower, whether they
16 were incurred when they were in the name of 1634,
17 whether they were incurred when they were in the
18 name of anything else, we are not paying a dime in
19 taxes.

20 **THE COURT:** Okay.

21 **MS. BALLARD:** We've got a bottom-line number that we've
22 agreed to that has to be paid by Friday or run
23 interest at 7.25 percent until paid on April
24 whatever. But we will not assume responsibility for
25 paying anything.

1 THE COURT: Okay. , Let's go ahead and suspend settlement
2 negotiations at this time, however that doesn't mean
3 that y'all can't still talk and work on it.

4 MS. BALLARD: Well, they're backing up, Your Honor.
5 They're backing up a lot from where they were when
6 we walked in here.

7 THE COURT: The original notes say we were going to talk
8 about the sanctions today. Now, do y'all want to go
9 ahead and talk about that, or do you want to hold
10 that in abeyance until you get this issue resolved?
11 I mean ---

12 MS. BALLARD: Your Honor, we'd like to move forward with
13 the sanctions hearing.

14 THE COURT: All right. Because a settlement proposal
15 would include the sanctions, right ---

16 MS. BALLARD: Yes.

17 THE COURT: --- Mr. Bunch?

18 MR. BUNCH: Your Honor, I actually have another call
19 coming to me from Mr. Babcock.

20 THE COURT: Oh, yes, sir. We'll stand at ease.

21 (Off the record from 11:21 a.m. to 11:27 a.m.)

22 MR. BUNCH: Your Honor, as you know, Mr. Babcock -- just
23 for the Court's information, Mr. Babcock has people
24 travelling in from all over the state, well I say
25 all over the state, I think he only mentioned

1 Charleston, and he and the rest of his law firm have
2 their initial partners meeting, which I believe he's
3 chairing. I would assume he is. Maybe Mr. Lewis
4 is, but I would assume Keith is. I believe he's
5 chairing that today. And that starts right now,
6 11:30. Prior to that he had deposition preparation
7 to do with a witness, which is why he is unavailable
8 today. Anyway, after speaking with Mr. Babcock,
9 HASCI is agreeable to the sales price at XXX; the
10 seller would not be responsible for paying the tax
11 liens on the property, but the -- but otherwise, you
12 know, the deal remains the same, the assignment of
13 leases, there would be no conveyance of 1634 or SH5,
14 that'd be 1634, LP or SH5, LLC. We're agreeing to
15 pay the interest on the purchase price at 7.5
16 percent up until the date of closing, the closing to
17 occur not later than April 30th. Okay. There would
18 be -- we still need to iron out the issue of
19 marketable or insurable title, which I understand
20 that Ms. Ballard offered a previous prospective
21 purchaser the property so they're the ones that kind
22 of had the deal structured the way they wanted to in
23 your order, so I would assume they can give good
24 title to the property. If it's not insurable, then
25 the deal's going to fall apart, okay. That's really

1 all I can -- I mean, we can't say it's insurable,
2 they can't say it's insurable, some title abstractor
3 and insurance company and title lawyer can make that
4 determination. In addition, Mr. Hammer would
5 release Shirley, her agents, servants and employees
6 from all matters dealing with the building and its
7 contents, which is what was conveyed to us on
8 January 16th. And if I've left out anything from my
9 previous recitation of where we were, I would
10 incorporate those as well.

11 **MS. BALLARD:** Your Honor, I can't agree to that. I can't
12 agree to marketable and insurable title, I'm sorry.
13 Can we proceed with our hearing?

14 **THE COURT:** Mr. Bunch indicated that's still open.

15 **MR. BUNCH:** She doesn't -- she doesn't have to agree to
16 it, Your Honor. That would be determined by whoever
17 does the closing work for the purchaser.

18 **MS. BALLARD:** I've offered a quit claim deed.

19 **MR. BUNCH:** If they can't get, Your Honor, if they can't
20 get insurance or marketable title, HASCI can't buy
21 the property.

22 **MS. BALLARD:** Sorry.

23 **THE COURT:** Or they wouldn't buy it.

24 **MR. BUNCH:** Right.

25 **THE COURT:** Not they couldn't, they wouldn't.

1 MR. BUNCH: Right. They wouldn't.

2 MS. BALLARD: It's with a quit claim deed or nothing.

3 MR. BUNCH: I'm not suggesting that a quit ---

4 THE COURT: No, it could be something less than a general
5 warranty deed, but it doesn't have to be -- I mean,
6 a quit claim deed is, you know.

7 MS. BALLARD: A quit claim deed is whatever I own, I'm
8 giving it to you.

9 THE COURT: That's right. Yeah.

10 MS. BALLARD: That's all we're going to do. I'm not
11 guaranteeing anything.

12 MR. BUNCH: Well, that's fine. But in order for the
13 closing to go forward, we would need the -- we would
14 need to know that. And according to what Ms.
15 Ballard has told me, the previous purchaser -- the
16 purchaser who had the property under contract and
17 then walked away from it, they were able to get
18 insurable title.

19 THE COURT: Let me suggest this. Why don't y'all get
20 together on a proposed order that hopefully would
21 hammer out any issues that are left, primarily the
22 issue of what kind of title you'd convey.

23 MS. BALLARD: I already know the answer to that, Your
24 Honor. All we're going to do is a quit claim deed,
25 that's all we're going to do. There's nothing to

1 negotiate.

2 **THE COURT:** Well, the problem is that, see, I'm sitting
3 here thinking whether I should just order y'all to
4 do that because, again, generally in supplement
5 proceedings if somebody has the assets ---

6 **MS. BALLARD:** I can't give them ---

7 **THE COURT:** Hold on a second ---

8 **MS. BALLARD:** --- any more than I received.

9 **THE COURT:** Let me finish, let me finish. --- have
10 assets, we make them pay. Now, I understand you
11 can't give any more than you got. So, but Mr. Bunch
12 I guess may be -- well, I was going to say, Ms.
13 Ballard has a client to protect and she's I guess
14 concerned about something -- being blindsided about
15 something else. Or the deal falling through because
16 of the type of title that they can convey. On the
17 other hand, HASCI is not looking to undermine the
18 agreement in this case. They want it resolved too,
19 right? I mean, I presume. Now, that's, you know,
20 an LLC's only a group of people, but they want it
21 resolved as well. So you're not going to do
22 anything on purpose just to sink the agreement, if
23 there is an agreement?

24 **MR. BUNCH:** I don't know what incentive or motive they
25 would have to do it, Your Honor.

1 THE COURT: Now, part of the problem is you may have ---
2 MR. BUNCH: I mean, the incentive here is that everything
3 ends.
4 THE COURT: Right.
5 MR. BUNCH: Okay?
6 THE COURT: But you may have exhausted my knowledge of
7 real estate. A quit claim deed is, you know, most
8 people I think would not get title insurance on a
9 quit claim deed. Now, tell me, Ms. Ballard, you may
10 know more. Tell me ---
11 MS. BALLARD: I don't know who the purchaser was using,
12 the potential purchaser was using. I'm happy to
13 give them that information. But my client is not
14 going to execute anything other than a quit claim
15 deed.
16 THE COURT: No ---
17 MS. BALLARD: Or unwind the Master's deed that we were
18 given.
19 THE COURT: Yeah. What I was going to ask is that between
20 the general warranty deed and a quit claim deed,
21 there are other intermediate type of ---
22 MS. BALLARD: It's going to be a completely unwarranted
23 deed, completely unwarranted. It's going to have no
24 warranties with it, because Mr. Hammer's going to
25 sue her tomorrow. I mean, I just see it. I know.

1 MR. BUNCH: Your Honor, you're the one that gave her the
2 deed to start with, so hopefully we can get
3 insurance on that.

4 THE COURT: Well, you know, only ---

5 MS. BALLARD: Well, somebody else was able to, so.

6 THE COURT: Yeah, what we do, and the most frequent cases
7 I see where someone's trying to quiet title is a tax
8 deed, you know, or a Master's deed or a quit claim
9 deed. And I guess in the agreement we could
10 actually, we could actually make part of the
11 agreement an order to quiet title, if that will
12 facilitate the settlement. If in fact there's no
13 real question about the title. I mean -- Mr. Bunch,
14 I see you frowning. I'm thinking about a situation,
15 what we do in our title, we explain how the
16 individual got the property, explain, you know, the
17 chain of title. And if there's no evidence to the
18 contrary, we actually sign an order saying, okay,
19 this is clear title even though all you have is a
20 tax deed, all you have is a Master's deed, or all
21 you have is a quit claim deed. Based on -- we could
22 include that in the order. We may need some
23 affidavits with it, but we can include that.

24 MR. BUNCH: Well, Your Honor, I know for a fact -- I don't
25 do much of this work. I don't think I do really any

1 of it. But I know for a fact that our office will
2 issue title policies or Master's deeds. So if the
3 only encumbrances on the property -- if it was
4 marketable based on your title, and the only thing
5 that's happened in the interim is that Mrs. Hammer
6 then conveyed it to Hightower, LLC and neither Mrs.
7 Hammer nor Hightower, LLC incurred any obligations
8 which would go against the property, then we ought
9 to be able to insure it. And Ms. Ballard has said
10 the prospective purchaser earlier had made
11 arrangements to get the insurance already, so. I
12 don't really see that as a big problem. I
13 understand they're not saying they're going to give
14 us anything more than a quit claim deed, but going
15 down the road if one purchaser had already been able
16 to figure it out -- you know, we can work with that
17 lawyer or that closing attorney and say, you know,
18 help us out here.

19 **THE COURT:** Who would be the closing attorney, Ms.
20 Ballard?

21 **MS. BALLARD:** Bill Higgins.

22 **THE COURT:** Bill?

23 **MS. BALLARD:** Bill Higgins was the closing attorney for
24 the purchaser. Whoever he got insurance through.

25 **THE COURT:** Okay.

1 MS. BALLARD: But we were not giving them a general
2 warranty deed either.

3 THE COURT: All right. Mr. Bunch, you say your firm will
4 issue a policy. Is your firm an agent for some
5 title insurance company?

6 MR. BUNCH: Yes, Your Honor.

7 THE COURT: Okay. What company is that, do you know?

8 MR. BUNCH: You know, I don't even know the name of the
9 company. Oh, you're talking about which title
10 company?

11 THE COURT: Right.

12 MR. BUNCH: I think we write for Chicago Title.

13 THE COURT: Okay.

14 MR. BUNCH: And when I say our firm, actually we have a
15 subsidiary that does that.

16 THE COURT: Okay.

17 MR. BUNCH: Or maybe -- I shouldn't say it's a subsidiary,
18 it's just a separately-owned business. In any
19 event, I believe they write Chicago Title, and I
20 don't know who else, if anybody else.

21 THE COURT: Okay. Let me suggest this: leave the
22 settlement on the table. If y'all can^o get together
23 later today or later in the future to work out a
24 consent order, I'm willing to consider that. In the
25 meantime, our notes indicate we're going to talk

1 about motions for sanctions. I think we should
2 probably go ahead and deal with that today. In
3 fact, do it right now if y'all have time to do it.

4 **MS. BALLARD:** Yes, sir.

5 **THE COURT:** Mr. Bunch, is that okay with you?

6 **MR. BUNCH:** Yes, Your Honor. And, you know, we really
7 spent a good bit of time dealing with the settlement
8 issues. I understand where your ruling would be on
9 the recusal issue, presumably you'd follow what you
10 did in the foreclosure case. I'd ---

11 **THE COURT:** No, no. Hold on a second.

12 **MR. BUNCH:** --- like to renew our motion on the record
13 here. And I would also add the comments that you
14 made in our January 12th status conference about Mr.
15 Hammer not being forthright with the Court and would
16 like to add those as a -- I could add it as an
17 exhibit or I can supplement it at a later time.

18 **THE COURT:** Well, it's a matter of record, so I don't have
19 any problem with that.

20 **MR. BUNCH:** Right.

21 **THE COURT:** You can do that.

22 **MS. BALLARD:** Your Honor, if we're going to go forward
23 with the sanctions hearing, our settlement
24 discussions have come to an end. So our amount
25 would go up.

1 THE COURT: So my suggestion that we leave this in
2 abeyance, leave it on the table and deal with
3 sanctions now, you're not accepting that?

4 MS. BALLARD: No, sir.

5 THE COURT: You don't accept my suggestion?

6 MS. BALLARD: No, sir.

7 THE COURT: Mr. Bunch, do you accept my suggestion?

8 MR. BUNCH: I would accept your suggestion to leave the
9 sanctions in abeyance. In fact, Your Honor ---

10 THE COURT: No, not the sanctions in abeyance. The
11 settlement talks in abeyance.

12 MR. BUNCH: I'm sorry.

13 THE COURT: Ms. Ballard just announced that settlement's
14 over and so the next time y'all have a talk it's
15 going to be a different number.

16 MS. BALLARD: Correct.

17 THE COURT: And ---

18 MS. BALLARD: If we're going forward with the sanctions
19 hearing at this point, yes, sir, those discussions
20 are over.

21 MR. BUNCH: Well, since we are so close on settlement,
22 Your Honor, and I think it would be appropriate to
23 hold it in abeyance, you know, I see no reason to go
24 forward with the sanctions hearing today. I think
25 that, in actuality, I think that injects another

1 level of potential acrimony in the case on both
2 sides. I'm not suggesting it's just on our side, or
3 on their side. And if they're saying costs will go
4 up to settle the case, then I would suggest that's
5 another reason not to go forward with the sanctions
6 today. I would, you know ---

7 **THE COURT:** Well, tell you what, what if I say I won't
8 rule today on the sanctions. I mean, I've already
9 ordered sanctions, and allegedly tendered -- there
10 was an offer to pay that that was tendered, but that
11 didn't work out because there were conditions
12 imposed that your client didn't want to do. Not
13 imposed by the Court, but imposed by Ms. Ballard and
14 her client. So I see no reason why we can't go
15 forward with the sanctions hearing and in fact leave
16 the settlement on the table. Now, Ms. Ballard, you
17 said you're not going to leave it on the table?

18 **MS. BALLARD:** No, sir.

19 **THE COURT:** All right. So it's gone?

20 **MS. BALLARD:** Yes, sir.

21 **THE COURT:** Any possibility of the settlement is gone?

22 **MS. BALLARD:** I'm sorry?

23 **THE COURT:** Any possibility of the settlement is gone?

24 **MS. BALLARD:** If we proceed with the sanctions hearing,
25 yes, sir. Because the amount of our settlement

1 offer, our demand, would go up.

2 **THE COURT:** All right. Mr. Bunch?

3 **MR. BUNCH:** I don't know what to say, Your Honor. I mean,
4 I think you control your courtroom. If you want to
5 move forward with sanctions, that's up to you. If
6 you don't, you don't have to.

7 **THE COURT:** I'm actually trying very hard not to let y'all
8 settle this because, again, normally in supplemental
9 proceedings if somebody has the means to satisfy the
10 judgment or has a deal or a plan to do it, we make
11 them do it, you know. And sometimes the judgment
12 creditor isn't happy because they didn't get
13 everything they want, sometimes the debtor isn't
14 happy because they're having to pay. However, y'all
15 are very, very close it seems. Everything's agreed
16 to except the issue of marketable title, is that --
17 I mean, is that correct?

18 **MS. BALLARD:** The last offer, when they last came back in
19 the courtroom -- yes.

20 **THE COURT:** That's the only issue left?

21 **MS. BALLARD:** Yes.

22 **THE COURT:** Okay.

23 **MR. BUNCH:** And, Your Honor, as I said, I don't think
24 that's an issue because all we're saying is in order
25 to -- for HASCI to buy the property, and I don't

1 represent HASCI, but in order for HASCI to buy the
2 property it would need good title to the property.
3 I'm not saying it has to be by general warranty
4 deed, it just has to be insurable and marketable,
5 and she's not representing that it is.

6 **THE COURT:** And my suggestion again was that we could
7 quiet title ---

8 **MS. BALLARD:** I like that idea, Your Honor.

9 **THE COURT:** --- you know, at the same time. It would have
10 to have evidence to support that though, you know.
11 You have to have a chain of title and all of that
12 information. But that's ---

13 **MS. BALLARD:** That would not be at Mrs. Hammer's expense
14 because the title is a mess.

15 **THE COURT:** Okay.

16 **MS. BALLARD:** And I don't want her to have to incur the
17 expense of producing a chain of title and all of
18 that. So if they want to do it that way, that will
19 be at their expense.

20 **MR. BUNCH:** Your Honor, we think we can get insurable,
21 marketable title based on our limited research,
22 going back to when the property was acquired I think
23 20 years ago from NAI 1634 or whatever the name of
24 the entity was.

25 **THE COURT:** And for clarity of the record, the proposed

1 settlement would in fact include any amount for
2 sanctions; is that correct?

3 **MS. BALLARD:** That is correct.

4 **THE COURT:** Okay. I really want the settlement to stay on
5 the table. The settlement offer to stay on the
6 table, I'm not saying that y'all have settled this
7 with his offer, because y'all are very close. So
8 what I'm persuaded now, Mr. Bunch, that it might be
9 the better part of valor to continue the motion for
10 sanctions hearing until y'all have decided one way
11 or the other whether or not you can settle this.

12 **MS. BALLARD:** And can we put a deadline on that, Your
13 Honor? I've been dealing -- every time I try to put
14 a deadline on it, it never gets met.

15 **THE COURT:** Okay.

16 **MS. BALLARD:** So.

17 **THE COURT:** Today is January 27th. I'll have to get my
18 scheduler to contact y'all both to make sure
19 everybody ---

20 **MS. BALLARD:** I have surgery on February 4th; I'll be out
21 from the 4th till the 9th.

22 **THE COURT:** Okay. We can work with you on that.

23 **MS. BALLARD:** But other than that, I'll be available.

24 **THE COURT:** I'll just have my scheduler, Mr. Scott,
25 contact y'all and reschedule this hearing.

1 MS. BALLARD: Thank you, Your Honor.

2 THE COURT: Okay. Mr. Bunch?

3 MR. BUNCH: All right. Thank you, Your Honor.

4 (There being nothing further, the hearing was concluded.)

5

CERTIFICATE

I certify that the foregoing transcript, consisting of 48 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on January 27, 2015, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

March 27, 2015

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

EXHIBIT 20

Amy Westbrook

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, February 3, 2015 10:54 AM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard
Subject: RE: Status

Ok, I'll go with the 13th, 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
v-card

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

 MERITAS LAW FIRMS WORLDWIDE

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Tuesday, February 3, 2015 10:16 AM
To: Thomas W. Bunch, II; 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 9th, 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, copy to mara@desaballard.com

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

EXHIBIT 21

Amy Westbrook

From: Thomas W. Bunch, II
Sent: Monday, February 9, 2015 3:36 PM
To: 'Desa Ballard'
Cc: 'Keith M. Babcock'; 'Allan Fulmer Jr'
Subject: Hammer settlement docs
Attachments: [1516419] QCDeed-HowardHammer to HighTowerLLC-2015-TO SIGN.pdf; QCDeed-ShirleyH to HighTowerLLC-2015-TO SIGN.pdf; QCDeed-1634MainLP to HighTowerLLC-2015-TO SIGN.pdf; Contract of Sale to HASCI.pdf; Settlement Agr. signed by Howard, Alvin & HASCI.pdf

Desa,

Hope you are well. Attached are the following:

1. A Settlement Agreement signed by Howard Hammer, Alvin Hammer and HASCI, LLC.
2. A Contract of Sale to sell the property to HASCI. This was just finalized a short while ago, so it does not yet have signatures.
3. Quitclaim Deed from Shirley.
4. Quitclaim Deed from 1634.
5. Quitclaim Deed from Howard.

We are working on a title policy and hope to have that finalized today. Unless something comes up that I am not aware of, I hope issuing a commitment will not be a problem. Allan Fulmer, Jr. was retained by HASCI to handle the real estate aspects of this transaction so he is copied on the email. He asked that I convey to you that the deeds might need to be worked on some, but I am forwarding to you so you will see where we are going with the structure of the closing.

Tommy



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

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

 **MERITAS' LAW FIRMS WORLDWIDE**

**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 HASCI, 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,

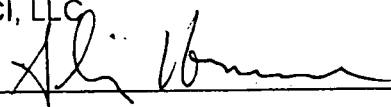
challenge, invalidate, modify or vacate this agreement or any orders of dismissal referenced in this agreement, or any judgments or orders previously issued in the above captioned cases by any judge(s) in any court, including but not limited to, any arguments concerning public policy grounds or any other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

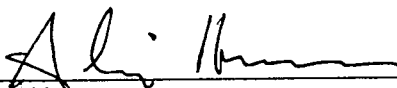
15. No party has been promised anything in connection with his/her execution of this agreement other than the terms set forth herein.
16. The signatures of the undersigned reflect that this agreement is entered into voluntarily by the parties, that all parties understand the effect of this agreement, 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.

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 (10th) 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 (10th) 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

Quit-Claim Deed – Shirley Hammer to HighTower, LLC – 1634 Main Street [cont.]

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

SUBJECT TO the easements, restrictions, covenants, reservations and conditions referenced specifically or generally above, Grantor covenants to warrant and forever defend all and singular said property unto Grantee, its successors and assigns, from and against Grantor, her heirs and assigns, whomsoever lawfully claiming the same, or any part thereof, and no others.

IN WITNESS WHEREOF, Grantor has caused this Deed of Real Property to be executed as of the day and year first above written.

*Signed, sealed and delivered
in the presence of:*

Witness #1 Signs Here

Shirley Hammer (SEAL)

Witness #2 Signs Here/Can Also Be Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, _____, Notary Public for the State of South Carolina, do hereby certify that **Shirley Hammer, also known as Shirley Hightower**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2015.

Notary Public, State of South Carolina (L.S.)

My Commission Expires: _____

[Legal Description Follows on Next Page]

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property, as described in Exhibit A [1634 Main Street, Columbia, SC 29201, TMS #09014-04-19], is being transferred by Shirley Hammer unto HighTower, LLC.
3. Check one of the following: The Deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because it is a transfer of real property by QUIT-CLAIM DEED and no consideration paid thereunder.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The Deed Recording Fee is computed as follows:
 - (a) \$ 0.00 the amount listed in item 4 above.
 - (b) \$ 0.00 the amount listed in item 5 above (if no amount, place zero).
 - (c) \$ 0.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. The Deed Recording Fee due is based on the amount listed on Line 6(c) above, and the Deed Recording Fee due is \$ 0.00 .
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
 Grantor .
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this _____
day of _____, 2015

Notary Public for South Carolina
My Commission Expires: _____

_____(SEAL)
Shirley Hammer—Grantor

Recording Requested By and When Recorded Mail to:
Allan E. Fulmer, Attorney, P.A.
Post Office Box 1548, Columbia, South Carolina 29202
[Prepared Without Benefit of Title Exam- No Title Opinion Provided]

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **QUIT-CLAIM DEED**

Whereas, by that certain *Master's Deed* recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922, at Page 1520, the Master in Equity for Richland County sought to convey the ownership interests of 1634 Main L.P. in the below-described real property to Shirley Hammer; *however*, it appears that the conveyance to Shirley Hammer may have only transferred to Shirley Hammer a 52.75% interest in the below-described real property, leaving 47.25% interest in the said real property in the name of 1634 Main L.P. which may cause confusion as to the ownership interest transferred by the Master in Equity to Shirley Hammer, and then subsequently by Shirley Hammer to HighTower, LLC by that certain *Deed* recorded January 24, 2014 in Record Book 1922, at Page 3825; and,

Whereas, in order to resolve any confusion and to confirm transfer of fee title to HighTower, LLC as the Grantee herein named, this Deed is being delivered by 1634 Main, L.P. unto HighTower, LLC to convey any right, title or interest it may own in the said real property;

Accordingly, **THIS DEED**, executed on February ____, 2015, by **1634 Main, L.P.** (hereinafter referred to as "*Grantor*") to **HighTower, LLC** (hereinafter referred to as "*Grantee*"), whose mailing address is 421 River Club Road, Lexington, South Carolina 2929072.

WITNESSETH:

IN CONSIDERATION of the sum of Five Dollars (\$5.00) and other valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, Grantor has granted, bargained, sold and released, and by this Deed grants, bargains, sells and releases, subject to the easements, restrictions, covenants, reservations and conditions referenced specifically or generally below, to Grantee, its successors and assigns, the following described properties (hereinafter collectively the "*Property*"):

All Right, Title, and Interest of the undersigned in and to:

1634 Main Street, Columbia, SC 29201
Parcel "A" and Parcel "B" – Collectively Containing 0.50 Acres
Plat Prepared by Cox and Dinkins, Inc. dated February 5, 1996
County of Richland, State of South Carolina
TMS #09014-04-19

See *Exhibit "A"* attached hereto and incorporated herein by reference.

THIS conveyance is made subject to all covenants, restrictions, easements, rights-of-way, and other matters of record, and such matters as would be shown by a current plat and an inspection, affecting the within-described property, including without limitation matters shown on the plat(s) referenced in *Exhibit "A"*.

Quit-Claim Deed – 1634 Main, L.P. to HighTower, LLC – 1634 Main Street [cont.]

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

SUBJECT TO the easements, restrictions, covenants, reservations and conditions referenced specifically or generally above, Grantor covenants to warrant and forever defend all and singular said property unto Grantee, its successors and assigns, from and against Grantor, its successors and assigns, whomsoever lawfully claiming the same, or any part thereof, and no others.

IN WITNESS WHEREOF, Grantor has caused this Deed of Real Property to be executed as of the day and year first above written.

*Signed, sealed and delivered
in the presence of:*

1634 MAIN, L.P.

Witness #1 Signs Here

By: _____ (SEAL)

Shirley Hammer
Authorized Officer

Witness #2 Signs Here/Can Also Be Notary

By: _____ (SEAL)

Shirley Hightower
Authorized Officer

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, _____, Notary Public for the State of South Carolina, do hereby certify that **Shirley Hammer, also known as Shirley Hightower, as authorized officer of 1634 Main, L.P.**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2015.

(L.S.)
Notary Public, State of South Carolina
My Commission Expires: _____

[Legal Description Follows on Next Page]

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:

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Tax Map # 09014-04-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property, as described in Exhibit A [1634 Main Street, Columbia, SC 29201, TMS #09014-04-19], is being transferred by 1634 Main, L.P. unto HighTower, LLC.
3. Check one of the following: The Deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because it is a transfer of real property by QUIT-CLAIM DEED and no consideration paid thereunder.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The Deed Recording Fee is computed as follows:
 - (a) \$ 0.00 the amount listed in item 4 above.
 - (b) \$ 0.00 the amount listed in item 5 above (if no amount, place zero).
 - (c) \$ 0.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. The Deed Recording Fee due is based on the amount listed on Line 6(c) above, and the Deed Recording Fee due is \$ 0.00 .
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
 Authorized Officer of Grantor
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction; must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this _____
day of _____, 2015

Notary Public for South Carolina
My Commission Expires: _____

_____(SEAL)
Shirley Hammer –Authorized Officer of Grantor

Recording Requested By and When Recorded Mail to:
Allan E. Fulmer, Attorney, P.A.
Post Office Box 1548, Columbia, South Carolina 29202
[Prepared Without Benefit of Title Exam- No Title Opinion Provided]

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **QUIT-CLAIM DEED**

Whereas, by that certain *Master's Deed* recorded in the Office of the Register of Deeds for Richland County on January 22, 2014 in Record Book 1922, at Page 1520, the Master in Equity for Richland County sought to convey the ownership interests of 1634 Main L.P. in the below-described real property to Shirley Hammer and the derivation in the legal description references an unrecorded deed to Howard Hammer; *however*, it appears there is no recorded deed to support the statement in the derivation which may cause confusion or a cloud on the title to the said real property; and,

Whereas, Howard Hammer denies delivery of a deed to him individually and that he further denies ever owning any interest individually in the said real property; however, in order to avoid any cloud on the title to the said property and to resolve any confusion as to ownership and to confirm transfer of fee title to HighTower, LLC as the Grantee herein named, this Deed is being delivered by Howard Hammer unto HighTower, LLC to convey any right, title or interest he may have, if any, in the said real property;

Accordingly, THIS DEED, executed on February ____, 2015, by *Howard Hammer, individually*, (hereinafter referred to as "*Grantor*") to *HighTower, LLC* (hereinafter referred to as "*Grantee*"), whose mailing address is 421 River Club Road, Lexington, South Carolina 2929072.

WITNESSETH:

IN CONSIDERATION of the sum of Five Dollars (\$5.00) and other valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, Grantor has granted, bargained, sold and released, and by this Deed grants, bargains, sells and releases, subject to the easements, restrictions, covenants, reservations and conditions referenced specifically or generally below, to Grantee, its successors and assigns, the following described properties (hereinafter collectively the "Property"):

All Right, Title, and Interest of the undersigned in and to:

1634 Main Street, Columbia, SC 29201
Parcel "A" and Parcel "B" – Collectively Containing 0.50 Acres
Plat Prepared by Cox and Dinkins, Inc. dated February 5, 1996
County of Richland, State of South Carolina
TMS #09014-04-19

See *Exhibit "A"* attached hereto and incorporated herein by reference.

THIS conveyance is made subject to all covenants, restrictions, easements, rights-of-way, and other matters of record, and such matters as would be shown by a current plat and an inspection, affecting the within-described property, including without limitation matters shown on the plat(s) referenced in *Exhibit "A"*.

Quit-Claim Deed – Howard Hammer to HighTower, LLC – 1634 Main Street [cont.]

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

SUBJECT TO the easements, restrictions, covenants, reservations and conditions referenced specifically or generally above, Grantor covenants to warrant and forever defend all and singular said property unto Grantee, its successors and assigns, from and against Grantor, his heirs and assigns, whomsoever lawfully claiming the same, or any part thereof, and no others.

IN WITNESS WHEREOF, Grantor has caused this Deed of Real Property to be executed as of the day and year first above written.

*Signed, sealed and delivered
in the presence of:*

Witness #1 Signs Here

_____(SEAL)
Howard Hammer

Witness #2 Signs Here/Can Also Be Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, _____, Notary Public for the State of South Carolina, do hereby certify that **Howard Hammer, individually**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2015.

_____(L.S.)
Notary Public, State of South Carolina
My Commission Expires: _____

[Legal Description Follows on Next Page]

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property, as described in Exhibit A [1634 Main Street, Columbia, SC 29201, TMS #09014-04-19], is being transferred by Howard Hammer unto HighTower, LLC.
3. Check one of the following: The Deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because it is a transfer of real property by QUIT-CLAIM DEED and no consideration paid thereunder.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The Deed Recording Fee is computed as follows:
 - (a) \$ 0.00 the amount listed in item 4 above.
 - (b) \$ 0.00 the amount listed in item 5 above (if no amount, place zero).
 - (c) \$ 0.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. The Deed Recording Fee due is based on the amount listed on Line 6(c) above, and the Deed Recording Fee due is \$ 0.00 .
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
 Grantor .
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this _____
day of _____, 2015

Notary Public for South Carolina
My Commission Expires: _____

Howard Hammer (SEAL)

EXHIBIT 22

Amy Westbrook

From: Desa Ballard <desab@desaballard.com>
Sent: Wednesday, February 11, 2015 1:42 PM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan; Beth Cogan; Mara Ballard
Subject: RE: Settlement Agreement with db changes 2-11-2015

Yes, there is. I intended to cross out that sentence about 4-30-2015.

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Wednesday, February 11, 2015 12:09 PM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: RE: Settlement Agreement with db changes 2-11-2015

Desa,

I just want to make sure I am clear on one of your changes and yesterday's emails. In paragraph number "2" of the Settlement Agreement revised by you, you include a payment deadline of this Friday, February 13th. Yet, in the same paragraph, you modified, but left in the following: "At any time before April 30, 2015, the undersigned parties to this Agreement agree that that HASCI and/or Alvin Hammer may pay the stated consideration and effect transfer of title to the real property to HASCI, LLC."

The quoted sentence, to me, is inconsistent with a 2/13 payment deadline. I don't have any idea why the quoted sentence would be modified and left in the Settlement Agreement if Shirley's actual deadline is 2/13. It makes the 2/13 deadline ambiguous: In order to discuss with my client, I need to confirm if there is a payment deadline of 2/13.



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

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F: 803-744-1545
TBunch@robinsonlaw.com
v-card

Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900

 **MERITAS LAW FIRMS WORLDWIDE**

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Wednesday, February 11, 2015 9:52 AM
To: Thomas W. Bunch, II; 'Keith Esquire M. Babcock (kmb@lbglegal.com)'
Cc: Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard
Subject: Settlement Agreement with db changes 2-11-2015

Please see the attached, which incorporates the changes (via track changes and comments function in Word) we are agreeable to in order to conclude this settlement. There is no need for a contract of sale, because we are not selling the property, we are transferring it to Howard's designee in exchange for payment of an agreed-upon sum by way of settlement. I have not yet reviewed the proposed quit claim deeds that Alan Fulmer sent, but I'm moving to that next.

We had set several prior deadline dates, none of which was met, and we have been forced to keep this settlement offer alive despite it supposedly having deadlines. I tried to have it done by 2-9, but you pointed out that everyone was busy, etc. so I agreed to your suggested deadline of 2-13-2015, and specifically pointed out that extending the time yet again required consummation and payment of money by 2-13-2015.

I am not trying to be difficult, but I have dealt with Howard long enough that I know he has something up his sleeve and I'm trying to protect Shirley as best I can.

You will note that this version requires HASCI to pay all property taxes for all years; your draft and what you said at the last hearing was trying to force Shirley to pay the property taxes that came due during her ownership of the property and that was not agreeable. The discount settlement price of \$525K, which is far too little and was supposed to be a "today only" offer more than a month ago, cannot require Shirley to have any financial obligation other than Turbeville.

Please review this and I'll review the proposed quit claim deeds and get them back to Alan right away so we can get this matter concluded on Friday.

db

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EXHIBIT 23

Amy Westbrook

From: Desa Ballard <desab@desaballard.com>
Sent: Friday, February 13, 2015 4:47 PM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Allan Fulmer Jr; Beth Cogan; Mara Ballard
Subject: RE: Hammer update

You can make a new offer, but the \$525K is off the table. I do want to settle this but we simply can't deal with the continuous delays. That has been a problem from the beginning. That's why we have had deadlines on the \$525. It was supposed to be a one-day only offer when we were at the courthouse on 1-24-2015, and somehow it got stretched to a month. We're done with that offer.

If you want to make an offer I'll take it to Shirley. However, we have to move forward.

Have a good weekend.

db

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Friday, February 13, 2015 4:39 PM
To: Desa Ballard
Cc: Keith M. Babcock; Allan Fulmer Jr
Subject: Hammer update

Desa,

I wanted to give you an update on where we are regarding settlement. First, right after we spoke yesterday, I had to leave for the day. I started reviewing and revising the settlement agreement when I got back in today, but had other matters on my calendar today, including a mediation and meeting with a client for the last 2.5 hours in a Chapter 11 bankruptcy case of some importance. Thus, despite my best intentions as of yesterday's conversations of getting something to you today, I am not at that point. Second, although I understand that Alvin is willing to pay the \$25,000 we discussed yesterday, he is only willing to do that when we have a signed agreement and real estate contract.

As I was writing this, I see that you notified Judge Strickland that we have been unresponsive in meeting your deadlines and that your offers are withdrawn. I had planned on continuing to revise the documents over the weekend. If settlement is a dead issue, please advise so I do not further spend time on it.

Tommy



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

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F: 803-744-1545
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EXHIBIT 24

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

SHIRLEY HAMMER,

Plaintiff,

vs.

CASE NO. 2013-CP-40-6898

HOWARD HAMMER, et al.,

Defendants.

BEFORE THE HONORABLE JOSEPH M. STRICKLAND

DATE: March 27, 2015

TIME: 3:03 p.m.

LOCATION: Richland County Courthouse
1701 Main Street, Courtroom 2D
Columbia, South Carolina

REPORTED BY: ANGELA D. ZUVER,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

1 motion to appeal.

2 With reference to -- I think I've heard
3 everybody argue, okay, let's just ignore the
4 January 2014 order where Your Honor ordered
5 Mrs. Hammer to sell the property. They're tired of
6 that. They don't want to do that anymore. They
7 want you to order the property sold to HASCI. I'm
8 not sure where that comes from. That's not even
9 before this Court.

10 We are presently marketing the property
11 as Your Honor ordered us to do. We have an offer
12 that we have that we've counter offered to. I
13 don't know whether we're going to accept that offer
14 or not, but we're doing what we were told to do
15 under the order.

16 We have absolutely zero interest in
17 settling with Mr. Howard Hammer. The reason we are
18 here -- I want to make sure Your Honor understands
19 this. The reason we are here is because
20 Mrs. Hammer settled a family court matter with
21 Mr. Hammer in 2008. In 2009 he filed -- Mr. Howard
22 Hammer filed this case in circuit court to set
23 aside the settlement from the family court case in
24 2008.

25 So the last time we entered into a

1 settlement with Mr. Howard Hammer it led to six
2 years of litigation in the circuit court. We're
3 not going to enter into a settlement with
4 Mr. Howard Hammer. It's not going to happen. We
5 are going to comply with the Court's order. We're
6 going to sell the property, we're going to pay
7 whatever money is received in to the Court and
8 we're going to have our sanctions hearing at the
9 end of next week and we'll be done.

10 Thank you, Your Honor.

11 THE COURT: All right.

12 Mr. Babcock, Mr. Bunch, do you want to
13 say anything?

14 MR. BUNCH: No. I'll let Mr. Babcock
15 address it first.

16 MR. BABCOCK: First, Your Honor, I have
17 to talk about Ms. Ballard's comment about cooking
18 the books, was the phrase she used. Nobody has
19 intimated or indicated that something was going to
20 be done wrong by HASCI and I take great offense
21 that that would be stated here.

22 THE COURT: While you're doing that I
23 would remind all of us to remember our civility and
24 cooking the books is kind of a pejorative or
25 negative term. And I'm not even sure what it

Amy Westbrook

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, February 3, 2015 10:54 AM
To: Thomas W. Bunch, II
Cc: Keith M. Babcock; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard
Subject: RE: Status

Ok, I'll go with the 13th, 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



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

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Columbia, South Carolina 29202
P: (803) 779-8900

 MERITAS LAW FIRMS WORLDWIDE

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Tuesday, February 3, 2015 10:16 AM
To: Thomas W. Bunch, II; 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 9th, 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, copy to mara@desaballard.com

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EXHIBIT 21

Amy Westbrook

From: Thomas W. Bunch, II
Sent: Monday, February 9, 2015 3:36 PM
To: 'Desa Ballard'
Cc: 'Keith M. Babcock'; 'Allan Fulmer Jr'
Subject: Hammer settlement docs
Attachments: [1516419] QCDeed-HowardHammer to HighTowerLLC-2015-TO SIGN.pdf; QCDeed-ShirleyH to HighTowerLLC-2015-TO SIGN.pdf; QCDeed-1634MainLP to HighTowerLLC-2015-TO SIGN.pdf; Contract of Sale to HASCI.pdf; Settlement Agr. signed by Howard, Alvin & HASCI.pdf

Desa,

Hope you are well. Attached are the following:

1. A Settlement Agreement signed by Howard Hammer, Alvin Hammer and HASCI, LLC.
2. A Contract of Sale to sell the property to HASCI. This was just finalized a short while ago, so it does not yet have signatures.
3. Quitclaim Deed from Shirley.
4. Quitclaim Deed from 1634.
5. Quitclaim Deed from Howard.

We are working on a title policy and hope to have that finalized today. Unless something comes up that I am not aware of, I hope issuing a commitment will not be a problem. Allan Fulmer, Jr. was retained by HASCI to handle the real estate aspects of this transaction so he is copied on the email. He asked that I convey to you that the deeds might need to be worked on some, but I am forwarding to you so you will see where we are going with the structure of the closing.

Tommy



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

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P: (803) 779-8900

 **MERITAS' LAW FIRMS WORLDWIDE**

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

)

)

)

)

)

2

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

;

1

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 HASCI, 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,

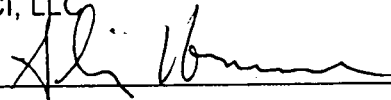
challenge, invalidate, modify or vacate this agreement or any orders of dismissal referenced in this agreement, or any judgments or orders previously issued in the above captioned cases by any judge(s) in any court, including but not limited to, any arguments concerning public policy grounds or any other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

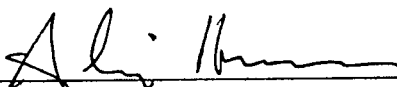
15. No party has been promised anything in connection with his/her execution of this agreement other than the terms set forth herein.
16. The signatures of the undersigned reflect that this agreement is entered into voluntarily by the parties, that all parties understand the effect of this agreement, 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.

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 (10th) 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 (10th) 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