

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
William C. Tindal, Special Referee

(Opinion No. 2015-UP-306 (S.C. Ct. App. Filed June 24, 2015))
Appellate Case No. 2015-001959

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S.C. Supreme Court

Ned Gregory, Jr., Respondent,

v.

Howell Jackson Gregory and the Gregory Company, Inc., and the City of Lancaster,
Defendants.

Of Whom Howell Jackson Gregory, The Gregory Company, Inc. are the Petitioner

**REPLY TO RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

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In the Supreme Court

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Court of Common Pleas

William C. Tindal, Special Referee

Court of Appeals Opinion No. 2015-UP-306
Appellate Case No. 2015-001959

On Petition for a Writ of Certiorari
to the South Carolina Court of Appeals

Ned Gregory, Jr.....Respondent,

v.

Howell Jackson Gregory and
The Gregory Company, Inc.,.....Petitioners.

REPLY TO RETURN
FOR A WRIT OF CERTIORARI

Petitioners submit the following reply to the return for a writ of certiorari pursuant to Rule 242(g) Certiorari to the Court of Appeals of the Appellate Court Rules.

1. This case is an equity matter.
2. Petitioners are reminded of the movie “Cool Hand Luke” wherein the warden tells the chain gang prisoner “what we have here is a failure to communicate” in reviewing this file in preparation for the appeal.
3. Also, this appeal is a consolidation of two cases even though the caption does not reflect that, to wit: Horry County matter (a partition suit begun in Lancaster in 2000 and moved to Horry in 2002 resulting in two orders in 2006 by then Master-in-Equity Cross

awarding offsetting judgments; however, due to the clerk of court error in 2008 only the Respondents judgment was noted in the transcript of judgment and since those orders were not appealed became the law of the partition case) and the Lancaster County matter (a suit to set aside the Cross deed of the Lancaster real estate to The Gregory Company, Inc., but based upon the erroneous judgment amount reported by the Horry clerk in 2008 ((R. 33)) and not presented to the court by Respondent until a hearing in 2012).

4. That Lancaster County Special Referee Tindal allowed Petitioners leave of court to get a correction in 2012 in Horry County of the erred transcript of judgment and an amended transcript of judgment was prepared by the Horry clerk (R. 36) correctly accounting for the offsetting judgments as per the 2006 Cross orders (R. 2-5), but two checks still remained to be accounted for and since they were made payable to the Horry County Master in Equity Office the Horry clerk needed an order to further modify the judgment amount.

5. That the successor Horry County Master-in-Equity Howe in 2013 in open court did reduce the judgment amount by the total of the two checks (R. 37) when Respondent conceded them; however, Howe subtracted the \$7,597.03, two checks total, from the erred transcript of judgment not the amended one thus leaving the partition matter judgment amount still in question as the Howe order of 2013 (R. 21) failed to comply with the Cross orders of 2006. Therein lies the issue on appeal as no final judgment has been rendered in the partition matter which is the basic money issue sought in the Lancaster suit to set aside the Cross deed (R. 130-133) by Respondent.

6. To further complicate matters the successor Master-in-Equity Howe violates Rule 63, SCRCF when she by not accepting the clerks amended transcript of record based on the

two Cross Orders of 2006, the law of the partition case, she in essence changes those orders and a subsequent judge in the same court cannot do this. See Charleston County DSS v. Father, et. al., 317 S.C.283, 454 S.E.2d 307, 312 (1995). See (R. 147).

7. In those 2006 Cross orders is an amount (\$7,940.00) that Respondent conceded at trial that was what Petitioner paid to remove the gas tanks from the Lancaster real estate and to date the judgment has not been reduced by that amount. So, in equity a conceded amount in 2006 should be allowed just as a conceded amount in 2013 as they represented entirely two separate matters in the partition case.

8. Respondent has been aware of this inconsistency by the Howe court based upon the erred transcript of judgment and not willing to tell the court of the error and failure to recognize the clerks corrected document leads one to believe that this officer of the court as long as things are going to his best interest will stay mum. This is not one seeking equity doing equity and this is the basis of the appeal in this equity matter.

9. Furthermore, Respondent when in receipt of the erred transcript of judgment in 2008 did not produce it until a hearing in 2012 with the Lancaster Special Referee which shows a recalcitrant attitude toward doing the right thing as should be the standard in all equity matters. Now, since the Court of Appeals consolidated both of these cases to be heard on appeal you cannot overlook the activity in the Horry court and say that the issue was not preserved as the consolidation makes the Horry issue of a non final judgment the issue that Lancaster Special Referee has been waiting on before he concludes.

10. Respondent argues “unceasing stalling tactics designed to forestall the course of justice” by Petitioners, but the real truth of the matter is the failure to communicate by Respondent. And, the irony created when Respondent did communicate was that the

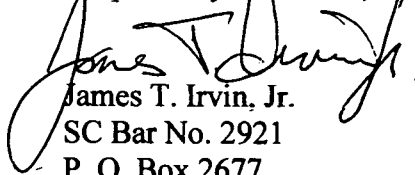
conceded sum in 2006 with Cross for \$7,940.00 has not been credited off the judgment sum to date; however, a conceded sum in 2013 with Howe for \$7,597.03 has been credited off the judgment sum and the Cross orders were not appealed.

11. In this equity matter there can be no conclusion or final judgment until all of the conceded sums are credited and this issue has been preserved from the partition case to the Court of Appeals and was obviously overlooked by the court.

12. That this petition does have merit as in equity all the maxims are controlling and until equity is applied to the facts in this case there can be no final judgment here and thus no lien until a final judgment is rendered. The failure of the court to apply the full and complete intent and rulings of the two 2006 Cross orders; he listened to the facts and made an equitable judgment in a partition case which has yet to be honored. As the law of the case in an equity matter to deny its relief is the stall in the quest for justice.

13. Grant the petition for the writ of certiorari as equity demands it.

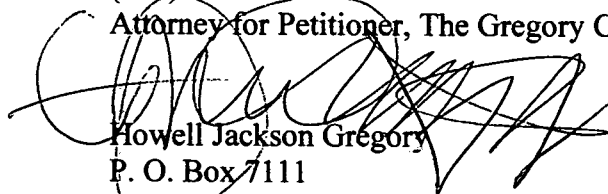
Respectfully submitted,



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October 8, 2015

THE STATE OF SOUTH CAROLINA
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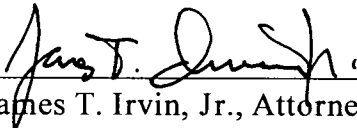
v.

Howell Jackson Gregory and the Gregory Company, Inc., and the City of
Lancaster, Defendants.

Of Whom Howell Jackson Gregory, The Gregory Company, Inc. are the Petitioner

PROOF OF SERVICE

I certify that I have served one copy of the Reply to Return to Petition for Writ of
Certiorari on Palmer Freeman by depositing a copy of it in the United States Mail, postage
prepaid, on October 9th, 2015 addressed to Palmer Freeman, P.O. Box 8024, Columbia,
29201, Attorney for Respondent.


James T. Irvin, Jr., Attorney for The
Gregory Co., Inc., Appellant