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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William E. Tindal, Special Referee

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

Ned Gregory, Jr., Respondent,

v.

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

Of whom Howell Jackson Gregory, The Gregory Company, Inc. are the Petitioners.

APPENDIX

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Other Counsel of Record:
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Attorney for Respondent

The South Carolina Court of Appeals

Ned Gregory, Jr., Respondent,

v.

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

Of whom Howell Jackson Gregory and The Gregory
Company, Inc., are the Appellants.

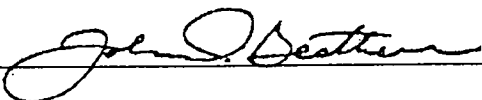
Appellate Case No. 2013-002370

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



Paula A. Thomas J.


John D. Beatty J.


John D. Beatty J.

Columbia, South Carolina

FILED

August 20, 2015

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.

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

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

MOTION FOR REHEARING

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

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Appellant Pro Se

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE
COURT OF APPEALS OF SOUTH CAROLINA:

For reasons given below, Appellants move to review the decision of the said Court of Appeals dated and filed June 24, 2015 via a rehearing under Rule 221, SCRAP.

BACKGROUND

(The 2000 Partition suit with Horry County Master-in-Equity J. Stanton Cross, Jr.)

Even though judgment was entered against Howell Jackson Gregory in favor of Ned Gregory, Jr. by Horry County Master-in-Equity J. Stanton Cross, Jr. on April 25, 2006 (two orders, includes the Nunc Pro Tunc Order dated August 10, 2006 for April 25, 2006) the final judgment amount has not yet been properly calculated by the court as the Horry County Clerk of Court failed to reduce the Respondent's award by the credits awarded Appellant causing the transcript of judgment amount to be off by \$25,517.99 and not as ordered by trial judge Cross of this partition action after weighing the equities in the matter and finding that Howell Jackson Gregory who proved the sums that he paid were not contributed toward by Ned Gregory, Jr. was entitled to a total credit of \$25,517.99 against the award to Ned Gregory, Jr. That sum includes an amount of \$7,940.00 that was actually conceded at trial in 2004 by Ned Gregory, Jr. and his counsel, Clifford Welsh for payment of the removal of the gas tanks from a Lancaster property.

(The erred Transcript of Judgment by the Horry County Clerk of Court in 2008)

On June 10, 2008 the Office of Melanie Huggins, Horry County Clerk of Court issued a transcript of judgment for Respondent, Ned Gregory, Jr. which was in error, but the error was not detected until February 7, 2012 at a hearing in Lancaster with the Special

Referee when it was initially presented there to Appellant. Special Referee Tindal could not rule on the erred transcript of judgment as it had come from the partition matter in Horry County and any corrections to be made had to come from Horry County.

(The 2008 Lancaster suit to set aside the Cross deed of the Lancaster tract)

Respondent's suit in Lancaster County to set aside the deed of the Lancaster tract by Master-in-Equity J. Stanton Cross, Jr. to The Gregory Company, Inc. was put on hold by Special Referee Tindal on February 7, 2012 in order that the transcript of judgment dated June 10, 2008 be dealt with in the Horry County Master-in-Equity Court as Special Referee Tindal had no jurisdiction over the amount of the judgment.

(The 2012 and 2013 Motions in Horry County to correct the erroneous judgment)

Since the erred June 10, 2008 Transcript of Judgment issued by the Horry County Clerk of Court there has been an effort from 2012 on by Appellant to have the error by the clerk corrected as the judgment amount in this matter is not final and that issue was presented to the Horry County Master-in-Equity Court in 2012 and 2013 and is a preserved issue on the appeal of that matter which was consolidated with the 2008 case brought by Ned Gregory, Jr. against Howell Jackson Gregory in Lancaster County to have the Master-in-Equity deed set aside for failure to pay the non final judgment which causes the amount including interest to be an extortion attempt by Respondent against the Appellant until the correct judgment amount is finally calculated to become a final judgment.

Appellant's first issue on appeal (A) deals with the Horry County matter of the attempt to have the Appellant's credits calculated into the judgment amount and with the consolidation of those cases (2000 Horry partition and 2008 Lancaster deed set aside) on

appeal on February 25, 2014 by the order of the South Carolina Court of Appeals along with the transmittal letter stating that the consolidated caption for the appeal of the two cases would use the 2008 Lancaster caption with case no. 2013-002370 to include the Horry case with case no. is 2013-002443 (Copy of order and letter attached – pgs. 9, 10) and with only one record on appeal.

It appears from the June 24, 2015 Order of this Court that the appeal from the original 2000 partition action from Horry County of the subsequent motions to correct the erred judgment amount was not considered by the Court as it was properly appealed and consolidated with the Lancaster County 2008 suit to set aside the Master-in-Equity deed to The Gregory Company, Inc. and preserved the non-final judgment issue that this Court said was missing in the said Order. The entire effort by Appellants before the successor Master-in-Equity, Cynthia Graham Howe in 2012 and 2013 was to have the erred judgment amount corrected to include the credits ordered by the trial judge Master-in-Equity, J. Stanton Cross, Jr. to become a final judgment instead of remaining a non-final judgment. The issue of non-final judgment was actually preserved at the trial level.

ARGUMENT

This Order dated June 24, 2015 (pgs. 11-13) must be reviewed and modified to reflect the Appellant's issue of non-final judgment and restore equity to the case at bar.

The trial judge in the 2000 partition action was the Horry County Master-in-Equity, J. Stanton Cross, Jr. During the trial Respondent and his counsel conceded the sum of \$7,940.00 in favor of Appellant, Howell Jackson Gregory for his payment of that sum to remove the gas tanks from the Lancaster property and that Ned Gregory, Jr. did not

contribute towards. In the April 25, 2006 Order of Judge Cross this concession was ordered. Also ordered was any other sums including taxes that Howell Jackson Gregory could prove that Ned Gregory, Jr. did not contribute towards the benefit of the two properties subject of the partition action. Howell Jackson Gregory did prove to Judge Cross two other payments he made in that category, to wit:

- a) Horry County taxes on the Myrtle Beach home for three years (2002, 2003 and 2004) amounting to \$4,077.99 and
- b) New roof on the Lancaster commercial building amounting to \$13,500.00.

The total credits that Judge Cross awarded Howell Jackson Gregory amounts to the sum of \$25,517.99; however, not yet have those credits been computed against the judgment sum in the subsequent court records for Ned Gregory, Jr. and thus an erroneous and/or non-final judgment exists in the matter on appeal preserved from the Horry County partition post trial motions matter on appeal in this consolidated appeal.

The three orders of the successor Master-in-Equity for Horry County include a conceded amount at a hearing in 2013 by Ned Gregory, Jr. and his counsel Palmer Freeman of two checks totaling \$7,597.03 that were paid to Master-in-Equity Cross on August 9, 2006 by Howell Jackson Gregory and Clifford L. Welsh for the benefit of Howell Jackson Gregory and that sum has reduced the non-final judgment amount by that amount already. Those two checks were paid to Judge Cross on August 9, 2006 the day before his Nunc Pro Tunc Order of August 10, 2006 for April 25, 2006.

Further, the successor Master-in-Equity Cynthia Graham Howe admitted in open court at one hearing to Appellant's question "Is the Court taking judicial notice of the fact that the Clerk of Court's office created an error on the June 10, 2008 transcript of judgment?" Answer: "Yes, Sir..." (T. 124, ll. 13-17). Also, in argument Appellant advised the Howe

Court "Since you have acknowledged the transcript of judgment of June 10, 2008 is in error, the whole purpose of me coming to this Court (Horry County Master-in-Equity post trial motions) was to clear up the error." (T. 127, ll 13-15).

Further, successor Master-in-Equity Cynthia Graham Howe failed and refused to give any credit to the trial Master-in-Equity J. Stanton Cross, Jr.'s two April 25, 2006 orders and by doing so she violates Rule 63, SCRPC by her inaction she changes the intent and holding in those orders which she cannot do. Therefore the Cross orders should be held out as the law of the partition case and the proper credit calculations be made.

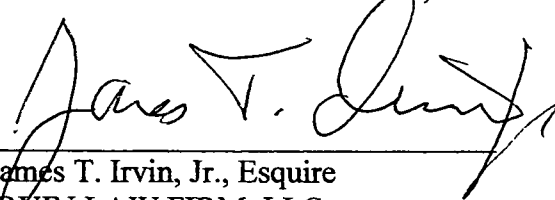
In addition to the first issue on appeal (A) dealing with the erred transcript of judgment the third issue on appeal (C) further questions the ability of Respondent who obtains a faulty transcript of judgment to use same to ask the Lancaster court to set aside a deed from the Horry County Master-in-Equity who tried the partition case, ordered the credits due Appellant, yet Respondent knowing of the conceded sum at trial and the erred judgment issued by the Horry Clerk of Court uses the June 10, 2008 erred transcript of judgment as the basis for his lawsuit, but waits nearly four years to reveal the erred document at a hearing in Lancaster on February 7, 2012. This issue also comes from the Horry County partition case as it hinges on the amount of the judgment which is in error.

Since the two orders of the trial judge of the partition action dated April 25, 2006 (T. 2-5) were not appealed then they become the law of the case and the credits should and must be protected and the erroneous and/or non-final judgment reduced further from \$40,550.44 by applying the credit of \$25,517.99 to now become a final judgment of \$15,032.45.

CONCLUSION

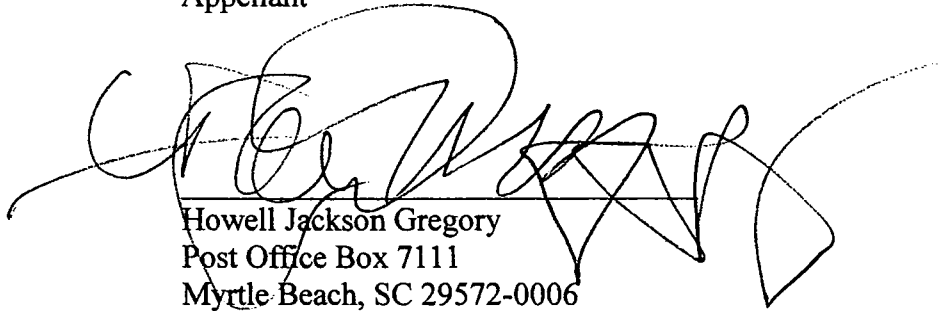
Recognize that the consolidation of the two cases by the Court allowed Appellants to combine the issues on appeal dealing with both cases. Issues A & C from the Horry case as the erroneous transcript of judgment issued by the Horry County Clerk of Court in 2008 was the monetary thrust of the 2008 Lancaster suit to set aside the deed. The actual document of the erred judgment (T.33) was not attached to the lawsuit complaint by Respondent and was not actually seen by Appellants and counsel until February 7, 2012. Why Respondent secreted the document for nearly four years still remains a mystery to date; however, speculation would dictate that four more years of interest on the exorbitant judgment amount as it did not account for the credits due Appellant would generate more money for Respondent in an extortion attempt. In an effort to be fair and as this is still an equity action weigh the equities as Master-in-Equity J. Stanton Cross, Jr. did using all the equitable maximums applicable and reduce the \$40,550.44 by \$25,517.99 to render a final judgment amount of \$15,032.45. Also, by applying equity begin interest from the final judgment date not to include any prior erroneous and/or non-final judgment interest.

RESPECTFULLY SUBMITTED,



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(843) 222-3228

Attorney for The Gregory Company, Inc.
Appellant

A large, stylized handwritten signature in black ink, appearing to read 'Howell Jackson Gregory', is written over a horizontal line.

Howell Jackson Gregory
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(843) 222-4800
Pro Se Appellant

Myrtle Beach, SC
July 6, 2015



The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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February 25, 2014

Howell Jackson Gregory
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Mr. Palmer Freeman, Jr., Esquire
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Re: Ned Gregory v. Howell Jackson Gregory AND Ned Gregory, Jr. v. H.
Jackson Gregory(2)
Appellate Case No. 2013-002370

Dear Counsel:

Please see the attached orders regarding the motions filed with this Court. The matter titled "Ned Gregory v. Howell Jackson Gregory (2)" (case no. 2013-002443) has now been consolidated with the matter titled "Ned Gregory v. Howell Jackson Gregory" (case no. 2013-002370). All future filings in this consolidated matter shall use the caption as shown on the attached order for case no. 2013-002370, and this Court anticipates receiving one record on appeal.

Counsel for the respondent is advised that the respondent's initial brief and designation of matter shall be served and filed no more than thirty days from the date of this letter.

Very truly yours,


CLERK

The South Carolina Court of Appeals

Ned Gregory, Jr., Respondent,

v.

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

Of whom Howell Jackson Gregory is the Appellant.

Appellate Case No. 2013-002370

ORDER

After careful consideration, the motion to dismiss is denied.

Additionally, the motion to consolidate this case with Appellate Case Number 2013-002443 is granted.


FOR THE COURT

Columbia, South Carolina

cc:

Howell Jackson Gregory
Palmer Freeman, Jr., Esquire
James T. Irvin, Jr., Esquire
Jeff L. Hammond

FILED
2/25/14

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 Court of Appeals

Ned Gregory, Jr., Respondent,

v.

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

Of whom Howell Jackson Gregory and The Gregory
Company, Inc. are the Appellants.

Appellate Case No. 2013-002370

Appeal From Lancaster County
William C. Tindal, Special Referee

Unpublished Opinion No. 2015-UP-306
Submitted June 1, 2015 – Filed June 24, 2015

AFFIRMED

Howell Jackson Gregory, of Myrtle Beach, pro se.

James T. Irvin, Jr., of Irvin Law Firm, LLC, of Myrtle
Beach, for Appellant The Gregory Company, Inc.

Palmer Freeman, Jr., of Whetstone Perkins & Fulda,
LLC, of Columbia, for Respondent.

PER CURIAM: Howell Jackson Gregory and The Gregory Company, Inc. (the Company) (collectively, Appellants) appeal the special referee's order finding (1) a notice of lis pendens was properly filed; (2) a conveyance of real property to the Company was void under section 27-23-10 of the South Carolina Code (2007); (3) Ned Gregory, Jr. held judgments of \$37,490.44 plus interest and \$3,060 plus interest against Howell Jackson Gregory; and (4) the real property should be sold at auction with the proceeds used to pay the judgments.¹ Appellants argue the special referee erred in (1) ordering the sale of real property to satisfy the judgments, which Appellants claim are non-final judgments, (2) finding the notice of lis pendens was properly filed, and (3) finding the conveyance void under section 27-23-10. We affirm.

1. Appellants have not preserved the issue of whether the special referee erred in ordering the sale of the property to satisfy judgments that Appellants argue are non-final. *See B & A Dev., Inc. v. Georgetown Cnty.*, 372 S.C. 261, 271, 641 S.E.2d 888, 894 (2007) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

2. The notice of lis pendens was properly filed. *See* S.C. Code Ann. § 15-11-10 (2005) ("In an action affecting the title to real property the plaintiff (a) not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby."); *Lebovitz v. Mudd*, 293 S.C. 49, 54, 358 S.E.2d 698, 701 (1987) (holding a notice of lis pendens was properly filed because "[a]n action to set aside a fraudulent conveyance is one 'affecting title to real property'").

3. The special referee did not err in finding the conveyance void under section 27-23-10. *See* § 27-23-10 ("Every gift, grant, alienation, bargain, transfer, and

¹ Howell Jackson Gregory also filed a notice of appeal from an Horry County Master-in-Equity's order denying his motion to alter or amend a judgment under Rule 59(e), SCRCP; however, he did not raise any issues relating to that order in his statement of issues on appeal.

conveyance of lands . . . made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken . . . to be clearly and utterly void, frustrate and of no effect"); *Albertson v. Robinson*, 371 S.C. 311, 317, 638 S.E.2d 81, 84 (Ct. App. 2006) (stating a conveyance may be set aside under section 27-23-10 if the creditor establishes, "(1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt").

AFFIRMED.²

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.

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

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

PROOF OF SERVICE

I certify that I have served the Motion for Rehearing with supporting authorities on Palmer Freeman, Esquire by depositing a copy of it in the United States Mail, with sufficient postage prepaid on July 7, 2015 addressed as follows, to wit:

Palmer Freeman, Esquire
P. O. Box 8024
Columbia, SC 29201


IRVIN LAW FIRM, LLC
P. O. BOX 2677
Myrtle Beach, SC 29578-2677
(843) 445-6200

July 7, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr.,.....Plaintiff/Respondent,

v.

Howell Jackson Gregory and
The Gregory Company, Inc.....Defendants/Appellants.

RECORD ON APPEAL

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Attorney for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO: 2000-CP-29-896

NED GREGORY, II

PLAINTIFFS,

VS.

ORDER OF REFERENCE
WITH FINALITY

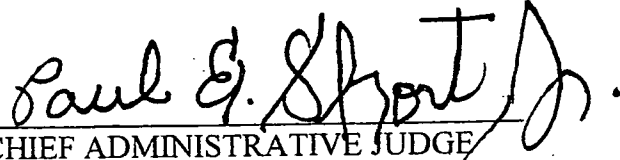
HOWELL JACKSON GREGORY

DEFENDANTS.

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OFFICE OF CLERK
OF COURT
2001 OCT 12 A 10:45
CLERK OF COURT
LANCASTER COUNTY, S.C.

IT IS ORDERED, ADJUDGED AND DECREED that the issues hereby be, and the same hereby are, referred to Stanley Cross to take the testimony in this case and to report the same together with his findings of fact and conclusions of law, and together with any special matter, with all convenient speed with authority to enter a final judgment in this cause with any appeal to be made directly to the South Carolina Supreme Court.

AND IT IS SO ORDERED.


CHIEF ADMINISTRATIVE JUDGE
SIXTH JUDICIAL CIRCUIT

October 12, 2001
Lancaster, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER: 2002-CP-26-1706

NED GREGORY, JR.)
Plaintiff,)
vs.)
H. JACKSON GREGORY,)
Defendant.)

ORDER

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CLAY COUNTY
2006 APR 25 PM 4:09

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/

This Order follows Hearings held before this Court on February 16, 2006 and on March 17, 2006. These Hearings were held to address the issues of rent on the Myrtle Beach property, the accounting between the parties, Defendant's failure to comply with his bid on the Lancaster property from the June, 2005, sale, and the re-sale of the Lancaster property.

Addressing the issue of rent, it appears we are talking about a period of fifty-five (55) months of rent the Defendant owes on the Myrtle Beach property. This is the period of time from when the Defendant moved into the Myrtle Beach property fulltime in September 2000, until the property sold at Auction on May 2, 2005. The Plaintiff presented the Court with expert testimony stating the rental value of the subject property was between \$1,500.00 and \$1,800.00 per month. The Defendant testified the property was uninhabitable and therefore had no value. However, the Defendant and his wife and at times his daughter, lived in the structure throughout the period in question. Therefore, the Court finds that the Defendant should pay the Plaintiff rent for the fifty-five (55)

months he maintained exclusive possession of the Myrtle Beach house, in the amount of Twenty Thousand Nine Hundred (\$20,900.00) Dollars.

The accounting issue has been greatly simplified by the parties in that there was not any evidence introduced to contradict the accounting presented by the Plaintiff. After reviewing the accounting done by the Plaintiff for the period of June, 1992, through June 30, 2005, the Court finds that the Plaintiff spent his own funds for necessary and proper expenses in the upkeep of the subject property, without contribution by the Defendant, in the amount of Twenty One Thousand Nine Hundred Fifty Nine & 47/100 (\$21,959.47) Dollars, for which he is entitled to be reimbursed by the Defendant.

3/2 The Defendant is entitled to a setoff to the amount expended by the Plaintiff, of any funds that he can prove that he contributed, without contribution from the Plaintiff. It is conceded that Defendant spent Seven Thousand Nine Hundred Forty (\$7,940.00) Dollars to remove the gas tanks from the Lancaster property. The only other contribution by the Defendant was for real estate taxes for the Myrtle Beach house. The Defendant will be given credit for any real estate taxes he paid on the Myrtle Beach property for the years 2002, 2003 and 2004, if paid receipts are produced.

The Lancaster property sold at Auction on June 6, 2005, to the Defendant. To date, the Defendant has not complied with his bid. Therefore, the property must be resold. The Defendant must pay the costs from the June, 2005, sale. This includes the cost of publications (\$528.23) and the Special Referees Commission (\$1,700.00) Dollars. This totals Twenty Two Hundred Twenty Eight & 23/100 (\$2,228.00) Dollars to be paid within ten (10) days from the date of this Order to counsel for the Plaintiff.

The Lancaster property shall be readvertised and sold by the Special Referee in Lancaster County. Because of the Defendant's failure to comply with his bid made during the June, 2005, sale, if the Defendant is the successful bidder, the bidding shall be suspended until the appropriate amount of cash is posted by the Defendant. If the Defendant does not immediately post the appropriate amount of cash, as required by the Special Referee, the bidding shall continue, until there is another successful bidder. After the successful bidder complies with the bid, the Special Referee shall deduct his commission and any costs he sustains and forward the remainder of the sale price to the undersigned.

IT IS SO ORDERED.

3

HONORABLE J. STANTON CROSS

April 25 2006

CERTIFIED COPY

STATE OF SOUTH CAROLINA 2012 SEP 21 PM 2:33

COUNTY OF HORRY *Lane Higgins-Ward*

NED GREGORY, JR., CLERK OF COURT
HORRY COUNTY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2002-CP-26-1706

Plaintiff,

-vs-

NUNC PRO TUNC ORDER

HOWELL JACKSON GREGORY,

Defendant.

This Order follows Hearings before this Court on February 16, 2006 and on March 17, 2006 and addresses certain matters not mentioned, but before the Court and mentioned items, but awaiting additional proof thereof as set forth in the Order of the Court dated April 25, 2006.

Addressing the amounts that the Defendant is entitled to setoff to the amount expended by the Plaintiff, of any funds that he can prove that he contributed, without contribution from the Plaintiff and in addition to the \$7,940.00 that Defendant paid for the removal of the gas tanks from the Lancaster property, the Defendant shall be entitled to setoff the cost he paid for the new roof to the Lancaster property in the amount of \$13,500.00. Also, Defendant shall be given credit for real estate taxes he paid on the Myrtle Beach property in the amount of \$4,077.99.

Since Defendant paid Ninety Three Thousand Nine Hundred Twenty Five (\$93,925.00) to this Court on April 28, 2006 prior to the readvertised 2006 sales date for this property, therefore it is cancelled. An additional sum amounting to \$7,597.03 is needed for interest due the Court to finalize the 2005 sale. Giving Defendant credit for the rent paid into the Court by the tenant of the Lancaster property amounting to \$2,500.00 during the year 2005, the Defendant now owes this Court \$5,097.03 as the interest balance on the bid he made at the 2005 sale.

IT IS SO ORDERED.

J. Stanton Cross, Jr.
HONORABLE J. STANTON CROSS, JR.
HORRY COUNTY MASTER IN EQUITY

NUNC PRO TUNC APRIL 25, 2006
July 8-10-2006
Conway, South Carolina

HORRY COUNTY
SEP 11 2011
CLERK OF COURT
MELANIE HUGHES

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE # 2008-CP-29-1084

Ned Gregory, Jr.,
Plaintiff,

-vs-

Howell Jackson Gregory, The Gregory
Company, Inc. and The City of Lancaster,

Defendants.

ORDER OF REFERENCE
TO SPECIAL REFEREE

FILED
OFFICE OF CLERK
OF COURT
2009 JUL 14 P 11:55
CLERK OF COURT
LANCASTER COUNTY

This matter appeared on the Common Pleas motion docket in Lancaster County on March 16, 2009 pursuant to two motions filed on behalf of the Defendants, Howell Jackson Gregory and The Gregory Company, Inc. That pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure the circuit court may upon its own motion refer this matter to a special referee who shall be as defined under Rule 53(a) a member of the South Carolina Bar and pursuant to the South Carolina Code Ann. Section 14-11-60.

NOW, THEREFORE, UPON MOTION OF THE UNDERSIGNED CIRCUIT JUDGE AT LARGE, SEAT 8, IT IS HEREBY ORDERED

That William C. Tindal, Esquire, member of the South Carolina Bar, be and he is hereby appointed as Special Referee in the captioned matter pending before this circuit court for the purpose of ruling on outstanding motions and he shall enter final judgment as to the causes of action presented in the case.

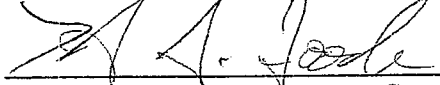
That Special Referee William C. Tindal shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

That compensation of Special Referee William C. Tindal shall be paid by the parties in such amount as shall be set by said special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

That any appeal from any order or judgment issued by Special Referee William C. Tindal shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

KENNETH G. GOODE


Circuit Court Judge at Large, Seat 8

June 30, 2009
Winnsboro, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

Ned Gregory,)
Plaintiff,)

vs.)

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

ORDER AND JUDGMENT

Case No.: 2008-CP-29-1084

FILED
2013 APR 30 PM 6
LANCASTER, SC

This case was referred to me on June 30, 2009. The referring order directs me to serve as Master and to rule "[O]n outstanding motions and enter final judgment as to the causes of action presented in the case."

A hearing on all motions and a trial on the merits of the case was held September 26, 2012. Plaintiff and his attorney, Palmer Freeman was present, as was Defendant Howell Jackson Gregory ("Jack Gregory"). Creighton Coleman appeared by telephone for The Gregory Company, Inc.

BACKGROUND

There is little dispute on the facts of this case.

I. THE ORIGINAL PROCEEDINGS AND JUDGMENT

Ned Gregory, Sr. died in 1985. He left his sons, Ned Gregory, II and Howell Jackson Gregory, equal undivided interests in a house and lot in Myrtle Beach, Horry County, South Carolina (the "Beach House") and adjacent commercial properties at 329 South Main St., 331 South Main St. and 104 Chesterfield Ave., Lancaster, Lancaster County, South Carolina (collectively the "Lancaster Properties").

In 2000, Ned Gregory filed suit to partition both properties, collect unpaid rent for Jack Gregory's use of the Beach House and for an accounting. The case was filed in Lancaster (Case No. 2000-CP-29-896), but was later referred to the Master-in-Equity for Horry County for final disposition. Horry County assigned it a new case number (Case No. 2002-CP-26-1706).

A. PARTITION SALE, TITLE AND RECORDING

In 2005, the Master ordered the auction of both properties. He appointed Robert Folks to auction the Lancaster Properties. On June 6, 2005, Folks auctioned the Lancaster Properties. Folks report of the sale states: "Mr. Jack Gregory bid in the Lancaster County property at the sale conducted this day as ordered for the sum of \$170,000."

Folks testified at the hearing. He confirmed the notice and also produced the directive from the Horry County Master regarding the sale. Under the terms of the order of sale, third party bidders were required to pay 5% down and comply with the terms of their bid within 30 days. Jack Gregory did not do either.

A final hearing on the remaining issues in the suit was held in 2006. A decision was rendered April 26, 2006. The Master's Order of April 26, 2006 noted: "The Lancaster County property sold at auction on June 6, 2005, to the Defendant [Jack Gregory]. To date, the Defendant has not complied with his bid. (Order of April 26, 2006, at p. 3)

On April 28, 2006, Jack Gregory paid the Horry County Master \$93,925 on the Lancaster bid. This was one-half of the \$170,000 bid, plus additional charges and interest assessed in the April 26 Order. The check was drawn on The Gregory Co., Inc.

In October 2006, James Irvin, Jack Gregory's attorney, prepared and sent the Master a deed to the Lancaster Properties. The deed recites that the property was sold "unto The Gregory Company, Inc." The deed later states: "TO HAVE AND HOLD, the said premises, with its hereditaments, privileges and appurtenances, unto the said parties of the second part, The Gregory Company, Inc."

The Master signed it on October 30, 2006 and returned it to attorney Irvin.

On November 6, 2006, Irvin filled out a recording affidavit about the transfer as required by the Lancaster Clerk of Court. Irvin swore that Jack Gregory had bid for the property and then assigned rights to it over to The Gregory Company, Inc.

The Master's deed was not recorded until June 4, 2008.

B. NED GREGORY'S JUDGMENTS AGAINST JACK GREGORY

In the order of April 26, 2006, the Master rendered judgment in favor of Ned Gregory for \$45,087.47. The transcript of judgment was offered as an Exhibit by Plaintiff.

On September 24, 2012, Jack Gregory filed a motion challenging the correctness of this judgment. Since this hearing, Jack Gregory's motion has been denied by the Horry Master, so the amount remains \$45,087.47 plus interest.

On May 27, 2006, a month after the Master's Order, Ned Gregory obtained a second judgment against Jack Gregory for \$3,060 in an unrelated case. The amount of this judgment is not disputed. It too was offered as an Exhibit by Plaintiff.

Ned Gregory has not recovered on either judgment. Jack Gregory testified at the hearing he did not have assets immediately available to satisfy either judgment.

Judgments entered in 2006 accrue interest at the rate of 11.25%, compounded annually.

II. THE CURRENT LAWSUIT

On September 19, 2008, Ned Gregory filed this suit against Jack Gregory, The Gregory Company, Inc., and the City of Lancaster. Before the hearing, the Plaintiff and the City announced they had resolved their dispute. The City therefore did participate in the subsequent hearing.

Since the City did not participate in the trial, I refer to Jack Gregory and The Gregory Company, Inc. as the Defendants in this Order.

The suit alleges that there was a transfer of title rights from Jack Gregory to The Gregory Company, Inc. and this was a fraudulent conveyance to defeat his judgments. Plaintiff also placed a Lis Pendens against the Lancaster Properties.

The Defendants answered the Complaint and counterclaimed. At the beginning of the hearing, the Defendants were granted permission to amend their Answers. These amendments resolved many of the issues in this case related to unauthorized representation of a corporation and requests for default judgments filed by both sides.

The Defendants also took the position that Plaintiff was not entitled to file a Lis Pendens.

The Defendants' Answers claimed that Ned Gregory's attorney, Clifford Welch, collaborated in preparing the Master's deed to The Gregory Company, Inc. However, neither Defendant offered evidence to support this argument. Welch testified by deposition. His deposition was introduced by Plaintiff. Welch testified that he did not receive a copy of the deed before or after it was signed and he did not approve of or know of the wording of that deed.

Plaintiff also offered the recording affidavit Irving prepared for the Lancaster County Clerk of Court. It states in relevant part:

The above transaction is exempt, or partially exempt from the recording fee . . . as this is a partition sale whereby the Court granted the property back to the defendant, Howell Jackson Gregory, who assigned his bid to his corporation, The

Gregory Company, Inc.

Jack Gregory testified at the hearing, that he was the sole owner of The Gregory Company, Inc. until March 16, 2007. He offered the minutes of the annual shareholders meeting of that day to show his wife and daughter received shares in the company for the first time that day.

Jack Gregory also testified he attended the Lancaster auction and bid for The Gregory Company, Inc. not for himself. He introduced the check used to pay for the property that was drawn on The Gregory Company.

Jack Gregory also testified that at present he did not have assets to satisfy the judgments against him, though he thought he could pay something if given time.

DECISION

As noted, many of the issues in this case are resolved. Two issues remain for my decision:

1. Is Plaintiff's Lis Pendens valid? and
2. Should title now in The Gregory Company, Inc. be set aside under The Statute of Elizabeth, Section 27-23-10, S.C. Code?

THE LIS PENDENS

The Defendants have made several motions challenging the validity of Plaintiff's Lis Pendens. I reviewed Defendants' arguments and determine Plaintiff's Lis Pendens is proper.

Lis Pendens are governed by Sections 15-11-10 through 15-11-50, S.C. Code. The Supreme Court addressed the issues raised by the Defendants in Lebovitz v. Mudd, 293 S.C. 49, 398 S.E. 2d 698 (1987).

In Lebovitz the Plaintiff sued alleging a fraudulent conveyance of property. He filed a Lis Pendens against the disputed property. The property owner challenged the Plaintiff's right to file a Lis Pendens. The Supreme Court ruled the lien was proper and held: "An action to set aside a fraudulent conveyance is one "affecting title to real property" and notices of lis pendens properly were filed against the subject property." 398 S.E.2d 698, 701.

Therefore Plaintiff's Lis Pendens is proper.

The Defendants' assertion that this is a third Lis Pendens is without merit. While there were other Lis Pendens filed, they were filed in the partition suit. Plaintiff filed the current Lis Pendens when he filed this fraudulent conveyance suit in 2008. It is the only Lis Pendens that has been filed in this case. It is appropriate under Lebovitz v. Mudd cited earlier.

THE STATUTE OF ELIZABETH

Section 27-23-10 S.C. Code, also known as the Statute of Elizabeth, states in relevant part:

Every ... conveyance of lands ... which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful ... debts ... must be deemed and taken ... to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

In Albertson v. Robinson, 371 S.C. 311 (SC Ct App, 2006), the Court of Appeals recounted what a plaintiff must prove to prevail in a fraudulent conveyance suit.

When there was a transfer of assets without consideration, the conveyance will be set aside in favor of a creditor, if the creditor shows the following three elements:

1. The grantor was indebted to the creditor at the time of the transfer.
2. The conveyance of the debtor's asset was voluntary by the debtor.
3. The grantor failed to retain sufficient property to pay the creditor.

371 S.C. 311, 317.

All of these elements exist in this case.

First, Jack Gregory owed Ned Gregory money at the time the deed for the Lancaster Properties was signed. In April 2006, Ned Gregory obtained a judgment against Jack Gregory. In May 2006, he obtained a second judgment against Jack Gregory. Neither judgment was appealed. Neither is paid. The deed conveying the Lancaster Properties was signed October 30, 2006. Jack Gregory was indebted to Ned Gregory before the deed was signed.

The Defendants' main argument goes to the second element. Defendants argue there was no transfer of ownership. They assert that Jack Gregory bid as a representative of The Gregory Company, Inc. at the Lancaster auction.

However it is my determination that Jack Gregory was bidding for himself at the Lancaster auction, not the Gregory Company, Inc. Several factors point to this.

First, Jack Gregory did not identify himself as an agent to Folks. Folks' report of the sale states that Jack Gregory individually bid for the property.

Second, a high bidder who was not a party to the suit was required to immediately pay 5% down and comply with the terms of their bid within 30 days of the auction. The high bidder here did neither. In addition, a high bidder who was not a party to the suit would have had to pay the full bid price of \$170,000. The high bidder here paid only one-half of that amount plus penalties and interest.

The use of a corporate check drawn on the Gregory Company does not alter this finding. The fact that a bidder uses third party funds to fulfill his bid does not show the bidder is an agent. In addition, at the time of the auction, Jack Gregory testified he was sole owner of all the assets of The Gregory Company, Inc. That being the case, the use of a corporate check does not prove agency.

The recitations in the Master's deed do not change my finding. The Master's deed was prepared by Jack Gregory and his attorney Jim Irvin, not the Master. They were solely responsible for its wording. Plaintiff's attorney Cliff Welch's uncontradicted testimony was that he was not shown this deed before it was sent to the Master and that he played no part in its preparation. The recitations in the deed indicating The Gregory Company, Inc. was the bidder were added by the Defendants over a year after the auction. The Defendants then did not record the deed until three years after the auction.

It is clear that Jack Gregory was the high bidder at the auction and I so find. Between June 5, 2005, and October 2006, Jack Gregory, assigned his right to receive a deed to the Lancaster Properties to The Gregory Company, Inc. This conveyance was an attempt to defeat creditors.

James Irvin's recording affidavit supports this finding as does the nineteen month delay in recording the deed.

My decision that there was a fraudulent conveyance is reinforced by findings of the South Carolina Supreme Court. In 2000, the Supreme Court found The Gregory Company, Inc. was controlled by Jack Gregory and had been used to hide assets. (See, In the Matter of H. Jackson Gregory (Opinion No. 25135, filed May 30, 2000 - "He [Jack Gregory] deposited it [client funds] into an account belonging to The Gregory Company, Inc., a company he controlled.") At the hearing, Jack Gregory testified that at the time the deed was prepared and signed by the Master, he still owned 100% of the stock in The Gregory Company, Inc.

As to the third element, Jack Gregory has no other assets or funds available to satisfy Ned Gregory's two judgments. He has paid nothing on the judgments and testified at the hearing on this case he was not able to pay them unless he was given "a little time." His only other asset, the Beach House, is fully mortgaged. Jack Gregory testified he is attempting to get this mortgage modified so he can afford to keep the property.

IT IS THEREFORE ORDERED:

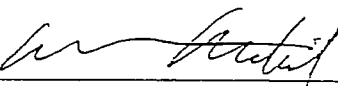
1. The Lis Pendens is proper.
2. The transfer of the right to receive the title for the Lancaster Properties located at 329 South Main Street, 331 South Main Street and 104 Chesterfield Avenue, from Jack Gregory to The Gregory Company, Inc. violates Section 27-23-10 S.C. Code.
3. The initial judgment remains \$45,087.47 plus interest at 11.25% accruing since April 26, 2006. The second judgment is \$3,060 plus interest at 11.25% accruing since May 27, 2006. (the initial judgment and the second judgment collectively the "Ned Gregory Judgments"). Interest continues to accrue hereafter.
4. The Defendants, Howell Jackson Gregory and The Gregory Company, Inc. be and are hereby enjoined from transferring title, or any interest therein, to all or any portion of the Lancaster Properties pending further order of this Court.
5. Plaintiff and the City of Lancaster have 60 days after this order to request a further hearing on the issues between them or to advise me that they have finally settled their dispute. If I do not hear from the parties, the Plaintiff's claims against the City are dismissed.
6. The Lancaster Properties described in the Lis Pendens shall be sold at public auction at the Lancaster County Courthouse, 104 North Main Street, Lancaster, South Carolina on a sales day determined by the below signed Special Referee, on the following terms:
 - a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to the Ned Gregory Judgments. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.
 - b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the rate of 11.25%.
 - c. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

- d. Purchaser to pay for deed preparation, costs of recording the deed and transfer taxes on the deed.
 - e. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Special Referee.
7. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, the Special Referee hearing fee, plus the Ned Gregory Judgments in full, Plaintiff may pay to the Special Referee only the amount of the costs and expenses crediting the balance of the bid on the Ned Gregory Judgments.
8. The Special Referee will apply the proceeds of the sale as follows:
- FIRST: All costs and expenses associated with my service as Special Referee, including Special Referee hearing fee, and costs of advertising the properties.
- NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of the Ned Gregory Judgments and interest or so much thereof as the purchase money will pay on the same;
- NEXT: Any surplus should be held pending further Order of this court.
9. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Lancaster County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.
10. In the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.
11. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity

of redemption or lien in the Lancaster Properties so sold, or any part thereof.

12. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Order and Judgment upon all parties not in default for failure to appear in this action.
13. The deed of conveyance made pursuant to the sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the Lancaster Properties at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
14. The undersigned will retain jurisdiction to do all necessary acts incident to this matter, including without limitation, the advertisement and sale of the Lancaster Properties in separate units or as a whole, to conduct auction(s), and the issuance of a Writ of Assistance.
15. Because of my decision, it is not necessary to hear or decide Plaintiff's post hearing motion filed on October 9, 2012.

IT IS SO ORDERED:



William C. Tindal
Special Referee

April 30, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

NED GREGORY,)
)
Plaintiff)
)
vs.)
)
HOWELL JACKSON GREGORY,)
THE GREGORY COMPANY, INC.)
and the CITY OF LANCASTER,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

ORDER

Case No.: 2008-CP-29-1084

2013 NOV - 1 AM 10:41
CLERK OF COURT
LANCASTER, SC
FILED
IN COURT

This matter came to be heard by me as the result of the Motion of the Defendants, Howell Jackson Gregory and The Gregory Company, Inc. under Rule 59 SCRPC to Alter or Amend the Order and Judgment of this Court dated and filed on April 30, 2013 (the "April Order"). A hearing on the motion was held on July 10, 2013, at my offices located at 312 North Main Street, Lancaster, South Carolina, which hearing was attended by the Plaintiff and his attorney, Palmer Freeman, the Defendant, Howell Jackson Gregory, pro se, and James T. Irvin, Jr., attorney for the Defendant, The Gregory Company, Inc.. In addition Mitchell Norrell, attorney for the Defendant, the City of Lancaster, made an appearance, during which the Plaintiff and the City of Lancaster agreed their dispute was settled.

The Court heard and has carefully considered the arguments of the parties.

At the hearing, Plaintiff conceded that, on May 15, 2013, the Horry Master in Equity reduced the amount of one of Plaintiff's two judgments against Jack Gregory from \$45,087.47 to \$37,490.44. The April Order stated the amount of that judgment as \$45,087.47.

IT IS THEREFORE ORDERED:

Defendants' motion to amend is granted as to the amount of the initial Judgment against Jack Gregory. The corrected amount of that judgment is \$37,490.44 plus interest at 11.25% accruing since April 26, 2006.

[Handwritten signature]

The Plaintiff's second judgment for \$3,060 plus interest at 11.25% accruing since May 27, 2006 was not challenged by Defendants' motions and remains unchanged.

All other relief requested in Defendants' Motion is denied.

The Lancaster properties at 329 South Main Street, 331 South Main Street and 104 Chesterfield Avenue, Lancaster, described more fully in the Lis Pendens, shall be sold at public auction in Courtroom B, the Lancaster County Courthouse, 104 North Main Street, Lancaster, South Carolina at 11:00 a.m., Monday, December 2, 2013.

The City of Lancaster is dismissed as a Defendant.

With the exception of the foregoing, the remainder of the April Order, including without limitations the terms and conditions relating to the sale and disposition of proceeds from the sale, remains unchanged.

SO ORDERED:

October 31, 2013

Lancaster, SC



William C. Tindal
Special Referee



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Ned Gregory,)
Plaintiff,)
vs.)
Howell Jackson Gregory,)
Defendant.)

Case No. 2002-CP-26-1706

ORDER

FILED
HORRY COUNTY
2013 MAR -5 AM 10:11
MELANIE HUGGINS-WARD
CLERK OF COURT

This case came before me for hearing on December 10, 2012. Defendant has moved to alter the amount of Plaintiff's 2006 judgment against him. For reasons stated below, this Court denies his motion.

FINDINGS:

In his will, Ned Gregory, Sr. left his sons, Ned Gregory, II and Howell Jackson Gregory (Jack Gregory), equal undivided interests in a house and lot in Myrtle Beach and commercial properties in Lancaster.

In 2000, Ned Gregory sued in Lancaster County for partition of both properties and for unpaid rent and an accounting. In 2002, the case was referred to the Horry County Master, Stanton Cross, and given its present case number.

On April 25, 2006, Judge Cross issued his decision. He awarded Plaintiff \$20,900.00 rent for Defendant's use of the Myrtle Beach house, \$21,959.47 on his accounting claim and he ordered the Defendant to pay Plaintiff \$2,228.00.

This amount, \$20,900.00 + 21,959.47 + \$2,228.00 totalling \$45,087.47, was enrolled as the amount of the judgment. It is still the amount on record.

The Order was not appealed. Neither side filed motions seeking alteration of the judgment or a new trial. However, on August 10, 2006, Judge Cross issued what is styled a Nunc Pro Tunc Order. It purports to modify the April 25, 2006 Order by giving Jack Gregory credits that would reduce the judgment. There are no exhibits attached to the Order and there is nothing setting out how the payments mentioned in the Order came to the Court's attention.

At the hearing on the present motion, Jack Gregory stated he had approached Judge Cross *ex parte* with some bills he had paid and asked Judge Cross to reduce the judgment by the amount of these bills. When the Court asked Clifford Welsh, Ned Gregory's attorney in 2006, if he was aware of the discussion between the Judge and

Jack Gregory before it took place, he said he had not been told or notified of it. He said he had never seen any documents explaining where the amounts in the Nunc Pro Tunc Order came from. He did receive a copy of the Nunc Pro Tunc Order after it was signed. Welch immediately filed a motion challenging the Order. That motion was never heard, however.

After the Nunc Pro Tunc Order, the judgment of record remained \$45,087.47.

In 2008, Ned Gregory filed a fraudulent conveyance action against Jack Gregory in an attempt to collect the judgment in this case. Prior to filing, he obtained a copy of the transcript of judgment from the Clerk of Court showing the judgment as \$45,087.47.

On September 24, 2012, the day before the trial of the fraudulent conveyance suit, Jack Gregory filed the present motion. It seeks to have the judgment reduced by the credits given him in the Nunc Pro Tunc order.

ORDER:

Though the Defendant does not specify under which rule he brings his motion, he can only get the relief he seeks under Rule 60 SCRPC. Two possible sections would allow a judgment to be altered:

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24
Rule 60(b)(1) SCRPC, which allows a court to correct a judgment when it finds mistake, inadvertence, surprise, or excusable neglect and,

Rule 60(a) SCRPC, which allows correction of clerical mistakes.

Rule 60(b)(1) is not available to the Defendant. Rule 60 (b)(1) motions must be filed within one year of entry of the challenged judgment. This motion comes six years after the Nunc Pro Tunc order and four years after the Plaintiff obtained the transcript of judgment for his fraudulent conveyance lawsuit.

Rule 60 (a), SCRPC likewise is not available to Defendant. While it has no time limit, Rule 60 (a), can only be used to correct a "mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function. While a court may correct mistakes or clerical errors in its own process to make it conform to the record, it cannot change the scope of the judgment." Dion v. Ravenel, Eiserhardt Associates, 449 S.E.2d 251 @ 253-254 (S.C. Ct. App., 1994).

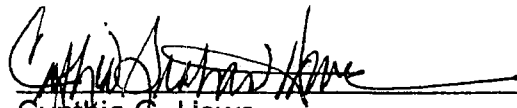
In short, Defendant can not now seek to correct the amount of the 2006 judgment.

Though it was not necessary to reach the enforceability of the Nunc Pro Tunc Order to decide this motion, the Court notes that Order is of questionable validity. See, e.g., Ex Parte Strom, 343 S.C. 257 (2000) and Heins v. Heins, 543 S.E.2d 224 (S.C. Ct App. 2001).

Costs associated with the hearing of this case, including court reporter fees are charged to Defendant.

DEFENDANT'S MOTION IS DENIED.

SO ORDERED:


Cynthia G. Howe C
Horry County Master-in-Equity

March 4, 2013.

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GPH

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Ned Gregory,
Plaintiff,
vs.

Howell Jackson Gregory,
Defendant.

Case No. 2002-CP-26-1706

ORDER

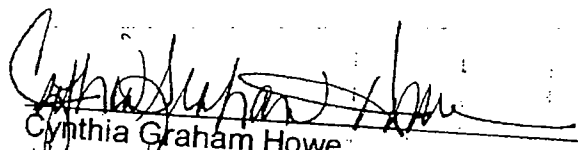
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HURRY COUNTY
2013 MAY 16 PM 12:32
MELANIE HUGGINS-WARD
CLERK OF COURT

Defendant moved, pursuant to Rule 59(e), SCRCP, for reconsideration of my March 4, 2013 Order, denying him relief. He also moved to Amend Judgment by Further Reduction with Confirmation of Monies Paid to Master in Equity in 2006. A hearing was held before this Court on April 25, 2013.

As to Defendant's Motion to Alter or Amend under Rule 59(e), SCRCP, I find that Defendant has failed to prove the alleged credits for payments he made without contribution from Plaintiff (other than the conceded \$7,597.03). In Defendant's Motion, he contends that the March 4, 2013 Order of this Court did not address the part of Judge Cross's April 25, 2006 Order that states "Defendant is entitled to a setoff to the amount expended by the Plaintiff, of any funds that he can prove that he contributed, without contribution from the Plaintiff." (Emphasis added). At the April 25, 2013 hearing, Defendant presented mere photocopies of two checks allegedly signed by Defendant, totaling \$7,597.03. Plaintiff conceded at the hearing that Defendant contributed the \$7,597.03. However, I find that Defendant has failed to prove that he is entitled to credits for his other alleged contributions as set forth in his Motion. Accordingly, I find that the judgment amount as set forth in the March 5, 2013 Order must be amended to account for the \$7,597.03 in credits, as conceded by Plaintiff. Therefore, the correct amount of judgment is \$37,490.44.

Defendant's Motion to Amend Judgment by Further Reduction with Confirmation of Monies Paid to Master in Equity in 2006, is essentially a repackaging of Defendant's original September 24, 2012 motion. To the extent this motion addresses anything new, it, like Defendant's earlier motion, is denied pursuant to Rule 60, SCRCP.

IT IS SO ORDERED.


Cynthia Graham Howe
Horry County Master in Equity

Conway, SC
May 15, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Ned Gregory,)
Plaintiff,)
vs.)
Howell Jackson Gregory,)
Defendant.)

Case No. 2002-CP-26-1706

ORDER

13 OCT 17 PM 3:19
CLERK OF COURT

Defendant's motion filed July 1, 2013 came before me for hearing on October 14, 2013. Ned Gregory and his attorney, Palmer Freeman, were present as was Defendant, who appeared *Pro Se*. For reasons stated below, the Court denies Defendant's latest motion.

BACKGROUND:

In 2006, Ned Gregory obtained judgment against Jack Gregory.

In 2012, Jack Gregory moved under Rule 60, SCRPC, to have the amount of the judgment reduced. The motion was denied.

On April 1, 2013, Jack Gregory filed a Rule 59(e), SCRPC motion. In this motion, he asked that I reconsider denial of his Rule 60 motion. A hearing was held on that motion on April 25, 2013. Defendant, as the moving party, was required to retain a court reporter. He employed Prestige Court Reporting, Inc. and a court reporter from that company attended and transcribed the hearing.

The Court ruled on Defendant's second motion on May 15, 2013. That order clarified the amount of the judgment and ordered the amount of the judgment be reduced from \$45,087.47 to \$37,490.44.

On July 1, 2013, Jack Gregory filed a second Rule 59(e), SCRCF motion. This motion was heard October 14, 2013. Defendant again retained the services of Prestige Court Reporting, Inc.

Before the October 14 hearing commenced, the Court asked Defendant if he had paid the court reporter for the April 25, 2013 hearing. Defendant replied he had not. He said he had made arrangements to pay and would do so shortly.

The Court then asked the amounts due Prestige Court Reporting for the April hearing and this hearing. The court reporter's charges for the April hearing were \$92.50 and the charges for the current hearing was \$75.00.

DECISION:

I. The Rule 59 Motion is Inappropriate.

2
CON
The current motion again asks the Court to reduce the amount of the judgment against Defendant. This is the same relief sought in Defendant's first and second post trial motions.

A party may not file successive Rule 59 motions seeking review of a decision. *See, e.g., Quality Trailer Products v. CSL Equipment Co., 349 S.C. 216, 562 S.E.2d 615 (2002), Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).*

In *Elam v. S.C.D.O.T., 361 S.C. 9, 602 S.E.2d 772 (2004)*, the Supreme Court clearly stated the following rule:

A second motion for reconsideration under Rule 59(e) is appropriate only if it challenges something that was altered from the original judgment as a result of the original motion for reconsideration.

Id. at 775.

Defendant's most recent Rule 59 motion does not challenge the change to the judgment

made in the May 15, 2013 order. Indeed, that change was in Defendant's favor. Instead, Defendant's July 1, 2013 motion seeks, for a third time, a reduction of the 2006 judgment.

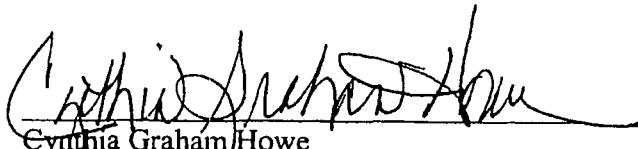
Under *Elam*, quoted above, this motion is inappropriate. Defendant should have appealed if he did not agree with the Court's last decision.

II. The Court Reporter's Fees Must Be Paid

Defendant must pay Prestige Court Reporting, Inc. \$167.50 within ten (10) days of this Order. Of this, \$92.50 is for the hearing on April 25, and \$75.00 is for the hearing on October 14, 2013.

If the court reporter is not paid within ten (10) days, Defendant ^{can} ~~is~~ ^{may be held} in contempt.

SO ORDERED:


Cynthia Graham Howe
Horry County Master-in-Equity

October 17, 2013.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
)
Tod Snipes Construction, Inc,) Case No. 2005-CP-29-141
Plaintiff,)
)
vs.) ORDER FOR JUDGEMENT
)
Jack Gregory and Ned Gregory,)
Defendant.)

The above-entitled case came before the Court on May 1, 2006, for a Final hearing of all the remaining issues pursuant to the September 26, 2005 Order for Judgment of this Court filed October 13, 2005 in the above captioned case. Daniel D. D'Agostino, Esq., attorney for the Plaintiff, was present. Ned Gregory, II, Esq., was present, appearing pro se on behalf of the Defendant, Ned Gregory. Defendant Jack Gregory, made no appearance. The Clerk of Court informed the Court that Defendant, Jack Gregory, was provided due notice of the case pending at this Common Pleas Term of Court by regular postage pre-paid first mail, addressed to Defendant, Jack Gregory, at his most recent address provided by Defendant, Jack Gregory, and that the mail had not been returned as undelivered.

The attorney for the Plaintiff informed the Court that the matters in the pending case concerning his client and Defendant, Jack Gregory, had been settled on September 6, 2005 between his client and Defendant, Jack Gregory, by payment from Defendant, Jack Gregory, which included attorneys fees and costs that the Plaintiff had incurred in the litigation. The Plaintiff's attorney also informed the Court that the settlement was consummated by payment of \$15,500.00 received from Defendant, Jack Gregory, on or about September 14, 2005 and was completely without the involvement of the Defendant, Ned Gregory. The Plaintiff's attorney also informed the Court that none of the remaining pending issues involved in the case concerned his client and that, although he would not remain in the Courtroom for the trial of the case, he would be available for corroboration of the case presented by the Defendant, Ned Gregory, and provided his office, home and cellular telephone numbers for use, should the need arise.

LANCASTER COUNTY, SC
JUDGMENT 06-12-2006
04:56 PM

Upon conclusion of the matters involved on the Motions Docket, the Court called the first pending case for trial on the Trial Docket, that being the above captioned case.

The Court inquired of the attorney for the Defendant, Ned Gregory, whether or not Defendant, Jack Gregory, was in attendance, whereupon the Court was informed by Ned Gregory, II, Esq. that he had not spoken with Jack Gregory, in over five (5) years, had not received notice that Jack Gregory was appearing, that Jack Gregory was a pro se litigant, that he did not expect Jack Gregory to appear and that he was prepared to proceed with trial to the conclusion of all the remaining issues in the pending case.

Ned Gregory advised the Court of the existence of the pending Partition suit which he had instituted against Jack Gregory in October, 2000 involving Lancaster County property, which is the subject of this action, as well as property in Horry County, South Carolina. He further stated that the suit had been heard by the Horry County Master-in-Equity and that most of the remaining issues pending in the case at bar have been or will be resolved by the Master. The issues remaining in this case, which are not before the Master, are attorney fees and costs incurred by Ned Gregory and the apportionment of the settlement of the Plaintiff's Mechanics Lien paid by Jack Gregory. Ned Gregory asks the Court to grant his request for judgment against Jack Gregory in the sum of Three Thousand Sixty and no/100 (\$3,060.00) Dollars pursuant his Attorney's Fees and Costs Affidavit filed with the Court on September 6, 2005. Ned Gregory also asks the Court to find and declare that the settlement of the Mechanics Lien paid by Jack Gregory be attributed solely to Jack Gregory and not be applied as a set-off to any interest of Ned Gregory in the Property.

Ned Gregory, as background for his requests, stated that in August, 2004 he observed someone atop the roof of the building at 331 South Main Street in Lancaster, South Carolina and made an inquiry. The person who was doing work to the roof of the building, handed Ned Gregory a business card of his employer, enscribed: Tod Snipes Construction. Upon calling the phone number on the card, Ned Gregory spoke with Tod Snipes and cautioned him that no work had been authorized by him, that the building was

co-owned with Jack Gregory, and that if he had not been paid that he should halt work immediately until payment was secured. Ned Gregory later observed that work had resumed, then ended in early September, 2004.

Ned Gregory received a letter dated December 9, 2004 from Plaintiff's attorney stating that he had been retained to represent the Plaintiff regarding payment due for roof repair work to the building at 331 South Main Street and intended to file a Mechanic's Lien if not paid. Ned Gregory responded by letter dated December 14, 2004 stating that he not only did not contract with the Plaintiff, but had specially advised him directly that he should either require advance payment or beware. The letter also noted that Ned Gregory had received no notice prior to commencement of work and requested a copy of the written contract, if any. No contract was ever received by Ned Gregory. Subsequently a Mechanic's Lien was filed and served on Ned Gregory and a suit to foreclose followed filing on February 9, 2005. Ned Gregory vigorously defended the suit, filing a Cross-Claim against Jack Gregory raising a number of issues, including a request for attorneys fees and costs. Most of the issues raised have been resolved by the Master in the Partition suit, including auction of the Horry County property in May, 2005 and auction of the Lancaster County property in June, 2005. Jack Gregory was the highest bidder at both auction sales, having bid \$610,000.00 for the Horry County property and \$170,000.00 for the Lancaster County property. Although while not in complete compliance, Jack Gregory made substantial compliance of the Lancaster County auction sale three days prior to its resale by Robert K. Folks, Esq., as Special Referee appointed by the Master. The sale as republished for 11:00 a.m. May 1, 2006, was cancelled by the Master, who had received funds for disbursement.

The trial of Plaintiff's case, scheduled for commencement on September 6, 2005 was settled by phone between Plaintiff's attorney and Jack Gregory the morning of September 6, 2005 just prior to trial. Ned Gregory appeared and requested attorneys fees and costs and requested that the Court declare that the settlement amount be solely attributed to the interest of Jack Gregory in the property, pursuant to South Carolina Rules of Civil Procedure Rule 71(d)(4). The Court declined to rule at that time, but

directed Ned Gregory to file his affidavit for attorneys fees and costs and that the issues would be determined at a subsequent term of Court. The September 25, 2005 Order for judgment followed.

Upon conclusion of the trial, Ned Gregory brought to the attention of the Court, the case of Metz v. Critcher 86 SC 348, 68 SE 627, which held that it is not necessary for owner to give notice that he will not be responsible for material furnished and used in order to prevent lien attaching, unless he has agreed, and the South Carolina Rules of Civil Procedure Rule 71(d)(4), providing for lien of a debtor in severalty being transferred to the portion assigned to the debtor.

11/18/04
The Court, upon careful consideration of the circumstances, the issues, and the facts surrounding the events leading up to the case at bar, the constant position of Ned Gregory throughout, the control of the employment of the Plaintiff by Jack Gregory, the denial by Ned Gregory, the settlement by Jack Gregory without the participation of Ned Gregory, and the exclusive ownership rights to the property exercised by Jack Gregory during settlement with the Plaintiff, all convince the Court that Ned Gregory has satisfied the requisite burden of proof and shown by the preponderance of the evidence that his request should be granted. This Court finds that the debt to the Plaintiff was the sole responsibility of Jack Gregory as it was contracted solely by Jack Gregory, unpaid by Jack Gregory and after suit to enforce was instituted and pending trial, settled solely with the Plaintiff's attorney.

Now, Therefore, it is Ordered, Adjudged and Decreed that the amount paid in settlement by Jack Gregory to the Plaintiff shall not be charged against Ned Gregory as against his interest in the property, nor shall it be used as a set-off against Ned Gregory in the distribution of the proceeds of sale of the property herein, nor charged as a debt against Ned Gregory in any manner whatsoever.

It is also Ordered, Adjudged and Decreed that Ned Gregory have judgment against Jack Gregory in the amount of Three Thousand Sixty and no/100 (\$3,060.00) Dollars actual damages

IT IS ALL SO ORDERED.

May 27, 2006
Winnsboro, South Carolina


Kenneth G. Goode, Presiding Judge
Sixth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
CASE NO.2008-CP-29-1084

Ned Gregory, Jr.,
Plaintiff,

-vs-

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

NOTICE OF MOTION AND MOTION
FOR EMERGENCY RELIEF
AS A REMEDIAL WRIT UNDER
SCRCP RULE 65(f)(1)

FILED
OFFICE OF CLERK
OF COURT

2009 JAN 12 2:28 PM

CLERK OF COURT
LANCASTER COUNTY

TO: NED GREGORY, JR., Attorney for and Plaintiff and MITCHELL A. NORRELL,
Attorney for the Defendant, The City of Lancaster:

YOU WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED DEFENDANTS,
TO WIT: HOWELL JACKSON GREGORY AND THE GREGORY COMPANY, INC.
DO HEREBY MOVE IMMEDIATELY FOR THIS EMERGENCY RELIEF TO BE
GRANTED AS EXPEDITIOUSLY AS THE ENDS OF JUSTICE REQUIRE FOR THE
FOLLOWING RELIEF, TO WIT:

1. Cancellation of the "Third Amended Notice of Pendency of Action" filed in this action by the Plaintiff as Case No. or Lis Pendens Book 2008-LP-29-174; and
2. Continuation of the hearing set in the Lancaster Municipal Court for Wednesday, January 14, 2009 requiring Defendant, Howell Jackson Gregory to appear and show cause why he should not be fined and or jailed for not repairing or tear down the building located at 104 Chesterfield Avenue, Lancaster, SC and owned by Defendant, The Gregory Company, Inc. as described in said lis pendens as Lot 3 as per plat of record in Plat Book 2008 at page 552, copy attached.

All of the foregoing based upon the affidavit of Howell Jackson Gregory attached.

THE GREGORY COMPANY, INC.

H. Jackson Gregory, President

Howell Jackson Gregory, individually
Defendants Pro Se

P.O. Box 70374

Myrtle Beach, SC 29572-0025

(843) 222-4800

Myrtle Beach, SC
January 7, 2009

MOTION FEE PAID

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2002-CP-26-1706

NED GREGORY, JR.,
Plaintiff,

-vs-

HOWELL JACKSON GREGORY,
Defendant.

NOTICE OF MOTION & MOTION
FOR MASTER IN EQUITY TO AWARD
CREDITS FROM NUNC PRO TUNC ORDER
OF 8-10-2006 FOR APRIL 25, 2006

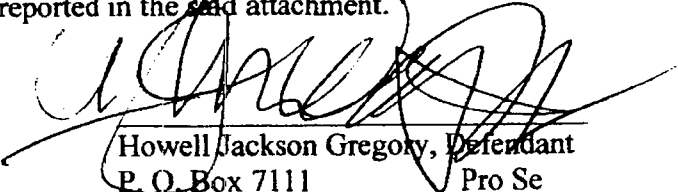
TO: NED GREGORY, II, ATTORNEY OF RECORD FOR NED GREGORY, AND
CLIFFORD L. WELSH, ATTORNEY OF RECORD FOR NED GREGORY

YOU WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL
MORE THAN TEN (10) DAYS FROM THE SERVICE OF THIS MOTION UPON
YOU MOVE BEFORE THE MASTER IN EQUITY FOR HORRY COUNTY FOR THE
FOLLOWING RELIEF, TO WIT:

Obtain an Order correcting the error that has been created in the Horry County
Clerk of Court's Office with regard to a certain Transcript of Judgment dated June 10th,
2008, a copy of which is attached hereto the error being that no credits were applied to
the Damages and Costs section pursuant to the Nunc Pro Tunc Order of Master in Equity
J. Stanton Cross, Jr. on 8-10-2006 for April 25, 2006.

That the Forty Five Thousand Eighty Seven and 47/100 (\$45,087.47) Dollars
should have read Seventeen Thousand Three Hundred Forty One (\$17,341.00) Dollars.

That the initial Order dated April 25, 2006 awarded only Forty Two Thousand
Eight Hundred Fifty Nine and 47/100 to Plaintiff; however, it allowed Defendant to
present proof of payment for credits to be offset against that amount later and thus the
Nunc Pro Tunc Order of 8-10-2006 for April 25, 2006 did so award those credits that
total the sum of Twenty Five Thousand Five Hundred Eighteen (\$25,518.00) Dollars and
therefore the true balance should have read Seventeen Thousand Three Hundred Forty
One (\$17,341.00) Dollars as of April 25, 2006 that Defendant owes Plaintiff in the
captioned partition action not what is reported in the said attachment.


Howell Jackson Gregory, Defendant
P.O. Box 7111 Pro Se
Myrtle Beach, SC 29572-0006
(843) 222-4800

September 24, 2012
Myrtle Beach, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Ned Gregory, Jr.,)
PLAINTIFF)
VS.)
H. Jackson Gregory,)
DEFENDANT.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2002-CP-26-1706
2008-CP-29-674
TRANSCRIPT OF JUDGMENT

NAME OF PARTY AGAINST WHOM JUDGMENT HAS BEEN OBTAINED

H. Jackson Gregory

NAME OF PARTY IN WHOSE FAVOR JUDGMENT HAS BEEN OBTAINED

Ned Gregory, Jr.

ATTORNEY(S) FOR JUDGMENT CREDITOR

Ned Gregory, II

DAMAGES AND COSTS

Forty-five Thousand Eighty-seven and 47/100 (\$45,087.47) Dollars

With interest accruing at the legal statutory rate from and after April 25, 2006

I CERTIFY THAT THE FORGOING IS A CORRECT TRANSCRIPT FROM THE
DOCKET OF JUDGMENT KEPT IN MY OFFICE.

June *10th*, 2008
Conway, South Carolina

Melanie Huggins
Melanie Huggins
Clerk of Court for Horry County

A

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE
FIFTEENTH JUDICIAL CIRCUIT

Civil Action # 2002-CP-26-17

Ned Gregory, Jr.,
Plaintiff,

-vs-

Howell Jackson Gregory,
Defendant.

NOTICE OF MOTION &
MOTION TO AMEND JUDGMENT
BY FURTHER REDUCTION
WITH CONFIRMATION OF MONIES
PAID TO MASTER IN EQUITY IN 2006

TO: PALMER FREEMAN, ESQUIRE AND CLIFFORD L. WELSH, ESQUIRE, AS
ATTORNEYS FOR PLAINTIFF, NED GREGORY, JR.

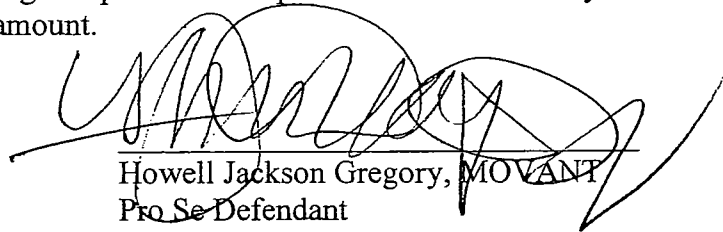
YOU WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL MOVE
BEFORE THE HORRY COUNTY MASTER IN EQUITY MORE THAN TEN (10)
DAYS FROM THE SERVICE OF THIS MOTION UPON YOU AT THE CONWAY
JUDICIAL CENTER, CONWAY, SC ON APRIL ,2013 AT 10:00 P.M. FOR THE
FOLLOWING RELIEF, TO WIT:

Obtain an Order from the Master-in-Equity to allow the Clerk of Court to further
reduce the Judgment amount in the captioned case from its current status pursuant to an
Amended Transcript of Judgment certified by Melanie Huggins-Ward dated November 2,
2012 in the amount of Twenty Four Thousand Six Hundred Sixty Six and 51/100
(\$24,666.51) Dollars. A copy of the said Amended Transcript of Judgment is attached
hereto as Exhibit "A". That the new judgment amount was prepared based upon a
clerical error of oversight or omission in the Clerk of Court's Office by not taking both
orders initially to figure the June 10, 2008 transcript of judgment amount. That to correct
the clerical error both orders were subsequently used and figured by taking the original
amount of Forty Five Thousand Eighty Seven and 47/100 (\$45,087.47) Dollars as a total
of the three (3) amounts in the first April 25, 2006 Order of J. Stanton Cross, Jr. and
reducing it by the second Order called Nunc Pro Tunc for April 25, 2006 or the Set-Off
Order as described by the Horry County Clerk of Court of the three (3) amounts paid for
by Defendant and not contributed to by Plaintiff amounting to Twenty Five Thousand
Five Hundred Seventeen and 99/100 (\$25,518.99) Dollars, thus leaving a total of
Nineteen Thousand Five Hundred Sixty Nine and 48/100 (\$19,569.48) Dollars, plus the
Five Thousand Ninety Seven and 03/100 (\$5,097.03) Dollars interest balance due the
Court as set forth on the final line of the said Nunc Pro Tunc Order therefore making the
reduced judgment amount in Exhibit "A".

That the further reduction requested herein cannot be determined by the Clerk of Court
as the interest balance amount was paid to the Horry County Master in Equity in the
amount of Five Thousand Ninety Seven and 03/100 (\$5,097.03) Dollars along with credit
for the 2005 Lancaster rent in the amount of Two Thousand Five Hundred (\$2,500.00)

Dollars also payable to Honorable J. Stanton Cross, the then Master in Equity, both checks dated August 9, 2006. That the Clerk of Court advises that she need verification from the Horry County Master in Equity's Office that those payments were in fact taken in by said office and upon an order so verifying such then a further reduction of the judgment amount in this case can then be made to reflect the true and correct balance that is outstanding in this matter. That both checks mentioned herein are attached hereto and referred to herein as Exhibit "B".

That an order confirming the payment as represented by the two (2) checks attached as Exhibit "B" to the Master in Equity Office on August 9, 2006 will assist the Clerk of Court in getting the correct accounting completed in this partition case and finally be able to further reflect the true judgment amount.



Howell Jackson Gregory, ~~MOVANT~~
Pro Se Defendant
P. O. Box 7111
Myrtle Beach, SC 29572-0006
(843) 222-4800

February 28, 2013
Myrtle Beach, SC

EXHIBITS:

- A. Amended Transcript of Judgment dated 11/02/2012 by Horry County Clerk of Court Melanie Huggins-Ward in amount of \$24,666.51.
- B. Two (2) checks to Master in Equity – Horry County dated August 9, 2006, to wit:
 - 1. #2263 from The Gregory Company in amount of \$5,097.03 and
 - 2. #0673 from Clifford L. Welsh, Attorney Trust Account in amount of \$2,500.00.

COUNTY OF HORRY

Ned Gregory Jr

Plaintiff

AMENDED

TRANSCRIPT OF JUDGMENT

VS.

Howell Jackson Gregory

Defendant

Melanie Huggins-Ward, being duly sworn, says that she is the Clerk of Court for the Court above named and that the Plaintiff(s) above named obtained Judgment against the Defendant in the above action, said Judgment having been duly and properly enrolled in the Office of the Clerk of Court for Horry County, South Carolina on and appearing as Judgment Roll Number 2002CP2601706

Names of Parties Against Whom Judgment
Has Been Obtained

Attorneys

Howell Jackson Gregory

Names of Parties in Whose Favor Judgment
Has Been Obtained

Attorneys

Ned Gregory Jr

Damages and Costs

Amount of Judgment : \$ 24,666.51

Costs: \$

Attorney's Fees : \$

Prejudgment Interest : \$

*Set-Off Order filed on 8/24/06 was applied on 11/02/2012

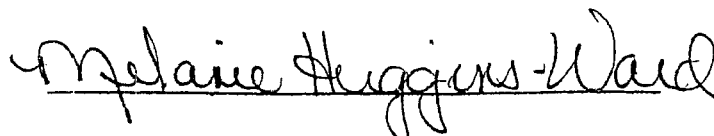
Total Judgment : \$ 24,666.51

Plus Interest, Costs and Disbursements

I certify that the foregoing is a correct transcript from the Docket of Judgment kept in my office.

"A"

36



MELANIE HUGGINS-WARD

Clerk of Court, Horry County, South Carolina

PAY TO THE ORDER OF Henry County Clerk in Equity \$ 5097.03

Five Thousand Nine Hundred & 03/100 DOLLARS

MEMO: See Exh. 1

DATE: 8-9-6

THE GREGORY COMPANY
302 E. 70TH AVE. N.
MYRTLE BEACH, SC 29572

67-7205/2532
0158003211

2263

Coastal Federal Bank
MYRTLE BEACH, SC 29577

2263

MP

DEFENDANT'S
EXHIBIT NO. 6
FOR IDENTIFICATION.
DATE 8/27/90 RPTR: ST

37

B

PAY TO THE ORDER OF Henry County Clerk DATE August 9, 2006 \$ 2500.00

Two thousand five hundred & 00/100 - DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
NORTH MYRTLE BEACH, SOUTH CAROLINA 29582

FOR Gregory Lancaster Rent Clifford L. Welsh MP

CLIFFORD L. WELSH ATTORNEY TRUST ACCOUNT
457 MAIN STREET 843-249-1441
NORTH MYRTLE BEACH, SC 29582

67-66/532

0673

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION #2002-CP-26-1706

NED GREGORY, JR.,
Plaintiff,

-vs-

HOWELL JACKSON GREGORY,
Defendant.

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND UNDER
RULE 59 (e) SCRPC

FILED
HORRY COUNTY
2013 APR -1 PM 4:12
CLERK OF COURT
JENNIFER WARD

TO: PALMER FREEMAN, ESQ. AND CLIFFORD L. WELSH, ESQ., ATTORNEYS
FOR PLAINTIFF, NED GREGORY, JR.:

YOU WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL
MOVE BEFORE CYNTHIA GRAHAM HOWE, MASTER-IN-EQUITY FOR HORRY
COUNTY SOUTH CAROLINA MORE THAN TEN (10) DAYS FROM THE
SERVICE OF THIS MOTION AND NOTICE FOR AN ORDER ALTERING OR
AMENDING HER ORDER DATED MARCH 4, 2013, FILED MARCH 5, 2013 AND
SERVED BY MAIL POSTMARKED MARCH 21, 2013 UPON THE FOLLOWING:

That said Order contains untrue "Findings" and/or misconstrued facts.

1. Page one of said Order attempts to paint a picture that Jack Gregory met ex parte with then Master-in-Equity J. Stanton Cross, Jr. when no such event occurred for the purpose of giving him documents to be used to reduce the judgment set forth in the April 25, 2006 Orders. The attorneys hired by the parties handled all of this.
2. The true facts are that Jack Gregory was given the opportunity under the first April 25, 2006 Order to offset "any funds he can prove" he incurred for the benefit of the two properties in the captioned partition action that were not contributed to by Plaintiff, Ned Gregory, Jr. The said Order even stated that it was conceded that the gas tank removal expense of \$7,940.00 would be a setoff. This meant that the trial of the partition case revealed this information and the Court was already aware of the payment by Jack Gregory without any contribution by Ned Gregory, Jr. so it was conceded; however, it has never been accounted for as a setoff with the Transcript of Judgment until November 2, 2012 when the Horry County Clerk of Court corrected the omission and issued an Amended Transcript of Judgment which is not yet a final as the Master-in-Equity Office needs to verify the deposit of two checks totaling \$7,597.03 that were paid to it on August 9, 2006. A hearing has been requested but not yet scheduled for this information.
3. The March 4, 2013 Order does not give Defendant credit for any setoffs. That Defendant did through his attorney, James T. Irvin, Jr. meet with Clifford L. Welsh, attorney for Plaintiff, Ned Gregory, Jr. and then Master-in-Equity J. Stanton Cross, Jr. on two occasions to address the issue of setoffs for the Defendant against Plaintiff's judgment. The first meeting was in late May, 2006

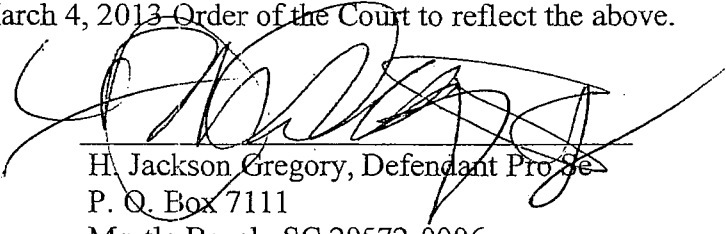
- as evidenced by a letter dated May 22, 2006 to Master-in-Equity Cross by Clifford L. Welsh, copy to Irvin confirming such a meeting the past Friday and setting forth the final amount needed to make the case end which was \$7,597.03 which total included another month's interest and also the costs of sale of the Lancaster property. This exact amount was paid to the Master-in-Equity Court on August 9, 2006 at the second meeting between the attorneys and the Court with the two checks being paid to the Court, one from Clifford L. Welsh Attorney Trust Account representing the \$2,500.00 rent collected from a Lancaster building to be paid to the purchaser of the Lancaster real estate and the other through Attorney Irvin from Jack Gregory in the amount of \$5,097.03, the difference. Both checks total \$7,597.03 and no ex parte meeting existed to obtain these.
4. The Horry County tax payments by Jack Gregory for tax years 2002, 2003 and 2004 were stated in the first April 25, 2006 Order to be a credit for Defendant with payments verified. The May, 2006 first conference of attorneys meeting with Master-in-Equity Cross produced the three checks via Attorney Irvin that are attached to the Irvin Affidavit dated April 1, 2013 as attached to this motion totaling \$4,077.99 and that total is acknowledged on the Clifford L. Welsh "Myrtle Beach Money Per Order" prepared documents that was used at the two hearings to set out the details of the setoffs to be allowed Defendant. This document references the \$4,077.99 amount and along with the conceded gas tank removal amount reduces the judgment per Welsh. The three checks presented show the dates the three checks cleared the bank and were all made payable to the Horry County Treasurer; however, no setoff was given for these payments on the Transcript of Judgment and no ex parte meeting occurred. According to the Welsh prepared document it stated "Amount Owed Ned \$30,811.48".
 5. The March 4, 2013 Order further infers that the Nunc Pro Tunc Order of August 10, 2006 for April 25, 2006 was faulty due to the fact that these exhibits were not attached to the said Order; however, there was no requirement to so attach the cancelled checks as the attorneys of record in meetings with the Master-in-Equity Cross knew of the payments, that the checks showed them clearing the banks and that they were not contributed to by Plaintiff and it was not necessary to set forth them as exhibits in the said Order. The gas tank removal was conceded at trial and Welsh verified the amounts in his two documents for the conferences with the Court and attorneys. No ex parte occurred and no contribution by Plaintiff.
 6. Another setoff that was overlooked in the Transcript of Judgment was the payment by Jack Gregory for the new roof job by Tod Snipes on a Lancaster building that had been condemned by the City of Lancaster in 2003. The cancelled check for \$15,500.00 was presented by Attorney Irvin at the two Cross conferences in the presence of the two attorneys. Master-in-Equity Cross disallowed \$2,000.00 of the payment as it was for attorney's fees, but did allow the \$13,500.00 paid for labor and materials to Dan D'Agestino, Esquire the attorney for Tod Snipes. This payment was made on September 12, 2005 and cleared the bank on 9-15-2005. There was no contribution here by Plaintiff and no ex parte meeting or communication occurred either.
 7. That on November 2, 2012 the Horry County Clerk of Court realizing the oversight in her office not giving the proper math to the two orders of record did

amend the Transcript of Judgment which now stands at \$24,666.51, a copy of which is attached to the Irvin Affidavit and awaiting the further reduction when the Master-in-Equity reports the verified deposit of the \$7,597.03 to her.

8. The March 4, 2013 Order takes the Order of Master-in-Equity J. Stanton Cross, Jr. and allows judgment to be computed based on page one and the top of page two and the bottom of page two; however the middle paragraph of page two dealing with the setoffs or credits for Defendant, Jack Gregory are completely disregarded as if that paragraph didn't even exist. That paragraph states that Defendant gets credit or setoff "of any funds that he can prove" for any amount paid by him and not contributed to by Plaintiff and through the attorney conferences with Master-in-Equity Cross have proved the following payments:
- a) Conceded the payment of \$7,940.00 for removal of gas tanks at Lancaster;
 - b) Credit of 2002, 2003 and 2004 Horry County real estate taxes proved with cancelled checks clearing bank totaling \$4,077.99; and
 - c) \$13,500.00 paid for new roof on Lancaster building from a \$15,500.00 check dated 9-12-2005 and cleared 9-15-2005 the bank; and
 - d) NONE of the above payments by Jack Gregory totaling the sum of \$25,517.99 were ever setoff or credit given when there was no contribution by Plaintiff, Ned Gregory, Jr. as per the distinct terms of the April 25, 2006 Order of Master-in-Equity J. Stanton Cross, Jr., page two and a further Order by the Court continues to deny the equitable allowance by a prior order of the same Court; however, the Horry County Clerk of Court has seen the omission in her office and has to date partially corrected the wrong Transcript of Judgment dated June 10 2008 by the Amended Transcript of Judgment dated November 2, 2012.

9. Obviously, Rule 60(a) SCRCF has been utilized here by the Horry County Clerk of Court in correcting the record as it so provides and the Master-in-Equity needs to recognize this correction of the oversight in that office which has amended the transcript of judgment when such an omission existed due to the oversight by her staff. To further deny Defendant his true offsets or credits by failing to recognize the amended transcript of judgment that corrects the omission would be to deal an inequity in the matter as there was no ex parte activity here and no Plaintiff contribution and the amended transcript of judgment is the proper conclusion thus far. After verifying the deposit of the \$7,597.03 paid to the Master-in-Equity on August 9, 2006 to the Clerk of Court as requested by motion presently before the Court will conclude the accounting needed for a valid and true transcript of judgment that finally speaks the truth in the final amount of \$17,069.48.
10. Therefore, alter or amend the March 4, 2013 Order of the Court to reflect the above.

SO MOVE.



H. Jackson Gregory, Defendant Pro Se
P. O. Box 7111
Myrtle Beach, SC 29572-0006
(843) 222-4800

Myrtle Beach, SC
April 1, 2013

STATE OF SOUTH CAROLINA

AFFIDAVIT OF H. JACKSON GREGORY

COUNTY OF HORRY

PERSONALLY APPEARS, H. JACKSON GREGORY, WHO ON OATH
STATES:

AFFIANT has read the Order of Master-in-Equity Cynthia Graham Howe dated March 4, 2013, filed March 5, 2013 and was mailed by the Horry County Clerk of Court to Attorney James T. Irvin, Jr. in envelop postmarked March 21, 2013 wherein AFFIANT is the Defendant in that matter. A copy is attached to the accompanying motion.

That said March 4 Order contains untrue facts and needs to be corrected as a miscarriage of justice and equity will be created if not modified to reflect the truth.

AFFIANT emphatically and vehemently denies any ex parte contact with the Master-in-Equity during the pendency of the action under consideration and styled as Ned Gregory, Jr. vs Howell Jackson Gregory #2002-CP-26-1706. The March 4, 2013 Order is incorrect when it states that "Jack Gregory stated that he had approached Judge Cross ex parte with some bills he had paid, etc." The truth of the matter was that AFFIANT stated that AFFIANT had done exactly what Judge Cross asked of AFFIANT and that was to present to the Court the evidence of payment of any contributions to the partitioned real estate consisting of two properties, a home in Myrtle Beach and three commercial buildings in Lancaster of expenses that AFFIANT had made without any contribution from Plaintiff, Ned Gregory, Jr. This was set forth in the first Order of April 25, 2006 and through AFFIANTS attorney, James T. Irvin, Jr. and in the presence of Clifford L. Welsh, attorney for Ned Gregory, Jr. those payments were presented to Master-in-Equity J. Stanton Cross, Jr. on two occasions in office conferences at the Court and were documented by cancelled checks with bank clearing dates, two prepared statements and a letter from Clifford L. Welsh confirming same and the final Order of Master-in-Equity Cross dated August 10, 2006 for April 25, 2006 as a follow-up styled Nunc Pro Tunc detailing setoffs under the terms of the first Order dated April 25, 2006.

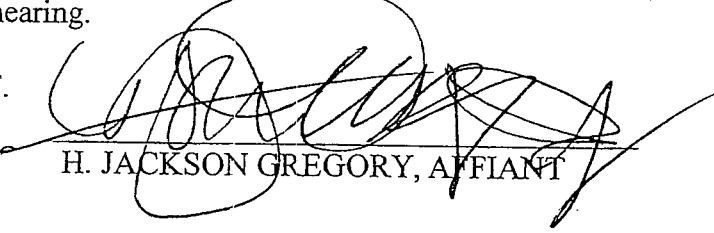
AFFIANT is now aware of two such conferences with the Court by the attorneys one being in late May, 2006 when all checks paid by AFFIANT for setoff were presented and the other being on August 9, 2006 when the two checks were issued, one check by AFFIANT in the amount of \$5,097.03 and the other issued by Clifford L. Welsh Attorney Trust Account in the amount of \$2,500.00 for the total needed by the Court to make the total of \$7,597.03 as set forth in the Clifford L. Welsh letter dated May 22, 2006 referencing the first conference with the Court on the prior Friday. The \$2,500.00 rent held by Welsh was to be the property of the new purchaser of Lancaster real estate. That on August 9, 2006 those two checks were presented to the Court in the second conference of attorneys and the Master-in-Equity Cross and complied with the Welsh May 22, 2006 letter and the Nunc Pro Tunc Order of the next day August 10, 2006 for April 25, 2006.

That should have ended the matter as soon as the Master-in-Equity's office confirmed to the Clerk of Court the receipt of the two checks and their deposit into the account.

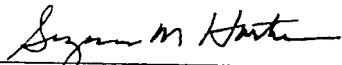
AFFIANT did drop off the payment check for the Lancaster real estate with Ann Lawson on April 28, 2006 at the Master-in-Equity office and that was the only time that AFFIANT was present there at the Court alone. AFFIANT was given a hand receipt of same and it is attached to this affidavit. The check was for \$93,925.00 and it cleared the bank on 5-4-2006 paying for the purchase of the Lancaster real estate (\$85,000.00 plus interest) with the final interest amount (\$5,097.03) and the costs of the Lancaster sale (\$2,228.00) being paid on August 9, 2006 with the two checks totaling \$7,597.03 by giving Defendant credit for the \$2,500.00 rent of a Lancaster building held by Welsh. With the Amended Transcript of Judgment now at \$24,666.51 with the further reduction of the \$7,597.03 would make the correct Final Judgment amount \$17,069.48.

AFFIANT was not aware of the error of the June 10, 2008 Transcript of Judgment until February 7, 2012 in Lancaster, SC when it was used as an exhibit in a hearing in another matter. AFFIANT was never served with a copy of the Transcript of Judgment. It was later in 2012 that AFFIANT met with the Horry County Clerk of Court who noticed that an oversight had been committed by her office in not applying the second order with the first to obtain the correct Transcript of Judgment amount. Later on November 2, 2012 the Clerk of Court amended the Transcript of Judgment to reflect the second order partially clearing up the omission as allowed pursuant to Rule 60 (a) SCRPC; however, the final Transcript of Judgment cannot be figured until the Master-in-Equity's office verifies to the Clerk of Court that the two checks issued on August 9, 2006 were deposited and cleared the Master-in-Equity bank account. AFFIANT has filed a motion to obtain this information for the Horry County Clerk of Court and was told by the Master-in-Equity's office by telephone in mid-March, 2013 that a telephone hearing would be held in the afternoon of March 18 or 19, 2013, but AFFIANT has not yet been contacted for such a telephone hearing.

AFFIANT SAYETH NAUGHT.


H. JACKSON GREGORY, AFFIANT

SWORN TO BEFORE ME
this first day of April, 2013.


Notary Public for South Carolina L.S.
My Commission Expires: 3/17/2018

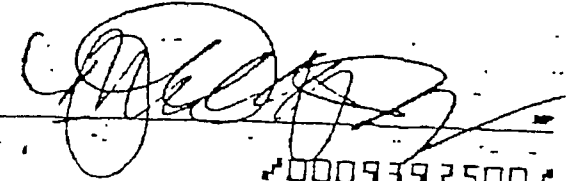
SUZANNE M. HARTMAN
Notary Public
State of South Carolina

Exhibits Attached to Affidavit:

1. Check dated April 28, 2006 #1179 in Amount of \$93,925.00 payable to Horry County Master-in-Equity from The Gregory Company, Inc. for the purchase of Lancaster; and
2. Hand receipt from Ann Lawson dated 4-28-2006 of above check to Jackson Gregory.



6 DAY BRANCH BANKING

THE GREGORY COMPANY, INC. SPECIAL OPERATING ACCOUNT 302 70TH AVENUE NORTH MYRTLE BEACH, SC 29572		1179
PAY TO THE ORDER OF <u>Henry County Master in Equity</u>	DATE <u>4-28-06</u>	67-7235-2532
<u>Ninety Three Thousand Nine Hundred twenty five</u>	\$ <u>93,925.00</u>	
COASTAL FEDERAL BANK MYRTLE BEACH, SC 29577		DOLLARS
FOR _____		
⑆001179⑆	⑆0009392500⑆	

05/04/2006 1179 \$93,925.00

MIEP523

HORRY COUNTY MASTER IN EQUITY
P. O. BOX 1665
CONWAY, S.C. 29528

O1MIE1
 CUSTOMER COP

DATE: 4/28/2006 TIME: 12:12:57 CASE #: 2002CP2601706 RECEIPT #: 20096

RECEIVED FROM: HOWELL JACKSON GREGORY

RECEIVED BY: LAWSONA
 MIE2

FEE DESCRIPTION	AMOUNT RECEIVED
BALANCE	93,925.00
METHOD OF PAYMENT	
CASH.....:	
CHECK.....:	\$93,925.00
TOTAL RECEIVED:	\$93,925.00

MIEP523

HORRY COUNTY MASTER IN EQUITY
P. O. BOX 1665
CONWAY, S.C. 29528

O1MIE1
 CLERK COPY

DATE: 4/28/2006 TIME: 12:12:57 CASE #: 2002CP2601706 RECEIPT #: 20096

RECEIVED FROM: HOWELL JACKSON GREGORY

RECEIVED BY: LAWSONA
 MIE2

FEE DESCRIPTION	AMOUNT RECEIVED
BALANCE	93,925.00
METHOD OF PAYMENT	
<i>Received by</i> <i>Anne Lawson</i>	
CASH.....:	
CHECK.....:	\$93,925.00
TOTAL RECEIVED:	\$93,925.00

STATE OF SOUTH CAROLINA

AFFIDAVIT OF JAMES T. IRVIN, JR.

COUNTY OF HORRY

PERSONALLY APPEARS BEFORE ME, the undersigned Notary Public for South Carolina, James T. Irvin, Jr., who after being first duly sworn deposes and says:

AFFIANT is a licensed South Carolina Attorney with an office located in Myrtle Beach, SC and who represented Howell Jackson Gregory in a partition action in the Horry County Master-in-Equity's Office from 2002 through 2006 when J. Stanton Cross, Jr. served as the Horry County Master-in-Equity then and styled as Ned Gregory, Jr. vs. Howell Jackson Gregory # 2002-CP-26-1706.

That AFFIANT has just recently received in the United States Mail an envelop from the Horry County Clerk of Court postmarked March 21, 2013 containing an Order dated March 4, 2013 by Cynthia Graham Howe, Master-in-Equity for Horry County along with a cover sheet in Case # 2002-CP-26-1706 being clocked in on March 5, 2013 by the Clerk's office and a copy of which is attached to the accompanying motion.

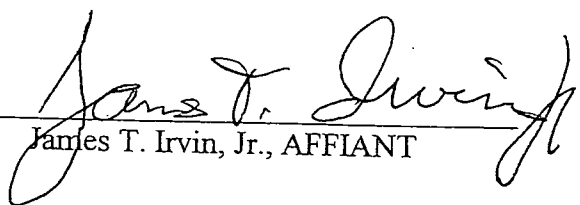
That after receiving the said Order AFFIANT called Howell Jackson Gregory to inform him that AFFIANT had gotten a copy of the document and advised him to come by a get the same. Jack Gregory did come by and met with AFFIANT on Thursday, March 28, 2013. AFFIANT and Jack Gregory discussed the Order and looked over the documents and exhibits that were present in 2003-2006 and AFFIANT noted that the Order of March 4, 2013 contained several errors of fact and the purpose of this affidavit is to clear the record of those misconceptions by the Court and the untrue facts stated.

1. Howell Jackson Gregory hired AFFIANT to represent him in the captioned partition action which began in Lancaster County in 2000. It was moved to Horry County in 2002 and at no time during this case did Howell Jackson Gregory meet with Master-in-Equity J. Stanton Cross, Jr. alone. No such ex parte meeting between Jack Gregory and Judge Cross as set forth in the March 4, 2013 Order occurred. This is a total misunderstanding by the Court and an untrue statement of fact. AFFIANT has known Jack Gregory for fifty years.
2. The August 10, 2006 Nunc Pro Tunc Order issued by Master-in-Equity Cross was not to modify the Order dated April 25, 2006, but to follow-up on the total credits that Defendant was allowed to setoff to the amount expended by the Plaintiff of "any funds" that Defendant could prove that he contributed without contribution from the Plaintiff. It was conceded in that Order that Defendant spent \$7,940.00 for the removal of the gas tanks which came from testimony at the trial of the case and no further documentation was needed. At some future date Defendant was to prove to the Court his Horry County tax payments for years 2002, 2003 and 2004. That Defendant did furnish to AFFIANT three (3) cancelled checks with bank clearing dates that were presented to Master-in-Equity Cross in the presence of Plaintiff's attorney, Clifford L. Welsh in May,

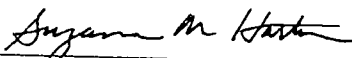
- 2006 and on August 9, 2006 by AFFIANT and from those meetings the numbers were then known for the follow-up August 10, 2006 Nunc Pro Tunc Order that the Court issued. In addition to the gas tanks removal and Horry taxes paid by Jack Gregory, he also paid \$13,500.00 for labor and materials on the new roof for the condemned Lancaster building that Ned Gregory, Jr. did not contribute towards and all three above items were then ordered to be setoff.
3. That Jack Gregory never met with Master-in-Equity, J. Stanton Cross, Jr. ex parte as AFFIANT was his mouthpiece and liaison for documents and paid checks needed by the Court. That Jack Gregory did take the payment for the purchase of the Lancaster property in amount of \$93,925.00 on April 28, 2006 to the Court alone when he gave his company check to Ann Lawson and obtained a receipt for same. This was the amount the Court requested of him then as purchaser of the Lancaster property and was paid within three (3) days of the April 25, 2006 Order. Later, Clifford L. Welsh and Jack Gregory both did write and present checks to the Court on August 9, 2006, copies of which are attached and Mr. Welsh also furnished to AFFIANT at their conferences with the Master-in-Equity Cross two additional documents that Welsh prepared to confirm the final numbers and confirm the balance due to complete the accounting for the follow-up order, copies of which are attached as well as the letter dated May 22, 2006 confirming the first conference on the prior Friday. Those two documents are entitled "Myrtle Beach Money Per Order" and "Lancaster Property Sale". No ex parte meetings occurred here.
 4. Obviously, Clifford L. Welsh is mistaken or just doesn't remember about the meetings, his May 22, 2006 letter and the two (2) documents he prepared and presented at that conference. His own documents reveal the tax total paid by Defendant Jack Gregory for tax years 2002, 2003 and 2004 in the amount of \$4,077.99. At the May, 2006 office conference with Master-in-Equity Cross the check from Jack Gregory to pay Dan D'Agostino, Esquire for Tod Snipes for the new roof was presented in a letter for financing dated February 14, 2006 along with attachments including two Tod Snipes' bids and the October 29, 2003 City of Lancaster condemnation letter, copies attached. Attorney Welsh was privy to the many communications with the City of Lancaster during the year 2004 in appealing their condemnation order. See six (6) letters he and AFFIANT received during 2004 from the City of Lancaster attached. From the \$15,500.00 check the \$2,000.00 attorney's fee was not allowed by the Master-in-Equity Cross, but the \$13,500.00 labor and materials was allowed to be setoff. Ned Gregory, Jr. did not contribute towards this payment. Clifford L. Welsh was present and aware of this setoff making three (3) setoffs provided for in the Nunc Pro Tunc Order of August 10, 2006 to total \$25,517.99.
 5. Another error in the March 4, 2013 Order in the "Findings" states that in the April 25, 2006 Order of Judge Cross "he ordered Defendant to pay Plaintiff \$2,228.00", however, the said Order actually states in the last paragraph of page two that the costs of the sale of the Lancaster property totaling \$2,228.00 "to be paid within ten (10) days from the date of this Order to counsel for the Plaintiff." That the \$93,925.00 amount paid by Defendant to Ann Lawson on April 28, 2006 for the purchase of the Lancaster property was to include this

- sum. However, according to the prepared document of Welsh entitled "Lancaster Property Sale" the total cost of sale amount of \$2,228.00 was figured in with the extra interest due the Court that Defendant still owed. The meeting on the Friday in May, 2006 that preceded the May 22, 2006 letter from Welsh to the Court with copy to AFFIANT stated that the interest should include another month and the total in that letter was \$7,597.03 which included the \$2,228.00 costs of sale of the Lancaster property. When paid on August 9, 2006 then the interest and the costs of sale were ended and also the satisfaction of that requirement of the April 25, 2006 Order. Ned Gregory, Jr. is not entitled to the \$2,228.00 as it was the costs of sale due the Master-in-Equity Court.
6. The two checks dated August 9, 2006 from Jack Gregory and Clifford L. Welsh attached matched the total of the Court Order of August 10, 2006 in the amount of \$7,597.03 that Master-in-Equity Cross needed to balance the books in the partition matter since both properties had been sold and paid for by Defendant. This satisfied the costs of sale of the Lancaster property amounting to \$2,228.00 and the Transcript of Judgment should reflect the same. Defendant as purchaser was given credit for the \$2,500.00 of rent money as ordered by Master-in-Equity Cross that Welsh held in his Attorney Trust Account which was his August 9, 2006 check to the Court. Verification of the deposit of the two August 9, 2006 checks by the Master-in-Equity office totaling \$7,597.03 to the Clerk of Court will equitably satisfy the remaining needed information that the Clerk of Court needs to issue the Final Amended Transcript of Judgment.
7. That based on the Amended Transcript of Judgment the balance is noted as of November 2, 2012 at \$24,666.51. With the verification of the deposit by the Master-in-Equity office of the \$7,597.03 to the Clerk of Court this would reduce the judgment amount to the correct number it should be of \$17,069.48.

AFFIANT SAYETH NAUGHT.


James T. Irvin, Jr., AFFIANT

SWORN to before me this
1st day of April, 2013.

 L.S.
Notary Public for South Carolina
My Commission Expires: 3/17/2018

SUZANNE M. HARTMAN
Notary Public
State of South Carolina

EXHIBITS ATTACHED TO AFFIDAVIT OF JAMES T. IRVIN, JR.:

- A. Transcript of Judgment dated June 10, 2008;
- B. Order of J. Stanton Cross, Jr. dated April 25, 2006;
- C. Nunc Pro Tunc Order of J. Stanton Cross, Jr. dated 8-10-2006 for April 25, 2006;
- D. Two (2) checks dated August 9, 2006, as follows:
 - (1) #2263 payable to Horry County Master in Equity for \$5,097.03 (interest balance) from The Gregory Company by Jackson Gregory; and
 - (2) #0673 payable to Honorable J. Stanton Cross for \$2,500.00 (2005 rent collected on Lancaster property due purchaser) from Clifford L. Welch, Attorney Trust Account;
- E. Check dated September 12, 2005 from The Gregory Company, Inc. to Dan D'Agestino, Esquire in the amount of \$15,500.00 (new roof on Lancaster Building) check #1095 clearing bank on 9-15-2005 as part of financing letter of February 14, 2006 with attachments:
 - (1) Bid from Tod Snipes dated 10-24-2003 for \$13,500.00;
 - (2) Bid from Tod Snipes dated 10-11-2004 for \$13,500.00; and
 - (3) Condemnation letter and notice by City of Lancaster building official Richard Bowers dated Oct. 29, 2003;
- F. Six (6) copies of letters from City of Lancaster in 2004 to both parties, James T. Irvin, Jr., Esquire and Clifford L. Welsh, Esquire dealing with the condemnation appeal of the Lancaster building with the bad roof and dated:
 - (1) March 29, 2004;
 - (2) April 7, 2004;
 - (3) April 20, 2004;
 - (4) April 30, 2004;
 - (5) May 19, 2004; and
 - (6) July 14, 2004.
- G. Copy of letter from Clifford L. Welsh dated May 22, 2006 confirming first conference with Master-in-Equity Cross and Attorney Irvin on prior Friday;
- H. Two typed statements prepared by Clifford L. Welsh for the conferences on May, 2006 and the August 9, 2006 both with Master-in-Equity Cross when the Two checks were written (See Exhibit D). The statements are entitled:
 - (1) MYRTLE BEACH MONEY PER ORDER; and
 - (2) LANCASTER PROPERTY SALE.
- I. Three tax checks from Jack Gregory for tax years 2002, 2003 and 2004 payable to Horry County Treasurer and totaling the sum of \$4,077.99:
 - (1) #1322 in amount of \$1,267.42 clearing bank on 1-23-2003;
 - (2) #1660 in amount of \$1,500.19 clearing bank on 5-5-2004; and
 - (3) #96 in amount of \$1,310.38 clearing bank on 1-24-2005.
- J. Amended Transcript of Judgment dated November 2, 2012 applying partial setoffs from Order dated 8-10-2006 filed 8-24-2006 with current reduced amount of \$25,666.51.

JACK GREGORY, JD
P. O. Box 70374
Myrtle Beach, SC 29572-0025
(843) 222-4800

February 14, 2006

James A. Benn, President
SBB Enterprises, Inc.
1900 Broad River Road, Suite 103
Columbia, SC 29210

Dear James:

RE: Three (3) commercial buildings, Lancaster, SC of which
roof job at 331 South Main Street is subject.
Loan Application for Howell Jackson Gregory

Pursuant to our telephone conversation of today confirming that in 2005 I paid for the roof job on the corner building at the intersection of Chesterfield Avenue and South Main Street in the city of Lancaster, SC. I enclose a copy of the cancelled check no. 1095 payable to the lawyer for Tod Snipes in the amount of \$15,500.00. This check cleared my bank account on September 15, 2005. I also enclose a copy of a letter from the city building official, Richard Bowers who in October, 2003 had condemned the building due to a faulty roof and after getting two bids, copies attached: a) Tod Snipes - 10-24-2003 - \$13,500.00 and b) John E. Minors - 4-18-2004 - \$18,000.00, I chose Tod Snipes to do the work.

Yours truly,

Jack Gregory

Enclosures
cancelled check no. 1095
letter from Richard Bowers
estimate from Tod Snipes
estimate from John Minors

THE GREGORY COMPANY, INC.
SPECIAL OPERATING ACCOUNT
302 70TH AVENUE NORTH
MYRTLE BEACH, SC 29572

1095

PAY TO THE ORDER OF Don R. Aguirre-Segura \$ 15,500.00
Fifteen Thousand Five Hundred DOLLARS & 00/100

DATE 9-12-2005

COASTAL FEDERAL BANK
MYRTLE BEACH, SC 29577

FOR Tod Snipes Roof Job - Lancaster, SC
20050929-141 #001095

0001550000

09/15/2005 1095 \$15,500.00

2227 Pond Court
Lancaster, SC 29720
286-0088 or 283-7585

DATE _____

10/24/2003

NAME / ADDRESS
Gregory and Gregory FAX 283-3326 283-3324

DESCRIPTION	TOTAL
job at 331 S. Main St., Lancaster Estimate on repairs to framing and replacement of roof Materials for framing 18 2x10 x 14 42 sheets of 1/2" plywood 50 lb #16 nails 11 2x8x14 50 lb #8 wax nails 1 10ft metal column 4in 20 2x4x12	
Remove roofing and plywood from 1344 sq ft Install 1344 sq ft of 1/2" plywood with 1/2" insulation board with .060 EPDM roofing over Install 104 linear ft of cant strip Install 48 linear ft of .024 drip edge Install 104 linear ft of metal coping .024 Install 3 vent stack covers Landfill fee Permit Total Estimate **All work covered under General Liability and Workman's Compensation Insurance**	13,500.00
	TOTAL \$13,500.00

All work is covered General Liability and Workman's Compensation Insurance.

E-1 50

from Ted Snipes Construct to 1-843-236-5455

at 10/11/2004 9:00 PM

001/0

2227 Pond Court
Lancaster, SC 29720
286-0088 or 283-7585

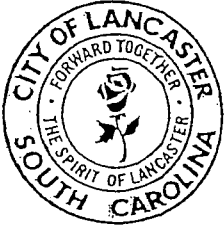
DATE	INVOICE #
10/11/2004	235

BILL TO
Jack Gregory FAX 843-236-5455 843-222-1800

DESCRIPTION	AMOUNT
2231 S. Main St., Lancaster, estimate on repairs to framing and replacement of roof materials for framing 2x10x14 sheets of 1/2" plywood 1b #16 nails 2x8x14 1b #8 wax nails 10ft metal column 4in. 2x4x12 move roofing and plywood from 1344 sq ft call 1344 sq ft of 1/2" plywood with 1/2" insulation board with .060 EPDM roofing over call 404 linear ft of cam strip call 48 linear ft of .024 drip edge call 104 linear ft of metal coping .024 call 13 vent stack covers addill fee mit Estimate 1 year warranty on labor and 10 year warranty on materials Firestone brand** All work covered under General Liability and Workman's Compensation Insurance**	0.00 0.00 13,500.00
Total	\$13,500.00

E-2 51





City of Lancaster, South Carolina

216 South Catawba Street P.O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

October 29, 2003

Ned Gregory, et al
PO Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 South Main Street
Tax Map: 81A-F-22.00

Dear Mr. Gregory:

As we discussed by telephone on October 27, 2003, and as advised by Lancaster Fire Department report dated October 17, 2003, referenced property is in a serious state of disrepair. Your written request by faxed letter dated October 27, 2003 and received on October 28, 2003, to allow continued use of the area of this property outside the structure has been discussed with senior staff along with the city attorney and has been determined to be unacceptable in consideration of the serious nature of violations, which presently exist. By copy of this letter the tenant is hereby ordered to immediately vacate the premises its' entirety and to not re-enter the premises under any circumstances until authorized to do so by an appropriate city official.

You are hereby notified that the above referenced property has been found in violation of Title 31, Chapter 15 of the S.C. Code of Laws along with applicable sections of city code (5-40 thru 5-44) and is hereby condemned under such provisions.

This notice of complaint is being issued because the building located on referenced property is unsafe for the reasons specified in the attached inspection report. This building is illegal and must be abated by repair and rehabilitation or by demolition. Such abatement must commence within thirty (30) days from the date of this notice and be completed within sixty (60) days unless a written request for extension is submitted and approved. If the building is abated by repair and rehabilitation, it will be necessary to conform to all requirements of applicable construction codes adopted by the City of Lancaster. Permits for building, electrical, plumbing or demolition will be issued to qualified applicants upon request. The Building, Licensing and Zoning department is located at 216 S. Catawba St., Lancaster, SC.

If repairs and rehabilitation or demolition of this building are not begun and/or completed within the time specified, legal proceedings charging you with

violation of a City Ordinance are to be anticipated. The penalty for violation of a City Ordinance is \$1087 and/or thirty (30) days confinement. Each day of continued violation is treated as a separate offense. In addition, if repairs and rehabilitation or voluntary demolition of this building are not completed within the required sixty (60) days, we will move forward to immediately cause demolition of this structure. The costs for demolition shall be forwarded for payment and collected in a manner provided by law, including the filing of liens and/or judgments.

No person shall deface or remove this notice from any building on which it is attached and has been determined to be unsafe.

Any person having legal interest in this property may appeal to the Building Official. All hearings will be held at City Hall, 216 S. Catawba Street, Lancaster, SC. A request for appeal must be in writing and shall be filed with the Building Official no less than ten, nor more than thirty, days from the date of this notice. The owner and parties of interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Building Official. Failure to appeal within the time specified will constitute a waiver of all rights to an administrative hearing.

Your cooperation in this matter is needed and will be appreciated. Please contact me if you have any questions.

Respectfully,

Richard Bowers /dml

Richard Bowers
Building Official

RB/dml

Enclosure

Cc: Steve Willis, City Administrator
James T. Irvin, Jr., Esquire
Johnny Parker



City of Lancaster, South Carolina

216 South Catawba Street P. O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

March 29, 2004

Ned Gregory, et al
PO Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 South Main Street
Tax Map: 81A-F-22.00

Dear Mr. Gregory:

Pursuant to your letter of March 26, 2004, and Mr. Welsh's letter of March 27, 2004, we have scheduled a meeting of the Property Maintenance Code Board of Appeals for Thursday, April 8, 2004 at 10:00 AM in the Council Chambers located at City Hall (216 S. Catawba Street-Lancaster, SC).

In response to Mr. Welsh's comments concerning confusion regarding the requirement to wait twenty (20) days before filing an appeal, the wording of my letter is easily misread as it is quoted directly from city code. The quote reads in part "an appeal must be filed no less than twenty (20) days after the notice of condemnation is served". This is correct in that there is usually a time lapse from the date of a condemnation and the date the document actually gets into the hands of the owner. This code provision attempts to clarify the twenty (20) day window of time to appeal does not start until notice is received, not the actual date of the notice. Upon service of a notice of condemnation, the owner then has twenty (20) days in which to file an appeal.

We look forward to your attendance and please contact me with any questions or comments.

Richard Bowers

Building Official

RB/dml

Cc: Steve Willis, City Administrator
James T. Irvin, Jr., Esquire
Clifford Welsh, Esquire

F-1 54





City of Lancaster, South Carolina

216 South Catawba Street P.O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

April 7, 2004

Ned Gregory, et al
PO Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 South Main Street
Tax Map: 81A-F-22.00

Dear Mr. Gregory:

As requested by attorney Cliff Welsh, we have rescheduled your appeal date concerning referenced property to Thursday April 15, 2004, at 10:00 a.m. in the Council Chambers located at City Hall (216 S. Catawba Street, Lancaster, SC). Those in attendance on this date who wish to be heard will be afforded the opportunity.

Please contact me with any questions or comments.

Richard Bowers

Richard Bowers/dml

Building Official

RB/dml

Cc: Steve Willis, City Administrator
Mandy Powers-Norrell, Esquire
James T. Irvin, Jr., Esquire
Clifford Welsh, Esquire

F-2

55



[Handwritten scribble]



City of Lancaster, South Carolina

216 South Catawba Street P.O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

April 20, 2004

Ned Gregory, et al
PO Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 South Main Street
Tax Map: 81A-F-22.00

Dear Mr. Gregory:

We have been notified by the chairman of the International Property Maintenance Code Board of Appeals that he will be unable to attend the appeal for referenced property scheduled for Thursday, April 15, 2004. With only three members on this board, we must reschedule again. The meeting is now scheduled for Thursday, April 29, 2004, at 2:00 p.m. in the Council Chambers located at City Hall (216 S. Catawba Street, Lancaster, SC). Those in attendance on this date who wish to be heard will be afforded the opportunity.

As discussed with Mr. H.J. Gregory and Mr. Irvin on Thursday, April 8, 2004, it is encouraging that consideration be given to engage the services of a general contractor to begin repairs to the condemned structure in the areas where structural damage is most visible. If we can see improvement to the structure prior to the appeals date, Mr. Ned Gregory will be contacted in an effort to delay/postpone with a specific new appeals date or cancel the appeal, whichever action is most appropriate.

My apologies for the inconvenience. Please contact me with any questions or comments.

Richard Bowers

Richard Bowers /dml

Building Official

RB/dml

Cc: Steve Willis, City Administrator
Mandy Powers-Norrell, Esquire
James T. Irvin, Jr., Esquire
Clifford Welsh, Esquire

56

F-3





City of Lancaster, South Carolina

216 South Catawba Street P.O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

April 30, 2004

Ned Gregory, et al
PO Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 South Main Street
Tax Map: 81A-F-22.00

Dear Mr. Gregory:

The appeals meeting for referenced property scheduled for April 29, 2004, has been re-scheduled for Monday, May 10, 2004, at 2:00 p.m. in the Council Chambers located at City Hall (216 S. Catawba Street, Lancaster, SC). Those in attendance on this date who wish to be heard will be afforded the opportunity.

Again, my apologies for the inconvenience. Please contact me with any questions or comments.

Richard Bowers

Building Official

RB/dml

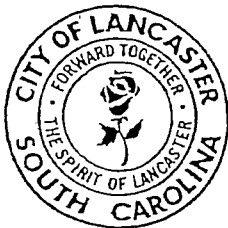
Cc: Steve Willis, City Administrator
Mandy Powers-Norrell, Esquire
James T. Irvin, Jr., Esquire
Clifford Welsh, Esquire

F-4

57



RECYCLED PAPER



City of Lancaster, South Carolina

216 South Catawba Street P. O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

May 19, 2004

Ned Gregory, et al
PO Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 South Main Street
Tax Map: 81A-F-22.00

Dear Mr. Gregory:

The appeals meeting for referenced property scheduled for May 10, 2004, has been re-scheduled for Monday, May 24, 2004, at 2:00 p.m. in the Council Chambers located at City Hall (216 S. Catawba Street, Lancaster, SC). Those in attendance on this date who wish to be heard will be afforded the opportunity.

Again, my apologies for the inconvenience. Please contact me with any questions or comments.

Respectfully,

Richard Bowers / dml

Richard Bowers
Building Official

RB/dml

Cc: Steve Willis, City Administrator
Mandy Powers-Norrell, Esquire
James T. Irvin, Jr., Esquire
Clifford Welsh, Esquire

F-5 58





City of Lancaster, South Carolina

216 South Catawba Street P.O. Box 1149 Lancaster, S.C. 29721

Phone: 803-283-4253 Fax: 803-286-5927

Forward Together . . . The Spirit of Lancaster

July 14, 2004

Ned Gregory
P.O. Drawer 967
Lancaster, SC 29721

Howell Jackson Gregory
302 70th Avenue N.
Myrtle Beach, SC 29577

RE: 331 S. Main St.-Condemned Property

Dear Mr. Gregory:

Since we have had numerous delays in scheduling an appeal date suitable to all parties, in consultation with the City Attorney and City Administrator, I have been instructed to conduct the appeal for referenced condemnation on Thursday, July 22, 2004, at 6:00 PM in the Council Chambers at City Hall, 216 South Catawba Street, Lancaster, SC.

Only confirmed court related duties will constitute authority to change this meeting date and time. Please schedule this appeal on your calendar and make every effort to attend.

We look forward to completing the appeal on July 22nd as planned. Please call with any questions.

Respectfully,

Richard Bowers
Building Official

Cc: Steve Willis, City Administrator
Mandy Powers-Norrell, City Attorney
Jim Irvin, Esquire
Clifford Welsh, Esquire

F-6 59



*Law Offices***WELSH & HUGHES**Attorneys And Counselors At Law
457 Main Street
North Myrtle Beach, S.C. 29582Clifford L. Welsh
Luke Hughes
Phillip Francis Luke Hughes, PA*

* Certified Mediator

Phone (843) 249-1441
Facsimile (843) 249-2043

May 22, 2006

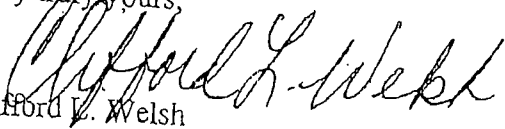
FAX: (843) 915-6310The Honorable James Stanton Cross, Jr.
Master-In Equity for Horry County
Post Office, Box 1236
Conway, South Carolina 29528-1236Re: Ned Gregory v. H. Jackson Gregory
Case No.: 00-CP-26-2605

Dear Judge Cross:

After I left your office Friday, I realized that there was a month's worth of interest left off of the total due, before a deed is issued, on the Lancaster property, in the above-referenced case. I have notified Jim Irvin that the total should be \$7,597.03. Further, by a copy of this letter, I am providing him with written notice of the correct amount.

With kindest personal regards, I remain

Very truly yours,


Clifford L. Welsh

Cc: James T. Irvin, Jr., Esquire, Fax: (843) 467-2202

G

MYRTLE BEACH MONEY PER ORDER

Ned Out of Pocket	\$21,929.47
Rent	<u>\$20,900.00</u>
Owed Ned per Order	\$42,829.47

Minus removal of tanks ½	\$3,970.00
Minus taxes paid by Jack	
(if receipts produced)	<u>\$4,077.99</u>
	\$8047.99

AMOUNT OWED NED	\$34,7481.48
-----------------	--------------

-3970

\$30,811.48

H-1

LANCASTER PROPERTY SALE

Total sales price	<u>\$170,000.00</u>
½ sales price	\$85,000.00
Special Referee Comm. (1/2)	\$850.00
Attorney fee (1/2)	\$8,500.00
Interest 8.25% for 11 months	\$12,856.25
Publication 2005 (1/2)	\$264.11
Publication 2006 full amount	<u>\$479.85</u>
AMOUNT TO PAY COURT	\$107,950.21
Amount if interest figured on ½	<u>\$100,938.21</u>

Handwritten: 117013.21

Handwritten: H-2

COASTAL FEDERAL BANK

THE RIGHT BANK FOR YOU

Account: 422010421

Page: 2

96

15 JAN 2005

96

Pay to the order of Horry County Treasurer \$1,310.38

One thousand three hundred ten and 38/100

COASTAL FEDERAL BANK

MYRTLE BEACH, SC 29577

MEMO 174-03-04-068

0096

01/24/2005 96 \$1,310.38

1660

THE GREGORY COMPANY

302 - 70TH AVE. N

MYRTLE BEACH, SC 29572

DATE 30 Apr 2004

Pay to the order of Horry County Treasurer \$1,500.19

One thousand five hundred and 19/100 DOLLARS

COASTAL FEDERAL BANK

MYRTLE BEACH, SC 29577

MEMO 2003064967

05/05/2004 1660 \$1,500.19

1322

THE GREGORY COMPANY

302 - 70TH AVE. N

MYRTLE BEACH, SC 29572

DATE 01/23/2003

Pay to the order of Johnny C. Wick Horry County Treas \$1,267.42

One thousand two hundred sixty seven and 42/100 DOLLARS

COASTAL FEDERAL BANK

MYRTLE BEACH, SC 29577

MEMO 174-03-04-068

01/23/2003 1322 \$1,267.42

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION #2002-CP-26-1706

NED GREGORY, JR.,
Plaintiff.

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND UNDER
RULE 59 (e) SCRC

-vs-

HOWELL JACKSON GREGORY,
Defendant.

HORRY COUNTY
13 JUL - 1 PM 3:53
CLERK OF COURT
JAMES T. IRVIN - WARD

TO: PALMER FREEMAN, ESQUIRE AND CLIFFORD L. WELSH, ESQUIRE,
ATTORNEYS FOR PLAINTIFF, NED GREGORY, JR.:

YOU WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL MOVE BEFORE THE HORRY COUNTY MASTER IN EQUITY, CYNTHIA GRAHAM HOWE MORE THAN TEN (10) DAYS FROM THE SERVICE OF THIS NOTICE AND MOTION FOR AN ORDER ALTERING OR AMENDING HER ORDER DATED MAY 15, 2013 and FILED MAY 16, 2013 and SERVED BY MAIL and RECEIVED BY JAMES T. IRVIN, JR., ESQUIRE ON FRIDAY, JUNE 21, 2013 UPON THE FOLLOWING:

That said Order states that Defendant has failed to prove that he is entitled to credits for his other alleged contributions, other than the two checks totaling \$7,597.03 which were conceded at the April 25, 2013 hearing by both counsel for Plaintiff, because he failed to prove that he contributed without any contribution by Plaintiff. That said order did reduce the judgment amount by the conceded amount of \$7,597.03 which is appreciated. However, Defendant did present at the hearing attached to the Notice of Motion and Motion dated April 1, 2013 the following documents, to wit:

1. Affidavit of H. Jackson Gregory dated April 1, 2013 with two exhibits attached;
2. Affidavit of James T. Irvin, Jr. dated April 1, 2013 with ten exhibits attached, some exhibits containing several pages; and
3. At the hearing on April 25, 2013 Defendant handed up to the Court his Brief of Defendant which was clocked in that day and offered as an exhibit to the Court with the Original being held by the Clerk of Court's Office to place into the file. Reference to the Court file is craved for a detailed explanation of the proof.

That the Defendant's proof was submitted in the documents attached to the affidavits and discussed in the Brief as set forth above and the record shows that much more than "Defendant presented mere photocopies of two checks allegedly signed by Defendant, totaling \$7,597.03" were submitted, but obviously overlooked by the Court. Actually, Defendant only signed one of the two checks mentioned as

Clifford L. Welsh signed the other one and the order is wrong to say that Defendant signed both checks. If the Court had perused the above stated documents then proof was met by Defendant as the Court relates in the May 15, 2013 Order it wasn't. This was the same proof presented to Judge Cross at trial and in 2006 that allowed the granting of the setoffs then which were overlooked by the Clerk of Court on June 10, 2008 when her office issued the Transcript of Judgment which was in error.

Reference to the first Order of Master in Equity J. Stanton Cross, Jr. dated April 25, 2006 (Exhibit B in the Irvin Affidavit) is made which contains the quoted language by the Court in it's May 15, 2013 Order "Defendant is entitled to a setoff to the amount expended by the Plaintiff, of any funds that he can PROVE that he contributed, without contribution from Plaintiff. (Emphasis Added)" That whole paragraph in Judge Cross' Order has been constantly overlooked by the Court in determining the judgment amount in this case. The Court during the trial before Master in Equity Cross determined that Defendant did pay for the removal of the gas tanks from the Lancaster property without contribution from Plaintiff and in that paragraph states "It is conceded that Defendant spent \$7,940.00 to remove the gas tanks from the Lancaster property". It does not make common sense that conceding the two checks in the May 15, 2013 for \$7,597.03 and reducing the judgment by that amount is allowed, but the conceded amount of \$7,940.00 in the Cross Order of April 25, 2006 is not. As this is a court of equity the Court is not applying equal equitable standards to the matter and a further reduction based upon all conceded amounts is needed. This setoff was determined by the trial judge in the matter from the evidence presented during the several days of testimony before him prior to his April 25, 2006 order and reflects the conceded amount by plaintiff and plaintiff's counsel at trial.

~~Also, that same order provided that Defendant could setoff the Horry County taxes~~ he paid in years 2002, 2003 and 2004 and Defendant did have presented to Judge Cross three (3) cancelled checks with the bank's confirmation of the clearing of those checks at the bottom of each check by his counsel, James T. Irvin, Jr. and those three checks were attached to the Irvin Affidavit as Exhibit "I" that were confirmed as amounting to \$4,077.99 in the Clifford L. Welsh typed statement entitled "Myrtle Beach Money Per Order" and attached to the Irvin Affidavit as Exhibit "H-1". Reference to those exhibits would reflect if not a concession the next best thing that Defendant was entitled to a setoff for not only the gas tanks removal, but also the three years taxes he paid as there was no contribution by Plaintiff.

Further to offer additional proof verifying payment of the above the three years taxes by H. Jackson Gregory for years 2002, 2003 and 2004 on the Horry County real estate please read the attached affidavit of Roddy Dickinson, Horry County Treasurer dated June 28, 2013 which includes those three cancelled checks paying the three years taxes by H. Jackson Gregory with no contribution by Plaintiff and the three Horry County receipts for the three years confirming the amounts paid by H. Jackson Gregory was the same amount billed. This setoff amount totals \$4,077.99.

The third matter that demands setoff is the amount paid by Defendant on September 12, 2005 to Dan D'Agostino, attorney for Tod Snipes, the roofer in Lancaster, SC who replaced the roof on one of the commercial buildings in 2004 that the city had condemned in 2003. The exhibits attached to the Irvin Affidavit clearly show that the cost of the roof job was \$13,500.00 and was paid for in full by Defendant with no contribution from Plaintiff via check #1095 for \$15,500.00.

See the following exhibits to the Irvin Affidavit that prove the foregoing:

1. Exhibit "E" shows the cancelled check to Tod Snipes' attorney for \$15,500.00 in full payment of the roof job and the clearing bank statement underneath on 9-15-2005. Judge Cross would not allow the extra \$2,000.00 attorneys fees to be setoff, but did allow the \$13,500.00 setoff in his second April 25, 2006 Order called the Nunc Pro Tunc Order of August, 2006. (See Exhibit "C" of the Irvin Affidavit)
2. Also, Exhibits "E-1" and "E-2" (Irvin Affidavit) reflect the same amount quoted (\$13,500.00) by Tod Snipes for the roof job in Lancaster to Ned, Jr. at Gregory and Gregory, his law office dated 10-24-2003 and to Jack Gregory on 10-11-2004. As Ned failed and refused to have anything to do with the roof job for over a year Jack ultimately took over in late 2004 and contracted with Tod Snipes to have the building's roof done and get the building off of the city condemned list which was done and paid for by Jack, the Defendant without any contribution from Plaintiff. See cancelled and cleared Check #1095 dated 9-12-2005 in amount of \$15,500.00 – Exhibit "E" of Irvin Affidavit.
3. Exhibit "E-3" (Irvin Affidavit) is the letter from the City of Lancaster Building Official Richard Bowers dated October 29, 2003 that condemns the building and threatens fines of over One Thousand Dollars a day, etc. if not appealed. ~~Several letters were sent out by the city of Lancaster in an attempt to set up a suitable time~~ to hear an appeal; however, everyone couldn't meet so Defendant, Jack Gregory hired Tod Snipes to do the work and save the building for the Estate. The letters are attached to the Irvin Affidavit as exhibits "F-1, F-2, F-3, F-4, F-5 and F-6". Attorneys Jim Irvin and Cliff Welsh were copied on each letter and were aware of the issue of the Lancaster roof all during 2004.
4. Since Plaintiff would not contribute to the payment of the roof job a mechanics lien was filed by Tod Snipes (on 1-4-2005 in Book E, page 43 Lancaster County) and the Defendants payment to Tod Snipes' attorney on 9-12-2005 satisfied the mechanics lien. Also a lis pendens was filed on May 24, 2005. This Court must take judicial notice of the case (Tod Snipes vs. Jack Gregory and Ned Gregory, Jr. 2005-CP-29-141) and the settlement of the mechanic's lien in September, 2005 as Judge Cross did in 2006.

When these exhibits were presented to Judge Cross in 2006 and his Nunc Pro Tunc Order was issued for April 25, 2006 the proof was made then and again now. As it was ordered then it should be ordered now and the new judgment amount be rendered to end this matter of equity. All of the foregoing exhibits are before this Court in the Irvin Affidavit that was attached to the April 1, 2013 Motion filed with

the Court that date. Defendant disputes the Court's authority to require more proof than was required by Judge Cross in 2006 as shown in the Irvin affidavit.

Also, with regard to the 2004 new roof job by Tod Snipes, please find July 1, 2013 affidavit of his attorney, Daniel D. D'Agostino, Esquire in the matter attached hereto that verifies the payment by H. Jackson Gregory of \$13,500.00 that covered the total cost of the roof by Tod Snipes along with the cancelled lis pendens and mechanics lien that was filed reflecting the roof job by Tod Snipes for \$13,500.00 was paid in full. Clearly this should prove that H. Jackson Gregory paid \$15,500.00 to the attorney of which Judge Cross allowed only \$13,500.00 for setoff and who settled his mechanics lien law suit and lis pendens and there was no contribution from plaintiff.

Therefore, the May 15, 2013 Order of this Court should be amended to reflect the above proof of the Defendants setoffs and the judgment reduced to reflect the same. Based upon the May 15, 2013 Order the reduced judgment amount of \$37,490.44 be reduced as follows, to wit:

1. By \$7,940.00 pursuant to the April 25, 2006 Cross Order specifying that it is a conceded amount that H. Jackson Gregory paid to have the gas tanks removed from the Lancaster property; plus
2. By \$4,077.99 pursuant to the affidavit, receipts and cancelled checks attached by the Horry County Treasurer Roddy Dickinson dated June 28, 2013 verifying the payment by H. Jackson Gregory of the 2002, 2003 and 2004 Horry County real estate taxes on the Myrtle Beach property; plus
3. By \$13,500.00 pursuant to the July 1, 2013 affidavit and cancelled mechanics lien and lis pendens attached by Daniel D. D'Agostino, attorney for Tod Snipes whose bid for the roof job he did in 2004 was \$13,500.00 to the Lancaster real estate that was completely paid by H. Jackson Gregory with no contribution by plaintiff.

That the math should read as follows:

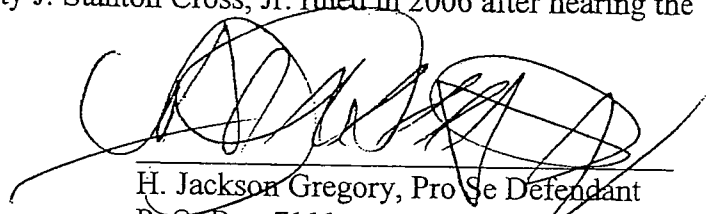
$$\$7,940.00 + \$4,077.99 + \$13,500.00 = \$25,517.99$$

So, the May 15, 2013 Order should be reduced by \$25,517.99 to read:

$$\$37,490.44 \text{ less } \$25,517.99 = \$11,972.45 \text{ (correct judgment amount)}$$

Therefore, the judgment amount in the captioned matter should read \$11,972.45 in lieu of \$37,490.44 and Defendant, H. Jackson Gregory will concede the \$11,972.45 amount for the benefit of the Court and to authorize the Clerk of Court to reissue the Transcript of Judgment to read accordingly as sufficient proof has been provided to verify what the Master in Equity J. Stanton Cross, Jr. ruled in 2006 after hearing the partition case at trial.

SO MOVE.



H. Jackson Gregory, Pro Se Defendant

P. O. Box 7111

Myrtle Beach, SC 29572-0006

(843) 222-4800

July 1, 2013



Treasurer of Horry County
Roddy Dickinson

STATE OF SOUTH CAROLINA

AFFIDAVIT OF RODDY DICKINSON

COUNTY OF HORRY

To Whom It May Concern:

Appearing before me a Notary Republic for South Carolina is Roddy Dickinson, Treasurer for Horry County and after first duly sworn he states the following:

That for tax years for 2002, 2003 and 2004 the real estate property taxes for those three years were paid and receipts were issued which are attached to this affidavit. That H. Jackson Gregory met with affiant in the office of the Horry County Treasurer on June 28, 2013 and after research the following results occurred.

As to year 2002, Receipt number 2002-063408 the total taxes paid amounted to \$1,267.42 and was paid on January 16, 2003. Which is the identical amount received in check number 1322 signed by H. Jackson Gregory.

As to year 2003, Receipt number 2003-064967 the total taxes paid amounted to \$1,500.19 and was paid on April 30, 2004. Which is the identical amount received in check number 1660 signed by H. Jackson Gregory.

As to year 2004, Receipt number 2004-067057 the total taxes paid amounted to \$1,310.38 and was paid on January 18, 2005. Which is the identical amount received in check number 96 signed by H. Jackson Gregory.

Attached is a copy of the three checks referenced above that were furnished to affiant by H. Jackson Gregory at the above meeting showing that the funds cleared the Coastal Federal Bank and matches the three amounts required to make the full annual tax payments for the real estate involved and those clearing dates are as follows: check 1322 for 2002 taxes cleared January 23, 2003; check 1660 for 2003 taxes cleared May 5, 2004; check 96 for taxes cleared January 24, 2005.

This above information completes the total research of this property, which is at Cane Patch, LT 7 BL 7 at tax map number 174-03-04-068, the physical address of the property in question. Affiant's research also identifies that no other payments were received by

any other persons for the payment of the three attached tax receipts and that H. Jackson Gregory was the sole payor to the Horry County Treasurer's Office of the tax amounts due for years 2002, 2003 and 2004 on this property.

Affiant sayeth naught.

Roddy Dickinson
Roddy Dickinson
Horry County Treasurer
Affiant

Sworn to before me this 28th day of June 2013.

Conye J. Brian L.S.
Notary Republic for South Carolina

My Commission expires 6/29/14.

COASTAL FEDERAL BANK

THE RIGHT BANK FOR YOU

Account: 422010421
Page: 2

01/24/2005 96 \$1,310.38

15 JAN 2005

Harry County Treasurer \$1,310.38

One thousand Three Hundred Ten + 38/100 DOLLARS

COASTAL FEDERAL BANK
MYRTLE BEACH, SC 29577

MEMO 174-03-04-068

0096 00000310382

04 67057

05/05/2004 1660 \$1,500.19

THE GREGORY COMPANY
302 - 70TH AVE. N
MYRTLE BEACH, SC 29572

DATE 30 April 2004

Harry County Treasurer \$1,500.19

One thousand Five Hundred + 19/100 DOLLARS

COASTAL FEDERAL BANK
MYRTLE BEACH, SC 29577

MEMO 2003064967 174-03-04-068

1660 000001500192

03 64967

01/23/2003 1322 \$1,267.42

THE GREGORY COMPANY
302 - 70TH AVE. N
MYRTLE BEACH, SC 29572

DATE 01/23/2003

Johnny C. Allen Harry County Treasurer \$1,267.42

One thousand Two Hundred Sixty Seven + 42/100 DOLLARS

COASTAL FEDERAL BANK
MYRTLE BEACH, SC 29577

MEMO 174-03-04-068 # 2003064967

1322 000001267422

02 63408

HORRY COUNTY, SOUTH CAROLINA

REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT

GREGORY LUCILLE G ETAL CO-TRUSTEES
H JACKSON GREGORY
302 70TH AVE N
MYRTLE BEACH SC 29572-3610

Itemization Of Your Tax Levy \$ Distribution

	MILLS	CREDIT	TAX \$'s
GEN. FUND DEBT	7.0		47.21
COUNTY GENERAL	39.4		265.71
HIGHER ED. DEBT	.7		4.72
HORRY-GT TEC	1.9		12.81
SENIOR CITIZENS	.4		2.70
RECREATION	1.5		10.12
TOTAL COUNTY			343.27
SCHOOL OPER.	102.9	344.40	349.56
SCHOOL DEBT SEV	22.0		148.37
TOTAL SCHOOL		344.40	497.93

TAX YEAR		2002 063408
MBP/Account No.		174-03-04-068
Property Location:		CANE PATCH LT 7 BL 7 CP
Appraised Value (Taxable):		168,600
POLITICAL SUBDIVISIONS	TAX LEVY	AMOUNT
CITY	63.2	426.22
SCHOOL	124.9	842.33
COUNTY	50.9	343.27
SPECIAL DIST		
LESS:		
COUNTY HOMESTEAD EXEMPTION		
CITY HOMESTEAD EXEMPTION		
STATE TAX RELIEF		-344.40
TOTAL TAX:		1,267.42
STORMWATER FEE		
TOTAL DUE		1267.42
(+3%) Jan. 16 thru Feb. 1 2003		1,305.44
(+7%) Feb. 2 thru Mar. 16 2003		1,394.16
(+5%) After March 16 2003		1,457.53
PRIOR YEAR TAX ON THIS PROP		1,267.42

IMPORTANT NUMBERS

ASSESSOR - 1301 SECOND AVE.
CONWAY, S.C. 29526
TELEPHONE NUMBERS:
843-915-5040 843-205-5040
843-756-2121

COUNTY TREASURER - BOX 1237
CONWAY, S.C. 29528
TELEPHONE NUMBERS:
843-915-5470 843-756-2121

ON MARCH 17th, ALL
TAXES GO INTO
EXECUTION WITH
COLLECTION COSTS
& PENALTIES ADDED

Taxes due on the following property for tax year commencing December 31

NOTICE NUMBER		DATE OF NOTICE		MBP/ACCOUNT NUMBER		CITY OF		MORTG.	DIST.
2002 063408		10/01/2002		174-03-04-068		MYRTLE BCH			880
TOTAL ASSESSMENT	PENALTY FOR NO/LATE FILING		ASSESSMENT EXEMPT		HOMESTEAD EXEMPTION		TOTAL TAXABLE ASSESSMENT		
6744	+		-		-		=	6744	
PROPERTY CLASSIFICATION		NO. OF ACRES	NO. LOTS	APPRaisal VALUE OF LAND	IMPROV.	APPRaisal VALUE OF BLDGS.	RATIO	TOTAL REAL OR PERSONAL	
RESID.			1.0	108400	1	60200	4	6744	

COUNTY AUDITOR - BOX 1205
CONWAY, S.C. 29528
TELEPHONE NUMBERS:
843-915-5050 843-756-2121

STORMWATER - BOX 1236
CONWAY, S.C. 29528
TELEPHONE NUMBER:
843-381-8000

REAL ESTATE AND PERSONAL PROPERTY RECEIPT:

TAX	PENALTY	FEES	INTEREST	STORMWATER FEE	TOTAL PAID
1,267.42					1,267.42
					DATE PAID
					1/16/2003

PAID RECEIPT

WE
APPRECIATE
YOUR
PAYMENT

GOD BLESS AMERICA

COPY

COPY

71

HORRY COUNTY, SOUTH CAROLINA
REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT

01TR54

GREGORY LUCILLE G ETAL CO-TRUSTEES
H JACKSON GREGORY
302 70TH AVE N
MYRTLE BEACH SC 29572-3610

TAX YEAR	2003 064967
MBP/Account No.	174-03-04-068
Property Location:	CANE PATCH LT 7 BL 7 CP
Appraised Value (Taxable):	168,600

POLITICAL SUBDIVISIONS	TAX LEVY	AMOUNT
CITY	63.2	426.22
SCHOOL	130.4	879.42
COUNTY	50.9	343.27
SPECIAL DIST		

LESS:	
COUNTY HOMESTEAD EXEMPTION	
CITY HOMESTEAD EXEMPTION	
STATE TAX RELIEF	-344.40
TOTAL TAX:	1,304.51
STORMWATER FEE	
TOTAL DUE	1304.51
(+3%) Jan. 16 thru Feb. 1 2004	1,343.65
(+7%) Feb. 2 thru Mar. 16 2004	1,434.96
(+5%) After March 16 2004	1,500.19
PRIOR YEAR TAX ON THIS PROP	1,267.42

Itemization Of Your Tax Levy \$ Distribution

	MILLS	CREDIT	TAX \$'s
GEN. FUND DEBT	6.2		41.81
COUNTY GENERAL	40.2		271.11
HIGHER ED. DEBT	.7		4.72
HORRY-GT TEC	1.9		12.81
SENIOR CITIZENS	.4		2.70
RECREATION	1.5		10.12
TOTAL COUNTY			343.27
SCHOOL OPER.	108.4	344.40	386.65
SCHOOL DEBT SEV	22.0		148.37
TOTAL SCHOOL		344.40	535.02

IMPORTANT NUMBERS

ON MARCH 17th, ALL
TAXES GO INTO
EXECUTION WITH
COLLECTION COSTS
& PENALTIES ADDED

ASSESSOR - 1301 SECOND AVE.
CONWAY, S.C. 29526
TELEPHONE NUMBERS:
843-915-5040 843-205-504
843-756-2121
COUNTY TREASURER - BOX 1237
CONWAY, S.C. 29528
TELEPHONE NUMBERS:
843-915-5470 843-756-212

COUNTY AUDITOR - BOX 1205
CONWAY, S.C. 29528
TELEPHONE NUMBERS:
843-915-5050 843-756-212

STORMWATER - BOX 1236
CONWAY, S.C. 29528
TELEPHONE NUMBER:
843-381-8000

Taxes due on the following property for tax year commencing December 31

NOTICE NUMBER		DATE OF NOTICE		MBP/ACCOUNT NUMBER		CITY OF		MORTG.		DIST.	
2003 064967		10/01/2003		174-03-04-068		MYRTLE BCH				880	
TOTAL ASSESSMENT		PENALTY FOR NO/LATE FILING		ASSESSMENT EXEMPT		HOMESTEAD EXEMPTION		TOTAL TAXABLE ASSESSMENT			
6744		+		-		-		=		6744	
PROPERTY CLASSIFICATION		NO. OF ACRES		NO. LOTS		APPRAISAL VALUE OF LAND		IMPROV.		APPRAISAL VALUE OF BLDGS.	
RESID.				1.0		108400		1		60200	
										RATIO	
										TOTAL REAL OR PERSONAL	
										6744	

REAL ESTATE AND PERSONAL PROPERTY RECEIPT:

TAX	PENALTY	FEES	INTEREST	STORMWATER FEE	TOTAL PAID
1,304.51	195.68				1,500.19
					DATE PAID
					4/30/2004

PAID RECEIPT

WE
APPRECIATE
YOUR
PAYMENT

GOD BLESS AMERICA

COPY

COPY

72

HORRY COUNTY, SOUTH CAROLINA

REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT

GREGORY LUCILLE G ETAL CO-TRUSTEES
 H JACKSON GREGORY
 PO BOX 70374
 MYRTLE BEACH SC 29572-0025

Itemization Of Your Tax Levy \$ Distribution

	MILLS	CREDIT	TAX \$'s
GEN. FUND DEBT	6.2		41.96
COUNTY GENERAL	40.2		272.07
HIGHER ED. DEBT	.7		4.74
HORRY-GT TEC	1.9		12.86
SENIOR CITIZENS	.4		2.71
RECREATION	1.5		10.15
TOTAL COUNTY			344.49
SCHOOL OPER.	108.4	344.40	389.25
SCHOOL DEBT SEV	22.0		148.90
TOTAL SCHOOL		344.40	538.15

TAX YEAR		2004 067057
MBP/Account No.		174-03-04-068
Property Location:		CANE PATCH LT 7 BL 7 CP
Appraised Value (Taxable):		169,200
POLITICAL SUBDIVISIONS	TAX LEVY	AMOUNT
CITY	63.2	427.74
SCHOOL	130.4	882.55
COUNTY	50.9	344.49
SPECIAL DIST		
LESS:		
COUNTY HOMESTEAD EXEMPTION		
CITY HOMESTEAD EXEMPTION		
STATE TAX RELIEF		-344.40
TOTAL TAX:		1,310.38
STORMWATER FEE		
TOTAL DUE		1310.38
(+3%) Jan. 16 thru Feb. 1 2005		1,349.69
(+7%) Feb. 2 thru Mar. 16 2005		1,441.42
(+5%) After March 16 2005		1,506.94
PRIOR YEAR TAX ON THIS PROP		1,304.51

ON MARCH 17th, ALL
 TAXES GO INTO
 EXECUTION WITH
 COLLECTION COSTS
 & PENALTIES ADDED

IMPORTANT NUMBERS

ASSESSOR - 1301 SECOND AVE.
 CONWAY, S.C. 29528
 TELEPHONE NUMBERS:
 843-915-5040 843-205-5040
 843-756-2121

COUNTY TREASURER - BOX 1237
 CONWAY, S.C. 29528
 TELEPHONE NUMBERS:
 843-915-5470 843-756-2121

COUNTY AUDITOR - BOX 1205
 CONWAY, S.C. 29528
 TELEPHONE NUMBERS:
 843-915-5050 843-756-2121

STORMWATER - BOX 1236
 CONWAY, S.C. 29528
 TELEPHONE NUMBER:
 843-381-8000

Taxes due on the following property for tax year commencing December 31

NOTICE NUMBER		DATE OF NOTICE		MBP/ACCOUNT NUMBER		CITY OF		MORTG.		DIST					
2004 067057		10/01/2004		174-03-04-068		MYRTLE BCH				880					
TOTAL ASSESSMENT		PENALTY FOR NO/LATE FILING		ASSESSMENT EXEMPT		HOMESTEAD EXEMPTION		TOTAL TAXABLE ASSESSMENT							
6768		+		-		-		=		6768					
PROPERTY CLASSIFICATION		NO. OF ACRES		NO. LOTS		APPRAISAL VALUE OF LAND		APPROV.		APPRAISAL VALUE OF BLDGS.		RATIO		TOTAL REAL OR PERSONAL	
RESID.				1.0		108400		1		60800		4		6768	

REAL ESTATE AND PERSONAL PROPERTY RECEIPT:

TAX	PENALTY	FEES	INTEREST	STORMWATER FEE	TOTAL PAID
1,310.38	+	+	+	+	1,310.38
					DATE PAID
					1/18/2005

PAID RECEIPT

WE
 APPRECIATE
 YOUR
 PAYMENT

GOD BLESS AMERICA

COPY COPY 73

Jul. 1. 2013. 12:23PM

D'Agostino Law Firm

No. 3301 P. 2



D'AGOSTINO
LAW FIRM

Daniel D. D'Agostino | Jacqueline N. Davis

25 West Liberty Street

York, South Carolina 29745

Phone 803.628.6509 | Fax 803.628.7990

www.dagostinolawyers.com

July 1, 2013

Jack Gregory

Via Facsimile: 843-445-6202

Re: Tod Snipes Construction, Inc. v. Jack Gregory and Ned Gregory
C.A. No.: 2005-CP-29-141

Dear Jack:

Enclosed please find the Order for Judgment with the \$15,500.00 check. This fully dismissed the above referenced action.

With kind regards, I am

Sincerely yours,

Daniel D'Agostino

Daniel D. D'Agostino

DDD/krm
Enclosures

00 Stripes - 10-24-2003 - \$13,500.00 and b) John E. Minors -

Tod Snipes to do the work.

Yours truly,

Jack Gregory

THE GREGORY COMPANY, INC.
SPECIAL ENDORSEMENT ACCOUNT
302 70TH AVENUE NORTH
MYRTLE BEACH, SC 29572

1095

PAY TO THE ORDER OF Dan D'Agostino Esquire DATE 9-12-2004

Fifteen Thousand Five Hundred \$ 15,500.00

COASTAL FEDERAL BANK
MYRTLE BEACH, SC 29577

For Tod Snipes Esquire - Investment Bank [Signature]

2005 429-101 #0010954

0001550000

09/15/2005 1095 \$15,500.00

STATE OF SOUTH CAROLINA	)	IN COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
Tod Snipes Construction, Inc.,	)	
	)	
Plaintiff,	)	File Book No. 2005-CP-29-141
	)	
v.	)	
	)	
Jack Gregory and Ned Gregory,	)	
	)	
Defendant.	)	

The within case was resolved and the mechanics lien and lis pendens shall be canceled.

D'AGOSTINO LAW FIRM



DANIEL D. D'AGOSTINO

25 West Liberty Street

York, South Carolina 29745

Office: (803) 628-6509

ATTORNEY FOR DEFENDANT

York, South Carolina
July 1, 2013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action # 2002-CP-26-1706

Ned Gregory, Jr.,
Plaintiff,

-vs-

Howell Jackson Gregory,
Defendant.

DEFENDANT'S MEMORANDUM IN
FAVOR OF JULY 1, 2013 MOTION

13 JUL 22 PM 2:38
CLERK OF COURT
WARD

The undersigned Defendant respectfully submits the following Brief of Defendant in Favor of Defendant's Motion under Rule 59(e) dated and filed July 1, 2013 and in Opposition to Plaintiff's Brief under cover of letter dated July 16, 2013:

HISTORY OF THE CASE:

This case began in 2000 in Lancaster County, SC as a Partition of two real estate properties: a Myrtle Beach, SC beach home and three commercial buildings in the city of Lancaster, SC by Ned Gregory, Jr. brother of Howell Jackson Gregory, the only two heirs of their parents. The case was moved in 2002 to Horry County, SC to be heard by the Master-in-Equity, J. Stanton Cross, Jr. who did hold several hearings and determined in 2005 that the said real estate could not be divided in kind and ordered the sale of both parcels: the Horry County home in May, 2005 and the Lancaster commercial property in June, 2005. Howell Jackson Gregory was the successful purchaser of the Myrtle Beach home and Howell Jackson Gregory as agent for The Gregory Company, Inc., his corporation was the successful purchaser of the Lancaster commercial property.

During the trial of the Partition case the trial judge, J. Stanton Cross, Jr., as Master-in-Equity allowed in addition to the partition issue equitable claims by BOTH parties and as a result Judge Cross after listening to the testimony presented and proof submitted during and after the trial allowed the following claims:

1. Plaintiff was awarded his claims for rent and accounting and they were set forth in the Transcript of Judgment dated June 10, 2008 prepared by the Horry County Clerk of Court's Office; however, an oversight was committed by the clerk in omitting the Defendant's awards by J. Stanton Cross, Jr., as Master-in-Equity;
2. Defendant was awarded his three claims for the following and the three were included in the Amended Transcript of Judgment dated November 2, 2012 by the Horry County Clerk of Court; however the corrected oversight was nullified by Order of Cynthia Graham Howe, Master-in-Equity on March 4, 2013 who attempts to modify or nullify the orders of J. Stanton Cross, Jr., the trial judge:

- a) It was CONCEDED that Defendant be awarded the cost of the removal of the gas tanks from the Lancaster property amounting to \$7,940.00 during the trial of the case and so stated in the first April 25, 2006 Order of J. Stanton Cross, Jr. and this amount is being wrongfully denied;
- b) Defendant was awarded the payment of the 2002, 2003 and 2004 Horry County real estate taxes on the Horry County property with proof and Defendant submitted three cancelled checks to the Court in 2006 totaling \$4,077.99 showing payment of those taxes for those tax years without any contribution from Plaintiff as set forth in both Orders of Judge Cross dated April 25, 2006 meeting the proof requirement by the trial judge and this amount is being wrongfully denied; and
- c) Defendant was awarded the cost of the new roof on one of the commercial buildings in Lancaster installed in 2004 and paid for by Defendant in 2005 amounting to \$13,500.00 without any contribution by Plaintiff as set forth in both Orders of Judge Cross dated April 25, 2006 meeting the proof requirement by the trial judge and this amount is being wrongfully denied.

The Order of Master-in-Equity Cynthia Graham Howe dated May 15, 2013 ironically contains a reduction of the original erred by oversight transcript of judgment dated June 10, 2008 by an amount that was CONCEDED; however, said Master-in-Equity fails and/or refuses to further reduce the said oversight transcript of judgment by an amount that was CONCEDED at the trial prior to her becoming the Master-in-Equity which was heard before and ruled upon by her predecessor, J. Stanton Cross, Jr. who retired from the bench due to a disability, a medical condition of which the Court should take judicial notice.

Further the Order dated May 15, 2013 dealt with two separate motions that had previously been filed by Defendant.

DEFENDANT'S LEGAL POSITION:

1. MOTION IS TIMELY:

The July 1, 2013 motion was filed on July 1, 2013 and within ten (10) days from when Defendant received a copy of said Order dated May 15, 2013. Defendant was never served with a copy of said Order, but was furnished a copy by James T. Irvin, Jr., Esquire, who was sent a copy by the Horry County Clerk of Court and the envelop containing the said Order was delivered by the US Mail to his post office box on Friday, June 21, 2013 and his call to the undersigned Defendant to come by and pick up a copy which was done. Therefore, the requirement of Rule 59(b) was met timely.

It appears that Plaintiff's counsel assumed that the Clerk of Court on May 16, 2013 or thereabouts sent notice of the entry of the said order; however, whether or not she did it was never received by Defendant and only one copy was received by James T. Irvin, Jr., Esquire on June 21, 2013 and Defendant did obtain a copy of that copy on that date from Mr. Irvin and within ten (10) days did file a timely motion. Said Rule 59(b) states "Time for Motion. ...In non-jury actions the motion shall be made not later than 10 days after the RECEIPT (emphasis added) ... of the filing of an order."

2. MOTION IS NOT REDUNDANT:

The motion is in response to an order that was written to cover two motions that were filed earlier. One of those motions was for credits due Defendant that were finally CONCEDED by Plaintiff's counsel at the hearing; however, a CONCEDED credit from the original trial of the case and ruled on by the trial judge, J. Stanton Cross, Jr. has never been recognized by the present Master-in-Equity and in order to preserve the equity in the matter a CONCEDED matter must be computed as ordered and failure to do so will ultimately result in an appeal and it would be obviously much more economical both monetarily and judicially to resolve the matter at this stage. Further, the authority of the present Master-in-Equity is being questioned.

The attachments to the July 1, 2013 motion further verify the proof that is available to show that the trial judge, J. Stanton Cross, Jr. was correct in his assessment of the facts and the required proof prior of his two orders in April, 2006. The proof presented to Judge Cross of several checks (See affidavit of James T. Irvin, Jr.) with the deposit of them and the bank clearance dates was sufficient for him to award Defendant, Howell Jackson Gregory the total of \$25,517.99 of funds that he paid toward the improvement of the partitioned real estate and taxes that were not contributed towards by Plaintiff.

Therefore, a corrected Transcript of Judgment reducing the latest number in the May 15, 2013 order of \$37,490.44 by the \$25,517.99 due Defendant would create a true and accurate judgment amount of \$11,972.45 which should be the newly amended transcript of judgment in the case.

3. THE DOCUMENTS ATTACHED VERIFY DEFENDANT'S SETOFFS:

The documents attached to the July 1, 2013 motion reflect how overkill of proof can lead to statements by opposing counsel that they should not be considered and that the motion is redundant. Those documents prove additionally and simply verify what was proven to J. Stanton Cross, Jr. who heard the case and saw the proof submitted to him during 2006 to his satisfaction to award Defendant a total of \$25,517.99 in the fashion of an offset to the judgment awarded Plaintiff and due to the oversight of the Horry County Clerk of Court on June 10, 2008 an error was committed and she has

tried to correct the same, but slowly and hopefully we will come to the correct judgment amount in the Master-in-Equity Court of Horry County where in 2002 this case was placed for resolution and legally done so in 2006.

Obviously, counsel for Plaintiff would argue that Defendant has submitted "a lot of papers" without specifying the details because they want the Court to feel overwhelmed with the paperwork and not read the contents to appreciate the facts. When the Court states that Defendant has not proven the payments that Master-in-Equity J. Stanton Cross, Jr. has already seen and a repeat of those payments still receive the not proven statement by a later serving Master-in-Equity who was not involved in the trial of the case and the issuing of the two April, 2006 orders, then the Defendant can only submit additional verifying facts that further show that what Judge Cross saw and ruled upon was correct. Those papers should help assist the current Court to reach the accurate judgment amount in this case that is now \$11,972.45.

Also, for Plaintiff's counsel to argue that Defendant is "cherry picking" a document is really taking the matter to the overkill standpoint when in their other breath they say the documents attached should not be considered. If you look at the dates of the facts then you will understand that their language is merely an argument that fails because the two April, 2006 orders of Judge Cross that set the stage for Defendants \$25,517.99 setoff of Plaintiff's judgment predates the final order in the Tod Snipes case that is quoted (without the date) by them as it was subsequent to the two April, 2006 orders of Judge Cross and those Judge Cross orders are the law of the partition case.

4. RULE 63 VIOLATION – AUTHORITY OF JUDGE HOWE QUESTIONED:

Rule 63 ... defines the authority of a successor judge in post-trial matters.

"There is a long standing rule in this State that one judge of the same court cannot overrule another... A successor judge may not substitute his own judgment for that of the trial judge..."

"Rule 63 gives a successor judge no discretion to reweigh the evidence where the trial judge has made findings of fact supported by evidence in the record." *Charleston County DSS v. Father, et al.*, 317 S.C. 283, 454 S.E.2d 307, 312 (1995).

Counsel for Plaintiff request that no hearing be held to rule on the July 1, 2013 motion; however, in light of the foregoing Rule 63 and case law violation by current Judge Howe a hearing should be held or in the alternative in lieu of the hearing the Court simply apply the equity as established by J. Stanton Cross, Jr., the trial judge pursuant to his two April, 2006 orders and issue an order that spells out his ruling by reducing the transcript of judgment in this partition case from its current total from the May 15, 2013 Order of \$37,490.44 by awarding to Defendant, Howell Jackson Gregory per Judge Cross \$25,517.99 which will give the true and accurate judgment total of \$11,972.45.

CONCLUSION:

It would be normal and equitable to end this matter in this Court where it was set 11 years ago for a partition of real estate that was sold in 2005. The lingering judgment of offsetting money amounts between the parties was flawed on June 10, 2008 when the Horry County Clerk of Court by oversight omitted giving the lawful credits to Defendant, Howell Jackson Gregory as ordered by Judge Cross. She admits that and on November 2, 2012 attempted to so award those setoffs as ordered by Judge Cross; however, she was reversed by the March 4, 2013 order of Judge Howe who attempts to modify the Judge Cross orders when under Rule 63 Judge Howe is barred from reweighing the evidence as she has no discretion there. The current position of this case is simple:

1. Judge Cross ruled in April, 2006 that BOTH parties had money expended that needed to be offset against each other and in so ruling he set forth Plaintiff's amounts in one paragraph and Defendant's amounts and rights in the following paragraph;
2. When asked by Plaintiff on June 10, 2008 to issue a Transcript of Judgment the Horry County Clerk of Court attempted to comply; however, only set forth on the said Transcript of Judgment the Plaintiff's amount omitting the Defendant's amount and therefore created the wrong judgment amount that has led to the effort to apply the equities as set forth by Judge Cross and correct the erroneous judgment;
3. In late 2012 when Defendant inquired of the Horry County Clerk of Court to determine how and why the judgment amount was wrong after initially seeing and learning of the erred oversight Transcript of Judgment dated June 10, 2008 in a hearing in Lancaster, SC on February 7, 2012 an effort was made to assist the Clerk of Court in getting the correct judgment amount established and several motions were filed to do so;
3. On November 2, 2013 the Horry County Clerk of Court did amend the Transcript of Judgment to give Defendant his \$25,517.99 offset credit; however, an order dated March 4, 2013 by now Master-in-Equity Cynthia Graham Howe reversed that correction. That action violates Rule 63 and this motion allows a revisit of that action in an effort to resolve the lingering matter of the correct judgment amount to be handled in the Horry County Master-in-Equity Court where it should be as it is the court of equity.
4. Whether a hearing is set or not the right thing to do would be to order that the judgment now stand at \$11,972.45 by giving Defendant, Howell Jackson Gregory his \$25,517.99 awarded credits by setoff as ordered by Judge Cross and let the matter end equitably.

Respectfully submitted,

H. Jackson Gregory
Defendant Pro Se

July 22, 2013

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Ned Gregory, Jr.,

Plaintiff,

vs.

Howell Jackson Gregory,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No. 200-CP-29-896

NOTICE OF PENDENCY OF ACTION

2902875 BK: 0002 PG: 0202
CERTIFIED TRUE COPY
Of Original Filed
in this Office
10/27/2000 04:53P
Lancaster County, SC
Clerk of Court

NOTICE IS HEREBY GIVEN, that an action has been commenced and pending in this Court upon Complaint of the above named Plaintiff against ~~the above named Defendant~~ for the partition of real property described as follows, to wit:

Tract "A" Lancaster County

"All that piece, parcel or lot of land, situate, lying and being in the City of Lancaster, County of Lancaster, State of South Carolina, fronting on South Main Street for a distance of 176' and on Chesterfield Avenue for a distance of 176', having a depth of 165' on the Northern boundary and a width of 108.5' on the Eastern boundary. Being bounded on the North by Cooper Furniture Company; on the East by Carol G. Hodnett and Chauncey D. Gregory; on the South by Chesterfield Avenue; and on the West by South Main Street. For a more complete description reference to Plat of Warren B. Turkert, L.S., dated October 25, 1951, and recorded in Plat Book 5, at Page 228, is craved."

Being the identical property conveyed to Ned Gregory and Toy R. Gregory by deed of A.J. Gregory, et al. recorded September 1, 1942, in Deed Book N-3, at Page 283; Toy R. Gregory conveyed his one-half interest to Ned Gregory by deed recorded August 12, 1946, in Deed Book S-3, at page 227; Ned Gregory subsequently conveyed one-sixth interest to C. D. Gregory by deed recorded in Deed Book W-4, at Page 229, to Toy R. Gregory by deed recorded in Deed Book W-4, at Page 232, to James Stoney Drake, Jr. by deed recorded in Deed Book W-4, at Page 233, to C.D. Gregory, Jr. by deed recorded in Deed Book W-4, at Page 234; the four-sixths interest were reconveyed to Ned Gregory as follows: from James Stoney Drake, Jr. by deed recorded October 5, 1959, in Deed Book W-45, at Page 330, from Toy R. Gregory by deed recorded May 2, 1961, in Deed Book Z-4, at Page 423, and from C. D. Gregory, Jr. and Gladys G. Gregory (See also will of C. D. Gregory, Sr.) recorded May 23, 1967, in Deed Book

W-5, at Page 104. Ned Gregory died testate November 27, 1985 (See Probate File 85-ES-29-302).

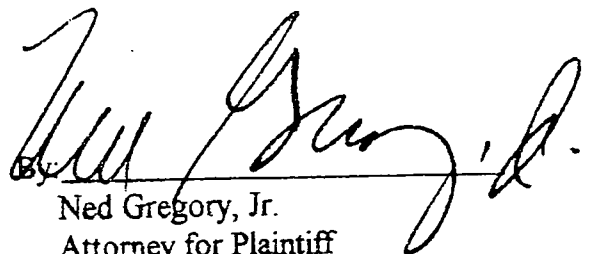
AND

Tract "B" Horry County

"All and singular that certain piece, parcel or lot of land situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, County of Horry, State of South Carolina, and being designated as Lot Seven (7) of Block Seven CP, Cane Patch Section, (7-CP) as shown on map of Block as property North of Cane Patch Swash made by T.M. Jordan, C.E., dated April, 1946, recorded in the Office of the Clerk of Court for Horry County in Plat Book 5-A, Page 36, reference to which is craved as forming a part of these presents. Said lot is bonded by 70th Avenue North on the SW for 90'; Lot No.6 on the NW for 150'; Lot No. 10 on the NE for 90'; and Lot No.8 on the NE for 150', as shown by plat of Robert L. Bellamy, C.E., dated December 16, 1961."

Being the identical property conveyed to Ned Gregory by deed of George W. Bryan and Claude M. Epps recorded September 6, 1949 in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 67, at Page 38. Ned Gregory died testate November 27, 1985, and by his will, provided for distribution of said property in trust. (See Probate Court File W/1422. Estate of Ned Gregory, Sr., filed September 23, 1986.)

Gregory and Gregory, Attorneys



Ned Gregory, Jr.
Attorney for Plaintiff
210 West Meeting St.
Post Office Box 967
Lancaster, SC 29720
Phone (803) 283-3324
Fax (803) 283-3326

October 27, 2000
Lancaster, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

Ned Gregory, Jr.,)
Plaintiff,)

vs.)

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

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No. 08-LP-29- 174

THIRD AMENDED
NOTICE OF PENDNECY
OF ACTION

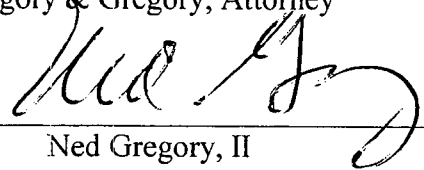
FILED
OFFICE OF CLERK
OF COURT
2008 SEP 19 A 11:58
CLERK OF COURT
LANCASTER COUNTY, SC

NOTICE IS HEREBY GIVEN, that an action has been commenced and is pending in this Court upon Complaint of the above named Plaintiff against the above named Defendants in regards to the real property described as follows, to wit:

"All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the City of Lancaster, County of Lancaster, State of South Carolina, fronting West on South Main Street for a distance of 176' and fronting south on Chesterfield Avenue for a distance of 176', being designated as Lot Nos. 1, 2, and 3 as per plat of Jack Smith Surveying dated June 9, 2008 and filed in Plat Book 2008, at Page 552. For a more minute description reference to said Plat s craved."

Being the identical property conveyed to The Gregory Company, Inc. by Deed of J. Stanton Cross, Jr., Master in equity for Horry County dated October 30, 2006 and recorded June 4, 2008 in the Office of the Register of Deed for Lancaster County, South Carolina in Deed Book 468, at Page 156.

Gregory & Gregory, Attorney

By: 

Ned Gregory, II
Attorney for Plaintiff
210 West Meeting St.
Post Office Box 967
Lancaster, SC 29721-0967
Phone (803) 283-3324
Fax (803) 283-3326

September 19, 2008
Lancaster, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

TOD SNIPES CONSTRUCTION)
INC.,)

PLAINTIFF,)

VS.)

JACK GREGORY AND NED)
GREGORY,)

DEFENDANTS,)

OF WHOM,)
NED GREGORY, JR. IS,)

CROSS-CLAIM PLAINTIFF,)

VS.)

HOWELL JACKSON GREGORY,)

CROSS-CLAIM DEFENDANT.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 05-CP-29-141

ANSWER AND COUNTERCLAIM OF
DEFENDANT NED GREGORY, JR. AND
CROSS-CLAIM COMPLAINT
(NON-JURY)

CLERK OF COURT
LANCASTER COUNTY, SC
2005 APR -7 A 11:00
CLERK OF COURT
OF COURT

The Defendant, Ned Gregory, Jr., answering the Complaint of the Plaintiff, would show unto the Court and would allege as follows:

FOR A FIRST DEFENSE

1. That the Defendant, Ned Gregory, Jr., denies each and every allegation contained in the Complaint, unless hereafter specifically admitted, modified or explained.
2. That the Defendant, Ned Gregory, Jr., admits the allegations contained in Paragraph Number 1 of the Complaint.

3. That the Defendant, Ned Gregory, Jr., admits the allegations contained in Paragraph Number 2 of the Complaint.

4. That the Defendant, Ned Gregory, Jr., admits the allegations contained in Paragraph Number 3 of the Complaint.

5. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 4 of the Complaint, and therefore, denies the same. The Complaint contains no Exhibit A.

6. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 5 of the Complaint, and therefore, denies the same.

7. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 6 of the Complaint, and therefore, denies the same.

8. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 7 of the Complaint, and therefore, denies the same.

9. Responding further to Paragraph Numbers 6 & 7 of the Complaint, the Defendant, Ned Gregory, Jr., admits that the Plaintiff conducted roof repair to only the building located at the address known as 331 South Main Street, Lancaster, South Carolina, and not upon other property which is the subject of this action, but denies that Plaintiff filed his Mechanic's Lien within ninety (90) days of the last date labor and materials were furnished to the job.

10. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 8 of the Complaint, and therefore, denies the same. The Complaint contains no Exhibit A.

11. Responding further to Paragraph Number 8 of the Complaint, the Defendant, Ned Gregory, Jr., has not received Notice pursuant to § 29-5-40 of the 1976 Code of Laws of South Carolina, as amended, nor has he received any bill for Plaintiff's alleged services regarding the property. Plaintiff did not file a Notice of Project Commencement pursuant to § 29-5-23 of the South Carolina Code of Laws.

12. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 9 of the Complaint, and therefore, denies the same. The Defendant, Ned Gregory, Jr., admits that he has paid no money to Plaintiff and further alleges that he has not received a bill from Plaintiff for his alleged services.

13. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Number 10 of the Complaint, and therefore, denies the same. The Complaint contains no Exhibit A.

14. That the Defendant, Ned Gregory, Jr., specifically denies the allegations contained in Paragraph Number 11 of the Complaint and demands strict proof thereof.

15. That the Defendant, Ned Gregory, Jr., specifically denies the allegations contained in Paragraph Number 12 of the Complaint and demands strict proof thereof.

16. That the Defendant, Ned Gregory, Jr., specifically denies the allegations contained in Paragraph Number 13 of the Complaint, and demands strict proof thereof.

17. Responding to Paragraph Number 14 of the Complaint, the Defendant, Ned Gregory, Jr., incorporates by reference, his responses to Paragraph Number 1 through Paragraph Number 13 of the Complaint.

18. That the Defendant, Ned Gregory, Jr., is without sufficient information to form a belief or opinion as to the allegations contained in Paragraph Numbers 15, 16, 17, 18, 19, and 20 of the Complaint, and therefore, denies the same.

19. Responding further to Paragraph Numbers 15, 16, 17, 18, 19, and 20 of the Complaint, any judgment, cost and attorney's fees granted to Plaintiff should be charged solely against Defendant, Jack Gregory, and against any interest he may have in the subject property.

20. That the Defendant, Ned Gregory, Jr., denies the prayer of the Complaint.

21. That by reason of this Defense, Plaintiff is not entitled to the relief demanded against the Defendant, Ned Gregory, Jr.

FOR A SECOND DEFENSE

22. That the allegations of the First Defense, not inconsistent herewith, are hereby realleged and incorporated herein by reference.

23. That Plaintiff has failed to allege facts sufficient to assert a cause of action against the Defendant, Ned Gregory, Jr.

24. That based upon and due to the forgoing, and pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, Plaintiff's claims should be dismissed as a matter of law.

FOR A THIRD DEFENSE

25. That the allegations of the First and Second Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.
26. That Plaintiff had no dealings with Defendant, Ned Gregory, Jr., and consequently had no contract with him regarding reparations to the building, which is the subject of the Plaintiff's action.
27. That by reason of this Defense, Plaintiff is not entitled to the relief demanded against the Defendant, Ned Gregory, Jr.

FOR A FOURTH DEFENSE

28. That the allegations of the First, Second, and Third Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.
29. That the Plaintiff's claims are barred by the applicable Statute of Limitations.
30. That based upon and due to the foregoing, Plaintiff's claims should be dismissed as a matter of law.

FOR A FIFTH DEFENSE

31. That the allegations of the First, Second, Third, and Fourth Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.
32. That Plaintiff's claims are barred by the Statute of Frauds.

53. That Ned Gregory, Sr. was domiciled in Lancaster County, South Carolina at the time of his death.

54. That the Last Will and Testament of Ned Gregory, Sr. was admitted to probate in the Probate Court for Lancaster County, South Carolina in Probate Roll # 85-ES-29-302 and filed September 23, 1986 in the Horry County Probate Court as File # W/1422.

55. The Last Will and Testament of Ned Gregory, Sr. established a trust for the subject real property which terminated March 16, 1990 upon the death of his widow, Lucille G. Gregory.

56. That pursuant to the terms of the Last Will and Testament, the sole devisees upon termination of the trust are the parties to the Cross-Claim Complaint as joint tenants.

57. That the Cross-Claim Plaintiff is a resident of Lancaster County, South Carolina. That upon information and belief, Cross-Claim Defendant is a resident of Horry County, South Carolina.

58. That the parties own no other property together and the Cross-Claim Plaintiff, upon information and belief, alleges that it would be in the best interest of the parties to partition the subject real property.

FOR A TENTH DEFENSE AND
BY WAY OF A CROSS-CLAIM COMPLAINT

FOR A THIRD CAUSE OF ACTION (ACCOUNTING AND OUSTER)

59. That the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.

60. That the Cross-Claim Plaintiff and Cross-Claim Defendant own the subject real estate technically as joint tenants.

61. That the Cross-Claim Plaintiff historically prepared annual schedules of equal weekly use established to permit successful management of the Premises located on Tract 'B' and to insure reasonable and orderly occupation thereof. A copy of an example of one of the said schedules is incorporated herein by reference and referred to as Exhibit 'A'.

62. That during the summer of 1998, Cross-Claim Defendant sent his teen-aged daughter to the Premises with intentions of using the Premises during Cross-Claim Plaintiff's week while Cross-Claim Plaintiff was in residence, and when Cross-Claim Defendant's daughter, accompanied by three others, arrived and found the Premises occupied by the Cross-Claim Plaintiff, she became belligerent, inflicted malicious damages to the Premises and personal property contained therein, and furiously harassed and verbally assaulted Cross-Claim Plaintiff. That on said occasion, Cross-Claim Defendant telephoned the Premises and verbally assaulted the Cross-Claim Plaintiff, became abusive, rude and made such improper and unlawful use of the telephone that the Cross-Claim Plaintiff was forced to temporarily interrupt the telephone service. That also on said occasion, Cross-Claim Defendant's daughter made improper and unlawful use of the telephone at the Premises by speaking to the Cross-Claim Plaintiff's guest in a rude, abusive and boisterous manner.

63. That during the week of August 2, 1998, Cross-Claim Defendant permitted his daughter to make improper and unlawful use of the telephone at the Premises during the Cross-Claim Plaintiff's week again by speaking to the Cross-Claim Plaintiff's guests in occupancy in an abusive, rude and boisterous manner.

64. That during this period, Cross-Claim Defendant was caught by the Cross-Claim Plaintiff in the act of allowing the Premises to be occupied by persons unknown to the Cross-Claim Plaintiff during the Cross-Claim Plaintiff's designated time. That said

occupants and their belongings had to be removed by the Cross-Claim Plaintiff and the Premises cleaned prior to usage by Cross-Claim Plaintiff and his guests.

65. That in September 1999, Cross-Claim Defendant was caught personally occupying the Premises during the Cross-Claim Plaintiff's week and nervously removed his personal belongings and quickly exited upon being detected.

66. That upon information and belief, there have been other occasions of unauthorized use and abuse by Cross-Claim Defendant.

67. That on September 21, 2000, Cross-Claim Defendant entered the Premises during the Cross-Claim Plaintiff's week without the Cross-Claim Plaintiff's knowledge, and upon information and belief, according to Pam, an unknown and unauthorized occupant, took and carried away the Cross-Claim Plaintiff's color television and remote, threw out most of the contents of the Premises including china, flatware, and glassware furnished by the Cross-Claim Plaintiff's wife, held the Premises open to maintenance workers Cross-Claim Defendant had invited from the Caravelle Motel to commit larceny of the Cross-Claim Plaintiff's personal property, (reported to the Myrtle Beach Police Department) and had arranged for the removal of all of the furniture and remaining contents; whereupon the Cross-Claim Plaintiff removed the occupants, halted the larceny, and secured the Premises.

68. That on September 30, 2000, the Cross-Claim Plaintiff caught Cross-Claim Defendant at the Premises in the act of Cross-Claim Defendant's hostile takeover and exclusive occupancy of the Premises, and when the Cross-Claim Plaintiff confronted Cross-Claim Defendant, he was informed, upon information and belief, according to Rick Brady who was delivering Cross-Claim Defendant and his possessions to the Premises, that the Sheriff's Department had evicted Cross-Claim Defendant and all other occupants from a house in Richland County pursuant to a foreclosure case in which Brady was obligated on the Note.

69. That although the Cross-Claim Plaintiff expressly refused to consent to Cross-Claim Defendant's hostile takeover of the Premises, since Cross-Claim Defendant's exclusive use of the property would, as a practical matter, completely eliminate its use by the Cross-Claim Plaintiff, Cross-Claim Defendant agreed to comply with certain terms regarding the Property; therefore, a written memorandum of the terms (Lease) of the Premises was prepared and delivered for Cross-Claim Defendant and his wife to sign. A copy of said Lease is incorporated herein by reference and referred to as Exhibit 'B'. Cross-Claim Defendant refused to sign the Lease and continued in residence, but failed to honor the terms of the Lease.

70. That during occupation of the Premises, Cross-Claim Defendant and all occupants should be required to comply with the terms of the Lease, that Cross-Claim Defendant should be required to adequately maintain the Premises in good repair to prevent its loss in value caused by deterioration and misuse, and that Cross-Claim Defendant should further be required to maintain adequate hazard insurance coverage of said Premises and promptly pay, prior to delinquency, all ad-valorem taxes on said Premises.

71. That as a direct and proximate result of Cross-Claim Defendant's actions, the Cross-Claim Plaintiff and his family have been denied use of the Premises and during visits to the area, and the Cross-Claim Plaintiff is forced to expend sums of money for accommodations while Cross-Claim Defendant continues to enjoy exclusive occupation of the Premises.

72. That should the Property of the parties be divided in kind by the Court, equity would require a division whereby the Cross-Claim Plaintiff would receive Tract 'B', and Cross-Claim Defendant would receive Tract 'A' and one-half (1/2) of the difference, if any, in cash, after a set-off of the following:

- a. Reimbursement to the Cross-Claim Plaintiff for expenses paid by the Cross-Claim Plaintiff for maintenance of the Property,

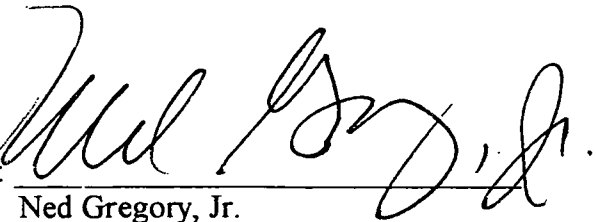
- b. Reimbursement to the Cross-Claim Plaintiff for taxes, insurance and utilities of the Property paid by the Cross-Claim Plaintiff,
- c. Compensation to the Cross-Claim Plaintiff for management of the Property,
- d. Compensation to the Cross-Claim Plaintiff for Cross-Claim Defendant's exclusive use and continuous occupation of the Premises, since August 30, 2000,
- e. Reimbursement to the Cross-Claim Plaintiff for sums expended by the Cross-Claim Plaintiff for accommodations during visits to the area,
- f. Reimbursement to the Cross-Claim Plaintiff for transportation and storage of the remaining contents of the Property, and
- g. Cross-Claim Plaintiff's attorneys fees and costs of this action.

WHEREFORE, having fully answered the Complaint herein, the Defendant/Cross-Claim Plaintiff, Ned Gregory, Jr., prays for dismissal of the Plaintiff's Complaint with costs, as to him; and in the event of a recovery by Plaintiff, the Defendant/Cross-Claim Plaintiff prays for judgment against Cross-Claim Defendant to the extent of any obligation to the Plaintiff; for actual and punitive damages against the Plaintiff; for relief sought against the Cross-Claim Defendant in partition of the said real property according to the respective rights of the owners thereto, and litigation of all remaining issues, including the accounting and ouster issues as follows:

- a. That Cross-Claim Defendant and all occupants of the Premises shall be bound by the terms of the Lease,
- b. That Cross-Claim Defendant shall, during occupancy, adequately maintain the Premises in good repair,
- c. That Cross-Claim Defendant shall, during occupancy, obtain and maintain adequate hazard insurance coverage of the Premises,

- d. That Cross-Claim Defendant shall, during occupancy, pay all current ad-valorem taxes on the Premises,
- e. Reimbursement to the Cross-Claim Plaintiff for expenses paid by the Cross-Claim Plaintiff for maintenance of the Property,
- f. Reimbursement to the Cross-Claim Plaintiff for taxes, insurance and utilities of the Property paid by the Cross-Claim Plaintiff,
- g. Compensation to the Cross-Claim Plaintiff for management of the Property,
- h. Compensation to the Cross-Claim Plaintiff for Cross-Claim Defendant's exclusive use of the Premises,
- i. Reimbursement to the Cross-Claim Plaintiff for sums expended by the Cross-Claim Plaintiff for accommodations during visits to the area,
- j. Reimbursement to the Cross-Claim Plaintiff for transportation and storage of the remaining contents of the Premises,
- k. Cross-Claim Plaintiff's attorneys fees and costs of this action, and,
- l. For such other and further relief as the court deems just and proper.

GREGORY & GREGORY ATTORNEYS

By: 

Ned Gregory, Jr.
Attorney for Defendant/Cross-Claim Plaintiff
210 West Meeting Street
Post Office Box 967
Lancaster, SC 29721-0967
(803) 283-3324

April 7, 2005
Lancaster, South Carolina

Week #	1	Ned thru	02-Jan-00	Jack thru	09-Jan-00
2	09-Jan-00	16-Jan-00			
3			16-Jan-00		23-Jan-00
4	23-Jan-00	30-Jan-00			
5			30-Jan-00		06-Feb-00
6			06-Feb-00		13-Feb-00
7	13-Feb-00	21-Feb-00			
8			21-Feb-99		27-Feb-00
9	27-Feb-00	05-Mar-00			
10	05-Mar-00	12-Mar-00			
11			12-Mar-00		19-Mar-00
12	19-Mar-00	26-Mar-00			
13			26-Mar-00		02-Apr-00
14			02-Apr-00		09-Apr-00
15	09-Apr-00	16-Apr-00			
16			16-Apr-00		23-Apr-00
17	23-Apr-00	30-Apr-00			
18			30-Apr-00		07-May-00
19			07-May-00		14-May-00
20	14-May-00	21-May-00			
21			21-May-00		28-May-00
22	28-May-00	04-Jun-00			
23			04-Jun-00		11-Jun-00
24	11-Jun-00	18-Jun-00			
25			18-Jun-00		25-Jun-00
26	25-Jun-00	02-Jul-00			
27			02-Jul-00		09-Jul-00
28	09-Jul-00	16-Jul-00			
29			16-Jul-00		23-Jul-00
30			23-Jul-00		30-Jul-00
31	30-Jul-00	06-Aug-00			
32	06-Aug-00	13-Aug-00			
33			13-Aug-00		20-Aug-00
34	20-Aug-00	27-Aug-00			
35	27-Aug-00	04-Sep-00			
36	04-Sep-00	10-Sep-00			
37			10-Sep-00		17-Sep-00
38	17-Sep-00	24-Sep-00			
39			24-Sep-00		01-Oct-00
40	01-Oct-00	08-Oct-00			
41			08-Oct-00		15-Oct-00
42			15-Oct-00		22-Oct-00
43	22-Oct-00	29-Oct-00			
44			29-Oct-00		05-Nov-00
45			05-Nov-00		12-Nov-00
46	12-Nov-00	19-Nov-00			
47	19-Nov-00	26-Nov-00			
48			26-Nov-00		03-Dec-00
49	03-Dec-00	10-Dec-00			
50			10-Dec-00		17-Dec-00
51	17-Dec-00	24-Dec-00			
52	24-Dec-00	01-Jan-01			
1			01-Jan-01		07-Jan-01
2	07-Jan-01	14-Jan-01			
3	14-Jan-01	21-Jan-01			
4	21-Jan-01	28-Jan-01			
5			28-Jan-01		04-Feb-01

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

LEASE

PARTIES

H. Jackson Gregory, and Patricia C. Gregory, Lessees, hereby lease the property known as 302 70th Avenue North, Myrtle Beach, South Carolina, in consideration of the covenants contained herein and upon the following terms and conditions:

WITNESSETH:

TERMS

1. Lessees shall enjoy exclusive use of the property as a residence for their immediate family only until sold or transferred provided the covenants, agreements and conditions herein are not breached.

2. Lessees shall furnish all material and labor and bear all expenses for keeping and maintaining the property in good order and repair including, but not limited to, installation of new shingles on the roof, removal of all existing shingles and damaged wood, repair of all roof leaks, repair of all damaged wood, disposal of all debris, and replacement and repair of all damaged exterior wood including windows, porch, carport and deck.

3. Lessees shall not allow anyone to share the property, keep roomers or boarders, nor assign, transfer nor sublet the property, nor permit the property to be used by anyone other than the immediate family nor in any other manner than for single-family residential purposes.

TAXES

4. Lessees shall pay taxes promptly upon receipt of tax notice and provide proof of payment in the form of a paid tax receipt on or before December 31, 2000.

INSURANCE

5. Lessees shall obtain and maintain a policy of hazard insurance and a separate policy for windstorm and hail covering the property and provide proof of each insurance

policy via paid receipts and policy declaration pages immediately upon request, on an annual basis by June 1, 2001 for policies beginning July 1, 2001, until sale and transfer of the property. Each policy shall not be less than the fair market value of the improved property but in no event less than One-Hundred-Thousand and (\$ 100,000.00) Dollars and Ned Gregory, Jr. shall be named as loss payee.

Lessee shall not injure, overload, or deface or suffer to be injured, overloaded, or defaced, the premises or any part thereof, nor shall the premises, nor any part thereof, be used for video poker or other form of gambling, or storage of hazardous substances. Lessee shall also be prohibited from storage of any hazardous substances.

The term Hazardous Substances, as used herein, shall include any substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction.

SPOUSAL WAIVER

6. Lessee, Patricia C. Gregory, shall waive any perceived marital property claim of the property via transmutation of inherited property used as a dwelling. The signature of Patricia C. Gregory hereon shall be sufficient as such waiver.

LISTING AGENT

7. Lessees shall execute a listing agreement with Barry Thigpen agent, d/b/a/ Re/Max Ocean Forest Realty for sale of the property at a sales price no less than Four-Hundred-Thousand and (\$ 400,000.00) Dollars and shall cooperate with the Agent for inspection of the property by potential purchasers.

REIMBURSEMENT EXPENSES

8. Lessees covenant and agree that upon sale of the property, the settlement agent shall pay to Ned Gregory, Jr. as a seller's expense, prior to division and payment of the net sale proceeds to the owners, reimbursement of all funds expended from September 23, 2000 to the closing date.

HOLD HARMLESS / NON-LIABILITY

9. Lessees covenant and agree that Ned Gregory, Jr., his heirs, agents or assigns, shall not be liable for any damages or injury of Lessees or Lessees' agents or to any person entering the property of any building located thereon or to or to any goods therein resulting from any defect in the structure, and further, Lessees shall indemnify and hold Ned Gregory, Jr., his heirs, agents or assigns, harmless from any and all claims of every kind and nature, including attorney's fees and costs.

RENT

10. Lessees covenant and agree that Ned Gregory, Jr. shall be paid by the settlement agent from closing proceeds as a seller's expense prior to division and payment of the net sale proceeds to the owners, a sum to be determined (based on fair market rental value of the property of no less than One-Thousand and (\$ 1,000.00) per month) representing compensation for one-half (½) of exclusive use and possession of the property by the Lessees during the period of quiet enjoyment and occupancy, beginning September 23, 2000.

LESSEES' WAIVER

11. Lessees waive as to any indebtedness incurred hereunder all right to exemption under the Constitution and laws of South Carolina.

Executed this _____ day of October, 2000.

Witness

By: _____
H. Jackson Gregory, Lessee

Witness

By: _____
Patricia C. Gregory, Lessee

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me _____ and made
oath that (s)he saw the within-named H. Jackson Gregory and Patricia C. Gregory sign, seal,
and as their act and deed, deliver the within-written Lease; and that (s)he with _____
_____, witnessed the execution thereof.

SWORN to before me this _____
day of October, 2000.

Notary Public for South Carolina
My Commission Expires: _____

Witness

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2005 CP 29-141

TOD SNIPES CONSTRUCTION, INC.,

Plaintiff,

-vs-

JACK GREGORY and NED GREGORY,

Defendants

REPLY TO CROSS COMPLAINT

FILED
OFFICE OF CLERK
OF COURT
2006 MAY 30 A 8:48
CLERK OF COURT
LANCASTER COUNTY, SC

The Defendant, Jack Gregory replying to the Cross Claim Complaint of the Defendant, Ned Gregory respectfully alleges:

1. That the allegations contained in the Defendant, Ned Gregory's Cross Claim Complaint alleging indemnification, partition, accounting and ouster as causes of action in paragraphs 44 through 72 (inclusive) are all denied with strict proof being demanded thereof.
2. That those same or similar allegations were alleged by Defendant, Ned Gregory, Jr. in his lawsuit against Defendant, Jack Gregory in Civil Action No. 2000 CP 29-896 in the captioned court wherein there is filed an action for partition and accounting along with other matters of equity through a Notice of Pendency of Action, Summons and Complaint filed in Lancaster County Clerk of Courts Office on October 27, 2000 at 4:53 P. M. and physically served by the Defendant, Ned Gregory, Jr. along with his personal man servant process server upon the Defendant, Jack Gregory at 302 70th Avenue North in Myrtle Beach, Horry County, South Carolina at about 10:00 P. M. after breaking and entering said residence and physically attacking the wife of Defendant, Jack Gregory in the kitchen of said home by knocking her about and against the refrigerator with the back door of the home as his weapon. That a police report was filed with the City of Myrtle Beach, South Carolina detailing the dastardly incident by Defendant, Ned Gregory, Jr., as an officer of the court knows that the delivery of process at that time of night and in the manner done was illegal, unethical and in violation of the proper actions for one who practices law in the state of South Carolina. That subsequently the action was removed to Horry County Court of Common Pleas in April, 2002 and is currently pending there as Civil

Action No. 2002 CP 26-1706 awaiting a final order from Master in Equity, J. Stanton Cross, Jr.

FOR A FIRST REPLY & DEFENSE
(Collateral Estoppel)

3. That Defendant, Ned Gregory, Jr. is collaterally estopped from instituting causes of action for partition, accounting and ouster in 2005 when he has already brought those causes of action in a similar lawsuit between the same parties in 2000 which did or could have alleged the same or similar allegations therein.

FOR A SECOND REPLY & DEFENSE
(Res Adjudicata)

4. That the Defendant, Ned Gregory, Jr. is bound by the final order of the 2000 action that he instituted and that his proper remedy therefrom would be an appeal as he is bound by the law in the case and that decision prevents a new action as is alleged herein.

FOR A THIRD REPLY & DEFENSE
(Unjust Enrichment)

5. That all of the efforts by the Defendant, Jack Gregory to prevent the City of Lancaster from carrying out the condemnation of the building located at 331 South Main Street, Lancaster, South Carolina were in the mutual benefit of both Defendants as they jointly own said building. That any perception otherwise is thwarted and ill motivated as Defendant, Jack Gregory was by his actions preventing waste of the building and eliminating the condemnation order by the city and getting the building in a rentable position with a tenant in the wings; however, due to the inaction by Defendant, Ned Gregory said building has not yet been issued the certificate of occupancy and the Defendants have lost over six months of rental that could have paid for the roof job. Now, the City of Lancaster Fire Department has issued a statement dated March 25, 2005, a copy of which is attached as Exhibit " A " that refers to said building as vacant and requires that the entire structure be boarded up to prevent vandalism and unauthorized entry. Any relief granted to Defendant, Ned Gregory, Jr. in this matter would amount to unjust enrichment as it is his inaction and dilatory tactics that have caused the current state of affairs.

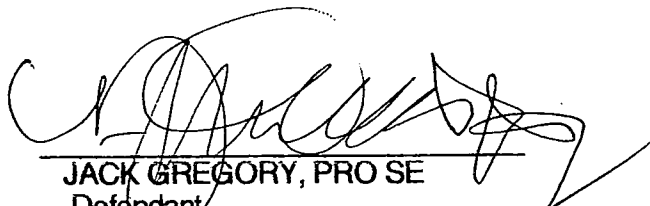
FOR A FOURTH REPLY & DEFENSE
(Unclean Hands)

6. That Defendant, Ned Gregory, Jr. attempts to sit back and watch the estate of his father waste away while he practices no stewardship principles and he has the audacity to ask the equity court to have him indemnified for any costs that he must share in to prevent the real estate in question from being condemned and destroyed by the City of Lancaster and now to have the said building boarded by order of the Fire Department due to it being vacant. That the said building located at 331 South Main Street, Lancaster, South Carolina had a tenant over six months ago when the roof work was completed; however, due to the inaction by Defendant, Ned Gregory, Jr. the rental for that period of time has been lost and the building is receiving further waste due to its nonuse. Defendant, Ned Gregory, Jr. is barred for any relief due to his unclean hands in the matter.

FOR A FIFTH REPLY & DEFENSE
(SC Frivolous Civil Proceedings Sanctions Act)

7. That the Cross Claim Complaint by Defendant, Ned Gregory, Jr., is a frivolous action as the same lawsuit exists in Horry County that he filed five years earlier and it should be apparent from the random non applicable allegations contained therein that the purpose of the said pleading is ill motivated and after dismissal subject to sanctions by the equity court.

WHEREFORE, Defendant, Jack Gregory prays that this Court dismiss the Cross Claim Complaint of Defendant, Ned Gregory, Jr. and grant appropriate sanctions pursuant to the SC Frivolous Proceedings Sanctions Act.



JACK GREGORY, PRO SE
Defendant
302 7th Avenue North
Myrtle Beach, SC 29572

April 20, 2005
Myrtle Beach, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Ned Gregory,)
Plaintiff,)
vs.)
Howell Jackson Gregory,)
Defendant.)

Case No. 2002-CP-26-1706

HEARING BEFORE
MASTER IN EQUITY

11:20 A. M.
December 10, 2012
Conway, South Carolina

1 M, which amount to \$2,500 from
2 Clifford Welsh's trust account
3 covering the rent that was paid on one
4 of the buildings in Lancaster during
5 the term of the action, and \$5,097.03,
6 which was paid by The Gregory Company,
7 Inc.

8 Now, those two checks were
9 handed up to the Court the same day,
10 August 9, 2006, and the next day the
11 Nunc Pro Tunc Order was issued. I
12 will say that I did hand up to Judge
13 Cross a list of all the expenses that
14 I had incurred with the properties
15 that had not been contributed to by my
16 brother, Ned Gregory.

17 In my Affidavit, -- I don't
18 have those pages numbered, but it's
19 one, two, three, four pages over -- I
20 set out those expenses that he did not
21 contribute to.

22 MASTER IN EQUITY: I'm sorry. Fourth
23 page over under what tab?

24 MR. JACK GREGORY: A, the Affidavit.

25 MASTER IN EQUITY: Okay.

1 him.
2 MASTER IN EQUITY: Hold on just one
3 second.
4 MR. JACK GREGORY: Yes.
5 MASTER IN EQUITY: Mr. Welsh, were you
6 present when Mr. Irvin met with Judge
7 Cross?
8 MR. WELSH: No, I was not. My first
9 notice was when -- of anything going
10 on -- was when I received a copy of
11 the Nunc Pro Tunc Order.
12 MASTER IN EQUITY: All right. Thank you.
13 MR. FREEMAN: Were you notified that they
14 were going to meet?
15 MR. WELSH: No.
16 MR. JACK GREGORY: Well, you're assuming
17 that there was a meeting. All he did
18 was get the information to the Court.
19 MASTER IN EQUITY: Has anybody ever seen
20 a transmittal letter from Mr. Irvin,
21 the attorney for Mr. Jack Gregory, to
22 Judge Cross transmitting the
23 information?
24 MR. WELSH: I did not.
25 MASTER IN EQUITY: Did you receive a copy

1 of it, Mr. Welsh?

2 MR. WELSH: No, I did not.

3 MASTER IN EQUITY: All right. Thank you.

4 MR. JACK GREGORY: I don't know that

5 there was one ever made; I never saw

6 it.

7 MASTER IN EQUITY: There would be a cover

8 letter to the Judge, transmitting the

9 information, --

10 MR. JACK GREGORY: Well, --

11 MASTER IN EQUITY: -- there wouldn't just

12 be an envelope full of information.

13 MR. JACK GREGORY: Well, that's what I

14 provided him.

15 MASTER IN EQUITY: You may have provided

16 that to your attorney. But an

17 attorney wouldn't just provide an

18 envelope full of information to a

19 judge. There would have to be a cover

20 letter explaining what the information

21 was.

22 MR. JACK GREGORY: Well, the Judge was

23 looking for what was in the envelope.

24 MASTER IN EQUITY: Well, --

25 MR. JACK GREGORY: And it was copies of

1 canceled checks.

2 MASTER IN EQUITY: Yeah. But that's not
3 how you transmit information to a
4 judge. And you know that, don't you,
5 Mr. Jack? I mean, aren't you an
6 attorney?

7 MR. JACK GREGORY: Yes, ma'am.

8 MASTER IN EQUITY: Yes, sir. And you've
9 never sent just a packet full of
10 information to a judge without a cover
11 letter, have you?

12 MR. JACK GREGORY: I was just complying
13 with what he told me to do. And in
14 this particular --

15 MASTER IN EQUITY: Well, who told -- Who
16 told you to do?

17 MR. JACK GREGORY: -- in this particular
18 situation. Judge Cross.

19 MASTER IN EQUITY: Well, so -- But you
20 just gave it to your attorney?

21 MR. JACK GREGORY: That's right.

22 MASTER IN EQUITY: And did you mail it to
23 your attorney or did you take it to
24 your attorney?

25 MR. JACK GREGORY: I brought him an

1 envelope with canceled checks in it.

2 MASTER IN EQUITY: Okay. Right.

3 MR. JACK GREGORY: And a whole list of
4 things that I had improved the home
5 with.

6 MASTER IN EQUITY: Right. You took it to
7 your attorney so you could explain it
8 to him?

9 MR. JACK GREGORY: No. I just handed him
10 the envelope. I said: This is what
11 Judge Cross is looking for --

12 MASTER IN EQUITY: Yes, sir.

13 MR. JACK GREGORY: -- under the April 25
14 Order.

15 MASTER IN EQUITY: As any client would
16 do. But I'm sure Mr. Irvin didn't
17 just put it all in an envelope or keep
18 it in that same envelope and send it
19 to Judge Cross. I'm sure he either
20 took it to Judge Cross or -- or he put
21 it in an envelope with a cover letter
22 to Judge Cross.

23 MR. JACK GREGORY: Well, I don't know
24 about a cover letter, but I do know
25 that that information got to Judge

1 Cross, because it was --

2 MASTER IN EQUITY: Well, obviously, it
3 got to Judge Cross, right, because it
4 resulted in the Nunc Pro Tunc Order.

5 MR. JACK GREGORY: That's right, Your
6 Honor. That's right.

7 MASTER IN EQUITY: So, somehow or
8 another, there was some ex parte
9 communication, either by letter or an
10 in-person conversation, with your
11 attorney and Judge Cross.

12 MR. JACK GREGORY: Well, we -- We did a
13 lot of conversations with Ann Lawson,
14 who was the Judge's secretary.

15 MASTER IN EQUITY: Yes, sir.

16 MR. JACK GREGORY: That's who I took the
17 check to on April 28th, 2006, which is
18 under Tab L. There's a receipt and
19 the check. I came by the Court at
20 that time and brought her the check.
21 And we may have dropped off the
22 envelope along with it at that point.

23 MASTER IN EQUITY: And L is a check for
24 what?

25 MR. JACK GREGORY: That was the bid on

1 HEARING IS CLEARLY JUST A MOTION TO AMEND OR
2 ALTER.

3 MR. H. J. GREGORY: IT IS, AND THIS IS PART OF
4 THAT MOTION.

5 THE COURT: YES, SIR.

6 MR. H. J. GREGORY: BECAUSE WHAT WE'RE IN COURT
7 TO DO IS TO BRING THE TRUTH OUT OF THE FACTS,
8 AND UP TO THIS POINT, THE PRIOR ORDER OF JUDGE
9 STAN CROSS, WHICH WAS ISSUED ON APRIL 25, 2006
10 AND CONTAINS THE LANGUAGE IN THAT ORDER THAT AT
11 TRIAL THE PARTIES CONCEDED AN AMOUNT THAT I
12 HAVE NOT BEEN GIVEN CREDIT FOR, AND THAT ORDER
13 HAS NOT BEEN APPEALED, AND THE LAST TIME WE
14 WERE HERE IN FRONT OF YOUR HONOR, THERE WAS A
15 CONCEDED AMOUNT OF TWO CHECKS.

16 I'M TRYING TO BRING THE LANGUAGE OF
17 THE COURT IN CONCERT. HOW CAN A CONCESSION AT
18 TRIAL, IN FRONT OF JUDGE CROSS, BE DENIED ME IN
19 THIS MATTER WHEN THE LAST TIME WE WERE IN
20 COURT, TWO CHECKS THAT WERE PAID IN THE SUMMER,
21 I THINK THEY WERE DATED AUGUST 9, 2006, TO THE
22 MASTER IN EQUITY'S OFFICE WAS A CONCEDED AMOUNT
23 OF SEVENTY-FIVE HUNDRED DOLLARS AND CHANGE,
24 HOWEVER A CONCEDED AMOUNT FROM THE TRIAL OF
25 THIS CASE HAS NOT YET BEEN GIVEN THE DEFENDANT,

1 HOWARD JACKSON GREGORY, CREDIT? SO I BROUGHT
2 THE CLERK, WHO KEEPS THE RECORDS IN THE CLERK'S
3 OFFICE AND WAS FAMILIAR WITH HOW THE ERROR
4 OCCURRED BACK IN 2008, WHEN THIS ERRONEOUS
5 TRANSCRIPT OF JUDGMENT DATED JUNE 8TH, 2008,
6 WAS ISSUED AND THE DEFENDANT, HOWELL JACKSON
7 GREGORY, WAS NOT GIVEN CREDIT FOR ANY OF THE
8 THREE MATTERS THAT HE PROVED TO JUDGE CROSS.
9 AND IT APPEARS TO THE DEFENDANT THAT IT'S A
10 CONTINUING ERROR ON THE PART OF THE COURT TO
11 TRY TO CHANGE THE ORDER OF JUDGE CROSS FROM
12 APRIL OF 2006 BY CONTINUOUSLY DENYING THE
13 DEFENDANT, HOWELL JACKSON GREGORY, THE THREE
14 CREDITS WHICH TOTAL OVER TWENTY-FIVE THOUSAND
15 DOLLARS. THAT WOULD BE THE OFFSET AGAINST WHAT
16 THE PLAINTIFF, NED GREGORY, CLAIMS. IF YOU
17 READ JUDGE CROSS'S ORDER, IN THE MIDDLE OF PAGE
18 TWO, IT'S OBVIOUS THAT THE CLERK OVERLOOKED
19 THAT PARAGRAPH.

20 MR. FREEMAN: YOUR HONOR, I HATE TO
21 INTERRUPT, BUT IT SEEMS TO ME THIS IS THE THIRD
22 POST-TRIAL MOTION ---

23 THE COURT: IT IS.

24 MR. FREEMAN: --- IN THIS CASE. WE
25 SHOULDN'T EVEN BE HAVING ORAL ARGUMENT. I'M

1 MR. H. J. GREGORY: YOUR HONOR, I THINK THAT
2 THE COURT NEEDS TO READ RULE 63 ---
3 THE COURT: WELL, I COULD HAVE READ
4 RULE 63 BEFORE, AND YOU COULD HAVE BROUGHT THAT
5 TO MY ATTENTION BEFORE.
6 MR. H. J. GREGORY: AND I THINK YOUR HONOR
7 NEEDS TO LOOK AT THE PARAGRAPH ON PAGE, IN THAT
8 RULING. I'M JUST GOING TO READ WHAT IT SAYS.
9 YOU'VE ASKED ME THE QUESTION. I HAVE ---
10 THE COURT: IS THAT JUDGE CROSS'S
11 ORDER?
12 MR. H. J. GREGORY: NO. THIS IS AN ORDER FROM
13 THE FAMILY COURT WHICH I CITED IN MY MEMORANDUM
14 THAT WAS FILED IN FAVOR OF MY MOTION OF TODAY,
15 AND THAT MEMORANDUM HAS BEEN CLOCKED IN, SHOULD
16 BE IN YOUR FILE, ---
17 THE COURT: YES, SIR.
18 MR. H. J. GREGORY: --- DATED JULY 22, 2013.
19 THE COURT: IS THAT NEW EVIDENCE, SIR?
20 MR. H. J. GREGORY: IN MY OPINION, IT'S NEW
21 EVIDENCE BECAUSE ---
22 THE COURT: WELL, MR. FREEMAN'S
23 ARGUMENT, AND HIS POINT IS WELL TAKEN, AND THAT
24 IS THAT UNLESS YOU HAVE SOMETHING NEW TO ARGUE
25 TODAY, THAT THIS MOTION IS IMPROPER BECAUSE

1 COURTROOM AND PROVE SOMETHING ELSE TO ME FIVE
2 YEARS FROM NOW. YOU ARE THROUGH. IF YOU WANT
3 TO BRING ANOTHER CASE, YOU CERTAINLY MAY, BUT
4 YOUR CASE IS OVER.

5 MR. H. J. GREGORY: BUT YOU SEE, YOUR HONOR,
6 YOU'RE SAYING THAT WHEN JUDGE CROSS RULED, THE
7 CASE WAS OVER. I AGREE WITH THAT, AND I WASN'T
8 GIVEN THE PROPER THREE CREDITS, WHICH TOTALS
9 OVER TWENTY-FIVE THOUSAND DOLLARS, AND ---

10 THE COURT: THEN WHY WEREN'T YOU? IF
11 JUDGE CROSS GAVE YOU THE CREDITS, WHY WEREN'T
12 THEY TAKEN OFF THEN?

13 MR. H. J. GREGORY: THAT'S WHY I'M BRINGING THE
14 CLERK'S OFFICE ---

15 THE COURT: DID YOU PROVE THE CREDITS?
16 IF YOU PROVED THEM THEN, WHY DIDN'T JUDGE CROSS
17 SUBTRACT THEM AND WHY DIDN'T HE HAVE THE EXACT
18 AMOUNT FOR OUR CLERK TO ENTER IT IN THE RECORD?
19 THAT'S HOW IT WORKS, MR. GREGORY.

20 MR. H. J. GREGORY: I UNDERSTAND THAT, YOUR
21 HONOR.

22 THE COURT: YOU DIDN'T PROVE IT THAT
23 DAY, DID YOU?

24 MR. H. J. GREGORY: I MOST CERTAINLY DID.

25 THE COURT: THEN WHY ISN'T IT IN THE

THAT HE CONTRIBUTED WITHOUT CONTRIBUTION FROM THE PLAINTIFF. IT IS CONCEDED THAT DEFENDANT SPENT \$7,940 TO REMOVE GAS TANKS FROM THE LANCASTER PROPERTY." THE LAST TIME I WAS IN COURT WHEN IT WAS CONCEDED AND THE ORDER WAS ISSUED AND THE AMOUNT WAS WRITTEN BY YOUR HONOR THAT THE TWO CHECKS THAT WE PAID SUBSEQUENT TO THIS ORDER WENT TO MY CREDIT.

THE COURT: ONLY BECAUSE THE OTHER MR.
GREGORY SAID, "AGREED TO THAT."

MR. H. J. GREGORY: WELL, HE SAID THE SAME
THING AT THE TRIAL OF THE CASE BEFORE YOU EVER
BECAME A MASTER IN EQUITY.

THE COURT: PERHAPS.

MR. H. J. GREGORY: THAT'S THE POINT I'M MAKING
TODAY.

THE COURT: WELL, THE ONLY REASON I
AGREED TO THAT IN THIS OTHER ORDER WAS BECAUSE
HE SAID, "YES." HE STOOD UP AND SAID, "I AGREE
TO THAT."

MR. H. J. GREGORY: WELL, THAT'S EXACTLY WHAT
HAPPENED AT THE TRIAL OF THE CASE. I SPENT
SEVEN THOUSAND NINE HUNDRED AND FORTY DOLLARS.
REMOVING GAS TANKS FROM THE PROPERTY, AND THEY
CONCEDED THAT AT THE TRIAL OF THE PETITION

1 CHAMBERS WITH MR. IRVIN AND MR. WELSH AND
2 MYSELF PRESENT.
3 THE COURT: NO, SIR. WERE THERE TWO
4 HEARINGS?
5 MR. H. J. GREGORY: THERE WAS ABOUT THREE.
6 THE COURT: YOU DON'T DO THAT. YOU
7 HAVE ONE HEARING. YOU PROVE YOUR CASE AT ONE
8 HEARING.
9 MR. H. J. GREGORY: ACTUALLY, THERE WAS TWO,
10 ABOUT TWO OR THREE DAYS OF TRIAL, AND THEN THIS
11 OCCURRED AFTER THE SALE WAS DONE, A YEAR LATER.
12 THE COURT: OKAY.
13 MR. H. J. GREGORY: NOW, ---
14 THE COURT: WELL, MAYBE HE DOES
15 HEARINGS DIFFERENTLY THAN I DO, YOU KNOW. I
16 DON'T KNOW. BUT THAT'S HOW I DO IT. I HAVE
17 ONE HEARING, WE PUT ALL OUR EVIDENCE IN AT ONE
18 TIME, AND THEN I ISSUE AN ORDER AND I RULE, AND
19 THEN WE DON'T HAVE THAT TROUBLE WITH THE
20 CLERK'S OFFICE NOT KNOWING WHAT AMOUNT TO ENTER
21 AS A JUDGMENT.
22 MR. H. J. GREGORY: WELL, BOTH ORDERS WERE
23 CLOCKED IN WITH, WITH THE CLERK'S OFFICE. THEY
24 WERE IN THE FILE, AND I HAVE THIS YOUNG LADY
25 HERE TODAY, DIANE MERCER, WHO IS IN CHARGE OF

1 SHALL BE GIVEN CREDIT FOR REAL ESTATE TAXES HE
2 PAID ON THE MYRTLE BEACH PROPERTY IN THE AMOUNT
3 OF FOUR THOUSAND SEVENTY-SEVEN DOLLARS AND
4 NINETY-NINE CENTS." WHEN YOU ADD THOSE NUMBERS
5 TOGETHER, IT COMES OUT TO OVER TWENTY-FIVE
6 THOUSAND DOLLARS THAT IS TO BE SUBTRACTED FROM
7 THE ACCOUNTING AND RENT NUMBERS THAT NED
8 GREGORY GOT, WHICH WAS AROUND FORTY-TWO
9 THOUSAND.

10 THE COURT: ANYTHING ELSE? YOU'VE
11 ALREADY BEEN OVER ALL THIS, MR. GREGORY. IS
12 THIS NEW?

13 MR. H. J. GREGORY: IS THE COURT TAKING
14 JUDICIAL NOTICE OF THE FACT THAT THE CLERK OF
15 COURT'S OFFICE CREATED AN ERROR ON THE JUNE
16 8TH, 2008, TRANSCRIPT OF JUDGMENT?

17 THE COURT: YES, SIR. THAT DOESN'T
18 MATTER. ANYTHING ELSE, SIR?

19 MR. H. J. GREGORY: NO.

20 THE COURT: I THINK, THE WAY YOU AND
21 YOUR ATTORNEY AND THE WAY THE OTHER SIDE
22 PREPARED THIS CASE, I MEAN, I'VE NEVER HEARD OF
23 ANYBODY NOT HAVING -- YOU HAD ALREADY PAID
24 THOSE TAXES, HADN'T YOU?

25 MR. H. J. GREGORY: WELL, I'VE GOT AN AFFIDAVIT

1 "THERE SHOULD BE A JUDGMENT AGAINST JACK
2 GREGORY IN X AMOUNT"?
3 MR. H. J. GREGORY: ONE OF THOSE DOES NOT
4 EXIST.
5 THE COURT: WHY NOT?
6 MR. H. J. GREGORY: I'M NOT JUDGE CROSS.
7 THE COURT: WELL, DID YOUR LAWYER
8 PREPARE AN ORDER FOR JUDGE CROSS TO SIGN?
9 BECAUSE THAT'S WHAT IT TAKES. JUDGE CROSS HAD
10 TOO MUCH TO DO TO SIT IN HIS OFFICE AND PREPARE
11 THAT ORDER. WAS MR. IRVIN YOUR LAWYER?
12 MR. H. J. GREGORY: SURE.
13 THE COURT: THAT MAN SITTING RIGHT
14 THERE?
15 MR. H. J. GREGORY: ABSOLUTELY.
16 THE COURT: WELL, THEN WHY DIDN'T HE
17 PREPARE THE ORDER? ASK HIM.
18 MR. H. J. GREGORY: THE JUDGE PREPARED THE
19 ORDER HIMSELF, ---
20 THE COURT: NO, SIR, HE DIDN'T. ASK
21 HIM RIGHT THERE WHY HE DIDN'T PREPARE THE
22 ORDER. ASK MR. IRVIN WHY HE DIDN'T PREPARE THE
23 ORDER.
24 MR. IRVIN: CALL ME AS A WITNESS.
25 MR. H. J. GREGORY: LET ME CALL MR. IRVIN AS A

1 THE NEW ROOF FOR THE LANCASTER PROPERTY IN THE
2 AMOUNT OF THIRTEEN THOUSAND FIVE HUNDRED
3 DOLLARS.

4 THE COURT: AND WHAT'S THE DATE OF THAT
5 ORDER, MR. JACK?

6 MR. H. J. GREGORY: IT'S THE NUNC PRO TUNC
7 ORDER. IT'S DATED 8/10/2006 OR APRIL 25, 2006.
8 IT WAS ---

9 THE COURT: IT'S NOT REALLY A NUNC PRO
10 TUNC ORDER. IT'S REALLY A SUA SPONTE ORDER.

11 MR. H. J. GREGORY: IT'S A FOLLOWUP TO WHERE WE
12 WERE HEADING AT THE TIME, AND THE TWO ORDERS
13 TAKEN TOGETHER NETS THE FINAL RESULT WHICH
14 SHOULD HAVE BEEN, GIVING THE DEFENDANT THE
15 THREE CREDITS THAT HE WAS ENTITLED TO PLUS THE,
16 THE TWO CHECKS THAT WERE CONCEDED AT THE LAST
17 TERM OF COURT HERE.

18 THE COURT: IS THERE ANYTHING ELSE,
19 SIR? I MEAN, I'VE HEARD ALL THIS ARGUMENT
20 BEFORE. THIS IS THE SAME ARGUMENT YOU MADE AT
21 THE LAST HEARING.

22 MR. H. J. GREGORY: YOUR HONOR, I WAS PREPARED
23 ABOUT A YEAR AGO, IT WAS AT THE END OF 2012,
24 AND THE FIRST TIME THAT YOU APPEARED IN THE
25 COURTROOM WITH THIS CASE TO HAVE MELANIE

1 HUGGINS WARD, THE CLERK OF COURT, PRESENT TO
2 TESTIFY ABOUT THE ERRONEOUS TRANSCRIPT OF
3 JUDGMENT THAT'S DATED JUNE 8TH, 2008, WHICH IS
4 WHAT'S DRIVING THIS TRAIN. THAT WAS DURING A
5 MONDAY, AND THERE WAS COURT GOING ON. SHE HAD
6 JUDGES ALL OVER THE COURTHOUSE, JURY DOWN IN
7 THE WAITING ROOM, AND SHE WAITED AROUND FOR
8 OVER AN HOUR AND HAD TO LEAVE TO TAKE CARE OF
9 BUSINESS, AND I THOUGHT THAT MY MOTION TO HELP
10 HER OFFICE CLEAR UP THE DISCREPANCY HERE WAS A
11 PRETTY SIMPLE MATTER, BUT IT'S ABSOLUTELY
12 TURNED INTO A NIGHTMARE, BUT I BRING THIS TO
13 YOUR ATTENTION. SINCE YOU HAVE ACKNOWLEDGED
14 THE TRANSCRIPT OF JUDGMENT OF JUNE 8, 2008, IS
15 IN ERROR, THE WHOLE PURPOSE OF ME COMING TO
16 THIS COURT WAS TO CLEAR UP THE ERROR. I
17 THOUGHT IT WAS THE SIMPLEST WAY TO HANDLE IT.

18 THE COURT: NO. I THINK WHAT'S
19 HAPPENED IS YOU'VE GONE TO THE CLERK OF COURT'S
20 OFFICE AND YOU'VE TRIED TO GET THE CLERK OF
21 COURT'S OFFICE TO CHANGE SOMETHING WITHOUT THE
22 OTHER SIDE BEING THERE. IS THAT NOT WHAT'S
23 HAPPENED?

24 MR. H. J. GREGORY: THAT'S WHY I FILED THIS
25 MOTION TO START WITH.

1 THE COURT: NO, SIR. YOU WENT TO THE
2 CLERK OF COURT'S OFFICE BEFORE YOU EVER FILED
3 THE MOTION AND WITHOUT THE OTHER SIDE BEING
4 THERE. IS THAT NOT SO?

5 MR. H. J. GREGORY: I HAD A DISCUSSION WITH
6 MELANIE HUGGINS AND DIANE MERCER.

7 THE COURT: AND TRIED TO GET THEM TO
8 CHANGE ---

9 MR. H. J. GREGORY: I DIDN'T TRY TO GET THEM TO
10 CHANGE ANYTHING. I ASKED THEM WHAT HAPPENED,
11 AND THEY EXPLAINED TO ME, AND AFTER I SHOWED
12 THEM THE SECOND PARAGRAPH IN JUDGE CROSS'S
13 ORDER OF APRIL 25, 2006, AND COMPARED IT WITH
14 THE NUNC PRO TUNC ORDER, THEN THEY SAID, "OH,
15 WE MADE A MISTAKE."

16 I ASKED THEM, "WHAT CAN WE DO TO
17 CORRECT IT?"

18 SHE SAYS, MELANIE HUGGINS SAY, "I NEED
19 A COURT ORDER." SO, THEREFORE, I BROUGHT THE
20 ACTION. IT WAS WELL WITHIN THE ONE YEAR
21 FOLLOWING THE FEBRUARY 7, 2012, DATE ---

22 THE COURT: YES, SIR.

23 MR. H. J. GREGORY: --- THAT PALMER FREEMAN
24 HANDED JIM IRVIN AND JACK GREGORY, IN
25 LANCASTER, SOUTH CAROLINA, THE TRANSCRIPT OF

1 JUDGMENT. NOBODY HAD EVER SEEN IT UNTIL THAT
2 POINT. SO AFTER I MET WITH MELANIE HUGGINS IN
3 SEPTEMBER OF 2012 AND SHE ADVISED THAT SHE
4 NEEDED AN ORDER TO ASSIST HER, I FILED THIS
5 MOTION TO DO THE CALCULATIONS AND TO PROVE THAT
6 THE TWO CHECKS THAT WERE CONCEDED AT THE LAST
7 HEARING WERE PAID TO THE MASTER IN EQUITY'S
8 OFFICE. SHE SAID SHE COULDN'T GIVE CREDIT FOR
9 THOSE TWO CHECKS UNLESS SHE HAD AN ORDER.

10 THE COURT: AND SHE'S GOT THAT ORDER.

11 MR. H. J. GREGORY: SHE DOES NOW. SHE SURE
12 DOES. AND AT THE SAME TIME, WE WERE ATTEMPTING
13 TO CLEAR THE RECORD ON THE ERROR OF THE JUNE 8,
14 2008, TRANSCRIPT OF JUDGMENT THAT DID NOT GIVE
15 ME CREDIT FOR THE THREE MATTERS THAT I'VE BEEN
16 DISCUSSING WITH YOU TODAY, AND THAT WAS THE
17 CONCEDED AMOUNT OF THE REMOVAL OF THE GAS
18 TANKS, SEVENTY-NINE HUNDRED AND FORTY DOLLARS,
19 THE THREE YEARS OF TAXES FOR 2002, THREE, AND
20 FOUR, FOUR THOUSAND SEVENTY-SEVEN DOLLARS AND
21 NINETY-NINE CENTS, AND THE PAYMENT FOR THE NEW
22 ROOF ON THE LANCASTER BUILDING, WHICH, BY THE
23 WAY, TOOK IT OUT OF CONDEMNATION, THAT THE CITY
24 OF LANCASTER WAS GOING TO CHARGE A THOUSAND
25 DOLLARS A DAY IF WE DIDN'T DO SOMETHING. THAT

2008008015

DEED
RECORDING FEES

\$10.00

EXEMPT

PRESENTED & RECORDED:

06-04-2008 02:38 PM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

BK:DEED 468

PG:156-159

After recording return to:
The Irvin Law Firm
5900-C North Kings Highway
Myrtle Beach South Carolina, 29577

**Prepared without Title Search
STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

Received

Tax Map Code 81A-F-22.00

Or Portion Of

WHEREAS, this action for the partition of the tracts of land located in Lancaster County and Horry County, South Carolina was filed in Lancaster County on October 27, 2000, and at that time assigned Case Number 2000-CP-29-896:

AND WHEREAS, the Honorable Paul E. Short, Jr., Chief Administrative Judge of the Sixth Judicial Circuit issued an Order of Reference, with Finality on October 21, 2001, referring case 2000-CP-29-896 to the Honorable J. Stanton Cross, Master in Equity for Horry County, with the authority to enter a final judgment:

AND WHEREAS, the case was assigned Case Number 2002-CP-26-1706, in Horry County, and was heard by the Honorable Court and an Order of Partition issued by the Court on April 5, 2005 that appointed Robert K. Folks, Esquire, as a Special Referee to act as auctioneer in this case;

AND WHEREAS, after having duly advertised the premises for sale at public outcry on June 5, 2005, the Special Referee did openly and publicly, and after such manner auction, offer the premises for sale, and the Special Referee, as provided by law did sell the said premises unto The Gregory Company, Inc., a South Carolina Corporation, Its Successors and/or Assigns, PO Box 70374, Myrtle Beach, South Carolina, 29572-0025, Horry County, South Carolina, for the sum of One Hundred Seventy Thousand and No/100 (\$170,000.00) Dollars being at that price the highest bidder for the same.

NOW KNOW ALL MEN BY THESE PRESENTS, that said party of the first part in consideration of the premises and the sum of Five (\$5.00) Dollars paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and release and by these presents does grant, bargain, sell and release unto the said parties of the second part.

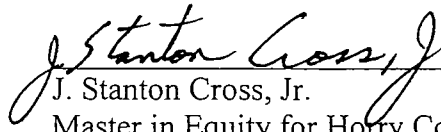
ALL AND SINGULAR, that certain piece, parcel or lot of land, with improvements thereon situate, lying and being in the city of Lancaster, County of Lancaster, State of South Carolina, fronting west on South Main Street for a distance of 176', having a depth of 165' on the Northern boundary and a width of 164.5 on the Eastern boundary, and fronting south on Chesterfield Avenue for a distance of 176'. Being bounded on the North by Cooper Furniture Company, on the East by Carol G. Hodnet and Chauncey D. Gregory, on the South by Chesterfield Avenue, and on the West by South Main Street. For a more complete description reference to Plat of Warren B. Turkett, L. S., dated October 25, 1951, and recorded in Plat Book 5 at Page 228 is craved.

BEING the identical property conveyed to Ned Gregory and Toy R. Gregory by deed of A. J. Gregory, et al. recorded September 1, 1942, in Deed Book N-3 at Page 283; Toy R. Gregory conveyed his one-half interest to Ned Gregory by deed recorded August 12, 1946, in Deed Book S-3 at Page 227, Ned Gregory subsequently conveyed one-sixth interest to C. D. Gregory by deed recorded in Deed Book W-4 at Page 233, to C. D. Gregory, Jr. by deed recorded in Deed Book W-4 at Page 234; the four-sixths interest were re-conveyed to Ned Gregory as follows: from James Stony Drake, Jr. by deed recorded October 5, 1959, in Deed Book W-45 at Page 330, from Toy R. Gregory by deed recorded May 2, 1961, in Deed Book Z-4 at Page 423, and from C. D. Gregory, Jr. and Gladys G. Gregory (see also Will of C. D. Gregory, Sr.) recorded May 23, 1967, in Deed Book W-5 at Page 104. Ned Gregory, Sr., died testate November 27, 1985 (See Probate File 85-ES-29-302) and Will at W/1422, Estate of Ned Gregory, Sr. filed September 23, 1986.

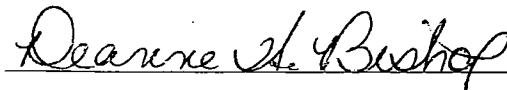
TOGETHER with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging or in any wise appertaining, and the reversions and remainder, rents, issues and profits thereof, and the reversions and remainder, rents, issues and profits thereof; and also the estate, right, title interest, dower, possession, property benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons, rightfully claiming or to claim the same or any part thereof by, from and or under them or through either of them.

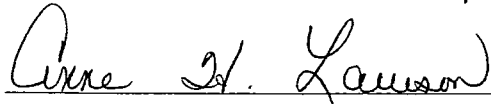
TO HAVE AND TO HOLD, the said premises, with its hereditaments, privileges and appurtenances, unto the said parties of the second part, The Gregory Company, Inc., Its Successors and/or Assigns forever.

IN WITNESS WHEREOF, I the said J. Stanton Cross, Jr., as Master in Equity for Horry County, under and by virtue of the said Decretal Final Order, have hereto set my Hand and Seal this the ^{30th} ~~11th~~ day of ~~September~~ ^{October} in the year of our Lord Two Thousand Six and in the Two Hundred Twenty Ninth year of Sovereignty and Independence of the United States of America.


J. Stanton Cross, Jr.
Master in Equity for Horry County

WITNESS


Deanne H. Bishop


Anne H. Lawson

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF LANCASTER)

PERSONALLY appeared the undersigned witness and made oath that he/she saw J. Stanton Cross, Jr., as Master in Equity for Horry Count, sign, seal and deliver the within Deed; and that deponent together with the other witness singed their names thereto.

Deanne A. Bishop

SWORN to before me this 30 day of Oct., 2006.

Anne H. Lanson

Notary Public for South Carolina

My Commission expires: 10-4-15

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF Horry)

PERSONALLY APEARED before me, the undersigned, who being duly sworn, deposes and states:

1. The Property known as 329 + 331 South Main St. AND 104 Chesterfield Ave., Lancaster County, South Carolina, was transferred by J. Stanton Cross, Jr., as Master in Equity, on the 30th day of October, 2006, to The Gregory Company, Inc., a South Carolina Corporation.
2. The Transaction was:

_____ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth

_____ not an arm's length real property transaction and the fair market value of the property is _____

☒ the above transaction is exempt, or partially exempt, from the recording fee as set forth in the S. C. Code Ann Section 12-23-10 et seq., as this is a partition sale whereby the Court granted the property back to the defendant, Howell Jackson Gregory, who assigned his bid to his corporation, The Gregory Company, Inc., a South Carolina Corporation.

As required by Code Section 120-24-70.

I further 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 \$1,000.00 or imprisoned not more than one year, or both.

James T. Dwyer

SWORN to before me this 8th day of November, 2006.

David A. Hernandez
Notary Public for South Carolina
My Commission Expires: **March 6, 2008**

*The fee is based on the real property's value. Value means the realty's fair market value in arm's length value real property transaction, this value is the sale price to be paid in money or money's worth. However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on it after the transfer.

MEMO TO NED GREGORY:

20 July 2004

RE: 331 South Main Street, Lancaster, SC
Tax Map: 81A-F-22.00

I don't know about you, but I certainly can't afford to owe the City of Lancaster One Thousand Dollars a day and have all of the inheritance stand as collateral for the debt and I think you are far too smart to not to agree with me on that issue. Therefore, I have called Tod Snipes and asked him to start work on the old Texaco building ASAP. He has finished the Jimmy McDonald job here at the beach except for some parts on order and is putting a roof on a small building in Lancaster now and can begin about August first.

The bank said they would take a mortgage on the \$13,500.00 cost to turn key the work. This is the same estimate that Tod gave you about a year ago. I got another estimate from John Minors in April, 2004 and it was for \$18,000.00, copy enclosed. Both of these folks are on the City of Lancaster approved list. Also enclosed is Tod's estimate of 10-24-2003.

You can call Steve Sherrill at First Citizens Bank in Lancaster at (803) 283-6940 and confirm the deal. I would suggest a note and mortgage from the Ned Gregory Trust and you and I sign as co-trustees. I think as soon as it is habitable it will rent for Eight Hundred a month which is sufficient to pay back the loan. I talked with Parker and he will move back into the location at that time and for that rental. Bubber is getting that for the car lot so I know that the rental is fair and Parker did not question it when I told him it would be that figure.

Now, you can either work with me or continue to be obstinate. You have basically fifty hours to decide as the Zoning Board meets at 6:00 PM Thursday 22 July 2004. As you know I had the gas tanks removed at no cost to you and if I had not done so then the cost today would be in excess of Twenty Five Thousand Dollars. I am willing to eat that Nine Thousand Dollars and share in the cost of the salvaging of the building with you. If you don't think that is a fair resolution of the current problem with the captioned property, then send me a proposal of what you think is fair.

Your Brother,

Jack

HP OfficeJet K Series K80xi
Personal Printer/Fax/Copier/Scanner

Log for
Jim Irvin
4672202
Jul 20 2004 11:06am

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Jul 20	11:03am	Fax Sent	18032833326	2:09	6	OK

MEMO TO NED GREGORY:

18 January 2005

RE: 331 South Main Street, Lancaster, SC
Tax Map : 81A-F-22.00

It has now been six (6) months since my memo to you dated 20 July 2004 and I have not heard a word from you about the captioned property. Since then the roof has been fixed and the roofer has filed a mechanics lien on the captioned property. I would think that Steve Sherrill at First citizens Bank would still finance the work, but two signatures are needed. I have advised you that I will sign and you will need to do so in order to avoid this delimma. Call Steve and confirm. I can sign anytime. Parker will rent for \$800.00 per month which will be ample income to pay the note off in less than two (2) years at seven or eight percent interest.

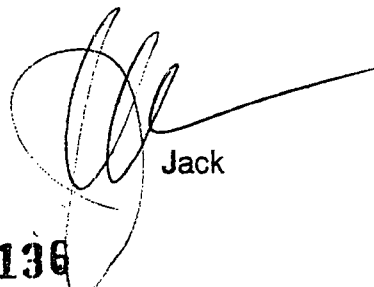
Waiting for something to happen is not smart. Getting the roof on prevented the city from moving forward on the condemnation. As soon as Tod Snipes gets paid he will give the city the OK for them to issue the C.O. and then it can be rented. This could have been done two (2) months ago. What are you waiting on?

Where are the rents from the building next door going? Are you paying the taxes from that? If those rents are used also, the bank could probably be paid off in one (1) year. Why not?

The Lancaster Fire Chief told me that the big window pane on the south side of the corner building had broken and was a hazard. Did you know that? Did you get it fixed? I asked Tod's lawyer, Dan to tell Tod to fix it and add it to the bill, but I got the the notice of mechanic's lien at the same time (same day) that I left that message. I don't know if he did fix it or not.

I guess since I paid for the removal of the gas tanks then you should pay for the roof. Is that fair? If not, then what is? Your silence and inaction is creating waste. I don't think that Ned and Lucille raised wasteful children or at least they did not intend to do so. I remember big Ned saying "Haste makes waste". You are proving his point to the opposite extent. How singular.

Your Brother,


Jack

FAXED 18 JAN 5 @ 1045 AM
TO 803 283-3321 - 2097

136

cc 249 2043 Ceff Welsh, Esq. - 20

FOLKS, KHOURY & DeVENNY

104 South Catawba Street
P. O. Box 1657
Lancaster, South Carolina 29721
Real Estate Telephone: (803) 286-4867
Fax Number (803) 286-8528

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DATE: June 6, 2005

FROM: Robert K. Folks

PLEASE DELIVER THIS COVER SHEET AND THE FOLLOWING 0

PAGES TO:

NAME: Cliff Welsh

FIRM: Welsh & Hughes Law Firm

RECEIVER'S FAX NO.: 843-249-2043

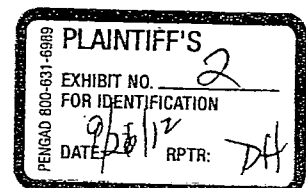
IF YOU DO NOT RECEIVE ALL OF THESE PAGES, PLEASE CALL 803-286-4867 AND ASK FOR Mary Beth.

COMMENTS

Re: Ned Gregory, Jr. vs. Howell Jackson Gregory
Case No. 02-CP-26-1706

Mr. Jack Gregory bid in the Lancaster County property at the sale conducted this day as ordered for the sum of \$170,000.00.

There was competitive bidding from four bidders, including Mr. Ned Gregory who submitted only one bid.



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CIVIL ACTION # 2008-CP-29-1084

Ned Gregory, Jr.

Plaintiff,

-vs-

FINAL JUDGMENT
ORDER OF
SPECIAL REFEREE

Howell Jackson Gregory, The
Gregory Company, Inc. and
The City of Lancaster,

Defendants.

This matter comes before me pursuant to an Order of the Circuit Judge for the Sixth Judicial Circuit dated June 30, 2009 to hear the motions and issues presented in the case and make my report by entering a final judgment in the matter.

A first meeting of the parties and counsel was held by me on February 7, 2012 in Lancaster, SC at which time the motions were dealt with and resulted in the following: All parties were allowed to amend their pleading by agreement which eliminated the motion for defaults against Plaintiff by the Defendants' Gregory and the motion to cancel the third lis pendens was not ruled on until the hearing in the matter which was set for September 26, 2012. That on September 24, 2012 the individual Defendant filed a motion in Horry County in the partition action wherein he is the sole Defendant for the purpose of correcting the Transcript of Judgment in that case file which is the basis for the matter before me it appears. Subsequently, a hearing has been scheduled for December 10, 2012 in Conway, SC to hear that motion before the Master-in-Equity.

Present at the hearing on September 26, 2012 were Plaintiff who initially was pro se in the matter with his Attorney Palmer Freeman, the individual Defendant, pro se, the corporate Defendant Gregory with its Attorney Creighton Coleman by telephone. The City of Lancaster and Plaintiff are working out their differences out of Court.

It appears from reading the pleadings filed in this matter that this is the third action brought by Plaintiff against the individual Defendant all dealing with basically the same matter the real estate owned by their parents that those two parties inherited in 1990. In order for me to obtain a better understanding and in an effort to fully appreciate the entire matter of the partition a full judicial Sua Sponte review of all of the orders in those prior two matters should be visited and this Court takes judicial notice of those orders:

1. ~~Order of Reference with Finality by Administrative Judge of the Sixth Judicial Circuit, Paul E. Short, Jr. dated and filed October 12, 2001 in the Office of the Clerk of Court for Lancaster County in Case No. 2000-CP-29-896 which moved the partition suit from Lancaster County to the Horry County Master-in-Equity to enter a final judgment in the case;~~

2. In Case No. 2002-CP-26-1706 the Order of Partition by Master-in-Equity J. Stanton Cross, Jr. of Horry County dated April 5, 2005 ordering the sale of the real estate owned jointly by Plaintiff, Ned Gregory, Jr. and Defendant, Howell Jackson Gregory consisting of a beach house in Myrtle Beach, SC and three commercial buildings in Lancaster, SC for sales dates in May, 2005 and June, 2005 respectively and reserving other issues to be determined later;
3. Order dated April 25, 2006 by J. Stanton Cross, Jr. in the partition suit for partial relief allowing Plaintiff credits with leave to further modify the order with subsequent proof of contributions by Defendant not participated in by Plaintiff;
4. Nunc Pro Tunc Order dated 8-10-2006 for April 25, 2006 by J. Stanton Cross, Jr. specifying those setoffs to apply to the first April 25, 2006 order in the partition action including taxes, tanks removal and new roof job; and
5. In Case No. 2005-CP-29-141 captioned Tod Snipes vs. Jack Gregory and Ned Gregory the Order of Judge Kenneth G. Goode, Presiding Judge, Sixth Judicial Circuit dealing with the cross action by Ned Gregory, Pro Se against Jack Gregory for attorneys fees and costs amounting to \$3,060.00 and to nullify the new roof job setoff dealing with one of the commercial buildings in Lancaster.

From my review of the foregoing orders of record, the various pieces of evidence presented at the hearing, the issues raised in the pleadings as amended I find the following:

FINDINGS OF FACT

1. There is currently pending and outstanding in the partition action pending in the Horry County Master-in-Equity Court, a case that was originally filed by Ned Gregory, Jr., Pro Se in Lancaster County, SC on October 27, 2000 for the partition of real estate owned equally at the time by Plaintiff and Defendant, Howell Jackson Gregory along with a lis pendens the following matters to be decided by that Court:

a. A faulty transcript of judgment dated June 10, 2008 by Melanie Huggins, Clerk of Court for Horry County as a hearing has been scheduled for December 10, 2012 for the purpose of correcting that document by Defendant Howell Jackson Gregory;

b. A motion for reconsideration of the Nunc Pro Tunc Order by Clifford L. Welsh, Attorney of Record for Ned Gregory, Jr. in the partition action dated September 8, 2006;

c. A final judgment which has never been issued by the Master-in-Equity as ordered by the Order of Reference with Finality in the partition action dated October 12, 2001 by Judge Paul E. Short, Jr.

2. That the real estate subject of the partition suit was sold at public auction as follows:

- a. The beach house was sold in May, 2005 in Horry County and the highest bidder at the sale was Howell Jackson Gregory who bid \$600,000.00 and he subsequently was issued a deed from Master-in-Equity J. Stanton Cross, Jr. which was recorded in the Horry County Register of Deeds Office on June 13, 2005 which refers to the

party of the first part the grantor, Master-in-Equity J. Stanton Cross, Jr. and the party of the second part the grantee, Howell Jackson Gregory along with the affidavit of James T. Irvin, Jr. that the transfer is exempt or partially exempt for recording fees and

- b. The three commercial buildings were sold on June 5, 2005 in Lancaster County and the highest bidder at the sale was Howell Jackson Gregory who bid \$170,000.00 and The Gregory Company, Inc. was subsequently issued a deed from Master-in-Equity J. Stanton Cross, Jr. which was recorded in the Lancaster County Register of Deeds Office on June 4, 2008 in Deed Book 468 at page 156 which refers to the party of the first part the grantor, Master-in-Equity J. Stanton Cross, Jr. and the party of the second part the grantee The Gregory Company, Inc. along with the affidavit of James T. Irvin, Jr. that the transfer is exempt or partially exempt for recording fees.

3. That in 2005 a mechanics lien action was brought by Tod Snipes Construction, Inc. against Jack Gregory and Ned Gregory for the new roof job on one of the commercial buildings in Lancaster seeking \$15,500.00 for costs in the amount of \$13,500.00 and attorney's fees of \$2,000.00. That the mechanics lien action ended in September, 2005 when Jack Gregory paid Snipes' attorney the \$15,500.00 and the cost portion of the payment was ordered for Jack Gregory as part of the setoff total in the Nunc Pro Tunc Order by Master-in-Equity J. Stanton Cross, Jr. dated 8-10-2006 for April 25, 2006.

4. That on May 1, 2006 a cross action brought by Ned Gregory, Jr., Pro Se against Jack Gregory in the mechanics lien action was heard by Circuit Judge Kenneth G. Goode and Jack Gregory was not present at the hearing which resulted in an order dated May 27, 2006 denying the new roof job payment by Jack Gregory to be used as a setoff in the partition action plus costs and attorney's fees amounting to \$3,060.00 and based upon an affidavit. There was no attorney of record representing Ned Gregory, Jr. in that action.

5. That this action before me was brought by Ned Gregory, Jr., Pro Se on September 19, 2008 wherein the third lis pendens was filed against the Lancaster real estate only and naming The Gregory Company, Inc. the owner and Howell Jackson Gregory initially alleging that the deed from J. Stanton Cross, Jr. Master-in-Equity was fraudulent and asking that it be set aside, then on February 7, 2012 at the first meeting before me the oral amendment by counsel for Plaintiff, Palmer Freeman asked that the deed be declared null and void as it is violates the Statute of Elizabeth and that the real owner is Howell Jackson Gregory. The idea here is for the transcript of judgment presented at the hearing in the amount of \$45,087.47 dated June 10, 2008 and the Judge Goode order awarding \$3,060.00 on May 27, 2006 be declared liens on the Lancaster real estate currently titled in the name of The Gregory Company, Inc.

6. That the three lis pendens filed against the Lancaster real estate by Ned Gregory, Jr. in presenting the partition action and the fraudulent deed now violation of the Statute of Elizabeth action attacking the credibility of the deed of conveyance by the Master-in-Equity to The Gregory Company, Inc. are as follows in chronological order:

- a. First Lis Pendens on October 27, 2000 in Lancaster County;
- b. Second Lis Pendens on March 11, 2002 in Horry County; and
- c. Third Lis Pendens on September 19, 2008 in Lancaster County.

7. That The Gregory Company, Inc. paid to the Horry County Master-in-Equity the following checks or had credits for monies due from rents collected from the Lancaster property that was applied toward the interest and court costs on the \$170,000.00 bid which amounts to more than 8.25% interest on the full bid. They are:

- a. The Gregory Company, Inc. check #1179 dated 4-28-2006 in the amount of \$93,925.00 of which \$85,000.00 is half the bid amount and \$8,925.00 interest;
- b. The Gregory Company check #2263 dated 8-9-2006 in the amount of \$5,097.03;
- c. A Clifford L. Welsh Attorney Trust Account check #0673 dated August 9, 2006 in the amount of \$2,500.00 for rent used to reduce the \$2,228.00 court costs with the balance of \$272.00 going toward interest;
- d. That the interest paid by The Gregory Company, Inc. totaled \$14,294.03; and
- e. The Court takes judicial notice that 8.25% interest on \$170,000.00 for a year is \$14,025.00 and with 365 days in a year the daily rate of interest is \$38.4246575342 and that 327 days lapsed from the time of the bid on June 5, 2005 in Lancaster to the bid payment thereof as required to the Master-in-Equity on April 28, 2006 reflecting the amount of interest due under the circumstances herein is \$12,564.86;
- f. Thus, The Gregory Company, Inc. overpaid interest at 8.25% on the full bid of \$170,000.00 to the Horry County Master-in-Equity in the amount of \$1,729.17, ie. \$14,294.03 paid interest less \$12,564.86 interest due equals \$1,729.17 overpayment.

8. That Ned Gregory, Jr. is a licensed attorney in South Carolina and has practiced law in Lancaster, SC for over forty (40) years and is a member of the Lancaster Bar.

CONCLUSIONS OF LAW

1. That since October 27, 2000 Ned Gregory, Jr., initially as a Pro Se Plaintiff in Lancaster County, then with counsel of record Clifford L. Welsh in Horry County has maintained against the individual Defendant Howell Jackson Gregory a partition action which is now over twelve (12) years old and is still pending in the Master-in-Equity Court for Horry County without a final judgment order being issued in the case as ordered by the Order of Reference with Finality. The original partition action involved the real estate in question in this action and was order sold by the Horry County Master-in-Equity which occurred on June 5, 2005 in Lancaster for \$170,000.00 to the highest bidder and it paid the half bid required by the Master plus an overpayment of the interest on the full bid on April 28, 2006 and August 9, 2006. That the Master weighs the equities in the matter and applying common sense to the transaction by having The Gregory Company, Inc. pay the full bid and then at the same refund one-half back to Defendant would be an unnecessary step in the process of its payment, so the Master just eliminated one step in that process. Since the Plaintiff has an issue with the Master-in-Equity in the handling of the Master's deed to The Gregory Company, Inc. then Plaintiff should be maintaining this action in the Horry County Master-in-Equity Court as the

proper Court is the Horry County Master-in-Equity first to conclude what he has instituted and he has failed to conclude. Plaintiff is barred by the doctrine of collateral estoppel, or issue preclusion here, which is to prevent a party from relitigating in a subsequent action an issue actually and necessarily litigated and determined in a prior action, especially if that prior action has not yet ended. See *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 481 S.E.2d 706 (1997). Plaintiff's first duty is to finalize his partition suit before commencing any further collateral litigation.

2. One who seeks equity must do equity and I find it inequitable for Plaintiff to institute pro se litigation in Lancaster County against Howell Jackson Gregory presenting issues that are pending and or ruled on in the initial partition action which is still pending in Horry County and it is the responsibility of the Plaintiff in that litigation to complete his ongoing matters there as opposed to be handling them in other collateral courts while the partition action still languishes with no effort on Plaintiff's behalf to conclude. This applies to the issue of the new roof job in the cross action of the mechanics lien case and the attack of the validity of the Master-in-Equity deed to The Gregory Company, Inc. of the Lancaster property following the auction in this instant suit. Since collateral estoppel was pled the Court is able to Sua Sponte invoke the doctrine of judicial estoppel which evolved to protect the truth-seeking function of the judicial process by punishing those who seek to misrepresent facts to gain advantage. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242,251, 489 S.E.2d 472,477 (1997); see also *John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 29 (4th Cir. 1995) (stating goal of judicial estoppel "is to prevent a party from playing 'fast and loose' with the courts, and to protect the essential integrity of the process."). As explicitly embraced by our supreme court, "judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne*, 327 S.C. at 251, 489 S.E.2d at 477. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Id.* However, the *Hayne* court only adopted the doctrine as it applies to facts, not law.

3. One who represents himself pro se as Ned Gregory, Jr. did in the cross action in the later hearing on May 1, 2006 with no attorney of record is not entitled to attorney's fees for that reason and for the reason that no legal authority is available for him to do so.

4. The ruling by J. Stanton Cross, Jr. as Master-in-Equity for Horry County in his Nunc Pro Tunc Order allowing among other items the new roof job paid for by Defendant to be used as a setoff against the credits in the first April 25, 2006 order becomes the law of the case and can't be reversed or modified by an order in another court by another judge. Under the law-of-the-case doctrine, a party is precluded from relitigating a prior unappealed order of another judge and the two Cross orders of April 25, 2006 are prior to the May 27, 2006 order of Judge Goode. See *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case. Cited in *Judy v. Phillip Martin, et. al.*, 674 S.E.2d 151 (SC 2009).

5. That the instant case seeks to basically accomplish the same thing as was attempted in the mechanics lien cross action in May, 2006 and that is to pick another court to air an issue of fraudulent deed or now violation of the Statute of Elizabeth when the original action governing such matters the partition action is still pending and thus the present litigation is not only premature but barred by the doctrines of collateral estoppel and judicial estoppel. Until the partition matter is ended with a final judgment any collateral action dealing with the real estate and the parties to that action in another jurisdiction or court other than the Master-in-Equity for Horry County Court are barred equitably under the doctrine of judicial estoppel. It is obvious that Plaintiff in bringing this action attempted to tie it to the partition suit by the use of the third lis pendens, but did not want to be in Horry County for some reason where he should be.

7. To ask another court to declare the deed by the Master-in-Equity to The Gregory Company, Inc. as fraudulent or now in violation of the Statute of Elizabeth before the partition action is ended with a final judgment is in violation of the SC law dealing with issues in partition cases as set forth in *Ackerman v. Heard*, 287 S.C. 626, 340 S.E.2d 560, (Ct. App. 1986) an appeal of a partition and accounting action wherein the general rule was set forth that a joint tenant who, at his own expense, places permanent improvements upon the common property is entitled in a partition suit to compensation for the improvements whether his cotenants assented thereto or not. Compensation is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another. The *Ackerman* decision was later followed in *O'Bratis v. O'Bratis* an appeal from the Richland County Master-in-Equity to the SC Court of Appeals as Opinion No. 3858 in 2004. The Master-in-Equity has exclusive jurisdiction over such matters including partition as set forth in Rule 71 of the SC Rules of Civil Procedure after his appointment by an order of reference under Rule 53. Under the SC Code of Laws, Ann. Section 14-11-85 provides "When some or all of the causes of action in a case are referred to a master-in-equity ... he shall enter final judgment as to those causes of action..." No final judgment has been issued in the partition case pending in Horry County thus far.

8. That the third lis pendens filed in 2008 behind the second lis pendens filed in 2002 is clearly outside the SC notice of pendency of action statute as five (5) years is the cutoff for filing amended lis pendens and the third lis pendens is six (6) years out and is illegal, therefore must be cancelled and by calling it the third lis pendens there is an attempt to tie the action to the partition action still pending in Horry County. Reference to the SC Code Ann. Section 15-11-10, et. seq. "Since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the statutory provisions is required." *Pond Place Partners, Inc. v. Poole* (S.C. App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. "The lis pendens mechanism is not designed to aid either side in a dispute between private parties; rather, lie pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, such as the fact of a suit..." *Pond Place Partners* case. As the partition suit is still pending in Horry County any question concerning the deed issued by the Master-in-Equity automatically is part of the ongoing partition action.

9. That Ned Gregory, Jr. as an attorney and a party to the partition suit that he instituted that he has failed or refuses to finalize is barred by the doctrine of judicial estoppel, the canons of ethics and as an officer of the court to bring lawsuits in other courts dealing with issues that are tied to the partition suit almost in an effort to harass the Defendant by attempting to make issue of those matters that he doesn't agree with while he still maintains that original action and is in no apparent hurry to conclude same.

10. By the fact that Ned Gregory, Jr. attempts to lead this court to believe that the Transcript of Judgment presented dated June 10, 2008 is a correct outcome of the partition suit discredits his case as it is clear that the Nunc Pro Tunc Order of 8-10-2006 for April 25, 2006 allowed setoffs that have not been figured into the math for the transcript of judgment and for this party to the action that instituted it pro se to be oblivious to those facts appears not negligent, but crafty in an attempt to lead this court to believe that he did not know the difference when a great error was committed and he was to benefit from it. Also, Plaintiff is aware that his lawyer Clifford L. Welsh has a six year pending motion for reconsideration dealing with that issue and it appears that they are in no hurry to finalize the partition suit probably because with the current transcript of judgment as it reads the error is in the Plaintiff's favor. As an officer of the Court and Plaintiff in a court of equity cannot be rewarded for his inaction to not only complete the partition action he instituted, but to correct the record in doing so, otherwise, be barred from collateral litigation as it violates the doctrine of judicial estoppel.

NOW, THEREFORE, UPON MOTION BY THE DEFENDANTS GREGORY IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff's within lawsuit is dismissed with all costs taxed to Plaintiff under the doctrines of judicial estoppel and collateral estoppel. That Plaintiff shall have for thirty (30) days from the date of this Order the right to redeem his equitable missteps with the right to merge and/or consolidate this action into the Horry County Master-in-Equity Court's pending partition action Plaintiff maintains there to avoid an absolute dismissal of this case;
2. Plaintiff's third lis pendens filed September 19, 2008 is hereby cancelled of record and the Lancaster County Clerk of Court is hereby ordered to so cancel the same as it violates the applicable strict interpretation of the statutory language unless Plaintiff redeems his equitable missteps and merges and/or consolidates this action as specified above;
3. Plaintiff's Order by Judge Goode dated May 27, 2006 is hereby declared null and void as it is barred by the law of the partition case and there is no attorney of record to justify an attorney's fees and costs award as Plaintiff was Pro Se.

IT IS SO ORDERED.

December ____, 2012
Lancaster, SC

William C. Tindal, Special Referee

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

J. STANTON CROSS, JR., MASTER IN EQUITY
CYNTHIA GRAHAM HOWE, MASTER IN EQUITY

Case No. 2002-CP-26-1706
Appellate Case No. 2013-002370

Ned Gregory, Jr.,

Respondent,

v.

Howell Jackson Gregory,

Appellant.

RETURN TO MOTION TO DISMISS APPEAL

Howell Jackson Gregory
Post Office Box 7111
Myrtle Beach, SC 29572-0006
(843) 222-4800
Pro Se Appellant

Palmer Freeman, Esquire
Post Office Box 8024
Columbia, SC 29202
(803) 799-9400
Attorney for Respondent

checks totaling \$7,597.03 were issued to the Horry County Master in Equity then. One check was from Respondent's counsel Clifford Welsh and drawn on Clifford L. Welsh Attorney Trust Account for \$2,500.00 and the other check was from Appellant and drawn on The Gregory Company account in the amount of \$5,097.03.

The next day August 10, 2006 the Trial Master in Equity issued his last order in the partition case and called it Nunc Pro Tunc Order for April 25, 2006 as it was a follow up from the first order of the setoff matters as the proof had been made by Appellant and the accounting of the two checks totaling \$7,597.03 presented to end the Lancaster sale.

Later on October 30, 2006 Master in Equity Cross executed the Lancaster tract deed to The Gregory Company, Inc. recorded in Lancaster County on June 4, 2008.

Subsequently, on June 10, 2008 the Horry County Clerk of Court issued a Transcript of Judgment that did not reflect the 2006 orders of Master in Equity Cross as it omitted the setoff awards to Appellant and only reported the awards to Respondent.

Respondent's new lawsuit against Appellant in Lancaster County in 2008 did not attach the faulty transcript of judgment to his complaint and it was not until 2012 that it was produced at a pre trial conference with the Special Referee in Lancaster. Appellant in 2012 met with the Horry County Clerk of Court to understand what had happened. When the clerk realized that her office had overlooked the setoff awards to Appellant she attempted to correct the omission error and issued an Amended Transcript of Judgment on 11-02-2012 which reduced the judgment total to \$24,666.51; however, the clerk needed a court order from the Master in Equity to credit the two checks as both checks were made payable to the Master in Equity. Appellant in an effort to assist the Horry County Clerk of Court filed two motions in the Master in Equity Court.

1 YOU'VE ALREADY MADE THIS MOTION TWICE BEFORE.
2 MR. H. J. GREGORY: YOUR HONOR, THE LAW IN
3 THIS, IN THIS STATE, AND I'M, AND I'M READING
4 FROM THE CASE OF CHARLESTON COUNTY DEPARTMENT
5 OF SOCIAL SERVICES VERSUS FATHER, STEPMOTHER,
6 AND MOTHER, AND IT'S CITED, IT'S 454 SOUTH
7 EASTERN 2ND 307. IT'S A 1955 SOUTH CAROLINA
8 CASE. AND IN THAT CASE, FAMILY COURT JUDGE
9 MENDEL RIVERS RULED. HE RESIGNED SHORTLY
10 THEREAFTER. A NEW JUDGE CAME ON THE BENCH,
11 JUDGE MALLARD, WHO ATTEMPTED TO CHANGE JUDGE
12 RIVERS'S ORDER, AND THE SUPREME COURT HAS SET
13 FORTH THE PARAMETERS ON WHICH RULE 63 APPLIES,
14 AND IT STATES THAT THE THRESHOLD ISSUE IN THIS
15 CASE IS WHAT DISCRETION A SUCCESSOR JUDGE HAS
16 UNDER RULE 63. THERE'S A LONGSTANDING RULE IN
17 THIS STATE THAT ONE JUDGE OF THE SAME COURT
18 CANNOT OVERRULE ANOTHER.

19 THE COURT: I'M NOT TRYING TO OVERRULE
20 JUDGE CROSS.

21 MR. H. J. GREGORY: YOU, YOU OVERRULED WHAT
22 JUDGE CROSS ORDERED.

23 THE COURT: NO, SIR, I HAVE NOT. I'VE
24 TAKEN JUDGE CROSS'S ORDER. I'VE TAKEN JUDGE
25 CROSS'S ORDER, AND I'VE ABIDED BY HIS ORDER, --

1 WITNESS.

2 THE COURT: NO, SIR. YOU ASK HIM RIGHT
3 NOW. TAKE A BREAK. LET'S TAKE A BREAK, AND
4 YOU ASK HIM. TAKE A BREAK. WE'RE GOING TO
5 TAKE A BREAK RIGHT NOW, AND YOU ASK HIM.

6 *****OFF THE RECORD*****

7 (ON THE RECORD)

8 THE COURT: BACK ON THE RECORD?

9 MR. H. J. GREGORY: WE'RE BACK ON THE RECORD.

10 IT APPEARS THAT CLIFF WELSH PREPARED THE APRIL
11 25, 2006, ORDER.

12 THE COURT: IS THAT THE SECOND ORDER OR
13 THE FIRST ONE?

14 MR. H. J. GREGORY: WELL, IF YOU COUNT THE
15 ORDER OF PARTITION, THIS WOULD BE THE SECOND
16 ORDER.

17 THE COURT: OKAY.

18 MR. H. J. GREGORY: BUT THE THIRD ORDER WAS
19 PREPARED BY JUDGE CROSS'S OFFICE AFTER WE HAD
20 THE CONFERENCE, SHOWED HIM THE CANCELLED
21 CHECKS, PROVED THAT I WAS ENTITLED TO, IN
22 ADDITION TO THE CONCEDED AMOUNT OF SEVENTY-NINE
23 FORTY, THE ADDITIONAL AMOUNT OF THE THREE
24 YEARS' TAXES OF FOUR THOUSAND SEVENTY-SEVEN
25 DOLLARS AND NINETY-NINE CENTS AND PAYMENT OF

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Findal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.

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

Of whom Howell Jackson Gregory and The Gregory Company, Inc. are the
Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

A. DOES RESPONDENT'S CONCEALMENT OF THE JUNE 10, 2008 FAULTY TRANSCRIPT OF JUDGMENT AND FAILING TO ATTACH A COPY TO THE COMPLAINT, AS IT OMITTS HIS CONCEDED SUM AT TRIAL OF \$7,940.00 THAT APPELLANT PAID FOR THE REMOVAL OF THE GAS TANKS FROM THE LANCASTER TRACT FROM BEING IMPLEMENTED THEREFROM, AS STATED IN THE CROSS ORDERS OF APRIL 25, 2006, THE LAW OF THE CASE, CREATE A NON FINAL JUDGMENT THAT THE SPECIAL REFEREE RELIES UPON IN ORDERING SALE OF LANCASTER TRACT PREMATURELY TO PAY A NON FINAL JUDGMENT THAT FAILS TO COMPLY WITH SC CODE ANN. 15-35-810 PROVIDING THAT A FINAL JUDGMENT IS NEEDED TO CREATE A LIEN?

B. MAY RESPONDENT USE A DEAD LIS PENDENS CLOTHED WITH FRAUD TO LITIGATE IN 2008 WITH A THIRD LIS PENDENS IN LANCASTER IN AN EFFORT TO BOOTSTRAP TO HIS PARTITION ACTION IN HORRY AFTER THE SECOND LIS PENDENS FILED IN 2002 AND IN VIOLATION OF SC CODE ANN. 15-11-50 THAT PROHIBITS REFILEING AFTER FIVE YEARS?

C. DOES A STATUTE OF ELIZABETH VIOLATION OCCUR WITH A DEED OF CONVEYANCE FROM THE HORRY COUNTY MASTER IN EQUITY J. STANTON CROSS, JR., AS GRANTOR TO THE GREGORY COMPANY, INC., AS GRANTEE AFTER ORDER OF PARTITION, PUBLIC SALE AND HIGHEST BIDDER WAS APPELLANT WHO OWNED AN UNDIVIDED ONE-HALF INTEREST THEREIN AND WHO ASSIGNED BID TO HIS CORPORATION AND IT PAID MASTER IN EQUITY HIS REQUIREMENT OF ONE-HALF THE BID AMOUNT, PLUS COSTS, WHEN RESPONDENT SUBSEQUENTLY OBTAINS A FAULTY TRANSCRIPT OF JUDGMENT WITH FAVORABLE ERROR, SECRETES IT AND USES IT TO LITIGATE AGAINST APPELLANTS FOR THE EXTORTED SUM?

STATEMENT OF THE CASE

The case at bar is an outgrowth of the original partition action commenced by Respondent in 2000 in Lancaster County to force the sale of the real estate assets of the father of the parties who died testate in 1985 and after their mother's life estate ended in 1990. In 2001 the partition action was moved to Horry County (R. p. 1) to be heard by the Master in Equity J. Stanton Cross, Jr., as the real estate consisted of two tracts: Horry tract – a beach house in the city of Myrtle Beach and Lancaster tract - three vacant commercial buildings on South Main Street in the city of Lancaster. That following the Order of Partition by Master in Equity Cross in 2005 both tracts were sold at public auction.

The Horry tract was sold in May, 2005 to Appellant and closed with a deed of conveyance from Master in Equity Cross that year. The Lancaster tract was sold in June, 2005 to The Gregory Company, Inc. and closed with a deed of conveyance from Master in Equity Cross in 2006. (R. pp. 130-133) Appellant as owner of The Gregory Company, Inc. attended the sale in Lancaster and was the highest bidder (R. p. 137) and subsequently assigned the bid to his corporation (R. p. 133) and the corporation paid the required bid amount to the Horry County Master in Equity on April 28, 2006. (R. pp. 43-44) The deed (R. p. 130) and a plat (R. p. 149) were recorded in June, 2008.

Also in June, 2008 Respondent obtained a transcript of judgment (R. p. 33) from the Horry County Clerk of Court that was in error as it omitted certain setoffs awarded to Appellant by Master in Equity Cross in his orders of April 25, 2006 (R. pp. 2-4) and the Nunc Pro Tunc Order of August 10, 2006 for April 25, 2006. (R. p. 5) The error

amounted to \$25,517.99, plus two checks (R. p. 37) that were later conceded by Respondent and his counsel in May, 2013 before the successor Master in Equity Cynthia Graham Howe amounting to \$7,595.03. (R. p. 21)

The two orders of Master in Equity Cross in 2006 were not appealed and are the law of the partition case and contain a conceded sum of \$7,940.00 that is still omitted.

The current action was brought by Respondent in 2008 with the filing of a third lis pendens (R. p. 86) alleging fraud in the Cross deed of the Lancaster tract to The Gregory Company, Inc. which was later amended to a violation of the statute of Elizabeth claim on February 7, 2012 at a pre-trial hearing when the transcript of judgment was first presented to Appellants and which was not attached to the complaint as an exhibit.

A hearing in the matter resulted in the special referee adopting the judgment amount set by the successor Master in Equity Cynthia Graham Howe of Horry County which was in May, 2013 reduced by the conceded two checks to the sum of \$37,490.44. The hearing consisted of no witness testimony, but discussions with the special referee.

Following the hearing in the matter an order was issued by the special referee, William C. Tindal on April 30, 2013 (R. pp. 7-15) calling for the sale of the Lancaster tract at public auction holding that it violated the statute of Elizabeth. A Rule 59(e) motion was filed and later on October 31, 2013 (R. pp. 16-17) the denial of that motion was made and the \$37,490.44 was adopted as the judgment amount and the date of December 2, 2013 was set for the sales date. Subsequently, a petition for supercedeas was filed initially in The South Carolina Court of Appeals by Appellants that was denied and referred back to the special referee and after an expedited emergency hearing a stay of the sale was ordered.

That on December 6, 2013 Appellants filed a Motion for Consolidation of the case at bar with the appeal of the partition case as the judgment amount there is relied on here.

The Notice of Appeal was served and filed in this case on November 7, 2013 in The South Carolina Court of Appeals.

ARGUMENT

A. DOES RESPONDENT'S CONCEALMENT OF THE JUNE 10, 2008 FAULTY TRANSCRIPT OF JUDGMENT AND HIS FAILING TO ATTACH A COPY TO THE COMPLAINT, AS IT OMITTS HIS CONCEDED SUM AT TRIAL OF \$7,940.00 THAT APPELLANT PAID FOR THE REMOVAL OF THE GAS TANKS FROM THE LANCASTER TRACT, FROM BEING IMPLEMENTED THEREFROM, AS STATED IN THE CROSS ORDERS OF APRIL 25, 2006, THE LAW OF THE CASE, CREATE A NON FINAL JUDGMENT THAT THE SPECIAL REFEREE RELIES UPON IN ORDERING THE SALE OF THE LANCASTER TRACT PREMATURELY TO PAY A NON FINAL JUDGMENT AND FAILS TO COMPLY WITH SC CODE ANN. 15-35-810 PROVIDING THAT A FINAL JUDGMENT IS NEEDED TO CREATE A LIEN?

The Horry County Clerk of Court on June 10, 2008 created an omission error in transcribing the judgment in the 2000 partition case and thereby failed to include the awards to Appellant for \$25,517.99 that Master in Equity J. Stanton Cross, Jr. ordered in 2006 and credit from two checks presented to the Horry County Master in Equity on August 9, 2006 from Appellant and Respondent's counsel, Clifford L. Welsh. Appellants did not know of the omission error until February 7, 2012 (R. p. 128, lines 1-25 – p. 129,

lines 1-11) at a pre-trial conference in Lancaster with William C. Tindal, Special Referee who was appointed in 2009 (R. p. 6) to hear this new case brought by Respondent against Appellants asking the court to declare the Master in Equity deed of conveyance of the Lancaster tract to The Gregory Company, Inc. fraudulent on the basis that Appellant, the highest bidder at the public sale in 2005 assigned the bid to his corporation that paid one-half the bid to the Horry County Master in Equity on April 28, 2006 as he required, plus costs in the amount of \$93,925.00. (R. pp. 43-44)

At the time of the sale of the Lancaster tract in 2005 all three commercial buildings were vacant. That Appellant in 2004 hired Tod Snipes to put a new roof on the corner building to have that building removed from the city's condemned list and to avoid a one thousand dollar a day penalty. (R. p. 53, lines 1-3) The city of Lancaster condemned the building in 2003 (R. p. 52) and during 2004 an appeal of the condemnation was attempted to be scheduled by Richard Bowers, Lancaster Building Official with six letters (R. pp. 54-59) to counsel and the owners, but to no avail. Finally, Appellant after trying to work with Respondent in July, 2004 (R. pp. 134-135) and again in January, 2005 (R. p. 136) with faxed memos advising of a banker who would finance the work, but the two memos were totally ignored by Respondent, as Respondent remained silent, hired Tod Snipes to do the roof job per his two estimates. (R. pp. 50-51) Appellant in an effort to avoid waste of the family assets and proposed penalties from the city then got the work done and the Tod Snipes bill was paid in full in September, 2005 amounting to \$13,500.00 by The Gregory Company, Inc. and that payment was part of the omitted \$25,517.99 by the Horry Clerk. This payment was proved to Master in Equity Cross in a hearing on August 9, 2006 by a cancelled check dated 9-12-2005 from The Gregory

Company, Inc. to Dan D'Agostino, Esq. in the amount of \$15,500.00 with bank clearing date of 9-15-2005. (R. p. 49) Master in Equity Cross would not allow the extra \$2,000.00 for attorney's fees to be a part of Appellant's setoff award, but did approve and ordered the \$13,500.00 cost paid. (R. p. 5)

Also, during the five year period from 2005 to 2010 Appellants spent time and money rehabilitating the three buildings as the second building was condemned (R. p. 31) in 2008 and a new roof was installed to remove it also in 2009. Finally, the first tenant was housed in 2010 and the second in 2012 and now all three buildings are rented with long term leases of thirty years each and the two tenants have spent over \$35,000.00 each in making improvements to ensure their long term commitments. Appellants have polished this diamond in the rough from a liability to a cash generating asset and have garnered the praises of the city fathers for their efforts. The intersection of South Main Street and Chesterfield Avenue now is alive and vibrant and not the eyesore of the past decade.

Another omission from the erred transcript was the removal of the gas tanks by Appellant from the Lancaster tract that Respondent and his counsel, Clifford L. Welsh conceded at the trial of the partition case amounting to \$7,940.00. (R. p. 3) Respondent knew of this conceded sum and upon receipt of the faulty transcript from the Horry County Clerk of Court he hid it and did not attach a copy of it to his complaint on purpose alleging fraud in 2008 and secretly kept it out of sight until the pre-trial conference on February 7, 2012, (R. p. 42) nearly four years after receiving it in June, 2008. One can only imagine why this document was kept by Respondent under wraps for over forty-three months as he probably drooled over the interest he would be making at

11.25% on the escalated judgment amount. As an officer of the court Respondent should have known better and alerted the Horry County Clerk of Court of the error, but Respondent again remained silent and should be bound by his actions or better non-actions as he violated the equitable maxims that equity is as equity does or one who seeks equity must do equity. Respondent fails miserably under both counts.

A third omission from the Horry Clerk's transcript of judgment was Appellant's payment of the 2002, 2003 and 2004 Horry County real estate taxes on the Horry tract. This was proved to Master in Equity J. Stanton Cross, Jr. in May, 2006 at a hearing in chambers with counsel present and three cancelled checks were presented payable to the Horry County treasurer totaling \$4,077.99 and reflecting their bank clearing dates. (R. p. 63) Respondent's counsel Welsh even prepared two statements (Myrtle Beach Money per Order (R. p. 61) and Lancaster Property Sale (R. p. 62)) acknowledging the payments that were presented at the hearing and he later documented the event with a letter to all dated May 22, 2006. (R. p. 60)

The continuation of this faulty transcript of judgment lingers on and during 2013 an amendment (R. p. 36) on November 2, 2012 from the Horry Clerk was denied by successor Master in Equity Cynthia Graham Howe (R. pp. 18-20), even though Howe stated in open court on October 14, 2013 that she takes judicial notice that the June 10, 2008 transcript of judgment is in error. (R. p. 124, lines 13-17) All of this points to the fact that the current amount of the Horry judgment that the Lancaster special referee relies upon to base his ruling is nothing more than a non-final judgment and does not meet the standard set forth in SC Code Ann. 15-35-810 that requires a final judgment is needed to create a lien. Therefore, the non final judgment of \$37,490.44 is not a lien and

cannot be used to force the sale of real estate.

Also, Respondent creates a double standard in his use of a conceded sum when he and counsel during the trial of the partition case concede (R. p. 3) the gas tank removal sum of \$7,940.00 and during the April 25, 2013 hearing in Horry County he and counsel concede (R. p. 21) the sum of the two checks paid to the Horry County Master in Equity on August 9, 2006 totaling \$7,597.03; however, only one of those conceded sums have been credited for the benefit of Appellant when both are conceded. This double standard issue of conceded (R. p. 65) was presented to Howe in Appellant's Rule 59(e) motion of July 1, 2013 that was heard on October 14, 2013 (R. p. 117) (R. p. 126, line 22 – p. 129, line 25) and denied in her order dated October 17, 2013 (R. pp. 22-24) and is on appeal. Therefore, until all omitted sums are credited to Appellant then the judgment professed by successor Master in Equity Cynthia Graham Howe as \$37,490.44 is a non final judgment and presents a premature state of affairs as if falls short of creating a lien.

In the case of *Freeman v. Colwell Mortgage Corp.* 297 S.C. 335, 377 S.E.2d 108 (S.C. App. 1989) the Court states that under SC law, a judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money citing *Ducker v. Standard Supply Co., Inc.*, 280 S.C. 157, 311 S.E.2d 728 (1984). In the *Freeman* case the trial court found the "Order for Judgment" did not become a final monetary judgment because the mobile home was repossessed.

In the case at bar the non final judgment is the byproduct of the Horry Clerk's omission on the June 10, 2008 transcript of judgment and the continued denial of a correction by the successor Master in Equity Cynthia Graham Howe by her actions in failing to implement the Appellant's setoffs from the orders of the partition case that were

not appealed and are the law of the case in 2006 as she is violating Rule 63, SCRCP by changing the orders of the prior Master in Equity after his retirement through her non implementation. (R. p. 120, lines 1-21) (R. pp. 77-81) "Rule 63 gives a successor judge no discretion to reweigh the evidence where the trial judge has made findings of fact supported by evidence in the record."

Also, "there is a long standing rule in this state that one judge of the same court cannot overrule another...[A] successor judge may not substitute his own judgment for that of The trial judge..." Charleston County DSS v. Father, et al., 317 S.C. 283, 454 S.E.2d 307 at 312 and 310 (1995). If successor Master in Equity Howe had implemented the omitted setoffs in favor of Appellant then the non final judgment of \$37,490.44 would be reduced by \$25, 517.99 to the sum of \$11,972.45 which would result in a final judgment amount As established by the 2006 Cross orders which are the law of the partition case as neither were appealed. But, she fails to do so and Special Referee Tindal has been dealt with nothing more than a non final judgment which restricts his decision and makes it void.

Since Lancaster Special Referee, William C. Tindal relies upon the orders of the Horry County Master in Equity Court they must be visited in this appeal.

Master in Equity J. Stanton Cross, Jr. was fair and equitable in his two orders of 2006 by weighing the claims of the parties and he approved some, but not all of Respondents claims for rent and accounting \$42,959.47 and after a conceded sum by Respondent and his counsel at trial Appellant was awarded a setoff for the \$7,940.00 amount he spent for the removal of the gas tanks from the Lancaster tract (R. p. 3) and given the opportunity to prove, which he did, any additional amounts that Appellant paid for that Respondent did not contribute towards and those items were the new roof for the

Lancaster tract building in 2005 in amount of \$13,500.00 (R. pp. 49-51) (R. pp. 75-76) and the 2002, 2003 and 2004 Horry County real estate taxes totaling \$4,077.99 (R. pp. 63-73) for Appellants setoff amount of \$25,517.99. (R. p. 46) Obviously, the removal of the gas tanks and the erection of a new roof on the Lancaster tract were an improvement that prevented waste and helped to preserve the property.

In the case of *Ackerman v. Heard* 287 S.C. 626, 340 S.E.2d 560 (S.C. App. 1986) the Court held that a joint tenant who at his own expense, places permanent improvements upon common property is entitled in partition suit to compensation for improvements regardless of whether his cotenants assented thereto in order to prevent unjust enrichment. The *Ackerman* case said further that “compensation is allowed not as a matter of legal right, but purely from the desire of a court of equity to do justice...”

Such was the case in 2006 when Master in Equity Cross following the trial of the partition case executed the two 2006 orders that are now the law of the case as neither of the two orders were appealed. This standard was addressed in the case of *Judy v. Martin*, a South Carolina Supreme Court Opinion No. 26604, 674 S.E.2d 151 (2009) wherein it held “that Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case.” This is known as the law of the case doctrine and it applies with regard to the two 2006 Master in Equity Cross Orders.

At the public sale of the Lancaster tract in June, 2005 the high bid was \$170,000.00 after several bids were made. (R. p. 137) This was after the above mentioned improvements and at the time of the sale no buildings were under condemnation by the city of Lancaster. This effort was the result of Appellants taking action and doing what was necessary to make the Lancaster tract worth as much as it could be worth under the

circumstances then. One can imagine what the liability factor would have been if the gas tanks were still in the ground and the corner building was still under condemnation at the time of the sale.

Appellants improvements not only enhanced the value of the Lancaster tract at the public sale in 2005, but helped prevent the waster of the assets that are now producing an income. These positive actions by Appellants are not proof of fraud that Respondent claims in his lawsuit to have the now valuable property sold to pay his non final judgment that is the result of his silence and inaction and as an officer of the court his failure to help find the truth of the matter, but instead by hiding a faulty transcript of judgment nearly four years that is in error and the error is in his favor due to the omission by the clerk of court who is allowed to correct her error under Rule 60(a), SCRCP, but has been denied by an arbitrary (R. p. 123) successor Master in Equity (R. p. 121, lines 5-24) who violates Rule 63, SCRCP (R. pp. 80-81) even though she denies that she is violating Rule 63, SCRCP on October 14, 2013. (R. p. 147, lines 2-25)

Conceded is defined in Webster's Dictionary as "1. to admit as true, valid, certain, etc. 2. to grant as a right." For Special Referee Tindal in his two Lancaster orders to hold that a non final judgment amount from the Horry partition case of \$37,490.44 is final is his failure to utilize the applicable SC law in the case.

There have been several cases that have dealt with the term "conceded" in SC. The TNS Mills, Inc. v. S.C. Dept. of Revenue, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) Case held that "an issue conceded in a lower court may not be argued on appeal." This view has been quoted in recent cases of Historic Charleston Holdings, LLC v. Mallon, 365 S.C. 524, 617 S.E.2d 388 (S.C. App. 2005) and in Austin v. Stokes-Craven Holding

Corp. dba Stokes Craven Ford, 387 S.C. 22, 691 S.E.2d 135 (S.C. 2010).

In the case of Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597 (S.C. App. 2012) the Court equates conceded with a defaulting party in a lawsuit. By defaulting the Court says a defendant forfeits his “right to answer or otherwise plead to the complaint.” “In essence , the defaulting defendant has conceded liability. However, a defaulting defendant does not concede the [a]mount of liability.”

Other recent SC cases dealing with ‘conceded’ are: City of Greer v. Humble, 402 S.C. 609, 742 S.E.2d 15 (S.C. App. 2013) wherein the City ‘conceded’ the affidavit is deficient on its face and under prior law could not argue otherwise on appeal. In Curry v. Curry, 402 S.C. 388, 741 S.E.2d 558 (S.C. App. 2013) the wife ‘conceded’ Husband’s drinking did not prevent him from getting up and preparing her coffee and toast each morning, participating in housework and earning an income that supported their comfortable lifestyle. In Kiriakides v. Atlas Food Systems & Services, Inc., 338 S.C. 572, 527 S.E.2d 371 (S.C. App. 2000) when Atlas incorporated, the division of the shares of stock was handled and after George died his shares were split up, but Alex gave away his ten percent to the family. On cross examination however, Alex ‘conceded’ he had to go along with records showing John originally had 2360 shares and he had 2370 shares. In a statute of Elizabeth case Sumner v. Janicare, Inc., 294 S.C. 483, 366 S.E.2d 20 (S.C. App. 1988) Sumner ‘conceded’ the transfer was for valuable consideration.

The Special Referee’s two orders (April 30, 2013 (R. pp. 7-15) and October 31, 2013 (R. pp. 16-17)) for sale are premature of this valuable asset, the Lancaster tract, that has been enhanced, not by Respondent who claims fraud, but by Appellants who have expended time and money to transform the vacant and dilapidated Lancaster tract from a

non performing liability into an asset producing income during the five years following the purchase in 2005. The 2008 Respondent claim that a fraudulent transfer by Master in Equity Cross occurred is ludicrous with Respondent knowing that the 2006 orders of Cross (R. pp. 2-5) contain a conceded sum of \$7,940.00 that he and his counsel Welsh made at trial (R. p. 3) (R. p. 118, line 6 – p. 119, line 19) that was omitted from the faulty transcript of judgment that Respondent hid for nearly four years should be crystal clear evidence that the judgment amount from the Horry court is non final and a sale of the Lancaster tract is premature until a final judgment be determined.

From the case of Bone v. U.S. Food Service, 404 S.C. 67, 78, 744 S.E.2d 552, 558-9 (S.C. 2013) the SC Supreme Court said this Court's jurisprudence is in accord with the definition of a final judgment found in Black's Law Dictionary. It defines a final judgment as "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs...and enforcement of the judgment." Black's Law Dictionary 919 (9th ed. 2009).

In the case at bar the issue of the amount of the judgment is not final as the omitted amount from the June 10, 2008 transcript of judgment is still unsettled to say the least. The two orders of Master in Equity Cross in 2006 that grant the setoff to Appellant and are the law of the partition case have not yet been implemented. All subsequent orders (R. pp. 18-24) appear to be in violation of Rule 63, SCRCP in denial of the efforts of the clerk of court under Rule 60(a), SCRCP and Appellant under Rule 60(b)(1) to correct the faulty document (R. p. 33) in an effort for equity to prevail.

B. MAY RESPONDENT USE A DEAD LIS PENDENS CLOTHED WITH FRAUD TO LITIGATE IN 2008 WITH A THIRD LIS PENDENS IN LANCASTER IN AN EFFORT TO BOOTSTRAP HIS PARTITION ACTION IN HORRY AFTER SECOND LIS PENDENS FILED 2002 AND IN VIOLATION OF THE STRICT COMPLIANCE OF SC CODE ANN. 15-11-50 PROHIBITING REILING AFTER FIVE YEARS?

When Respondent filed his 2008 complaint for fraud he also filed a third lis pendens. (R. p. 86) The second lis pendens (R. pp. 84-85) was filed in 2002 in Horry County when the partition case was moved from Lancaster County where the first lis pendens was filed in 2000. (R. pp. 82-83)

Under specific language of SC Code Ann. 15-11-50 Respondent's third lis pendens is a dead lis pendens as it was filed six years after the second lis pendens and the statute is specific in stating that after five years it cannot be refilled. Here six years passed and therefore a dead lis pendens. It is obvious that Respondent was intent on bootstrapping his new fraud action onto his partition action, but his timing was off by a year. A dead lis pendens clothed with fraud cannot be valid under SC law since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the statutory provisions is required. See Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002) rehearing denied, certiorari denied.

From the facts that existed at the time of the sale of the Lancaster tract in 2005 the property was in dire need of repair as all three commercial buildings were vacant and no income was being generated and at the time of the sale one building was given a new roof to remove it from the cities condemned list (R. pp. 52-59) and within a couple of years

another building was condemned in 2008 and a new roof was added in 2009 all during the five year period that no tenants were there. Appellants filed an emergency motion in January, 2009 (R. p. 31) to seek relief from the circuit court that week in two areas: one- cancel the third lis pendens and two – obtain a continuance in city court for code violation due to need for a new roof. It was not until the special referee hearing in September, 2012 that the third lis pendens motion was heard, but not ruled on until the April 30, 2013 Order of Tindal.

When Appellant, The Gregory Company, Inc. purchased the Lancaster tract no mortgage or lien was placed on the property as it was the intent of the purchaser to hold the property, fix it up, rent it out and derive income for the family as it was the old family home place over one hundred years ago where Appellant's grandfather raised thirteen children and sent them all to college and served as the mayor of Lancaster at the turn of the century from 1890's forward. Then in the late 1940's Appellant's father bought the Lancaster tract from his siblings.

A look at all of the lis pendens cases alleging fraud it is the thrust of the filings that the owner of the property is about to encumber or transfer the property and a lis pendens is needed to notify the world that a claim is pending, but the claim must be based upon the facts that exist at the time. In the case at bar in 2008 there is no evidence that The Gregory Company, Inc. was holding the property to sell or mortgage as no such acts existed. If The Gregory Company, Inc. had any intent or desire to sell or mortgage the Lancaster tract then it could have done so after getting the deed from the Horry County Master in Equity by rushing to the Lancaster Courthouse and recording the deed with mortgage liens thereon; however, no such thought or action was taken and the deed was

recorded (R. p. 130) when a plat was being obtained to record simultaneously and did so in June, 2008. (R. p. 149) Therefore, there is no fraud in the transaction from J. Stanton Cross, Jr. as Master in Equity to The Gregory Company, Inc., as the required one-half the bid amount was paid, plus costs, as Appellant owned an undivided one-half interest in the Lancaster tract and The Gregory Company, Inc. has diligently over a five year period fixed up the property from when it couldn't attract a tenant and was condemned by the city to now fully occupied and making money with long term quality leases. There was none then and is no intent now to sell the property. The Lancaster tract should be worth twice what was paid for it in 2005 taking into consideration the improvements that have been made and with no mortgage or lien thereon, except for Respondent's dead third lis pendens.

C. DOES A STATUTE OF ELIZABETH VIOLATION OCCUR WITH A DEED OF CONVEYANCE FROM Horry County Master in Equity, J. Stanton Cross, Jr., as Grantor to The Gregory Company, Inc., as Grantee after order of partition, public sale and highest bidder was Appellant who owned an undivided one-half interest therein and who assigned bid to his corporation and it pays Master in Equity his requirement of one-half the bid amount plus costs when Respondent subsequently obtains a faulty transcript of judgment with favorable error, secretes it and litigates against Appellants' for the extorted sum?

The standard of review as outlined in the recent SC case of *Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672 (S.C. App. 2013) states “A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth. [403 S.C. 208] An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies.” *Oskin v. Johnson*, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012).

Section 27-23-10(A) of the South Carolina Code (2007) is commonly known as the Statute of Elizabeth. From the *Oskin* case the Court has held in interpreting the statute that “conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration.”

In the case at bar the grantor was J. Stanton Cross, Jr., Horry County Master in Equity following a partition case and an Order for Partition with a public sale of the Lancaster tract and the highest bidder was The Gregory Company, Inc. through its agent and owner, Appellant who owned an undivided one-half interest in the property (R. p. 7) just prior to the June, 2005 sale.

Special Referee William C. Tindal buys into the Respondent’s argument that since Appellant bid the property at the sale then, when he assigned the bid to the corporation that Appellant falls under the second condition as no consideration was paid for the assignment of the bid. (R. p. 11) If that be the case then the assignment of the bid is made without actual intent to defraud. Without actual intent to defraud then Appellant has not participated in a fraudulent transfer and the statute of Elizabeth does not apply.

On the other hand The Gregory Company, Inc. paid the required one-half the bid amount to the Horry County Master in Equity plus costs (R. pp. 43-44) which represented the full amount required by the court to be granted the Lancaster tract for \$170,000.00. The Master in Equity has wide discretion to operate his court as he deems equitable and he did not require either Appellant to pay down 5% and pay off the bid in 30 days as the Special Referee Order of April 20, 2013 attempts to use in painting a broad brush of fraud on behalf of Appellants when none existed. (R. p. 12) Special referee is attempting to limit the authority of the Horry County Master in Equity J. Stanton Cross, Jr. by holding that no equitable discretion applies in the Cross court and that Cross has no flexibility.

A second dig by Special Referee Tindal was that Appellant did not identify himself as agent to Robert Folks, the agent for Horry County Master in Equity at the Lancaster sale. (R. p. 11) This is merely an assumption on the part of the court as Folks did not require any registration prior to or after the sale and Folks has known Appellant for over fifty years. The actual sale was handled quite informally. Also, Folks was acting for the Master in Equity and merely sold the property and reported the sale to the Horry County Master in Equity afterwards. (R. p. 137) In order for a corporation to attend and bid at a sale since it is not a person and only an entity then an agent would have to act in that capacity. Appellant was the perfect person to so act as he was the sole owner of The Gregory Company, Inc. (R. p. 12) So, the faxed report by Folks to Clifford L. Welsh on June 6, 2005 was correct in stating "Mr. Jack Gregory bid in the Lancaster County property at the sale conducted this day as ordered for the sum of \$170,000.00. There was competitive bidding from four bidders, including Mr. Ned Gregory who submitted only

one bid.” However, this is not how Special Referee Tindal stated it in his April 30, 2013 Order page 5 (R.p.11) in describing the bidding as “Folk’s report of the sale states that Jack Gregory individually bid for the property.” This is a total misconception by special referee of the facts. It leads one to believe that special referee pre-decided the case and is shaping the facts to suit his needs.

The third dig by the special referee was to assume that the Horry County Master in Equity would not apply equity and not offer flexibility to the sale agenda of the Lancaster tract. In doing so the special referee on page 6 (R.p.12) of his April 30, 2013 Order he holds The Gregory Company, Inc. to a strict 30 day pay and 5% down rule; however, special referee is not the Master in Equity for Horry County and did not order the sale and so he cannot use his standards to get the result he desires when the person in charge, J. Stanton Cross, Jr. allows The Gregory Company, Inc. ten months to pay for the bid on the Lancaster tract. (R. pp. 43-44) It is wrong for special referee to hold that against Appellants as Appellants were in their rights under the man who ordered the sale not special referee who merely views the facts in the light that he creates as it appears he is making a case for Appellants violation of the statute of Elizabeth when no such violation occurred.

The fourth dig by the special referee on page 6 talks about the use of a company check to pay for the bid. Well, yes as all payments with regard to the Lancaster tract were by company check as the property was bought and paid for by the corporation. In addition to the purchase check the check for the payment of the new roof in 2005 was by corporate check in the amount of \$15,500.00 (R. p. 49) (R. p. 75) to the attorney for

roofer Tod Snipes and the corporate check on August 9, 2006 to the Horry County Master in Equity was for \$5,097.03 (R. p. 37) along with the Welsh check for \$2,500.00 concluded the Lancaster tract sale.

The fifth dig was to attack the deed which was executed by the man who ordered the sale and who allowed ten months to pay for the bid and who still had the right to either not sign or sign and since the Master in Equity was satisfied in October, 2006 that the partition case was history he signed the deed (R. p. 131) to end the matter. It was his court and it was his call in dealing out equity to the parties and the deed to him obviously was credible and acceptable.

Also, special referee makes a slight remark about the fact that the deed was not recorded for three years after the auction (R. p. 12) as if that is important. Even though South Carolina is a race notice state it still is the law that a deed does not have to be recorded to be valid and there is no time limit as to when a deed must be recorded. It was explained to special referee that the plat was being prepared and the deed and plat were to be recorded simultaneously and as it occurred the plat was recorded a few days after the deed with deed being recorded on June 4, 2008 (R. p. 130) and the plat being recorded June 10, 2008. (R. p. 149) The main objective during this five year period from sale to the first tenant was getting the property in shape physically not recording a deed. The property had been in the Gregory family for well over one hundred years and Appellants were not planning on changing that historic accomplishment.

Finally, special referee states that this conveyance was an attempt to defeat creditor(s) on page 6 (R. p. 12) of his April 30, 2013 Order. The only known creditor was Respondent and finally with his presentment of the faulty transcript of judgment dated

June 10, 2008 (R. p. 33) on February 7, 2012 (R. p. 128, line 16 – p. 129, line 2) at the pre-trial that did not include the conceded (R. p. 3) sum of \$7,940.00 that Respondent and his counsel at trial did so concede for the removal of gas tanks from the Lancaster tract by Appellant then the creditor was defrauding the court and Appellant.

As an officer of the court Respondent should have done something to correct the error of omission by the Horry Clerk of Court, but he remained silent and in hopes that no one would notice. Now Respondent will allow the special referee to use the faulty document to punish Appellant and accuse him of trying to defeat creditor(s) when there is only one and that one is using the faulty document that Respondent knows to be faulty and by making his exorbitant claim for money in this court of equity he turns that faulty transcript of judgment into a fraudulent document.

This is a classic case of extortion without the use of a dangerous weapon, only manipulated paper.

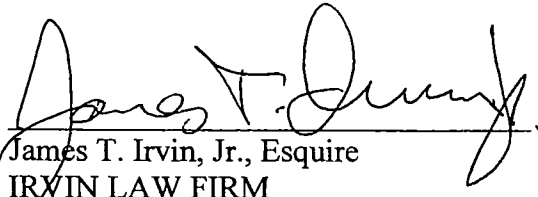
CONCLUSION

Had Respondent done the right thing and notified the Horry County Clerk of Court that she had made an error on the June 10, 2008 transcript of judgment when he received it in the mail instead of hiding it for nearly four years in hopes that he would receive a windfall by selling the Lancaster tract in a fraudulent deed action that was later modified to a violation of the statute of Elizabeth he would already have the correct amount of money that he is entitled to have as the properties over the five years from 2005 to 2010 were rehabbed and finally rented with quality tenants on long term leases and the Lancaster tract is now in shape to be used as an asset to borrow against and pay the lone

creditor only the correct sum he is entitled to once a final judgment amount is determined by the appellate court. Appellants are caught in a catch 22 scenario here and are being extorted by Respondent who is using the court system in hopes of forcing a big payday that Respondent really knows does not exist. But, as long as the faulty document and rulings are going his way Respondent still remains silent and offers no equity whatsoever. As an officer of the court Respondent knows better, but it appears that greed is the victor.

As a court of equity, reverse the special referee orders and halt the sale orders as there is no violation of the statute of Elizabeth by weighing the equities in the matter. Also, reach a final judgment amount as all that exists is a non final judgment which is not a lien, but the lower courts are treating the \$37,490.44 as a lien. The correct final judgment figure is \$25,517.99 less than that amount or \$11,972.45.

Respectfully submitted,

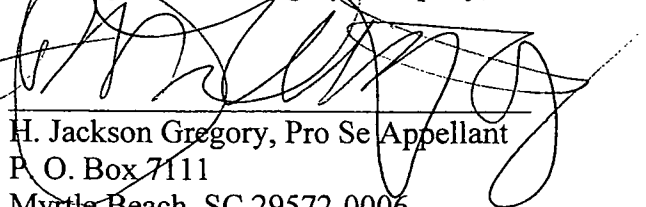


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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
COURT OF COMMON PLEAS

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., ... Respondent,

v.

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

Of whom Howell Jackson Gregory is the Appellant.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

Did the Court of Common Pleas for Horry County err in determining the principal amount of the judgment entered by it on April 25, 2006?

II.

Did the Court of Common Pleas for Lancaster County err in finding that the appellant's assignment to his wholly owned corporation of his right to take title to the Lancaster properties was voidable under the Statute of Elizabeth?

III.

Was the respondent authorized by statute to file a *lis pendens* against the Lancaster properties when he filed suit to set aside the conveyance of those properties as fraudulent under the Statute of Elizabeth?

COUNTERSTATEMENT OF THE CASE

Consolidated in this matter are appeals in two related actions.

The first is a partition action, filed by the respondent in Lancaster County in 2000 as Case Number 2000-CP-29-896. The action was referred by consent to the Master in Equity for Horry County because one of the properties was located in that county, whereupon venue was transferred and the action was assigned an Horry County case number, 2002-CP-26-1706. The appeal in this partition action bears Appellate Case Number 2013-002443.

The second is an action by the respondent to set aside an allegedly fraudulent conveyance under the Statute of Elizabeth, S.C. Code Ann. § 27-23-10, filed in Lancaster County in 2008, Case Number 2008-CP-29-1084. The appeal in this action bears Appellate Case Number 2013-002370. The Court directed the use of this case number and its caption for the consolidated appeals.

Proceedings in the Partition Action

The partition action was filed by Ned Gregory, Jr. ("Ned"), the respondent herein, against Howell Jackson Gregory ("Jack"), an appellant herein (henceforth, "the appellant"), on October 27, 2000, seeking partition of three adjacent parcels in downtown Lancaster and a house in Myrtle Beach. The respondent additionally sought a partition accounting. By order of the Honorable Paul E. Short, Jr., Presiding Judge of the Sixth Judicial Circuit, dated October 12, 2001, the partition action was referred with finality to the Master in Equity for Horry County. Judge Short entered a consent order transferring venue to Horry County on February 27, 2002.

Following trial on December 10, 2001, and post-trial discovery, by order of the Honorable J. Stanton Cross, Jr., Master in Equity of Horry County, dated April 5, 2005, the subject properties were ordered to be sold at auction. Judge Cross appointed Robert K. Folks, Esquire, a member of the Bar of Lancaster County, as special referee to conduct

the auction sale of the Lancaster parcels. If the successful bidder at auction were anyone other than one of the two cotenants (Ned and Jack), the successful third-party bidder was ordered to deposit five (5%) percent of the amount of the successful bid and to pay the balance within thirty (30) days. Special Referee Folks conducted the auction on June 6, 2005 and reported to the court that the successful bidder was the appellant Jack Gregory, who bid in the property for \$170,000.00. Judge Cross auctioned the Myrtle Beach house. The successful bidder was the appellant Jack Gregory.

At hearings conducted on February 16, 2006, and March 17, 2006, Judge Cross tried the remaining issues related to respondent's claim for a partition accounting. By order [R. 2] dated April 25, 2006, Judge Cross found that the respondent was entitled to judgment against the appellant in the partition accounting in the gross amount of \$42,859.47 in upkeep expenses and rent.¹ Judge Cross found that the appellant was entitled to an offset for his own upkeep expenses in two amounts: (1) a conceded amount of \$7,940.00 for removal of gas tanks at one of the Lancaster parcels; and (2) property tax payments on the Myrtle Beach house for tax years 2002, 2003, and 2004, if proved. In this regard the order of April 25, 2006 provides:

The Defendant [the appellant] is entitled to a setoff to [sic] the amount expended by the Plaintiff [Ned] of any funds that he [the appellant] can prove that he contributed, without contribution from the Plaintiff [Ned]. It is conceded that Defendant [the appellant] spent [\$7,940.00] to remove the gas tanks from the Lancaster property. The only other contribution by the Defendant [the appellant] was for real estate taxes for the Myrtle Beach house. The Defendant [the appellant] will be given credit for any real estate taxes he paid on the Myrtle Beach property for the years 2002, 2003 and 2004, if paid receipts are produced.

¹ This figure consisted of two sums: (1) \$21,959.47 for respondent's property upkeep expenses, and (2) \$20,900.00 rental value of the Myrtle Beach house, occupied by appellant.

[Order of April 25, 2006, p. 2, R. 3.]²

Judge Cross further noted that the appellant had not complied with the terms of the auction sale, ten months earlier. Judge Cross therefore ordered the Lancaster properties to be re-auctioned. Re-auction was avoided when the Master accepted from the appellant on April 28, 2006 a check for \$93,925.00, representing one-half of his successful bid at the June 2005 auction, plus costs. [See Appellants' Brief, Argument "A," last sentence of first paragraph.]

On August 10, 2006, without notice to respondent [Tr. of hearing of Dec. 10, 2012, pp. 48-52, R. 110-16], Judge Cross issued what was styled a *nunc pro tunc* order. [R. 5.] In this *ex parte* order Judge Cross granted credit to the appellant against the judgment of April 25, 2006 in the sum of \$4,077.99, being the amount paid by the appellant in property taxes for the years 2002, 2003, and 2004. Although Judge Cross had found in the earlier order that "[t]he only other contribution by the Defendant [the appellant] was for real estate taxes for the Myrtle Beach house", Judge Cross purported to grant the appellant an additional credit in the amount of \$13,500.00 paid to a roofing contractor for work on one of the Lancaster buildings. When notified of this order, the respondent moved for reconsideration under Rule 59, SCRCP, but the motion was never heard.

The alleged contribution of \$13,500.00 originated when the appellant contracted with Tod Sipes Construction, Inc., for roofing work, then failed to pay for it. Sipes sued both the appellant and the respondent as cotenants. The case was settled with the payment to Sipes' attorney of the amount due by the appellant. Judge Goode's order [R. 26] approving the settlement and dismissing the case forbade charging respondent Ned Gregory for any portion of the payment:

Now, Therefore, it is Ordered, Adjudged and Decreed

² Also, Judge Cross ordered the appellant to pay the sum of \$2,228.00 for publication costs and the special referee's fees in the partition sale, but this portion of the order was unrelated to the judgment entered in the partition accounting.

that the amount paid in settlement by [Jack Gregory] to the Plaintiff [Sipes] shall not be charged against Ned Gregory as against his interest in the property, nor shall it be used as a set-off against Ned Gregory in the distribution of the proceeds of sale of the property herein, nor charged as a debt against Ned Gregory in any manner whatsoever.

[Order of May 27, 2006, in Case No. 2005-CP-29-141, p. 3, R. 29.]

In October 2006, the appellant Gregory's attorney, James Irvin, Esq., delivered to Judge Cross a draft deed conveying the Lancaster properties, not to the appellant Jack Gregory but to The Gregory Company, Inc.³ Judge Cross returned the executed deed to Mr. Irvin. The deed was held for nineteen months, then recorded on June 4, 2008. [R. 130.] Respondent Ned Gregory filed Case No. 2008-CP-29-1084 on September 19, 2008, under the Statute of Elizabeth, seeking to void the deed to The Gregory Company, Inc., and placing title in the name of appellant Jack Gregory, subjecting the Lancaster properties to the judgments held by respondent.

On June 10, 2008, the Horry County Clerk of Court issued a Transcript of Judgment [R. 33] in the partition action in the amount of \$45,087.47 against the appellant Jack Gregory.⁴ By motion [R. 32] dated September 24, 2012, the appellant moved to reduce the amount of the judgment to take account of the offsets granted in the *ex parte nunc pro tunc* order of August 10, 2006.⁵ The motion was heard on December 10, 2012 by the Honorable Cynthia Graham Howe, Master in Equity for Horry County. By order [R. 18] dated March 4, 2013, Judge Howe denied the motion. By motion [R. 38] dated April 1,

³ The Gregory Company, Inc., a corporation wholly owned and controlled by the appellant, was his *alter ego*. See: *In re Gregory*, S.C. Supreme Court Op. No. 25135 filed May 3, 2000.

⁴ This was the sum of the three amounts awarded to the respondent in the order of April 25, 2006. The Clerk failed to credit the appellant with the upkeep expense of \$7,940.00 for gas tank removal awarded to him in that order.

⁵ In addition to the offset for gas tank removal expense, \$7,940.00, granted in the order of April 25, 2006, and the offset for property taxes allowed in the order of April 25, 2006, if proved, the appellant sought an offset for roofing expense of \$13,500.00. [Motion of 9/24/12, R. 32.]

2013, the appellant moved for reconsideration under Rule 59, SCRCP. The motion was heard on May 15, 2013. At the hearing, the respondent conceded that the judgment should be reduced by the amount of \$7,597.03.

By order [R. 21] dated May 15, 2013, Judge Howe reduced the amount of the 2006 judgment against the appellant from \$45,087.47 to \$37,490.44, based upon the respondent's concession.

By motion [R. 64] dated April 1, 2013, the appellant again moved for reconsideration under Rule 59, SCRCP. By order [R. 22] dated October 17, 2013, the motion was denied.

The appellant Jack Gregory served notice of appeal of the order of October 17, 2013 on November 4, 2013.

Proceedings in the Statute of Elizabeth Case

The Statute of Elizabeth action was filed on September 19, 2008 by Ned Gregory, the respondent herein, against Jack Gregory and The Gregory Company, Inc., the appellants herein, to void the Master's deed of the Lancaster properties to The Gregory Company, Inc., placing title instead in the name of the appellant Jack Gregory and subjecting the properties to judgments held by respondent against the appellant.⁶ The City of Lancaster was joined as a party defendant but was later dismissed. The appellants Jack Gregory and The Gregory Company, Inc., counterclaimed on various grounds.

By order [R. 6] of the Honorable Kenneth G. Goode, Presiding Judge of the Sixth Judicial Circuit, dated June 30, 2009, William C. Tindal, a member of the Bar of Lancaster County, was appointed special referee to enter judgment with finality. The case was tried before the special referee on September 26, 2012. By order [R. 7] dated April 30, 2013, the special referee entered judgment in favor of the respondent, voiding the conveyance

⁶ In addition to the partition accounting judgment, respondent holds an Horry County judgment against the appellant in the amount of \$3,060.00, entered May 27, 2006, in an unrelated matter.

to The Gregory Company, Inc., and ordering an auction sale of the Lancaster properties to satisfy the respondent's judgments against the appellant Jack Gregory.

By motion dated June 6, 2013, the appellants moved under Rule 59, SCRCP, to reconsider. By order [R. 16] dated October 31, 2013, Special Referee Tindal amended his earlier order so as to reflect the reduction in the amount of the partition accounting judgment as ordered by the Horry County Master in Equity on May 15, 2013.

Jack Gregory and The Gregory Company, Inc., served notice of appeal of the order of October 31, 2013 on November 6, 2013.

STATEMENT OF FACTS

The salient facts are recited in the Counterstatement of the Case.

The confusion which checkers the painfully protracted history of this litigation is perhaps unique. Much but not all of it arises from the appellant's effort to reconstruct to his advantage events of 2006 which were undocumented when they occurred, much less now. Some of it arises from the appellant's effort to claim credit for items never mentioned by him in 2006 or until these proceedings got underway in 2012. These items include the appellant's claim that, in 2006, he overpaid to the Horry County Master in Equity the interest due as a result of his year's delay in making good his successful bid on the partition sale of the Lancaster properties. These items also include his effort to transmute that interest payment, which had nothing to do with the appellant's contribution toward upkeep of the subject properties — the sole subject of the partition accounting judgment — into a credit against that judgment. But principally the confusion is generated by the appellant's sometime claim — seven years after the fact — that it was not the appellant personally but his corporation which was the successful bidder at the partition auction of the Lancaster properties.

These and other aspects of the facts of this matter will be discussed in the Argument section of this brief, below.

ARGUMENT

I.

The amount of the partition accounting judgment entered on April 25, 2006 was \$45,087.47, less an offset of \$7,940.00. The Order for Judgment permitted the judgment debtor to apply for a single further offset — property taxes for three years. The judgment debtor failed to move for such an offset. Instead, he presented *ex parte* to the Master in Equity a list of further offsets which he sought. The Master's order purporting to grant two of those items and rejecting the others was void. In the orders under appeal, the Master correctly determined that the principal amount of the judgment is found in the Order of Judgment of April 25, 2006.

Judgment [R. 2] in the partition accounting was entered against the appellant on April 25, 2006. The judgment consisted of three components: (1) Myrtle Beach rent of \$20,900.00; (2) Lancaster properties upkeep of \$21,959.47; and (3) partition action costs reimbursable to the respondent of \$2,228. These three amounts total \$45,087.47. Against this total the court found the appellant entitled to an offset for his contribution of \$7,940.00 to Lancaster properties upkeep for removal of the gas tanks. Thus, the net amount of the judgment was \$37,147.47.⁷

In what proved to be an imprudent indulgence to the appellant, the Master in Equity — having heard all the evidence offered in two hearings on the partition accounting — gave the appellant the opportunity to make a post-judgment showing of another contribution to the upkeep of the properties, not proved at trial. The Master allowed the appellant to apply for a single additional offset for any Horry County property tax payments made by him for three specific years.

Instead of gathering evidence of any such tax payments not offered at trial and then moving for the belated offset, the appellant approached the Master *ex parte* with a laundry

⁷ Much of the resulting confusion — and with it the opportunity for obfuscation — came from the fact that the order did not specify the amount of the judgment as a sum certain.

list of additional items claimed by him to have been contributed to the upkeep of the partitioned properties, not limited to the specified property taxes.⁸ With no notice and no hearing, the Master issued a second order — the so-called “*nunc pro tunc*” order [R. 5] of August 10, 2006 — granting two additional offsets to the judgment entered on April 25, 2006. These were: (1) property taxes of \$4,077.99; and (2) \$13,500.00 for Lancaster roof repairs. Since no record of this *ex parte* conference exists, it is unknown what was said to the Master or shown to him. It is very safe to say, however, that the Master was not shown the Order of May 27, 2006 [R. 26] of Judge Goode, from which the \$13,500.00 figure derived. That order provided:

Now, Therefore, it is Ordered, Adjudged and Decreed that the amount paid in settlement by [Jack Gregory] to the Plaintiff [Sipes] shall not be charged against Ned Gregory as against his interest in the property, nor shall it be used as a set-off against Ned Gregory in the distribution of the proceeds of sale of the property herein, nor charged as a debt against Ned Gregory in any manner whatsoever.

[Order of May 27, 2006, in Case No. 2005-CP-29-141, p. 4, R. 29.]

When respondent’s attorney received word of the Order of August 10, 2006, respondent moved to alter or amend, but the motion was never heard.

The *ex parte* so-called *nunc pro tunc* order [R. 5] was void.

The Fourth Circuit Court of Appeals described the limited function of a *nunc pro tunc* order in these terms:

Nunc pro tunc literally means “Now for then.” *Maksymchuk v. Frank*, 987 F.2d 1072, 1075 n. 2 (4th Cir.1993) (quoting 67 C.J.S. at 1 (1978)). We previously defined the doctrine as “a procedure whereby a determination previously made, but for some reason improperly entered or expressed, may be corrected and entered as of the original time when it should have been, or when there has been an omission to enter it at all.” *Id.* (quoting 67 C.J.S. at 2). The purpose of an order entered *nunc pro tunc* is to correct mistakes or omissions in the record so that the record properly reflects the events that

⁸ The appellant sought offset for various other amounts not identified in this record. Appellant told Judge Howe: “I did hand up to Judge Cross a list of all the expenses that I had incurred” [Hearing of 12/10/12, p. 14, R. 111.] Appellant gave the Master “a whole list of things”. [*Id.*, p. 51, R. 115.]

actually took place. It may not be used to retroactively record an event that never occurred or have the record reflect a fact that never existed. See *Ex parte Buskirk*, 72 F. 14, 20-21 (4th Cir. 1896); see also *Rockingham Cnty. Dep't of Soc. Servs. v. Tate*, 202 N.C.App. 747, 751-52, 689 S.E.2d 913, 916-17 (2010). We explained long ago that "[t]he rule is now well established that *nunc pro tunc* orders cannot operate to modify orders theretofore made or to take the place of orders intended to be made but omitted. The courts can by such orders supply omissions in the record of what was actually done in the cause at a former time when it was under consideration, and by mistake or neglect not entered in the clerk's minutes or the court's records; but where the court has omitted to make an order which it could have made, and in fact intended to make, it cannot subsequently make the same *nunc pro tunc*, so as to make it binding upon the parties to the suit from the date when it was so intended to have been entered. . . ." *Buskirk*, 72 F. at 20-21. The passage of time has not altered the purpose and limitations of this rarely-used device. See *Maksymchuk*, 987 F.2d at 1075 n. 2.

Glynn v. Wilmed Healthcare, 699 F.3d 380, 383-84 (4th Cir. 2012). See: *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001); *Ex parte Strom*, 343 S.C. 257, 264-65, 539 S.E.2d 699, 702-03 (2000):

Nunc pro tunc orders can only be used to place in the record evidence of judicial action that has actually taken place. "A prerequisite for a *nunc pro tunc* order . . . is some previous action by the court that is not adequately reflected in its record." *Deweese v. Sweeney*, 947 S.W.2d 861 (Tenn. Ct. App. 1996), *app. den'd*, (1997); see also *Simmons v. Atlantic Coast Line R.R. Co.*, 235 F.Supp. 325, 330 (D.S.C. 1964) (*nunc pro tunc* entry cannot be made to serve the office of correcting a decision or of supplying non-action on the part of the court); *Carroll v. Carroll*, 338 S.W.2d 694, 695 (Ky. 1960) ("The error could not be corrected by *nunc pro tunc* order because such an order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error or supply an omission of judicial action."); 20 AM.JUR.2D *Courts* § 29 (1995) (the order cannot supply the record with action that the court failed to take).

In 2012 the appellant filed a motion [R. 32] to correct a "transcript of judgment" [R. 33] prepared by the Horry County Clerk of Court in 2008. Such a document is prepared to evidence the amount of a judgment for use in another venue or jurisdiction but has no power to change the actual judgment. In substance, the appellant's motion was to determine the principal amount of the judgment against him, and only incidentally to correct

the transcript thereof if inaccurate, and that is how the Horry County Master in Equity treated the motion.

The appellant has failed in his duty to supply a record sufficient for deciding the issues presented by failing to procure a transcript of the hearing of his Horry County motion or any of its Rule 59 reiterations. See: *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E.2d 185, 187 (Ct. App. 1986) ("The burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent review."). On appeal he relies upon a concession made by the respondent at one of his Rule 59 hearings. The order of judgment of April 25, 2006 [R. 2] explicitly granted to the appellant an offset of \$7,940.00 for the contribution cost of gas tank removal. At the Rule 59 hearing on May 15, 2013, seven years later, the appellant claimed an additional offset for the amount of \$7,597.03, charged him by the court as interest for his year-long failure to satisfy his bid for the Lancaster properties.⁹ [Order of August 10, 2006 [R.5]; Appellant's Return [R. 146] dated 11/21/13 to Motion to Dismiss, p. 3: \$7,597.03 was "to end the Lancaster sale."] This payment was wholly unrelated to any credit to which the appellant might have been entitled in the partition accounting as contribution to the upkeep of the jointly titled properties. Ironically, the respondent mistakenly conceded that the appellant was entitled to an offset in this amount.¹⁰ Absent this mistaken concession, on no account would the appellant have been entitled to an offset against the partition accounting judgment for the interest he was required to pay, as purchaser at the Lancaster auction, on account of his delay in fulfilling his bid. That was a separate matter entirely. It would figure into the distribution of funds from the partition sale and the resulting accounting — *i.e.*, the **sale** accounting, not the **upkeep contribution** accounting. The appellant has presented no evidence of the

⁹ Interest at the rate of 8.25% on half the successful bid for thirteen months was rounded to \$7,597.03. See letter of May 22, 2006 [R. 60] from Clifford Welch, Ned's counsel, to Judge Cross.

¹⁰ The number was similar to the \$7,940.00 offset for gas tank removal, granted to the appellant in the Order [R. 3] of April 25, 2006.

sale accounting, as to which there has been no challenge at any time.

Thus, the appellant benefits from a mistaken concession of an amount to which he had no claim for offset — but approximately equal to his contribution of gas tank removal expense, granted in the Order of April 25, 2006.

II.

The appellant's assignment to his wholly owned corporation of his right to take title to the Lancaster properties was voidable under the Statute of Elizabeth. The deed to the corporation was properly voided. Title was properly placed in the appellant personally and subjected to the claims of his judgment creditor.

The appellant's principal claim against the orders issued in the Lancaster County Statute of Elizabeth action is that the 2006 Horry County judgment is "non-final", so that the court in the Statute of Elizabeth action erred in relying upon the Horry County court's determination of the principal amount of that judgment.

The Horry County judgment of 2006 [R. 2] is as final as a judgment can get. See: *Bone v. U.S. Food Services, Inc.*, 404 S.C. 67, 78, 744 S.E.2d 552, 558-59 (2013). Moreover, the respondent holds a second judgment against the appellant which is undisputed in amount. [R. 13, ¶ 3.] This judgment, too, is unpaid, and the appellant lacks the ability to satisfy this judgment, either. The Statute of Elizabeth court could have set aside the fraudulent conveyance to appellant's corporation solely in reliance upon this undisputed judgment without regard to the larger partition accounting judgment.

The appellant switches back and forth in his brief between whether he personally was the successful bidder¹¹ at the partition sale in 2006 or whether his corporation was. The only evidence is that the appellant Jack Gregory was the successful bidder. The Horry County order for auction specified that if a third party were the successful bidder, it would

¹¹ For example, "Appellant was the highest bidder and subsequently assigned his bid to his corporation" [Brief at 6.] The special referee "was correct in stating 'Mr. Jack Gregory bid in the Lancaster County property at the sale'" [Brief at 22.]

be required to make a deposit of 5% and pay the balance in thirty days, but if either of the parties to the auction were successful, no deposit would be required. Jack Gregory was the successful bidder. He offered no deposit, and none was required. [R. 8.] The special referee who conducted the auction reported to the court that Jack Gregory **bid in** the property.¹² [Folks report, R. 137.] The appellant states in his brief that this report was correct. [Brief at 2.] The appellant's attorney averred that the appellant was the successful bidder and had assigned his bid. [Irvin affidavit, 11/8/06, R. 133.] When the appellant failed for eleven months to satisfy his successful bid, the court found that he had failed to do so and ordered re-auction. [R. 4.] When the appellant immediately made good his bid (with a check [R. 43] from his wholly owned corporation), his attorney prepared and submitted to the court a deed reciting that the appellant was the successful bidder and that he had assigned his bid to his corporation. [R. 133.] This version of what happened — which is the correct one — is found at various points in the appellant's brief.

It was of course the appellant's goal to avoid receiving title to the Lancaster properties which he had purchased at the partition auction so as to shield those assets from the judgments against him. Thus, the assignment was fraudulent, as was causing the court's deed to be issued to the corporation rather than to the appellant.

The Lancaster court committed no error in setting aside the assignment and the conveyance, and placing the property in the name of appellant Jack Gregory.

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BID. * * *

—**Bid in.** Property sold at auction is said to be "bid in" by the owner or an incumbrancer or some one else who is interested in it, when he attends the sale and makes the successful bid.

BLACK'S LAW DICTIONARY 205 (4th ed. 1951). See, e.g., *Cloniger v. Cloniger*, 261 S.C. 603, 193 S.E.2d 647 (1973).

III.

A plaintiff who commences an action to void a deed to real estate under the Statute of Elizabeth is statutorily permitted to file a *lis pendens*.

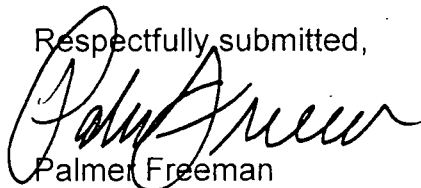
When the respondent commenced the Statute of Elizabeth action, he filed a *lis pendens* inaccurately styled a "Third Lis Pendens". [R. 86.] This was not the third but the first and only *lis pendens* filed in the Statute of Elizabeth action. The misnomer can be attributed to the fact that two *lis pendens* [R. 82, 84] had been filed in the partition action, years earlier.

A *lis pendens* is properly filed in connection with an action to set aside a conveyance under the Statute of Elizabeth. *Lebovitz v. Mudd*, 293 S.C. 49, 398 S.E.2d 698 (1987). The fact that the label attached to the document was partly inaccurate is of no consequence.

CONCLUSION

For the foregoing reasons, the respondent asks the Court to affirm the Order and Judgment entered April 30, 2013 by Special Referee Tindal, finding the transfer of the subject property to appellant Gregory's corporation to have been in violation of the Statute of Elizabeth, and further to dismiss the appeal of the orders of the Horry County Master in Equity.

Respectfully submitted,



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September 19, 2014.

Attorney for Respondent.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2013-002370

Ned Gregory, Jr., Respondent,

v.

Howell Jackson Gregory, The Gregory Company and The City of Lancaster,
Defendants,

Of whom Howell Jackson Gregory and The Gregory Company, Inc., are the
Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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APPELLANT'S AGRUMENT IN REPLY

PREAMBLE:

Respondent's counterstatement of the case headlines the two cases that comprise this appeal by consolidation; however, a third case is discussed which is a cross-action by Respondent in May, 2006 against Appellant after the main action, a mechanic's lien was settled in September, 2005 when Appellant paid to the attorney for Tod Snipes, contractor \$15,500.00 (R. pp. 49, 74-75) for the new roof installed by Snipes in 2004 to a Lancaster tract building. (R. pp. 50-51) Respondent refused to participate in 2004-5 with Appellant about obtaining a new roof, ignoring two faxed memos, July 2004 and January, 2005 from Appellant (R. pp. 134-136) during and after the 2004 efforts to appeal the City of Lancaster condemnation order of that building from the letter of Richard Bowers, Lancaster Building Official dated October 29, 2003 (R. pp. 52-53) that provided over \$1,000. a day fine for non-compliance. (R. p. 53) Six letters in 2004 (R. p. 46) (R. pp. 54-59) were sent back and forth to reschedule the appeal to the owners/parties and counsel and when it appeared fruitless Appellant was able to obtain the identical bid from Tod Snipes in 2004 (R. p. 51) that Respondent obtained from him in 2003 (R. p. 50) to roof the condemned building for \$13,500.00. (R. pp. 50-51) Aware that time was running out with the city and the upcoming partition auction of the Lancaster tract Appellant contracted with Tod Snipes to install a new roof and prevent waste of the Lancaster tract assets of the parties.

The May 27, 2006 Order of Kenneth G. Goode (R. pp. 26-30) is the result of the cross-action trial on May 1, 2006, occurring just days after the April 25, 2006 Order of Master in Equity J. Stanton Cross, Jr. (R. pp. 2-4) was issued in Respondent's partition action and that Cross order was prepared by the Respondent's attorney, Clifford Welsh. (R. p. 148, lines 9-17) It provides: Appellant may setoff "any funds" (R. p. 3) he contributed that he can prove that Respondent did

not contribute to.

Respondent appears to undermine the equitable intent of his own partition case that provided at trial the conceded (R. p. 3) sum of \$7,940.00 Appellant paid for the removal of the gas tanks. He amended his pleadings on May 1, 2006 from the original that consisted of the same language he pled in his partition case (R. pp. 87-106) (R. pp. 107-109) and then orally asks the court to order that he not be held responsible for the cost of the new roof improvement creating an unjust enrichment for Respondent. He also awards himself attorney fees for representing himself and does not attach a qualifying affidavit to the Goode Order of May 27, 2006. (R. pp. 26-30) The order is without any reference to the April 25, 2006 Cross Order. (R. pp. 2-4) Respondent thereby presents a conflict of his equitable intent on improvements to the Lancaster tract to benefit him and a fraud upon the court.

In a proposed order to William C. Tindal, Special Referee Appellant presented the doctrine of judicial estoppel recognized in South Carolina (R. pp. 138-144); however, Tindal did not consider the issue.

Respondent has now brought three pro se actions against Appellant all relating to the partition of the jointly owned assets in Horry and Lancaster Counties as follows, to wit:

1. First case in Lancaster County in 2000 for partition, moved to Horry County in 2002, and Respondent then hired counsel, Clifford L. Welsh;
2. Second case in Lancaster County in 2006 as a cross-action all pro se ; and
3. Third case in Lancaster County in 2008 for fraudulent deed, amended in 2012 alleging a violation of the Statute of Elizabeth, after Respondent hired counsel, Palmer Freeman.

Respondent leaves the appearance that he will go to any length pro se to obtain favorable

rulings no matter how many courts he must engage, regardless of his initial partition action.

FIRST CASE: THE 2000 PARTITION

The counterstatement misidentifies the Lancaster tract as “three adjacent parcels in downtown Lancaster” in his description of the start of the partition case even though it does describe the property today. The subdivision of the Lancaster tract did not occur until after The Gregory Company, Inc. was deeded the property and then had it platted by a local surveyor in 2008. Both documents were recorded simultaneously in June, 2008. (R. p. 130) (R. p. 149)

The reference in Respondent’s brief that the Nunc Pro Tunc Order by J. Stanton Cross, Jr., Master in Equity dated August 10, 2006 (R. p. 5) is an ex parte order simply is not true and there is no proof that it is. (R. p. 46) This allegation was confirmed to be false with the joint issuance of the two August 9, 2006 checks (R. p. 37) by Cliff Welsh and Appellant to Judge Cross.

The two checks conceded in the May 15, 2013 Howe Order (R. p. 21) represented the money needed by the Cross court to conclude the Lancaster sale and Respondent misallocates the use of those funds, as he does not follow the two documents (R. pp. 61-62) prepared by his counsel Welsh and presented at the Cross conference on the Friday just prior to May 22, 2006, the date of the Welsh letter (R. p. 60) memorializing the event attended by counsel. A follow up conference was held with counsel at the Cross court on August 9, 2006 (R. p. 41) (R. pp. 45-46) as that was the date that those two checks (R. p. 37) were issued, to wit: The Gregory Company check for \$5,097.03 as balance interest and the Clifford L. Welsh Trust check for \$2,500.00 as rent collected during litigation to go to the buyer of the

Lancaster tract. That total of \$7,597.03 was used by the Cross court to end the Lancaster sale. It paid off the Lancaster sale costs of \$2,228.00 (R. p. 47) with the balance of \$5,369.03 going to interest charged The Gregory Company, Inc. plus the interest paid by The Gregory Company, Inc. on April 28, 2006 of \$8,925.00 over and above the required one-half the bid amount of \$85,000.00 from the check of \$93,925.00. (R. pp. 43-44)

This makes the interest paid to the Cross court by The Gregory Company, Inc. in 2006 on April 28 (\$8,925.00) and on August 9 (\$5,369.03) for a total paid \$14,294.03. From the Welsh letter of May 22, 2006 (R. p. 60) and applying the 8.25% interest rate (R. p. 62) used by the Cross court this court take judicial notice that from June 6, 2005 (date of auction sale) (R. p. 137) to April 28, 2006 (date of bid payment) (R. pp. 43-44) is ten months and three weeks. That interest at the rate of 8.25% on the bid amount of \$170,000.00 for one year amounts to \$14,025.00; but if figured on the one-half bid amount of \$85,000.00 it is \$7,012.50. Obviously, Welsh was using the one-half bid amount to figure the interest (R. p. 62) to conform with the Respondent's argument that Jack Gregory was the bidder and paid his one-half amount, but the Cross court required The Gregory Company, Inc. as the grantee to pay interest on the full bid of \$170,000.00 and it did so and is the legitimate legal grantee for doing so, as it was in the discretion of the equitable trial judge in the matter who applied equity to the facts in the case to conclude the sale.

The Gregory Company, Inc. overpaid the interest to the Cross court by \$1,802.40 creating a surplus. This is figured on the ten months and three weeks from bid to payment. The required interest on that time frame at 8.25% on \$170,000.00 is \$12,491.63, thus the actual interest paid \$14,294.03 is \$1,802.40 above the required sum. Based upon the math the Cross court properly carried out the conclusion of the Lancaster sale, collected the \$2,228.00

costs of sale in satisfaction of that number in the April 25, 2006 Cross Order and received sufficient interest to justify the deeding of the Lancaster tract to The Gregory Company, Inc.

Master in Equity Cross did not require the full bid amount to be paid as Jack Gregory owned a one-half interest and would get back that one-half payment, so in his wisdom and discretion he waived strict compliance and he charged 8.25% interest on the full bid amount (\$170,000.00) and was overpaid that required amount by \$1,802.40 for equity to prevail.

SECOND CASE: THE 2006 CROSS ACTION

A misstatement in Respondent's counterstatement would lead one to think that "Judge Goode's order approving the settlement and dismissing the case forbade charging respondent Ned Gregory for any portion of the payment" was all decided in one order, but it was not. Actually, the first order of Judge Goode was on September 26, 2005 (R. p. 25) following the payment by The Gregory Company, Inc. to the attorney for Tod Snipes, contractor of \$15,500.00. (R. p. 39) (R. p. 46) (R. p. 49) (R. pp. 74-75) It was that order that settled the mechanic's lien suit. (R. p. 25) The second Goode Order May 27, 2006 (R. pp. 26-30) as discussed in the preamble is the one that Respondent relies on that is unlawful.

The timing of the Cross Order of April 25, 2006 (R. pp. 2-4) in concluding the partition case is key to understanding why the Goode Order of May 27, 2006 (R. pp. 26-30) is suspect and unlawful. The die was cast in that Cross order with language prepared by Respondent's own lawyer (R. p. 125, lines 20-25) (R. p. 148, lines 9-17) Clifford Welsh:

"The Defendant (Appellant) is entitled to a setoff to the amount expended by the Plaintiff (Respondent) of ANY FUNDS (emphasis ours) that he (Appellant) can prove that he (Appellant) contributed, without contribution from the Plaintiff (Respondent)."

This equity action that Respondent initiated in 2000 to partition the common assets of the parties by 2006 had already seen the real estate auctioned. The Myrtle Beach home was sold in May, 2005 for \$600,000.00 and paid for by Appellant Jack Gregory and Lancaster tract was sold June 6, 2005 for \$170,000.00 (R. p. 137) and paid for by The Gregory Company, Inc. ten months and three weeks later on April 28, 2006. (R. pp. 43-44) In the interim Appellants paid for improvements to the Lancaster tract with the removal of the gas tanks (R. p. 3) (R. p. 5) (conceded at trial by Respondent in 2004 for \$7,940.00 and part of the April 25, 2006 Cross Order) and installation of a new roof in 2004 by Tod Snipes, contractor who was paid \$13,500.00 by Appellants from a September 12, 2005 check for \$15,500.00 to his attorney. (R. pp. 74-75)

At the sale of the Lancaster tract on June 6, 2005 the 2003 condemnation by the city had been satisfied and dismissed with the new roof. The gas tanks had been removed earlier. Even though the three commercial buildings were vacant in June, 2005 Lancaster tract was in the best condition for an auction sale with no detractors and multiple bidders. (R. p. 137) Respondent derived the best benefit from the sale, rather than sale of a condemned building.

Lancaster sale payment occurred on April 28, 2006 (R. pp. 43-44) three days before May 1, 2006 cross-action trial (R. p. 26, line 1) and Respondent had already laid equitable groundwork in his partition case for applying equity with the conceded sum of \$7,940.00 to Appellant for his removal of the gas tanks. This award for Appellant was included in the Cross Order of April 25, 2006 (R. p. 3) and is in accord with the existing South Carolina partition law as set forth in *Ackerman v. Heard*, 287 S.C. 626, 340 S.E.2d 560 (Ct. App. 1986):

“An appeal of a partition and accounting action wherein the general rule was set forth that a joint tenant who, at his own expense, places permanent improvements upon the common property is entitled in a partition suit to compensation for the improvements whether his cotenants assented thereto or not. Compensation is allowed not as a matter of legal right, but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another.”

The Ackerman decision was later followed in *O’Bratis v. O’Bratis* an appeal from the Richland County Master in Equity to the SC Court of Appeals and reported as Opinion No. 3858 in 2004. The Master in Equity has exclusive jurisdiction over such matters including partition as set forth in Rule 71 of the SCRCF after his appointment by an order of reference with finality under Rule 53. (R. p. 1)

The SC Code of Laws, Ann. Section 14-11-85 provides: “When some or all of the causes of action in a case are referred to a master-in-equity... he shall enter final judgment as to those causes of action...”

With this background Respondent entered the Goode court May 1, 2006 and attempted to undermine his own partition equity position on improvements to the common property paid for by Appellant, knowing aforethought that the Cross Order of April 25, 2006 stating that “any funds” (R. p. 3) would include the money Appellant paid for the new roof. So, reversing his equity position from the partition case Respondent seeks and draws an order denying to himself any liability for the cost of the new roof. This juxtaposition by Respondent can only be seen as letting greed trump common sense.

This equity issue remains with the partition court and cannot be hijacked in a cross-action in another court just because Respondent does not like the door opening language his counsel prepared in the Cross Order of April 25, 2006. (R. p. 148, lines 9-17) Respondent’s court maneuvering might have looked hot in 2006, but not in 2014 as he avoids the legal maxims

that need to be weighed in the case, as equity is as equity does, he who seeks equity must do equity and the doctrines of unjust enrichment and of unclean hands.

The doctrine of “unclean hands” precludes a plaintiff (Respondent) from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant (Appellant). *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943) was cited in *Wilson v. Landstrom*, 281 S.C. 260, 315 S.E.2d 130 (S.C. App. 1984).

Our opinion of the Goode Order of May 27, 2006 (R. pp. 26-30) is it’s the epitome of prejudice to the Appellant in this case as the Cross Order of April 25, 2006 (R. pp. 2-4) is prior and the law of the partition case which is the primary equity action initiated by Respondent and controls.

Also, the doctrine of judicial estoppel should intervene and declare the Goode Order of May 27, 2006 void as it violates the truth-seeking function of the equity court in the partition case, as it prevents the balancing of the equities of the parties that Judge Cross was right in doing so pursuant to the October 12, 2001 Short Order of Reference with Finality. (R. p. 1)

In applying the doctrine of judicial estoppel a discussion in the South Carolina Supreme Court decision of *Hayne Federal Credit Union v. Bailey, et al.*, 327 S.C. 242, 489 S.E.2d 472 (S.C. 1997) is craved:

“ Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. See *Colleton Reg. Hosp. v. MGS Med. Rev. Sys.*, 866 F. Supp. 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. Estoppel & Waiver, Section 139 at 593 (1996). Judicial estoppel generally applies only to inconsistent statements of fact. *Cannon v. H.K. Porter Co.*, 705 F.Supp. 288 (E.D.Va. 1989). Although some courts have held to the contrary, the doctrine does not apply to conclusions of law or assertions of legal theories. See *United States v. Siegel*, 472 F. Supp. 440 (N.D. Ill. 1979).

Our research of South Carolina case law has not revealed an explicit discussion of judicial estoppel; however, there are opinions alluding to the doctrine. For example, *Boykin v. Prioleau*, 255 S.C. 437, 179 S.E.2d 599 (1971) intimated that the doctrine exists in this state: “The defense of judicial estoppel has not been raised and the facts appearing here would not support it.” *Id.* at 441, 179 S.E.2d at 601; see also *Zimmerman v. Central Union Bank*, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)(“[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position.”)

We now explicitly adopt the doctrine of judicial estoppel as it relates to matters of fact (not law). In order for the judicial process to function property litigants must approach [327 S.C. 252] it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. It is certainly conceivable that parties may want to present novel legal theories, which may require changing one’s previous legal theory. [1] However, the truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence.... Notes: [1] The discussion here is not intended to suggest an alteration of our rules of preservation.”

See also *John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 29 (4th Cir. 1995) (stating goal of judicial estoppel “is to prevent a party from playing ‘fast and loose’ with the courts, and to protect the essential integrity of the process.”).

By applying the doctrine of judicial estoppel here the court would preserve the intent of the partition equity trial, sales and post trial follow-up of the judgment and setoffs per April 25, 2006 (R. pp. 2-4) and August 10, 2006 Nunc Pro Tunc for April 25, 2006 (R. p. 5) Cross Orders, the law of the case. The use of the term “any funds” (R. p. 3) left the door open for Appellant to return to court later with the proof, which he did, on August 9, 2006 and was awarded as setoffs the new roof payment of \$13,500.00 and the Horry taxes of \$4,077.99 via nunc pro tunc order.

The legal definition in Black’s Law Dictionary of “Nunc Pro Tunc” is a phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect.” Black’s Law Dictionary 737 (7th ed. 1991)

Master in Equity J. Stanton Cross, Jr. did not correct an error with his August 9, 2006 Nunc Pro Tunc Order for April 25, 2006, but simply placed into the record the evidence of his judicial action of August 9, 2006 that was anticipated by counsel. (R. pp. 45-46) After perusing the proof presented Cross awarded Appellant setoffs to Respondent's judgment in compliance with the South Carolina law governing nunc pro tunc orders. In the partition case the act of proving Appellant's expenses for the good of the common property, that Respondent did not contribute towards, was set up in the Welsh prepared Cross Order of April 25, 2006. (R. pp. 2-4) Those Appellant expenses proven later were authorized by Master in Equity Cross in that order.

This proof requirement accomplished on August 9, 2006 was not something that the court failed to take into account on April 25, 2006 or to correct an error or supply an omission of judicial action, as it was anticipated by the parties through their counsel that if proof was provided then the "any funds" (R. p. 3) language would allow Appellant to offset expenses proven against Respondent's judgment amount.

The case of *Ex Parte J. P. Strom, Jr.*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000) is our authority and it stated that Nunc pro tunc orders can only be [page 703] used to place in the record evidence of judicial action that has actually taken place. "A prerequisite for a nunc pro tunc order...is some previous action by the court that is not adequately reflected in its record." *Deweese v. Sweeney*, 947 S.W. 2d 861 (Tenn.Ct.App. 1996), app. den'd (1997); see also *Simmons v. Atlantic Coast Line R.R. Co.*, 235 F. Supp. 325, 330 (D.S.C. 1964 (nunc pro tunc entry cannot be made to serve the office of correcting a decision or of supplying non-action on the part of the court); *Carroll v. Carroll*, 338 S.W. 2d 694, 695 [343 S.C. 265] (Ky. 1960) ("The error could not be corrected by nunc pro tunc order because such as order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error or supply an omission of judicial action."); 20 Am. Jur. Courts 29 (1995) (the order cannot supply the record with action that the court failed to take).

If partition trial gas tank removal conceded sum of \$7,940.00 per said order (R. p. 3) then why in the name of logic would a new roof to stop a building condemnation and \$1,000. a

day fine (R. p. 129, lines 12-25) prior to auction sale not be the same thing. They both seek the same result to maximize the shape of the common property for sale to bring the highest bid. Otherwise, it causes a hardship to the owner who paid for the improvements, but doesn't get reimbursement and other owner gains a windfall through unjust enrichment.

On May 1, 2006 Respondent attempted to modify by conflict his initial intent with the conceded sum for the gas tanks removal by reversing the equitable aspect of his partition case in obtaining an order to forbid him from being charged for the new roof improvement. This direction change by Respondent appears to be an effort on his behalf to take the truth-seeking function lightly in his own partition suit in equity court, by playing fast and loose with the courts, as his cross-action trial was just days after April 25, 2006 Order that alerted him that the new roof job would become a setoff just like the gas tanks removal against his judgment sum. There is no question that the new roof payment is includable in the language of that order as "any funds". Respondent did not contribute toward that cost. Thus, the May 27, 2006 Goode Order (R. pp. 26-30) is suspect and unlawful.

Respondent makes argument in his brief that Appellant has failed to establish a record for this appeal from the partition case; however, since no testimony was allowed and mere discussion was had with the successor Master in Equity Howe in 2013: (R. p. 117) Diane Mercer (R. p. 118, lines 6-25) (R. p. 119, lines 1-19) and Jim Irvin (R. p. 125, lines 20-25) (R. p. lines 1-11) Appellant has relied on exhibited documents in establishing the record for review.

Appellant relies on the following South Carolina cases concerning Rule 71, the record and appeal of partition cases:

"This requirement [that the special referee make and preserve a

separate record of the proceedings] is merely directory, and hold that failure to comply with the rule does not serve as a basis for invalidating the judgment.” Cox v. Frierson, 311 S.C. 528, 429 S.E.2d 866, 868 (Ct. App. 1993).

“A partition action is an equitable action, heard by a judge alone and, as such, this court may find facts in accordance with our own view of the preponderance of the evidence.” Wilson v. McGuire, 320 S.C. 137, 140-41, 463 W.E.2d 614, 616 (Ct. App. 1995).

The partition action brought by Respondent in 2000 is an equity action and Master in Equity J. Stanton Cross, Jr. who tried the case weighed the equities of the parties as he was charged to do and he carried out their intent during and after trial and it was his equity court the one to determine the improvements questions to the common properties, not by another judge in another court a few days after his April 25, 2006 order was issued. (R. pp. 2-4) The truth-seeking function of the Cross court appears robbed of its function with the advent of the May 27, 2006 Goode Order (R. pp. 26-30) which is not the proper avenue Respondent should have taken in the matter. By applying the equity to this factual scene as submitted in the exhibited documents in the record that activity in the Goode court in May, 2006 should be abated and declared null and void as unlawful in the name of equity.

THIRD CASE: THE 2008 FRAUDULENT DEED & THIRD LIS PENDENS

This pro se fraudulent deed claim by Respondent in 2008 was based on two events occurring on June 10, 2008. The plat of the Lancaster tract was recorded on that date (R. p. 149) and the Horry County Clerk of Court issued a transcript of judgment dated June 10, 2008. (R. p. 33) The suit did not contain a copy of the transcript of judgment and it was not until February 7, 2012 that Respondent and his new counsel appeared in the Special Referee

pre-trial conference and produced the document for the first time to Appellants and counsel (R. p. 128, lines 1-25) (R. p. 129, lines 1-25) basing their amended suit upon the allegation that the Cross deed of the Lancaster tract to The Gregory Company, Inc. is a violation of the Statute of Elizabeth, S.C. Code Ann. Section 27-23-10.

The June 10, 2008 transcript of judgment (R. p. 33) (R. p. 124, lines 13-17) contained three glaring errors:

One: The costs of the Lancaster sale in the amount of \$2,228.00 was listed as part of the Respondent's judgment increasing his award from \$42,859.47 to \$45,087.47;

Two: Appellant's setoffs were not listed from the two 2006 Cross orders; (R. pp. 2-5) and

Three: The two checks issued August 9, 2006 to Horry Master in Equity (R. p. 37) totaling \$7,597.03 which included the payoff of the costs of the Lancaster sale of \$2,228.00 were not listed.

This arbitrary total sum in Respondent's favor of \$45,087.47 was quite a shock that such a document would exist. The facts of the partition trial were known to the parties and counsel, and didn't rule this way, but Respondent opted to secrete it for well over three years for some ulterior purpose when Respondent should have as an officer of the court contacted the Horry County Clerk of Court and report the discrepancy he obtained in June, 2008.

Along with the suit a Third Lis Pendens (R. p. 86) was filed against the Lancaster tract in 2008. Appellants filed an emergency motion to cancel the invalid lien in 2008. (R. p. 31) It was not until Tindal's order in April, 2013 that denied the motion. (R. p. 10) The Third Lis Pendens (3LP) was out of date according to the S.C. Code Ann. Section 15-11-10, et seq. providing for amendments to be within five years and as the time from the second lis pendens in 2002 (2LP) (R. pp. 84-85) when the partition case was removed from Lancaster to Horry

Also, for Judge Howe to rule that Appellant did not prove the three checks he paid for the Horry County tax years 2002, 2003 and 2004 amounting to \$4,077.99 (R. p. 5) (R. p. 63) and (R. pp. 63-70) and the \$13,500.00 (R. p. 5) (R. p. 40) (R. p. 46) (R. p. 49) and (R. pp. 74-75) new roof job check of \$15,500.00 that were proven to Judge Cross; ergo, his Nunc Pro Tunc Order appears that she is applying her own method of handling trials, as she does not understand how Judge Cross handled his cases, so as an option, she just denies, as his method did not mirror hers. (R. p.123, lines 1-25) This is how she is violating SCRCF Rule 63 for the Cross Orders were not appealed and are the law of the case, but Judge Howe in denying their content is changing the rulings in both of Judge Cross' 2006 Orders and contra to the Charleston County DSS Case.

Case of Charleston County DSS v. Father, et al., 317 S.C. 283, 454 S.E.2d 307 (1995) holding that a successor judge in the same court cannot change the prior orders of the retired judge.

Until the math is completed from the rulings in the partition case and a review of the Master In Equity J. Stanton Cross, Jr. orders in 2006 a final monetary judgment still does not exist here. S. C. Code Ann. Section 15-35-810 provides that a final money judgment constitutes a lien.

CONCLUSION

In order for equity to prevail in this partition action the following awards and setoffs must be computed in setting the record straight and establishing the truth in the matter.

1. Respondent have judgment against Appellant for \$42,859.47 which is the total of his claims for rent and accounting;
2. Appellant have the right to setoff against Respondent's judgment "any funds" that he can prove that Respondent did not contribute towards common property improvements and Appellant proved the following three items with the trial judge Cross:

One - \$7,940.00 gas tanks removal, conceded at trial in 2004;

Two - \$4,077.99 Horry County taxes for years 2002, 2003 and 2004 by three cleared checks presented on August 9, 2006 at that Judge Cross conference; and

Three- \$13,500.00 from the cleared check presented on August 9, 2006 in the amount of \$15,500.00 to attorney for Tod Snipes at that Judge Cross conference.

Appellant's Total setoff amount of \$25,517.99 per Judge Cross;

3. Ergo, net judgment amount is \$42,859.47 less \$25,517.99 for balance of \$17,341.48.

The Respondent's push to collect a non final partition judgment, plus relief from a suspect and unlawful Goode Order of May 27, 2006 awarding Respondent attorney fees for representing himself pro se without an affidavit attached in an obvious move to thwart the truth-seeking function of the partition court is simply viewed as a civil extortion attempt against Appellants. Abate the Goode Order of May 27, 2006 and declare it null and void as unlawful in equity.

For the reasons stated the Special Referee Tindal orders of sale of the Lancaster tract are not only premature, but The Gregory Company, Inc. was the proper grantee as it met all of the deed requirements by the Horry Master in Equity Cross who tried the case and applied the equitable standards of his court and no violation of the Statute of Elizabeth has occurred.

When Appellant, Jack Gregory assigned the bid to Appellant corporation his one-half interest valued at \$85,000.00 was being transferred to The Gregory Company, Inc. as the total bid was \$170,000.00 and to say that there was no consideration is false. Furthermore, The Gregory Company, Inc. met the interest demands from J. Stanton Cross, Jr., Horry County Master in Equity in 2006 and paid the following amounts orchestrated by Clifford L. Welsh, Respondent's counsel as evidenced in his May, 2006 two documents (R. pp. 61-62) and as required in the equity court:

1. \$93,925.00 for the one-half bid amount of \$85,000.00 including \$8,925.00 interest paid

on April 28, 2006;

2. \$7,597.03 from the two August 9, 2006 conceded checks (May 15, 2013 Howe Order) (R. p. 21) represents the \$2,228.00 Lancaster sale costs and the interest balance of \$5,369.03;
- 3 \$1,802.40 represents the overpayment of interest by The Gregory Company, Inc. creating a surplus with the Horry County Master in Equity Court in that amount.

Now, Respondent would argue (and Appellants deny) that a violation of the Statute of Elizabeth occurred and that Special Referee Tindal's Orders are correct and that the title to the Lancaster tract reverts to Jack Gregory, as he cannot assign the bid. If this was the case then the interest required by the equity court figured on the full bid amount and overpaid by The Gregory Company, Inc. in the amount of \$1,802.40 needs to be revisited as a bigger surplus would then have been created with the Horry County Master in Equity Office in the summer of 2006.

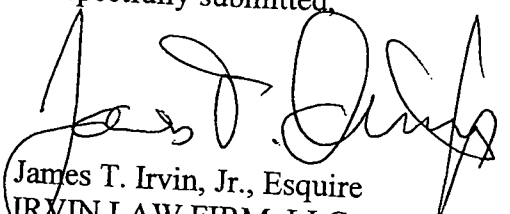
By applying the math, the required interest demand for the full bid of \$170,000.00 at the rate of 8.25% is established as \$12,491.63 when using the time frame of ten months and three weeks (bid on June 6, 2005 and \$85,000.00 payment on April 28, 2006). The interest requirement on half the bid (\$85,000.00) would then be \$6,245.83. The Gregory Company, Inc. paid on two occasions the total sum of interest to the equity court amounting to \$14,294.03. The \$6,245.83 sum subtracted from the total interest paid by The Gregory Company, Inc. to the equity court of \$14,294.03 would leave a balance or surplus with the equity court amounting to \$8,048.20.

Appellants argue: Leave the deed in the name of The Gregory Company, Inc. There was consideration and no fraud so no violation of the Statute of Elizabeth. All of the requirements of the Cross equity court have been met and a surplus of \$1,802.40 has been created that remains with the Cross equity court.

Respondent argues that the Statute of Elizabeth was violated; however, if that were the case and the Lancaster tract title did revert to Jack Gregory, then the interest paid the equity court by The Gregory Company, Inc. would have created a surplus of \$8,048.20 that still remains in the Cross equity court.

The goal here is for the final monetary judgment to be determined and as a court of equity in resolving the partition matter all three of these cases must be resolved that Respondent has brought pro se, as they are all related to his initial 2000 partition case where the truth-seeking function needs to stay and apply the equity maxims from the parties conduct to determine the just conclusion.

Respectfully submitted,



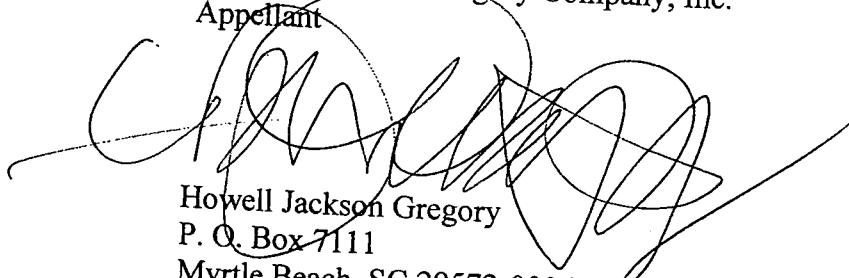
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