



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 21, 2011

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067
2009-CP-40-05911

Dear Ms. Lipscomb:

We have received the Appellant's Final Brief and Final Reply Brief in the above case. However, the briefs must include a colored back cover of the appropriate brief.

Within ten days of the date of this letter, please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A. Brown Building, 1205 Pendleton Street, Columbia, SC to make the required corrections. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

September 7, 2011

The Honorable Tonya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

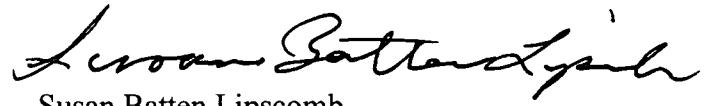
Re: Howard Hammer vs. Shirley Hammer
Case #: 2009-CP-40-5911

Dear Ms. Gee:

Please find the original and 14 copies of the Record on Appeal in the above referenced matter.

We are hand-delivering a copy to Ms. Ballard's office. The Final Brief of Appellate will follow by mail.

Yours very truly,


Susan Batten Lipscomb

Enclosure

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

RECEIVED

SEP 07 2011

SC Court of Appeals

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

September 7, 2011

The Honorable Tonya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Howard Hammer vs. Shirley Hammer
Case #: 2009-CP-40-5911
Tracking Number: 2010164067

Dear Ms. Gee:

Please find the original and 14 copies of the Final Brief of Appellant in the above referenced matter.

By copy of this letter we are serving a copy on counsel of record.

Yours very truly,



Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

RECEIVED

SEP 12 2011

SC Court of Appeals

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

September 7, 2011

The Honorable Tonya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

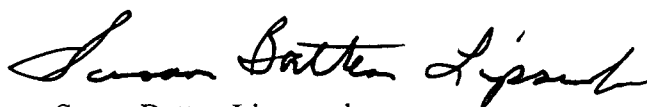
Re: Howard Hammer vs. Shirley Hammer
Case #: 2009-CP-40-5911
Tracking Number: 2010164067

Dear Ms. Gee:

Please find the original and 14 copies of the Final Reply Brief in the above referenced matter.

By copy of this letter we are serving a copy on counsel of record.

Yours very truly,


Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

RECEIVED
SEP 12 2011
SC Court of Appeals

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

August 18, 2011

HAND DELIVERED

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201

RECEIVED
AUG 18 2011
SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer
Civil Action #: 2009-CP-40-05911

Dear Ms. Gee:

Enclosed for filing please find a Proof of Service of the Record on Appeal, including a revised Index and supplemental documents, as permitted by the Court's Order filed July 19, 2011. I understand that the original and fourteen copies of the Record on Appeal and final briefs are required to be filed and a copy of the final brief served within twenty days of today.

Thank you for your assistance in this matter.

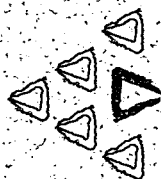
Very truly yours,



Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
(With enclosures)



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

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

July 5, 2011

Via U.S. Mail

Honorable Tanya Gee
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Howard Hammer v. Shirley Hammer a/k/a Shirley Grace Hightower*
Case No: 2010164067

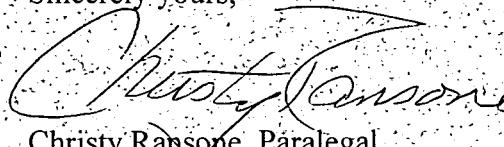
Dear Ms. Gee:

Enclosed please find the **Final Brief of Respondent and Certificate of Service** along with the required fifteen (15) copies for filing in the above referenced matter. I have also enclosed a copy of these pleadings to be clocked and returned to us in the self addressed envelope.

If you should have any questions please do not hesitate to contact me, or Stephanie Weissenstein, we will be happy to assist you further.

With warm personal regards, I am,

Sincerely yours,



Christy Ransone, Paralegal
christy@desaballard.com

Enclosures

c: Susan Lipscomb

RECEIVED
JUL 06 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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www.sccourts.org

July 19, 2011

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067
2009-CP-40-05911

Dear Ms. Lipscomb:

Enclosed is a copy of an Order of the Court regarding your Motion in the above case.

Please be advised the Supplemental Record on Appeal must be served and filed within 30 days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

The South Carolina Court of Appeals

Howard Hammer,

Appellant,

v.

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

Respondent.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2009-CP-40-05911

ORDER

Appellant's motion for leave to supplement the Record on Appeal with Plaintiff's motion to reconsider filed March 28, 2010, is granted. Appellant's motion to strike is denied. Appellant has also requested that this Court seal the appellate record, arguing family court record was sealed.

Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the inherent power to control our own records. See Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). Rule 41.1(b), SCRCF, requires a motion to seal to identify, with specificity, the documents or portions of documents for which sealing is considered necessary, to contain a non-confidential description of the documents, and to be accompanied by a separately sealed attachment labeled "Confidential Information to be submitted to Court in Connection with the Motion to Seal." The Rule also

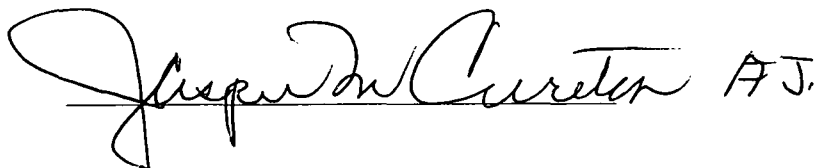
requires the moving party to state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

(1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

When ruling on a motion to seal, the court may also consider the public interest in the proceeding; the private or public status of the litigants and case generally; whether release would enhance the public's understanding of an important historical event; whether the public already has access to information contained in the records; whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. Ex parte Capital U-Drive-It, Inc., 369 S.C. at 12, 630 S.E.2d at 470 (2006).

Appellant's motion fails to address the factors listed above. Accordingly, the motion to seal is denied without prejudice to Appellant's right to provide the Court with the information required by Rule 41.1(b), SCRCP and Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006).

IT IS SO ORDERED.

 A.J.

FILED

7/19/11 

cc: Susan Batten Lipscomb, Esquire
Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

RECEIVED
JUN 06 2011
SC Court of Appeals

Howard Hammer,

Appellant,

vs.

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

Respondent.

RETURN TO MOTION TO STRIKE

Pursuant to Rule 240(e), SCACR, Respondent objects to Appellant's motion to strike certain of Respondent's designation of matter, as set forth in the motion. In the alternative, Appellant requests an Order that the Record on Appeal in this matter be placed under seal. Respondent objects to any suggestion that the Record be sealed insofar as Respondent's use and access of the material in related litigation, when relevant, is impacted.

Respondent would show that the documents and pleadings designated by her are portions of the transcript, pleadings, orders, exhibits, or other materials which were presented to the trial court in this matter. S.C.A.C.R. Rule 209(b) and Rule 210 (c). The transcript of record from the hearing before Judge Manning clearly establishes that Respondent presented to the Court, for its consideration, "Exhibits A through F to our memorandum" in support of summary judgment. (Tr. pg. 6, line 11 – pg. 7, line 5). Furthermore, both parties referenced the memorandum and its

exhibits throughout oral arguments. The referenced memorandum and exhibits are set forth at Items 6, 8, 9, 11, 12, 14 (and subparts), and 15 of Respondent's Designation of Matter.

Furthermore, Appellant raised the issue of whether the Court could consider the Family Court record in his Motion to Reconsider and Judge Manning, in his Order dated May 18, 2010, specifically found that the Court had the right to take judicial notice of the Family Court documents, even if they were sealed by order of the court.

Therefore, Respondent objects to the Motion to Strike and to any suggestion that the Record be sealed that impacts Respondent's use and access of the material in related litigation, when relevant.

A handwritten signature in black ink, reading "Stephanie Weissenstein" with a stylized flourish at the end.

Desa Ballard
Stephanie Weissenstein
BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR RESPONDENT

June 3, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

RECEIVED
JUN 06 2011
SC Court of Appeals

Howard Hammer,

Appellant,

vs.

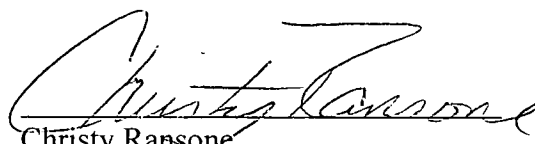
Shirley Hammer, a/k/a
Shirley Grace Hightower,

Respondent.

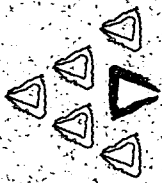
CERTIFICATE OF SERVICE

The undersigned certifies that she has, this date, caused to be served a copy of the **Respondent's Return to Appellant's Motion to Strike** upon opposing counsel in this matter via by regular U.S. mail delivery with sufficient first class postage affixed, addressed as follows:

Susan Batten Lipscomb
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia South Carolina 29201


Christy Ransone
Paralegal

June 3, 2011



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

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

June 3, 2011

RECEIVED
JUN 06 2011
SC Court of Appeals

Via U.S. Mail
Honorable Tanya Gee
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Howard Hammer v. Shirley Hammer a/k/a Shirley Grace Hightower*
Case No: 2010164067

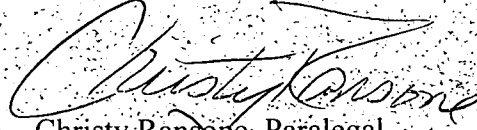
Dear Ms. Gee:

Enclosed please find the original and six copies of **Respondent's Return to Motion to Strike and Certificate of Service** in the above-referenced matter.

Also enclosed is an additional copy of these pleadings to be clocked and returned to us in the self addressed envelope enclosed with sufficient postage attached enclosed herewith. If you should have any questions please do not hesitate to contact me, or Stephanie Weissenstein, we will be happy to assist you further.

With warm personal regards, I am,

Sincerely yours,


Christy Ransone, Paralegal
christy@desaballard.com

Enclosures

c: Shirley Hammer
Susan Lipscomb

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Casey Manning Circuit Court Judge

~~2010~~
Case No. ~~2010~~-CP-40-05911

RECEIVED

JUN 14 2011

SC Court of Appeals

Howard Hammer Respondent

v.

Shirley Hammer Appellant

**MOTION TO SUPPLEMENT RECORD, TO STRIKE OR DELETE CERTAIN
MATTERS FROM THE RECORD AND TO SEAL**

Pursuant to Rules 240 and 212, SCRAP, Appellant moves for leave to supplement the Record on Appeal with the Plaintiff's Motion to Reconsider, Alter, Amend or Modify filed March 28, 2010, copy attached.

Appellant, consistent with the objection set forth in Appellant's Designation of Matter to be Included in the Record on Appeal, also moves to strike or delete from the Record on Appeal the following matter designated by Respondent to be included on Appeal (numbers correspond with Respondent's numbers):

6. Memorandum in Support of Defendant's Motion to Dismiss filed February 26, 2010;
8. Order Ending Action by Judge Rucker filed August 19, 2009;
9. Order Approving Settlement Agreement by Judge Rucker filed August 19, 2009;
11. Divorce Decree by The Honorable Dorothy Mobley Jones filed May 12, 2008;
12. Order (with Partial agreement) by Judge Jones filed May 12, 2008;

SH

13. Summons and Complaint for Declaratory Judgment, Family Court
filed August 25, 2010;

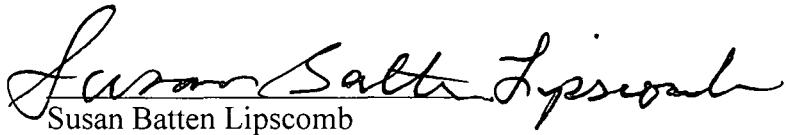
14. Family Court Orders by Judge Rucker filed January 27, 2010:

- A. Order Regarding Child Support Being Paid Through Clerk of Court;
- B. Order Regarding Defendant's Motion to Reconsider, Amend, Alter,
Modify and/or for New Trial and Stay;
- C. Order Correcting Scrivener's Error – IRA;
- D. Order Regarding Defendant's Pro Se Motion dated 08/19/09;
- E. Order (Regarding Plaintiff's Motion for attorney's fees and costs);

15. Dismissal of Warrant No. K37389 & K373840 dated October 19, 2009;

Those matters came from a Record sealed by the lower court and improvidently used in the underlying matter. The information contained in those Orders and other information is very sensitive and personal and was sealed for the protection of the parties and their two minor children. In the alternative, based on the sensitive nature of the Orders and other information, for the protection of the parties and the children, Appellant moves that the Record on Appeal be sealed.

May 20, 2011


Susan Batten Lipscomb
Lipscomb Law Firm, P.A.
1634 Main Street, Suite 200,
Columbia, SC 29201 Tel.(803) 233-6654
Attorney for Defendant-Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY

Casey Manning Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer Respondent

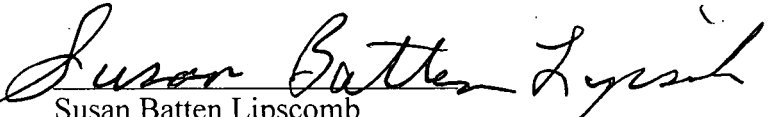
v.

Shirley Hammer Appellant

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Defendant-Appellant, do hereby certify
that on May 20, 2011, a copy of the **MOTION TO SUPPLEMENT RECORD, TO
STRIKE OR DELETE CERTAIN MATTERS FROM THE RECORD AND TO
SEAL** was served on counsel of record by mailing a copy to them by United States Mail,
postage prepaid, addressed as set forth below:

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


Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

June 14, 2011

The Honorable Tonya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JUN 14 2011

SC Court of Appeals

RE: Howard Hammer vs. Shirley Hammer
Case #: 2009-CP-40-5911
Tracking # 2010-164067

Dear Ms. Gee:

In response to letter dated June 2, 2011, copy enclosed for your convenience, I spoke to Laurie Field in your office on June 3, 2011, and confirmed that the actual date for serving the Record on Appeal in the referenced matter was May 20, 2011, not May 10, 2011. The Record on Appeal was served on counsel of record on May 20, 2011, and the original Proof of Service was sent for filing that day as well. A copy of that Proof of Service is enclosed.

All counsel of record agreed to supplement the Record on Appeal by including the following: (1) Plaintiff's Motion to Reconsider; and, (2) Memorandum Order by Judge Jones, May 12, 2008, in the Record on Appeal.

We have added those two documents to the Index and are serving the revised Index and supplement to the Record on Appeal today with a Proof of Service. The original Proof of Service is enclosed for filing.

A Motion to Supplement Record, to Strike or Delete Certain Matters from the Record and to Seal was also served May 20, 2011. The original and six copies are enclosed for filing with the \$25.00 filing fee.

Yours very truly,



Susan Batten Lipscomb

Enclosure

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire



112 p.m. 6/2/11
COPY

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 2, 2011

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Lipscomb:

Our records indicate that the Record on Appeal in the above case should have been served on opposing counsel and proof of service filed with the court by May 10, 2011. You must file a Motion to Serve and File Out of Time within ten (10) days of this letter or your appeal may be dismissed.

Also, this office did not receive a copy of Appellant's Motion to Strike or Delete Certain Matters from the Record, to Seal and to Supplement the Record. Please forward a copy within ten (10) days.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

DIARY

for June 12, 2011

DATE: _____

SIGN: _____

[COPY]

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer Appellant

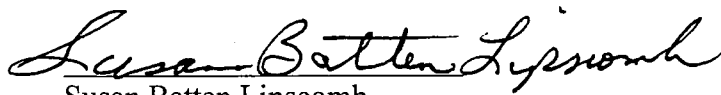
v.

Shirley Hammer Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on May 20, 2011, the Record on Appeal was served on counsel of record by causing a copy to be mailed, postage prepaid in the U.S. Mail addressed as set forth below:

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


Susan Batten Lipscomb



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

CLAIRE ALLEN
DEPUTY CLERK

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June 2, 2011

Isan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
334 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Lipscomb:

Our records indicate that the Record on Appeal in the above case should have been served on opposing counsel and proof of service filed with the court by May 10, 2011. You must file a Motion to Serve and File Out of Time within ten (10) days of this letter or your appeal may be dismissed.

Also, this office did not receive a copy of Appellant's Motion to Strike or Delete Certain Matters from the Record, to Seal and to Supplement the Record. Please forward a copy within ten (10) days.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

May 20, 2011

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

RECEIVED

MAY 23 2011

SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer a/k/a Shirley Grace Hightower
Civil Action #: 2009-CP-40-05911

Dear Desa and Stephanie:

Enclosed please find the Record on Appeal and Certificate in the referenced matter. Also enclosed and served is a copy of Appellant's Motion to Supplement Record, to Strike or Delete Certain Matters from the Record and to Seal.

Yours very truly,



Susan Batten Lipscomb

Enclosures

cc: The Honorable Tanya Gee

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

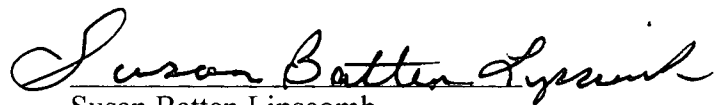
Howard Hammer Appellant

v.

Shirley Hammer Respondent

APPELLANT'S CERTIFICATE OF COUNSEL PURSUANT TO RULE 209, SCACR

The undersigned attorney for Appellant certifies that Appellant's Designation of Matter to be included in the Record on Appeal contains no matter which is irrelevant to the appeal.



Susan Batten Lipscomb
LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
Columbia, SC 29201
Telephone: (803) 233-6654
Fax: (803) 233-6663
Email: LipscombLaw@Gmail.com
Attorneys for Appellant

RECEIVED
MAY 04 2011
SC Court of Appeals

2010164067

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

Howard Hammer Appellant

v.

Shirley Hammer Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on May 4, 2011 Appellant's Certificate of Counsel Pursuant to Rule 209, SCAR was served on counsel of record by causing a copy to be placed in the U.S. Mail postage prepaid addressed as set forth below:

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

Susan Batten Lipscomb

RECEIVED
MAY 04 2011
SC Court of Appeals

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

May 4, 2011

HAND DELIVERED

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201

Re: Howard Hammer v. Shirley Hammer
Civil Action #: 2009-CP-40-05911

Dear Ms. Gee:

Enclosed for filing please find the original and two copies of Appellant's Certificate of Counsel Pursuant to Rule 209, SCAR together with Proof of Delivery.

By copy of this letter, we are notifying the counsel of record of this communication and serving on them a copy of the documents sent for filing.

Thank you for your assistance in this matter.

Very truly yours,

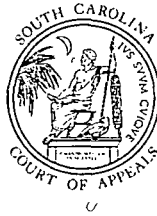


Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
(With enclosures)

RECEIVED
MAY 04 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 25, 2011

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

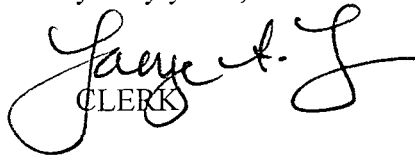
Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Lipscomb:

We have received your Appellant's Initial Reply Brief and Designation of Matter in the above case. However, you must provide a Certificate of Counsel according to Rule 209 of the South Carolina Appellate Court Rules. Please provide the certificate within ten days of this letter, or your appeal may be dismissed.

Furthermore, the cover of the briefs and record should show the lower court case number. The tracking number is used only for internal purposes. Any future filings by any party to this appeal must feature the lower court case number.

Very truly yours,


CLERK

TAG/laf

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911
Tracking Number 2010-164067

Howard Hammer Appellant

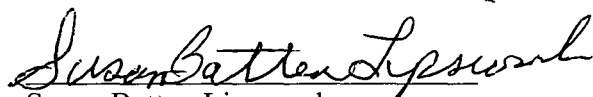
v.

Shirley Hammer Respondent

APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD
ON APPEAL

Appellant agrees to Respondent's Designations numbered 1, 2, 3, 4, 5, 7 and 10 to the extent it includes the full 2008 Agreement between the Parties, provided the inclusion is acceptable to this Court, based on Agreement of the Parties, notwithstanding the lower Court Order Sealing the Record, Appellant objects to the remaining documents designated by Respondent.

Appellant also designates the Order Sealing Record, filed August 19, 2009, in the lower court.



Susan Batten Lipscomb
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Email: LipscombLaw@Gmail.com
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Tracking Number 2010-164067

RECEIVED
APR 22 2011

Howard Hammer Appellant

v.

Shirley Hammer Respondent

SC Court of Appeals

PROOF OF SERVICE

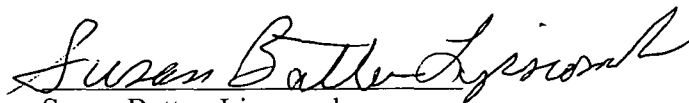
AND

CERTIFICATE OF FILING BY DEPOSIT OF ORIGINAL IN U.S. MAIL, PROPERLY
ADDRESSED AND POSTAGE PREPAID

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on April 20, 2011 Initial Reply Brief of Appellant and Appellant's Designation of Matter to be Included in Record on Appeal was served on counsel of record by causing a copy to be placed in the U.S. Mail postage prepaid addressed as set forth below:

Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
BALLARD, WATSON & WEISSENSTEIN
226 State Street
West Columbia, SC 29169

I, further certify that the original Initial Reply Brief of Appellant and Appellant's Designation of Matter to be Included in Record on Appeal was filed on April 20, 2011, pursuant to Rule 262, SCRAP, by placing the document in the U.S. mail, properly addressed to the Clerk of the Court of Appeals, with sufficient first class postage attached.


Susan Batten Lipscomb

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911
Tracking Number 2010-164067

RECEIVED

APR 22 2011

SC Court of Appeals

Howard Hammer Appellant

v.

Shirley Hammer Respondent

INITIAL REPLY BRIEF OF APPELLANT

Susan Batten Lipscomb
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226 State Street
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Attorneys for Respondent

TABLE OF CONTENTS

Appellant initially respectfully addresses and calls to the Court's attention matters present in Respondent's statement of the case, which were and are outside the evidence of record before the lower court. Appellant also respectfully notes that there appears to be a pattern of unnecessarily harsh characterizations towards Appellant personally, unsupported by the actual record before the lower court and potentially offensive to the Oath of Office and required Rules of Conduct.

**AS TO MATTERS PRESENTED IN THE STATEMENT OF THE CASE
AND BRIEF OUTSIDE SCOPE OF TRANSCRIPT OF RECORD**

Respondent's statement of the case, argument and memorandum in the lower court on its motion to dismiss repeatedly refer to a separate and distinct Family Court action between the parties. It is a matter of record and undisputed that the Family Court case was the subject of a motion for and the issuance of an order *sealing the record* therein.

The order sealing the record in the Family Court specifically provided that the *sealed record* was not to be "inspected, opened, **or otherwise discussed without an appropriate order...**" The sealing order further provided that any inspection or discussion of the case could be only "**....after due and proper notice to Plaintiff and Defendant and after due hearing**".

In the instant case before this court, there is absence of any evidence in the record of any attempt to give notice of and/or properly move as required by the sealing order for an order permitting discussion of the Family Court case. Moreover, the record before the lower court is devoid of any proper request for judicial notice accompanied by proper submission of matters for which judicial notice might have been requested.

Accordingly, it is respectfully submitted that all references in Respondent's brief to all matters from the sealed records in the lower court are improper as not only not being a part of the record before this court but more disturbingly violative of a Court Order Sealing a Record in order to protect the legitimate private interest of the parties to the case and "safeguard" the parties' "**and their children**". The matters presented regarding the Family Court case are therefore not specifically addressed herein. The Appellant reiterates the position(s) set forth in its initial Brief and particularly its contention that the Order of the lower court is without foundation on any matters of

competent evidence presented before the lower court and based solely upon statements of Respondent's counsel and her memorandum of law which itself was violative of the Court's Order sealing the Family Court record.

REPLY ARGUMENT

Respondent urges in its Argument I that Appellant failed to inform the court that the 2008 contract was converted from a private agreement to a family court order. Apparently, Respondent has failed to perceive that it is Appellant's position that the 2008 Contract retains its contractual nature in all respects by reason of the parties intent to do so, as set forth in the Contract. *Mosley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). Appellant asserts that Respondent was prohibited from disclosing the Contract without taking proper steps in accord with the Sealing Order. Further, Appellant urges that it was incumbent upon Respondent to take appropriate steps to allow the presentation of evidentiary matter to the lower court, and Respondent's failure to do so resulted in premature dismissal by the lower court without having the benefit of proper a evidentiary foundation.

Respondent urges without explanation in its Argument II that a portion of the sealing order allowing access to the file and use thereof by the parties, their counsel, and significantly the court personnel somehow should be interpreted to allow use of the court ordered sealed record, apparently in any and all forums involving litigation between the parties. Such interpretation totally ignores the significant prohibition against use of matters in the record without **"proper notice to [both parties] and after due hearing"**. The interpretation offered by Respondent is at best strained beyond the bounds of reasonable construction. The Respondent's theory seems to rest on the view (a) that the term "this litigation" means any litigation in any forum between the parties; and, (b) that the subject matter in the instant case is precisely and totally the same as the subject matter in the case below. Without any evidence of support in the record, Respondent presents to this Court that "Appellant does not and cannot deny that the contract between the parties was made an order of the family court." Respondent fails to recognize that regardless of whether it was made an order of the court that the intent of the parties was that it retain its contractual nature. Respondent then attempts to cloud the issues by alleging that Appellant's actions prevented the Circuit Court from having the true facts before it. To

the contrary, Appellant's position is and has been that the lower court was entitled to the true facts, but that the true facts must have been developed and produced in accordance with the requirements of law. In the instant case this required development of a complete record in accord with the mandate of the sealing order so that the lower court could have such full record before it made its decision. As to the contention that the parties to this litigation are "exactly the same" in regard to the Sealing Order, Respondent overlooks and ignores that although the main parties may be the same, the protection of the Sealing Order also extends to the children of the parties who are not a part of the instant case. If Respondent or her counsel actually had any concern for the lower Court to have the truth of all facts, to the issue before the lower Court, they could have followed the requirements of the Sealing Order by proper Motion. Rather, in what appears to be an effort to give the appearance in this Court that the full record of the Family Court would have supplied pertinent and relevant evidence supporting Respondent's position, Respondent attempts to shift the blame of their failure to take proper required action to supply any such evidence, by complaining of Appellant's failure to seek a Rule to Show Cause. In so doing Respondent ignores the uncontroverted evidence and transcript of record by which there is an absence of any basis for the lower Court's ruling. Respondent also ignores that the alleged violation of the lower Court's Sealing Order carries with it the potential of breach of other provisions of SCRCP. They also overlooked the present remedy of a Protective Order now being evoked by Appellant.

Moreover, Respondent's reliance on *Freeman v. McBee*, 280 S.C. 490, 313 S.E. 2d 325 (Ct. Appellate. 1984) as well as *South Carolina Department of Social Services v. Jamie C.*, 383, S.C. 221, 678 S.E. 2d 463, is misplaced. The instant case does not involve a case where a court is taking judicial notice of "its own records". Furthermore, even if judicial notice were discretionarily allowed, which has not been decided in South Carolina, the specific requirement of "due and proper" notice and a full hearing would be rendered meaningless by Respondent's contention.

Appellant respectfully urges that the matters raised in Respondent's Initial Brief support Appellant's contention of a lack of proper evidence for the issuance of the Order of Dismissal and Appellant's further contention that the issue of the validity of the contract at issue should have been determined by development of proper evidence

including if necessary appropriate Motion to permit introduction of relevant documentary evidence from the Family Court record *prior* to a determination on the jurisdictional issue.

It is worthy of emphasis that the action in the lower Court was one for Declaratory Judgment. Clearly it is black letter law that the lower Court had jurisdiction to entertain such action. It is equally clear, in order to entertain Respondent's Motion, the establishment of a full record was required. The development of such full record would not only have afforded the lower Court a basis upon which to make any jurisdictional ruling, but would also have promoted the interest of judicial economy. The Declaratory Judgment sought by Appellant was expected to have established and by the record of the full contract entered between the parties and submitted as part of Respondent's designation of matter to be included in the record of Appeal (Judge Jones' Order/Decree filed May 12, 2008, to which the certain contract that would be an issue is attached) establishes that such contract is violative of public policy on its face on account of several reasons, to wit: the requirement that the parties not bring grievance actions against their attorneys, the requirement of an Order of Protection against Appellant without any basis in fact and/or law and the expected evidence that the contract required the payment of monies for the withdrawal and/or request for withdrawal of fraudulent criminal charges. If all or any of the above provisions and/or matters set forth above were a part of the contract that would ultimately have been at issue and which Respondent now desires to have placed in the record on Appeal before This Court, it could readily have been determined that the "certain contract" was violative of public policy and void under the laws of our State. *Whitlock v. Creswell*, 190 S.C. 314, 2 S.E.2d 838 (1939).

Further, contrary to Respondent's assertion that Appellant attempts to delay the inevitable, by attempting to "deceive"¹ the Court, Appellant's intention was and is to follow the requirements of law by laying proper foundation and receiving proper permission upon due hearing for the introduction of appropriate documentary evidence. The Appellant is desirous of a declaration of the validity of the contract. To that end and

¹ This is one example of many instances throughout Respondent's Brief offensive to the Oath of Office requirement of civility.

in the interest of judicial economy the Appellant welcomes the opportunity for an Order from this Court permitting appropriate submission of evidentiary matters along with appropriate briefing and determination by this Court of the validity of the contract at issue or determination *su sponte* based upon Respondent's submission in its designation of record on Appeal of the contract at issue. A determination of the validity of the contract would settle the various other issues raised by Respondent.

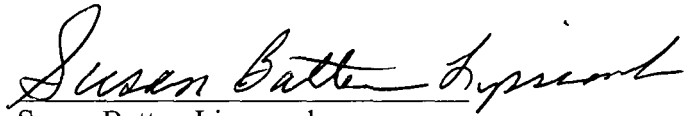
Respondent's underlying premise, permeating its entire brief and specifically set forth in Argument III (a) is that once a settlement is incorporated into a family court order the agreement loses its contractual nature is an inaccurate interpretation of family court law. Respondent rests its conclusion on *Emery v. Smith*, 361 S.C. 207, 603 S.E.2d 598 (Ct. App. 2004). The reliance on *Emery* is misplaced. The parties in *Emery* specifically requested that the agreement in that case lose its contractual nature.

Respondent's Argument IV amounts to an admission of Appellant's contention that the 2008 Agreement is void as against public policy. She necessarily admits that part of the consideration for the 2008 Agreement was her agreement to dismissal of criminal charges against Appellant, which were, on information and belief, fraudulently made and consideration for payment to her of huge sums of money, among other things, to which she was not entitled. Even if the doctrine of unclean hands applied in this case, and it does not because this is an action at law, Respondent is the party to which the doctrine would apply. The doctrine does not apply for the further reason that the 2008 Agreement is void as against public policy and is void *ab initio*. It is a nullity from inception and as a nullity from inception should not have been approved by the lower court.

Although Respondent reaped substantial monetary and other benefits from the void agreement, dismissal of criminal charges is solely within the discretion of the Solicitor. They were dismissed as not properly supported by the evidence. As to Respondent's reference to a document dated October 19, 2009, that document is not, was not and should not be in evidence and is irrelevant, particularly in light of Respondent's admission. Further Respondent's assertion of unclean hands, if accurate, would apply if at all, equally to both parties.

For the foregoing reasons and those set forth in Appellant's Initial Brief, in accord with the law and evidence, or in this case, lack thereof, Appellant respectfully submits

that the Orders in the lower court be reversed and the matter remanded to the lower court for further proceedings, or in the alternative that, in the interest of judicial economy and fairness, this court *sua sponte* review the 2008 Agreement and determine that the Agreement is void ab initio as violative of the established public policy of the State of South Carolina.

A handwritten signature in cursive script, reading "Susan Batten Lipscomb".

Susan Batten Lipscomb
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Attorneys for Appellant

LIPSCOMB LAW FIRM, PA
Susan Batten Lipscomb
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April 20, 2011

VIA U.S. MAIL

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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APR 22 2011

SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer
Case Number 2009-CP-40-5911
Tracking Number: 2010164067

Dear Ms. Gee:

Enclosed for filing please the original Appellant's Initial Reply Brief, Designation of Matter to be Included in Record on Appeal, and Proof of Service and Certificate of Filing by Deposit of Original in U.S. mail, Properly Addressed and Postage Prepaid.

By copy of this letter, we are serving a copy of the documents on the counsel of record.

Very truly yours,



Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 25, 2011

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
Case #2010164067

Dear Ms. Lipscomb:

The following Order has been endorsed on your Motion for extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 25, 2011."

Please be advised the Appellant's Initial Reply Brief must be served and filed no later than April 20, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/jt

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY

Casey Manning Circuit Court Judge

Case No. 2009-CP-40-05911
Tracking Number 2010164067

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MAR 01 2011

Howard Hammer ~~SC Court of Appeals~~

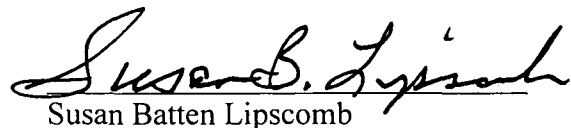
v.

Shirley Hammer Appellant

AMENDED PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Defendant-Appellant, do hereby certify that on February 28, 2011, a copy of the **Motion for Extension of time to file Initial Reply Brief** was served on counsel of record by telefax; and on March 1, 2011, the same was served by mailing a copy to them by United States Mail, postage prepaid, addressed as set forth below:

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


Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

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Tel.: (803) 233-6654 Fax: (803) 233-6663
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March 16, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201

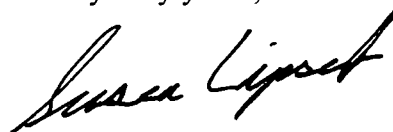
Re: Hammer v. Hammer
Case Number: 2010164067

Dear Ms. Gee:

A Motion for Extension in the above referenced matter was originally requested on February 28, 2011, extending time to file the initial reply brief to March 21, 2011. Shortly after filing the Motion for Extension, two of my cases were called up to be tried by jury, one in Richland County and one in Lexington County. As such, I have been in either trial or preparing for trial for the last month. Lastly, I am currently on a long scheduled vacation and will not be back in the office until next week. Accordingly, I am requesting an additional 30 days, or whatever time the Court deems appropriate, to file the initial reply brief. I have enclosed a check for \$25.00 in conjunction with this request.

Thank you for your assistance in this matter, if you have any questions whatsoever, please do not hesitate to contact my office.

Very truly yours,



Susan Batten Lipscomb

jrl

Enclosure

cc: Desa Ballard
Stephanie Weissenstein

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED

RECEIVED

MAR 16 2011

SC Court of Appeals

3/25/11

2ecf

3/24/11
4/20/11



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 2, 2011

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Lipscomb:

The following Order has been endorsed on your Motion in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 02, 2011."

Please be advised Appellant's Initial Reply Brief must be served and filed no later than March 21, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Casey Manning Circuit Court Judge

Case No. 2009-CP-40-05911
Tracking Number 2010164067

RECEIVED

FEB 28 2011

SC Court of Appeals

Howard Hammer Respondent

v.

Shirley Hammer Appellant

MOTION TO EXTEND TIME TO FILE INITIAL REPLY BRIEF

Pursuant to Rules 240 and 263, SCRAP, Appellant moves for extension of time to file an Initial Reply Brief for an additional 20 days or such time as the court deems reasonable. Respondent's Initial Brief and Designation of matter, dated February 17, 2011 was received by Attorney for Appellant on February 22, 2011. Accordingly, the Initial Reply brief would be due on February 28, 2011, only six days after actual receipt. Attorney for Appellant has a case on a jury trial docket in Richland County for the week of February 28, 2011, and a case on a jury trial docket in Lexington County for the week March 7, 2011, and has been unable to complete the Initial Reply Brief. Therefore, Attorney for Appellant respectfully request and moves for a twenty day extension of time from February 28, 2011, to file and serve the Initial Reply Brief.

February 28, 2011

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

Susan Batten Lipscomb

Susan Batten Lipscomb
1634 Main Street, Suite 200,
Columbia, SC 29201 Tel.(803) 233-6654
Attorney for Defendant-Appellant

FILED

2/28/11

1st motion

3/21/11

3/21/11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Casey Manning Circuit Court Judge

Case No. 2009-CP-40-05911
Tracking Number 2010164067

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FEB 28 2011

SC Court of Appeals

Howard Hammer Respondent

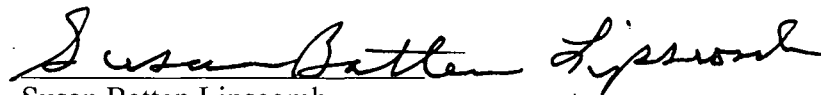
v.

Shirley Hammer Appellant

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Defendant-Appellant, do hereby certify
that on October 6, 2010, a copy of the **Motion for Extension of time to file Initial
Reply Brief** was served on counsel of record telefax of the same to them on February 28,
2011, and a copy of the same was served by mailing a copy to them by United States
Mail, postage prepaid, addressed as set forth below:

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


Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

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February 28, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201

RECEIVED

FEB 28 2011

SC Court of Appeals

Re: Hammer v. Hammer
Case Number 2010164067

Dear Ms. Gee:

Enclosed for filing please find the original and six copies of Appellant's Motion for Extension of Time to File the Initial Reply together with Proof of Delivery, together with the filing fee. We have enclosed an additional copy, which I would appreciate your date stamping and returning to me via our courier.

By copy of this letter, we are notifying the counsel of record of this communication and serving on them a copy of this Motion.

Thank you for your assistance in this matter.

Very truly yours,



Susan Batten Lipscomb

cc: Desa Ballard
Stephanie Weissenstein

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer Appellant

v.

Shirley Hammer Respondent

INITIAL BRIEF OF RESPONDENT

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Stephanie Weissenstein, Esquire
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P.O. Box 6388
West Columbia, SC 29169-6388
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desaballard.com
Attorneys for Respondents

RECEIVED

FEB 18 2011

SC Court of Appeals

30

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RESTATED ISSUES ON APPEAL

1. IF A DEFENDANT ASSERTS LACK OF SUBJECT MATTER JURISDICTION IN AN ANSWER RATHER THAN IN A PRE-ANSWER MOTION, MAY THE CIRCUIT COURT CONSIDER THAT DEFENSE ON THE APPLICATION OF DEFENDANT WITHOUT A FORMAL MOTION?
2. MAY THE CIRCUIT COURT TAKE JUDICIAL NOTICE OF SEALED FAMILY COURT RECORDS WHEN: (1) A PARTY ASSERTS A BREACH OF "CONTRACT" CLAIM, BUT FAILS TO DISCLOSE THAT THE "CONTRACT" IS AN ORDER OF THE FAMILY COURT OVER WHICH THE FAMILY COURT EXPRESSLY RETAINED JURISDICTION; (2) THE SEALING ORDER PROVIDES THAT THE PARTIES MAY USE THE SEALED FILE FOR "THIS" LITIGATION, AND (3) THE CIRCUIT COURT ACTION IS BETWEEN THE SAME PARTIES TO THE FAMILY COURT LITIGATION?
3. DOES S.C. CODE § 63-3-50 PROVIDE EXCLUSIVE JURISDICTION TO THE FAMILY COURT OVER A "CONTRACT," WHICH: (1) DIVIDED MARITAL PROPERTY IN A DOMESTIC PROCEEDING; AND (2) WHICH WAS APPROVED BY, AND CONVERTED INTO AN ORDER OF, THE FAMILY COURT?
4. DOES THE CLEAN HANDS DOCTRINE PRECLUDE A PARTY FROM ATTACKING AN ORDER AS VIOLATING PUBLIC POLICY WHEN THAT PARTY RECEIVED BENEFITS UNDER THAT ORDER?

STATEMENT OF THE CASE

This action below was initiated by Appellant, Howard Hammer, ("Appellant" or "Mr. Hammer") as an attempt to circumvent and renege on two Family Court settlements, incorporated into Family Court orders that were voluntarily entered into by Appellant with the advice and assistance of competent domestic counsel. By amended complaint dated November 4, 2009, Appellant sought a

declaratory judgment and relief in connection with *a certain contract* entered between the parties in May 2008 ("*May, 2008 Contract*"), which contract involves, among other matters property located at 320 St. James Street, Columbia, South Carolina and Plaintiff's retirement (IRA) accounts.

Amended Complaint for Declaratory Judgment and/or In The Alternative for Damages (the "Amended Complaint"), ¶ 7 (emphasis added). (R-)

The characterization of the May 2008 contract as a "certain contract" is patently misleading as Mr. Hammer failed to disclose that the May 2008 Contract was a partial settlement of Family Court litigation that has been pending since September 2, 2005, and, more significantly, that the Family Court expressly "adopted, approved, incorporated into, merged, integrated with and made" the May 2008 Contract a court order. *Hammer v. Hammer*, C.A. NO: 2005-DR-40-2871 (Order of Judge Dorothy Mobley Jones at 4, ¶ 1 (May 12, 2008) (the "May 2008 Order")). Moreover, the Family Court expressly retained "jurisdiction to issue any orders necessary to effectuate the terms of the Agreement." *Id.* at 4, ¶ 2 (R-).

Appellant's amended complaint in this case is an improper collateral attack on a valid and binding order of the Family Court, which has exclusive jurisdiction over both the parties and their claims. Consequently, the Circuit Court properly dismissed the amended complaint for lack of subject matter jurisdiction.

Respondent, Shirley Hammer ("Respondent" or "Mrs. Hammer") invoked the jurisdiction of the Family Court on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. She filed a Second Amended Complaint on December 6, 2007, seeking a divorce and other relief.

The Family Court litigation was settled in two phases. First, the divorce and property settlements were agreed to in May 2008 and made orders by Judge Jones on May 12, 2008 (i.e. May 2008 Contract). (R-) Second, on June 23, 2009, the parties settled issues relating to child custody, visitation, and related issues. The Family Court entered its orders approving this Settlement Agreement and Ending the Action on August 19, 2009. (R-).

Beginning in May 2009, Mr. Hammer mounted at least five attacks on the 2008 and 2009 Settlement Agreements and Family Court orders:

First, on May 4, 2009, Mr. Hammer sought to amend, modify, void, and set aside the May 12, 2008 order and requested a new trial under Rule 60(b), SCRCp. By order of Judge Jones entered September 1, 2009, this motion was dismissed with prejudice, in view of the August 19, 2009 order. (R-).

Second, Mr. Hammer, *pro se*, filed a motion to withdraw, rescind, and repudiate his consent to the June 23, 2009, Settlement Agreement. That motion was denied by order of the Family Court (Judge Rucker) on January 27, 2010. (R-).

Third, on September 4, 2009, Mr. Hammer filed a Motion to Reconsider, Amend, Alter, Modify and/or For a New Trial and Stay of the following four Family Court orders, each dated August 19, 2009: (1) Order for Transfer of Individual Retirement Account; (2) Order Sealing Record; (3) Order Approving Settlement Agreement; and (4) Order (Ending Action). This omnibus motion was denied by Order of Judge Rucker on January 27, 2010. (R-).

Mr. Hammer's fourth attack was his collateral attack on the Family Court's May 2008 Order in the Court of Common Pleas, which is the subject of this appeal. In her First Amended Answer, Motion to Dismiss, and Counterclaims to his Complaint, Mrs. Hammer asserted, inter alia, three affirmative defenses: (1) lack of subject matter jurisdiction (Rule 12(b)(1), SCRCP); (2) failure to state facts sufficient to constitute a cause of action (Rule 12(b)(6), SCRCP) and (3) *res judicata* (Rule 8(c), SCRCP).

By order dated April 14, 2010, Judge Manning dismissed Mr. Hammer's Amended Complaint for lack of subject matter jurisdiction, but expressly provided that his "order [did] not end the action as to [Mrs. Hammer's] counterclaims". All the counterclaims arise out of Mr. Hammer's conduct in July and August 2009. (R.) Mr. Hammer moved for reconsideration of this dismissal on April 29, 2010, which was denied by Order of Judge Manning entered May 18, 2010. (R. ...).

Fifth, on August 25, 2010, Mr. Hammer filed a complaint in Family Court seeking substantially similar relief as in the amended complaint that was before Judge Manning. Mrs. Hammer moved to dismiss this complaint on the following grounds: (i) failure to state facts sufficient to constitute a cause of action (Rule 12(b)(6), SCRCP); (ii) law of the case doctrine and *res judicata* (Rule 8(c), SCRCP); (iii) another action pending between the same parties on the same claims (Rule 12(b)(8), SCRCP); (iv) and lack of subject matter jurisdiction (Rule 11(b)(1), SCRCP). Judge Rucker held a hearing on February 8, 2011, at which he granted the motion from the bench and requested that Mrs. Hammer's counsel propose a written order.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY DETERMINED RESPONDENT'S SUBJECT MATTER JURISDICTION DEFENSE

Appellant argues that the court below improperly determined Mrs. Hammer's jurisdictional defense because she failed to make a formal motion to dismiss "as required by Rule 7(e) [sic] SCRCF." Initial Brief of Appellant at 8 (hereafter "Appellant Initial Br.").

Rule 12(b)(6), SCRCF, provides two distinct methods of asserting defenses listed in subsections (1)–(8) of the rule. One, every defense must be asserted in a responsive pleading. Two, at the option of the pleader, defenses (1)–(8) may be made by pre-answer motion: "A motion making any of these defense *shall be made before pleading . . .*" *Id.* (emphasis added). If any 12(b)(1)–(8) defense is asserted in a pleading, as in the amended answer below, Rule 12(d), SCRCF, provides that the defenses "shall be heard and determined before trial on the application of any party" Application in this context is a request and not necessarily a formal motion because a motion on any 12(b)(1)–(8) defense must be made *before answer*, except as permitted by Rules 12(c) and (h)(2). Consequently, when Rule 12(d) is read in view of Rule 12(b), it is beyond peradventure that any 12(b)(1)–(8) defense asserted in an answer must be determined before trial on the application of a party, and the application need not be a formal motion.

Most significantly, subject matter jurisdiction may be raised at any time by any means. Rule 12(h)(3), SCRCF, explicitly provides:

Whenever it appears by *suggestion* of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the case.

Id. (emphasis added). This rule is exactly the same as the former federal rule.¹ One leading federal practice treatise concluded that a formal motion was not required:

¹ Since December 1, 2009, Federal Rule 12(h)(3) has slightly altered language: "If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." No substantive change was made.

Moreover, no formal motion need be made in order to raise the subject matter jurisdiction issue. Rule 12(h)(3) provides that the defense may be interposed by informal "suggestion" rather than by motion. Since a "suggestion" technically is not a motion, a challenge to the court's subject matter jurisdiction is not subject to the consolidation requirements of Rule 12(g).

5C Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 1393, at 539-40 (3d ed. 2004) (footnotes omitted).

Moreover, Mr. Hammer was on notice that lack of subject matter jurisdiction was asserted in the amended answer,² and had adequate notice of the hearing held by Judge Manning on March 2, 2010, to determine that defense. A Roster Notice dated February 2, 2010, plainly stated that a hearing would be held on March 2, 2010, at 3:45 p.m. Respondent served and filed her memorandum in support of dismissal on February 26th. Appellant failed to submit a memorandum in opposition. At various places in his initial brief, Appellant asserts that there was no "evidentiary support in the record for the findings of fact upon which the lower court based its conclusions of law" Initial Brief at 9. Determination of subject matter jurisdiction is a question of law. The only "fact" needed to rule on subject matter jurisdiction was the "fact" that the 2008 contract was converted from a private agreement to a family court order. Appellant failed to disclose this "fact" to the court and asserts that Respondent was prohibited from disclosing it. As argued in Point II below, Respondent not only had a right but also a duty to disclose this "fact."

Accordingly, the court below properly resolved Respondent's Rule 12(b)(1) defense.

Whether by suggestion, motion, application, or request of any party, or *sua sponte*, the court must dismiss if subject matter jurisdiction is lacking.

² Amended Answer ¶¶ 36 ("This Court lacks subject matter jurisdiction . . ."), 38, 39, 40, 43 (all asserting Appellant's remedy is in Family Court for various reasons).

II. THE CIRCUIT COURT APPROPRIATELY TOOK JUDICIAL NOTICE OF THE SEALED FAMILY COURT RECORD

Appellant argues that Respondent violated the Family Court Sealing Order by referencing various records, including the Orders resolving the domestic litigation between Mr. Hammer and Mrs. Hammer, the same parties in the subject appeal. He also asserts that Judge Manning improperly based his findings on the Family Court record. Both arguments are plainly without merit and should be rejected for three reasons.

First, the sealing order expressly provides that the parties may access and use the sealed file in the domestic litigation. In this connection, the sealing order states:

Notwithstanding the foregoing, both Plaintiff and Defendant, their respective counsel, the Guardian *ad Litem* and the Court personnel shall be allowed access to this file and the use thereof in this litigation between Plaintiff and Defendant; provided, however, the documentation therein may be used only in connection with this litigation.

Order Sealing Record ¶ 3, *Hammer v. Hammer*, Docket No.: 05-DR-40-2871 (Family Court, Richland Cty., August 19, 2009) (emphasis in original). This provision plainly permits Mr. Hammer, Mrs. Hammer, their counsel, the Guardian *ad Litem*, and Court personnel to access the sealed file without first obtaining a Court Order.³ Judge Manning found that the case below “is a continuation of a marital dispute still ongoing in the Family Court since September 5, 2005;” Order Denying Motion to Reconsider, ¶ 3 (May 18, 2010). Although the term “this litigation” in paragraph 3 of the Sealing Court might be narrowly and woodenly construed to mean only the Family Court litigation, Judge Manning appropriately rejected this view. The parties to the litigation are exactly the same and the subject matter of the case below—the “certain contract”—

³ The immediate prior paragraph states: “The record herein sealed shall not be inspected, opened, or otherwise discussed without an appropriate Order allowing any such activity, which shall only be issued after due and proper notice to both Plaintiff and Defendant and after due hearing.” *Id.* ¶ 2 (emphasis added). Because this provision requires notice to both Mr. Hammer and Mrs. Hammer, it plainly contemplates a third party making the application to inspect and use the sealed record and does not require Respondent to give herself notice of her own contemplated use of the sealed files.

was executed in partial settlement of the Family Court litigation, and made an Order of the Family Court. Appellant does not, and cannot, deny any of these facts. Instead, he argues that the Circuit Court below was not entitled to the truth of these “facts” because Mrs. Hammer failed to obtain permission to reference the Family Court record. If Appellant thought Respondent was in violation of the Sealing Order, the appropriate remedy was to ask the Family Court to hold her in contempt under paragraph 4: “any person violating the terms of the Order shall be subject to contempt.” Sealing Order, *supra* ¶ 4. Appellant failed to seek a contempt citation knowing full well that Judge Rucker would find his collateral attack inappropriate and a continuation of the Family Court litigation.⁴

Second, as this Court so aptly stated in *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984):

A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021. It is not error for a judge to take judicial notice of what was stated in a former opinion in a prior action of the same case. *Montalbano v. Automobile Ins. Co.*, 218 S.C. 367, 62 S.E.2d 829 (1950).

Id. at 494, 313 S.E.2d at 327. Moreover, a court can take judicial notice of its records, files, and proceedings for all proper purposes. See *South Carolina Department of Social Servs. v. Jamie C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 466–67 (Ct. App. 2009) (explaining use of Rule 201, SCRE).

Rule 201, SCRE, plainly contemplates judicial notice of records from other courts. To be subject to judicial notice, a fact must be such that “its accuracy may be ascertained by reference to readily available sources of indisputable reliability.” *Bowers v. Bowers*, 349 S.C. 85, 94, 561

⁴Moreover, Mr. Hammer’s appeal only delays the inevitable. At some point, if his complaint is allowed to go forward, he will have to introduce “that certain contract” upon which he bases his request for relief and admit that it is part of the Family Court Order — or he will have to continue to deceive the court by presenting “a contract” that he would claim is separate and apart from the Family Court Order. As is already evident, “that certain contract” is the settlement agreement that was incorporated into and made a part of the Family Court order that he presently demands remain sealed. By insisting that the Order remain sealed, he attempts to prevent this Court from determining the deception he is practicing upon both this Court and the circuit court.

S.E.2d 610, 615 (Ct. App. 2002) (citation omitted).⁵ Unquestionably, Family Court records meet the Rule 201(b) SCRE standard. Moreover, it has been noted that “the most frequent use of judicial notice is in noticing the content of court records.” *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). Rule 201(c) even permits a court to take judicial notice *sua sponte*. Accordingly, the Court below properly took judicial notice of the Family Court orders in determining that it lacked subject matter jurisdiction.

Third, as recognized by Judge Manning, Appellant Mr. Hammer “created the necessity that [the Court below] have access to, and take notice of, the Family Court filings in the parties’ related domestic case.” Order Denying Motion to Reconsider, *supra*, ¶ 4. Additionally, it has long been established in American procedure that

[w]hen one party introduces and reads from . . . a record that which suits his purpose, the other party may read for his own benefit all that relates to that subject

Tappan v. Beardsley, 77 U.S. 427, 435 (1870). When Appellant brought his purported declaratory judgment action on the 2008 Contract, Respondent had not only the right, but a duty, to inform the court below that it was no longer a contract between the parties, but was a Family Court Order enforceable only by contempt. As argued in Point IV below, Mr. Hammer does not come to court with clean hands. He benefitted from the so-called “certain contract” and then, when it suited his purpose not to perform his concomitant obligations, he collaterally attacked the “contract” in the Circuit Court without disclosing its true nature. No court can fairly adjudicate a dispute when a party hides the true facts

⁵ See *Maverick Momentum, L.L.C. v. M.S.S. Supply Co.*, 2006 WL 3192273 (S.C. Com. P., May 9, 2006), in which Circuit Judge Alison Renee Lee took judicial notice of records from the United States District Court for the Western District of Washington. See also *United States v. Vann*, 630 F.3d 431, 437–38 & n.3 (2010) (Rehearing En Banc Granted Jan. 6, 2011) (noting that the Fourth Circuit may take judicial notice of state court records not part of the record before the district court) (citing *Loavar v. de Santibanes*, 430 F.3d 221, 224 n.2 (4th Cir. 2005) (taking “judicial notice of the records of a court of record”); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (noting that courts of appeals may properly take judicial notice of state court proceedings that were not part of the record before the district court)).

and nature of its claims as Appellant attempted to do below. As established in Point III, the Circuit Court does not have subject matter jurisdiction over a Family Court order dividing and allocating what is indisputably marital property. Without resorting to the sealed Family Court record, the Circuit Court would have had no basis to determine subject matter jurisdiction was lacking. Appellant opened the door to the sealed record by collaterally attacking the Family Court Order with his declaratory judgment action, and Judge Manning appropriately closed the door to the Circuit Court by finding a lack of subject matter jurisdiction.

III. THE CIRCUIT COURT LACKED SUBJECT MATTER JURISDICTION

A. *The Family Court Has Exclusive Jurisdiction over the Issues Raised in the Amended Complaint*

In relevant part S.C. CODE ANN. § 63-3-50 provides:

(A) The family court has exclusive jurisdiction

...

(2) to hear and determine actions for divorce a vinculo matriomii, separate support and maintenance, legal separation, *and in other marital litigation between parties*, and for settlement of all legal and equitable rights of the parties in the actions in and *to the real and personal property of the marriage* and attorney's fees, if requested by either party in the pleadings (emphasis added);

...

(25) to modify or vacate and order issued by the court;

...

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such prohibition;

...

(B) Notwithstanding another provision of law, the family court and the probate court have concurrent jurisdiction to hear and determine matters relating to paternity, common-law marriage, and interpretation of marital agreement; except that the concurrent jurisdiction of the probate court extends only to matters dealing with the estate, trust and guardianship and conservatorship actions before the probate court.

Moreover, S.C. CODE ANN. § 20-3-690 provides that “[t]he *family courts of this State have subject matter jurisdiction over all contracts relating to property* which is involved in a proceeding under this article *and over the construction and enforcement of those contracts.*” *Id.* (emphasis added). The term “this article” in § 20-3-690 refers to divorce and settlement agreements in South Carolina.

Plainly, each claim and related issues raised in the circuit court amended complaint has already been heard and determined by the Family Court, which had exclusive subject-matter jurisdiction under S.C. CODE ANN. § 63-3-50 (2), (25), (30), and under § 20-3-690, S.C. CODE ANN. (1976, as amended).

The First and Fourth Causes of Action for a Declaratory Judgment in Appellant’s complaint assert that the May 2008 Family Court Order is void as against public policy. These issues were heard by the Family Court and rejected by orders of January 27, 2010. (R....) As described above, these Orders rejected Mr. Hammer’s post-trial attack on the June 2009 Settlement Agreement and August 19th Order Approving the Settlement Agreement and Order Ending the Action. (R). The August 19, 2009 Order ending the action expressly reaffirmed the May 12, 2008, Order as later modified by the August 19, 2009 Order. Consequently, the May 2008 and the August 19, 2009, orders are both indivisible and indistinguishable.

Accordingly, Mr. Hammer’s public policy attack was already heard, determined, and rejected by the Family Court as follows:

Defendant argues the agreement is contrary to public policy, and makes other general allegations of material misrepresentations by Plaintiff. Settlement agreements in Family Court are not contrary to public policy; in fact, they are encouraged. Upon careful review of the agreement approved by this Court, there are no provisions which cause this Court public policy concerns. Defendant presented no credible or independent support for his allegations regarding material misrepresentations.

Family Court Order Regarding Defendant's *Pro Se* Motion, January 27, 2010, at 4 (R).

The Second, Third, Fifth, and Sixth causes of action in Mr. Hammer's complaint to his circuit court complaint all relate to disposition of the marital home, to transfer of Mr. Hammer's IRA account, and to other matters intrinsically related to the domestic relations litigation within the exclusive jurisdiction of the Family Court.

All of the property settlements in the May 2008 and June 2009 Settlement Agreements are in connection with the divorce proceeding. The law in this State expressly grants subject matter jurisdiction to the Family Court over the construction and enforcement of all these contracts (S.C. CODE ANN. § 20-3-690) and exclusive subject matter jurisdiction over all "marital litigation between the parties." S.C. CODE ANN. § 63-3-50 (A) (2). Significantly, Appellant makes the fallacious assumption that he has a contract claim. He does not. It is well established that when a settlement agreement is incorporated into a Family Court Order, it loses its contractual character, and the only permissible remedy for breach of its terms is contempt. *See, e.g., Emery v. Smith*, 361 S.C. 207, 214, 603 S.E.2d 598, 601 (Ct. App. 2004)(merging an agreement into an order transforms "it from a contract between the parties into a decree of the court"). Thereafter, the agreement, as part of the court order, "is fully subject to the Family Court's authority to interpret and enforce its own decrees." *Id.*, 603 S.E.2d at 602 (citing *Terry v. Lee (Terry I)*, 308 S.C. 459, 419 S.E.2d 213 (1992)(stating that the Family Court has *exclusive jurisdiction* to determine the rights of the parties under an agreement incorporated into a Family Court decree) (emphasis added).

B. The Circuit Court Did Not Have Concurrent Jurisdiction Over Claims Asserted in the Amended Complaint.

S.C. CODE ANN. § 63-3-50(B), quoted above, plainly demonstrates that when the legislature grants concurrent jurisdiction, it does so explicitly. This provision provides for concurrent jurisdiction by the family and probate courts to hear and determine matters relating to paternity, common-law marriage, and marital agreements *only if these matters are relevant to pending probate court actions* involving estate, trust, guardianship, and conservator matters.

Significantly, there is no similar provision for concurrent jurisdiction in the circuit court over the claims raised by the amended complaint.

C. Unless a Settlement Agreement Unambiguously Denies Continuing Jurisdiction, a Family Court Has Exclusive Jurisdiction to Modify and Enforce its Order by Contempt.

In the seminal case of *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), our Supreme Court, reversing and clarifying ambiguous and inconsistent prior authority, expressly held that once a settlement agreement is approved by the Family Court, it may be enforced by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction. *Id.* at 353, 306 S.E. 2d at 627 ("With the court's approval, the terms become a part of the decree and are binding on the parties and the court. However, unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the court and enforceable by contempt.").

Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements. *See* May 2008 Order at 4, ¶ 2 (R-); 2009 Order Ending Action at 8, ¶¶ 7 and 9 (R-).

Accordingly, under *Moseley*, the Family Court, and only the Family Court, has continuing subject matter jurisdiction over the claims raised by the Amended Complaint. *Moseley v. Mosier*,

279 S.C. 348, 306 S.E.2d 624 (1983) See also *Swentor v. Swentor*, 336 S.C. 472, 478–79, 520 S.E.2d 330, 334 (1999) (holding that, even in the face of an agreement to arbitrate, the Family Court does not lose jurisdiction).

Moreover, our Supreme Court expressly held that the Family Court, and not the Circuit Court, had exclusive jurisdiction over whether military retirement benefits could be deemed community property under a California divorce decree. *Terry v. Lee*, (Terry I), 308 S.C. 459, 419 S.E.2d 213 (1992). The parties were married in 1945, and were granted an Interlocutory Judgment of Divorce in 1967, which incorporated the parties' property settlement. The husband was in the United States Navy, and at the time of the 1967 divorce, military retirement benefits were not divisible as marital property. After a change in federal law, the wife instituted an action in a Richland County Court of Common Pleas in 1990 seeking a division of military retirement benefits. The Supreme Court held that under S.C. CODE ANN. § 20-7-420(2) (now recodified as § 63-3-50(A)(2)) that the Family Court had exclusive jurisdiction as follows:

Separate actions to determine property rights will be considered "other marital litigation" under Section 20-7-420(2)—thereby vesting exclusive jurisdiction in the family court-if the relief sought is incidental to the decree of divorce. See *Sims v. Sims*, 290 S.C. 190, 348 S.E.2d 835 (1986); *Zwerling v. Zwerling*, 273 S.C. 292, 255 S.E.2d 850 (1979); *Brown v. Brown*, 295 S.C. 354, 368 S.E.2d 475 (Ct. App. 1988); *Eichor v. Eichor*, 290 S.C. 484, 351 S.E.2d 353 (Ct. App. 1986).

Terry, 308 S.C. at 461, 419 S.E.2d at 214.

If litigation over property rights under a 1967 California settlement incorporated in a California decree is considered within the exclusive jurisdiction of the Family Court, then *a fortiori* the litigation below must also be within the exclusive jurisdiction of the Family Court under current S.C. CODE ANN. § 63-3-50(A)(2) which contains the exact same language as the predecessor statute.

Appellant's arguments to the contrary are fundamentally flawed and must be rejected. In his Statement of Issues on appeal "II" and at pages 10 and 11 of his Initial Brief, Appellant incredibly asserts that "the parties expressed an intent in their Agreement that the Family Court not have exclusive jurisdiction . . . ," and that because the agreement contained provisions concerning third parties, the Family Court lacked exclusive jurisdiction. First, any reasonable reading of the 2008 and 2009 agreements amply refutes the suggestion that the parties expressly rejected family court exclusive jurisdiction. Paragraph 2 of Judge Jones' May 12, 2008 Order plainly states: "This Court retains jurisdiction to issue any orders necessary to effectuate the Terms of the Agreement. More significantly, the so-called "contract" (Partial Settlement of Outstanding Issues), which the parties entered into prior to adoption by the Family Court unequivocally provides:

- (i) "This Order shall remain in full force and effect unless terminated by a subsequently issued order of the *Family Court*." ¶ 8(F) (emphasis added); and
- (ii) "When this settlement is approved it shall be enforceable through the contempt powers of the *Family Court*." ¶ 14 (emphasis added).

Consequently, it cannot be said, as Appellant cavalierly asserts, that the parties expressly denied continuing Family Court jurisdiction to enforce the terms and conditions of the Order.

Second, Mr. Hammer's Circuit Court Amended Complaint related only to the rights and obligations of Mr. Hammer and Mrs. Hammer, and did not concern any third parties. Whatever jurisdiction may lie in the Family Court with respect to the rights and obligations of third parties, it is abundantly clear that the case below is exclusively related to the rights and obligations of Appellant and Respondent, and no one else.

Moreover, Appellant's purported declaratory judgment action is not justiciable. To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). In *Polin v. Polin*, 295 S.C. 129, 367 S.E.2d 433 (Ct. App. 1988), a case materially

indistinguishable from this case, this Court found that the plaintiff's public policy argument was not a justiciable controversy. The plaintiff in *Polin* appealed from the denial of his motion for a new trial in a divorce action. The motion was based in part on his allegation that the settlement agreement entered between the parties and incorporated into the final divorce decree was void as against public policy because it contained a release of third persons from civil and criminal claims arising out of the marriage.

This Court expressly declined to address the public policy question on the grounds that no such claim against a third person had been asserted. "Therefore," the court held, "the issue is not ripe and a decision by this court would be purely advisory." 295 S.C. at 130-31, 367 S.E.2d at 434. Recognizing that a court "cannot render a declaratory judgment in the absence of an actual justiciable controversy," the Court of Appeals affirmed the Family Court's order. *Id.*

Polin is controlling in this case with respect to Appellant's declaratory judgment claim and his claim for damages based on the allegedly void contract. In his Amended Complaint, Appellant advances vague, conclusory public policy arguments but presents no facts sufficient to establish the existence of an actual justiciable controversy. Nowhere in the Amended Complaint does Appellant allege that he has asserted specific claims against Respondent or any third parties, or even that he would assert such claims were it not for the releases contained in the May 2008 Order. Presumably, Appellant does not suggest that the numerous criminal claims against him, released by Respondent in the May 2008 Order, should be reinstated and pursued. Accordingly, the public policy issue is not ripe for review and is therefore non-justiciable.

D. Even Under Pre-Moseley Law, When a Circuit Court Could Have Concurrent Jurisdiction Over Domestic Settlements, the Family Court Would Have Had Exclusive Jurisdiction.

It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive. *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981). In affirming a circuit court order dismissing a complaint for lack of subject matter jurisdiction, the Supreme Court held:

Here, action involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction. *The family court acquired jurisdiction first, therefore, it acquired exclusive jurisdiction to hear all further proceedings in the case. See Tucker v. Tucker*, 264 S.C. 172, 177, 213 S.E.2d 588 (1965)(emphasis added).

Id. at 575, 281 S.E.2d at 110. Accordingly, even if the circuit court had concurrent jurisdiction, which it plainly did not under current law, the family court would have exclusive subject matter jurisdiction because it acquired jurisdiction on September 2, 2005, almost four years before Appellant filed his complaint in this case. It is noteworthy that Appellant assiduously avoided any mention of *McDonald* both in the court below and in his initial brief in this Court.

E. Appellant's Jury Trial Argument Is Without Merit

Appellant asserts at various places in his Initial Brief that exclusive family court jurisdiction over the amended complaint violates his constitutional right to a jury trial. The Seventh Amendment to the U.S. Constitution, guaranteeing the right to trial by jury in federal civil trials when the value in controversy exceeds twenty dollars, has never been applied to the states. See *McDonald v. Chicago*, ___ U.S. ___, 130 S.Ct. 3020, 3035n.13 (2010) (seventh amendment not incorporated into the 14th Amendment's due process clause). Accordingly, in civil matters, states are free to structure their judicial systems to exclude trial by jury. South Carolina's family court

system is one such example. Consequently, Appellant's jury trial argument is flawed and must be rejected.

IV. APPELLANT IS NOT ENTITLED TO RELIEF BECAUSE HE BENEFITTED FROM THE SETTLEMENT WHICH HE NOW ATTACKS

In *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998), this Court observed that the doctrine of unclean hands precludes a party from recovering in equity if the party acted unfairly in the matter that is the subject of the litigation to the prejudice of the opposing party. The doctrine is applied in Family Court litigation. See *Bodkin v. Bodkin*, 388 S.C. 203, 221, 694 S.E.2d 230, 240 (Ct. App. 2010)(noting that the Family Court found Husband had unclean hands). "Unclean hands" is an equitable doctrine. A complaint for a declaratory judgment can be either legal or equitable. See *South Carolina Dept. of Transportation v. Horry County*, ___ S.C. ___, ___ S.E.2d. ___, 2011 W.L. 149444 (Sup. Ct., Jan. 18, 2011), at *2. Appellant, having benefitted in several respects from the agreement he attacks, acted unfairly and to the prejudice of Respondent.

By attacking the 2008 Family Court Order as violating public policy, Mr. Hammer engages in the sheerest form of hypocrisy. He insisted on, and received, the benefits of that 2008 order,⁶ which he now wants to disavow. Further, more than one year after the 2008 settlement and family court order that he now attacks, Mr. Hammer entered into another settlement, which was incorporated into a family court order of June 2009. That agreement once again called for the dismissal of additional criminal charges that were pending against him. Thus, in 2009, he continued to participate in the very same settlement behavior—insisting on the dismissal of

⁶ For example, pursuant to the 2008 Family Court order, he insisted that Mrs. Hammer convey certain real estate to him, which he then sold to a third party. (Does Appellant propose to return that property to Mrs. Hammer if granted the relief he seeks? Will his purchaser be willing to accommodate?)

criminal charges against him—that he claims is inappropriate and against public policy under the 2008 order.

Perhaps more egregious, two months *after* he initiated this lawsuit, Mr. Hammer, his attorney, and an assistant solicitor signed a document (R-) dated October 19, 2009, which stated that the criminal charges against him were dismissed pursuant to the June 2009 family court order and settlement.⁷ Thus, even while he was claiming in the court below that the May 2008 Family Court Order was invalid for public policy reasons because it included a recommendation that criminal charges against him be dismissed, he was insisting on and acting upon the very same provision in the June 2009 Family Court Order and settlement.

According to Mr. Hammer, the Family Court orders are valid and do not violate public policy while he is receiving his benefits under those orders; however, once he has obtained those benefits, he claims those orders are invalid so that he does not have to perform his obligations.

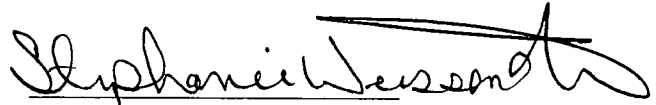
To allow this egregious and bad faith attack on the 2008 Family Court order, on which he has, himself, relied to his benefit, would be to open a Pandora's box for all Family Court litigants. No Family Court order would be final or could be relied on. Instead, any litigant could receive the benefits of the order, but when it came time for the litigant to perform his or her obligations under the order, he or she could then run to the Circuit Court and attempt to overturn the Family Court. If Appellant is allowed to do this now, every litigant in Family Court will have a roadmap to disrupt the entire Family Court system. That is precisely why the legislature made Family Court jurisdiction exclusive in S.C. CODE § 63-3-50.

⁷ The 2009 family court order confirmed the 2008 Family Court order and partial settlement agreement, except to the extent the 2009 order modified it. The October 19, 2009 document contains a misrepresentation about the position of Mrs. Medlin, a victim, who was not represented in the creation or execution of that document.

V. CONCLUSION

Respondent requests that the Order of Judge Manning dismissing the amended complaint for lack of subject matter jurisdiction be affirmed in all respects.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

Columbia, South Carolina
February 17, 2011



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

RECEIVED

FEB 18 2011

SC Court of Appeals

Howard Hammer Appellant

v.

Shirley Hammer Respondent

RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

1. Order dismissing complaint, by Judge Manning, April 14, 2010
2. Order denying motion for reconsideration, by Judge Manning, May 18, 2010
3. Amended Complaint for Declaratory Judgment, filed November 9, 2009
4. First Amended Answer to Amended Complaint, Motion to Dismiss, Motion for Injunction, filed November 3, 2009
5. Answer to Amended Complaint, Motion to Dismiss, Motion for Injunction, filed November 23, 2009
6. Memorandum in Support of Defendant's Motion to Dismiss, filed February 26, 2010
7. Transcript of Record from Hearing before Judge Manning on March 2, 2010
8. Order Ending Action, by Judge Rucker, filed August 19, 2009
9. Order Approving Settlement Agreement, by Judge Rucker, filed August 19, 2009
10. Order
11. Divorce Decree, by Judge Jones, filed May 12, 2008

See

12. Order (with partial settlement agreement), by Judge Jones, filed May 12, 2008
13. Summon and Complaint for Declaratory Judgment, Family Court, filed August 25, 2010
14. Family Court Orders, by Judge Rucker, filed January 27, 2010
15. Dismissal of Warrant No. K373839 & K373840, October 19, 2009

I certify that this designation contains no matter which is irrelevant to this appeal.



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Attorneys for Respondents

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

RECEIVED
FEB 18 2011
SC Court of Appeals

Howard Hammer,

Appellant,

vs.

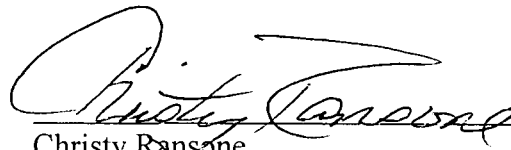
Shirley Hammer, a/k/a
Shirley Grace Hightower,

Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that she has, this date, caused to be served a copy of the **Respondent's Designation of Matter and Initial Brief of Respondent** upon opposing counsel in this matter via by regular U.S. mail delivery with sufficient first class postage affixed, addressed as follows:

Susan Batten Lipscomb
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia South Carolina 29201


Christy Ransone
Paralegal

February 17, 2011



Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
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February 17, 2011

Via U.S. Mail Only

Honorable Tanya Gee
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Howard Hammer v. Shirley Hammer a/k/a Shirley Grace Hightower*
Case No. 2010164067

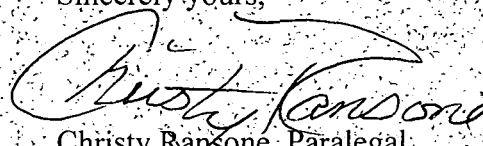
Dear Ms. Gee:

Enclosed, please find the **Respondent's Designation of Matter, Initial Brief of Respondent and Certificate of Service** in the above referenced matter. Please find a copy of these pleadings to be clocked and returned to us in the self addressed envelope enclosed with sufficient postage attached.

If you should have any questions please do not hesitate to contact me, or Stephanie Weissenstein, we will be happy to assist you further.

With warm personal regards, I am,

Sincerely yours,



Christy Ransone, Paralegal
christy@desaballard.com

Enclosures

c: Shirley Hammer
Susan Lipscomb

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FEB 18 2011

SC Court of Appeals

The South Carolina Court of Appeals

Howard Hammer,

Appellant,

v.

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

Respondent.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2009-CP-40-05911

ORDER

For good cause having been shown, the time for Respondent's Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until February 17, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

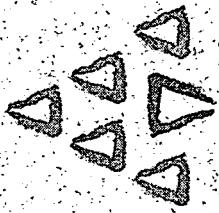
BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Susan Batten Lipscomb, Esquire
Desa Ballard, Esquire

FILED

SAC 1/21/11



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

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January 18, 2011

Via U.S. Mail and Facsimile
Honorable Tanya Gee
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Howard Hammer v. Shirley Hammer a/k/a Shirley Grace Hightower*
Case No: 2009-CP-40-05911

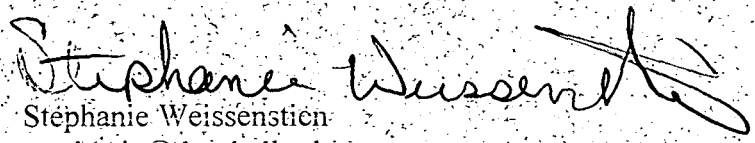
Dear Ms. Gee:

With the Court's permission, we would like to postpone our filing date of Respondent's Initial Reply Brief to February 17, 2011.

I am enclosing a firm check in the amount of Twenty-five Dollars (\$25.00) to cover this request. If a more formal motion is required, please do not hesitate to let me know.

With warm personal regards, I am,

Sincerely yours,


Stephanie Weissenstein
stephanie@desaballard.com

c: Susan B. Lipscomb, Esquire
Shirley Hammer (via e-mail only)

RECEIVED

JAN 19 2011

SC Court of Appeals

1/19/11

2/17/11

1st Motion

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer Appellant

v.

Shirley Hammer Respondent

INITIAL BRIEF OF APPELLANT

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Attorneys for Respondents

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DEC 08 2010

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

- I. Did the lower Court err in basing its conclusion of law and findings of fact and resulting dismissal of Appellant's Complaint when the record contained no admissible evidence for the findings of fact upon which the conclusions of law and dismissal were based and where Respondent raised the issue of jurisdiction in his Answer rather than by Motion?
- II. Did the lower Court err in finding that the case of *Mosley v. Mosier*, 278 S.C. 348, 306 S.E. 2d 624 (1983) was applicable to deny jurisdiction where the parties expressed an intent in their Agreement that the Family Court not have exclusive jurisdiction of the contract at issue between the parties and where dismissal transgressed and denied Appellant Federal and State Constitutional rights to jury trial and due process?
- III. Did the lower Court err in its conclusions of law that S.C. Code §20-3-690, 63-3-50 and 63-3-530(A)(2)(25)(30), provided for exclusive Family Court jurisdiction of the instant matter when said Code Sections do not so provide and 63-3-50(A)(2)(25)(30) violates Const. Art. 3, §17?

STATEMENT OF THE CASE

The Appellant, Howard Hammer ("Appellant") filed this action on August 18, 2009, and thereafter on November 9, 2009, filed and served an Amended Complaint For a Declaratory Judgment and/or in the Alternative for Damages, primarily requesting a declaration that a contract entered into between the parties in May 2008 ("May 2008 Contract") was void *ab initio*, as against public policy in that an integral part of the consideration for the May 2008 Contract was Respondent's agreement to withdraw and dismiss her criminal complaints against Appellant and, in addition, Respondent required that Appellant agree to an "Order of Protection" not only as to her, but also as to a person, not a party to the contract, and required that Appellant and Respondent execute an Agreement and Release of claims one against the other and that Appellant execute a Receipt and Release in favor of person's not a party to the Family Court litigation on account of any potential claims by Appellant. The May 2008 Agreement in issue contained a final clause stating "this agreement is a binding contract and is enforceable as such under law". The alternate causes of action for damages included several, for which Appellant was entitled to trial by jury.

On October 01, 2009, Respondent served an Answer, Motion to Dismiss, and Counterclaims. Respondent served a First Amended Answer, Motion to Dismiss, and Counterclaims on October 30, 2009. After Appellant served and filed his Amended Complaint, Respondent, on November 11, 2001, served a document styled Answer to Amended Complaint, Motion to Dismiss and Counterclaims. The primary defense of the Respondent was that the Circuit Court did not have subject matter jurisdiction over any matter related to the Family Court Order; however, Respondent also alleged defenses of

res judicata, laches, waiver, and estoppels, release, another case was pending between the parties, and failure to state facts sufficient to constitute a cause of action. Respondent's counterclaims included slander of title, tortious interference with an existing contractual relationship, intentional infliction of emotional distress, abuse of process, invasion of privacy/wrongful intrusion as to contracts to sell and purchase, and malicious prosecution. On December 9, 2009, Appellant served his Reply to the Counterclaims.

A hearing on Respondent's motion for dismissal as solely set out in the documents entitled Answer, Motion to Dismiss, and Counterclaims, First Amended Answer, Motion to Dismiss and Counterclaims, and Answer to Amended Complaint, Motion to Dismiss and Counterclaims was held by the lower court on March 2, 2010. On April 2, 2010, Appellant served and hand-delivered to the presiding Judge its Motion for compliance with a Family Court Order sealing the record in Family Court and Motion to Strike from Respondent's pleadings and memorandum all references to the Family Court litigation. By Order dated and filed April 14, 2010, the court dismissed Appellant's Complaint for lack of subject matter jurisdiction.

Appellant received the order on April 20, 2010 and served and filed a Motion pursuant to Rule 59(e) on April 29, 2010. The lower court issued its Order Denying Motion to Reconsider on May 18, 2010, which was received by Appellant on May 24, 2010. Notice of Appeal from the Order Denying the Motion Pursuant to Rule 59(e) and the Order dated April 14, 2010 was served on June 17, 2010.

ARGUMENT

I.

THE LOWER COURT ERRED IN MAKING FINDINGS OF FACT AND BASING ITS CONCLUSIONS OF LAW AND RESULTING DISMISSALS OF APPELLANT'S COMPLAINT ON SAID FINDINGS OF FACT WHERE RESPONDENT FAILED TO PRESENT A PROPER MOTION FOR DISMISSAL ON JURISDICTIONAL GROUNDS UNDER RULE 7(E) SCRPC AND THE RECORD CONTAINED NO ADMISSIBLE EVIDENCE SUPPORTING THE FINDINGS OF FACT UPON WHICH THE CONCLUSIONS OF LAW AND DISMISSAL WERE BASED.

When Respondent's Motion for Dismissal came on to be heard the record before the Court upon which a determination on the Motion was to be made contained only the Complaint, Amended Complaint, Answer, (styled Motion to Dismiss but contained no such Motion) and Counterclaims, Amended Answer (styled Motion to Dismiss but contained no such Motion) and Appellant's Denial Reply to Amended Answer. The lower Court's entire Order is based solely on Respondent's Memorandum of Law and Argument unsupported by any admissible evidence of record submitted by Respondent.

Appellant's action was one for Declaratory Judgment based upon "a certain contract" entered between the parties in May 2008. The Appellant's Complaint alleged that the May 2008 Contract was void *ab initio* as violating public policy for the reason that an integral part of Appellant's agreements in the said contract was Respondent's agreement to withdraw criminal complaints against Appellant and allow the criminal charges to be dismissed. The Complaint further alleged that in addition thereto and a further violation of public policy was that Respondent required Appellant to agree to a "Order of Protection" to a third party not privy to the Contract. The Agreement in issue also incorporated a provision prohibiting the parties from filing any grievances against any of the parties' attorneys and would, in and of itself, clearly be prohibited by public policy. Respondent's Amended Answer joined the issues by alleging that the contract was incorporated into an Order of the Family Court. The Amended Answer was styled Amended Answer, "Motion to Dismiss" and

Counterclaim and purported to incorporate a "Motion to Dismiss" contained in respondent's original Answer. A review of the record reveals that Respondent did not file any Motion to Dismiss pursuant to Rule 7(e) SCRCF but rather merely entered a denial of Appellant's allegation that the Circuit Court had subject matter jurisdiction. Thus, when the matter came on to be heard before the Court, the record contained no separate and distinct Motion by Respondent setting forth the grounds therefore as required by Rule 7(e) SCRCF. The Motion was accordingly heard based solely upon an allegation joining *the issues* regarding jurisdiction by the defense raised in the Answer. The record contains no evidentiary support for Respondent's Answer denying jurisdiction.

Notwithstanding Appellant's Motion to Strike, the Court failed to set hearing on said Motion or determine the question of whether the Paragraphs of Respondent's Answer objected to should have been stricken. Rather, the lower Court inadvertently erred and heard Respondent's Motion to Dismiss, ruling on same as though it was a Motion for Summary Judgment notwithstanding lack of any evidentiary support for it in the record.

As the record reveals, all of the findings of the lower Court were based solely and completely on statements of Respondent's counsel and on her Memorandum of Law which referenced a sealing Order of the Family Court record. The sealing Order required no inspection, opening or otherwise having discussion of the Family Court record without first obtaining an appropriate Order to do so. Notwithstanding the Order sealing the record in the Family Court Respondent's memorandum included portions of said Family Court record. The failure of Respondent to properly obtain an Order allowing the record in the Family Court to be offered into the record of the lower Court constituted a denial of Appellant's right for objection and ruling thereon by the lower Court.

It is respectfully submitted that the information and matters pertaining to portions of the Family Court record contained in Respondent's memorandum were improperly included in the findings of fact by the lower Court. Moreover, after Respondent's oral argument presented matters outside the record of evidence and contrary to the Family Court Order sealing the record in that Court, the

Appellant made written Motion that any reference to the sealed Family Court record be stricken and for compliance with the Family Court Order *sealing the record* of the prior Family Court proceedings between the parties.

This Motion for compliance was not ruled upon by the lower Court. Rather the lower Court's Order submitted by Respondent upon request of the Court and adopted as the Order of the lower Court now on appeal is replete with procedural and factual information from the sealed Family Court record.

Notwithstanding agreement by parties to this litigation that the record regarding any litigation between the parties in the Family Court had been, was and is sealed, the lower Court's Order submitted by Respondent upon request of the Circuit Court Judge and adopted as the Order of the lower Court now on Appeal is replete with procedural and factual information from the Family Court sealed record. The lower Court's findings of fact and resulting conclusions of law are likewise based entirely on the sealed Family Court record which even if it had not been sealed and was subject to admissibility was never entered as part of the record in this litigation.

It is axiomatic beyond the need for citation that a Court Order must be based upon findings of fact contained within the record before the Court issuing such Order. In the instant matter, not only was there an absence of proper Motion by Respondent upon which a dismissal ruling could have been based, but more significantly Respondent failed to submit any admissible evidence supporting its contentions for dismissal and giving rise to a legal factual basis for the findings of fact and conclusions of law made in the instant matter by the lower Court.

It is respectfully submitted that in the absence of evidentiary support in the record for the findings of fact upon which the lower Court based its conclusions of law and granted Respondent's Motion that the same should be reversed and remanded to the lower Court for further proceedings in accord with law.

ARGUMENT

II.

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT IN THE INSTANT MATTER FOR THE LACK OF SUBJECT MATTER JURISDICTION ON THE GROUNDS OF *MOSLEY V. MOSIER*, 278 S.C. 348, 306 S.E. 2d 624 (1983) WHERE THE CONTRACT AT ISSUE ASSUMING *ARGUENDO* THAT IT

HAD BEEN PROPERLY SUBMITTED INTO EVIDENCE TO BE CONSIDERED BY THE LOWER COURT CLEARLY SET FORTH THE PARTIES INTENT THAT THE FAMILY COURT DID NOT HAVE EXCLUSIVE JURISDICTION OVER THE CONTRACT IN THE INSTANT MATTER.

Assuming for the purposes of Appellant determination, that the contract in issue was properly before the lower Court and is now properly before this Court, an analysis of the said contract preponderates in favor of the conclusion it was the parties' intent that the Family Court did not have exclusive jurisdiction of the Agreement between the parties. Our Supreme Court held in the seminal case of *Mosley v. Mosier*, 278 S.C. 348, 306 S.E. 2d 624 (1983) that words of art would, after Mosley, no longer make a distinction in connection with jurisdiction for domestic agreements. Rather jurisdiction would be determined by the intent of the parties concerning that issue.

In the instant case, the intent of the parties that they at the very least contemplated if issues arose in connection with their agreement that the Circuit Court would have concurrent jurisdiction and that the Family Court would not have exclusive jurisdiction arises by reason of the following facts:

- a. That the contract submitted by Respondent at paragraph 15 of same provided that said contract was a binding one and, as such, was enforceable at law.
- b. That said contract inured to the benefit of the assigns and successors of the parties over whom the Family Court would not necessarily have jurisdiction.
- c. That the said contract included releases from and to two (2) parties other than the litigants over whom the Family Court would have no jurisdiction.
- d. That the said contract included releases from two (2) parties other than the litigants, which releases if presented as a defense in any litigation, would give rise to the right of a jury trial, not be afforded in Family Court.

Moreover the law supports Appellant's contention that the lower Court erred in dismissing Appellant's Complaint for the reason. *Hazel v. State*, 377 S.C. 60, 659 S.E.2d 137 (S.C. 2008; *In the Matter of Shaquille O'Neal*, 385 S.C. 243, 684 S.E.2d 549 (S. C. 2009). Furthermore, as to causes of actions 2 through 7 for Tort, Breaches of Contract, etc., even if an intent had not been indicated, as it has been, for concurrent, if not exclusive jurisdiction in the Circuit Court, the failure to permit Appellant to proceed on those causes of action transgressed and denied Federal and State Constitutional right to jury trial and due process.

It is respectfully submitted for the foregoing reasons and in accord with the applicable law the lower Court should be reversed and the case remanded for further proceeding in the Court of Common Pleas.

ARGUMENT

3

THE LOWER COURT ERRED IN ITS CONCLUSIONS OF LAW THAT S.C.CODE §§20-3-690 AND 63-3-50 (1976, AS AMENDED) PROVIDED FOR EXCLUSIVE FAMILY COURT JURISDICTION OF THE INSTANT MATTER WHEN THOSE SOUTH CAROLINA CODE SECTIONS DO NOT PROVIDE THE FAMILY COURT EXCLUSIVE JURISDICTION IN THE UNDERLYING CASE AND §§63-3-50(A)(2)(25)(30) VIOLATE SOUTH CAROLINA CONSTITUTION ART.3 §17.

Appellant's first cause of action in the Amended Complaint is one for declaratory judgment that a certain contract between the parties involving property located in Richland County and Appellant's IRA account was void *ab initio* as against public policy, on the basis, *inter alia*, that part of the consideration was one for an improper *quid pro quo*, i.e. the transfer of property and mutual releases for Appellant's agreement to dismiss certain criminal charges against Appellant and the parties' mutual agreement not to file grievance complaints against any lawyer representing either of them.

The starting point in analyzing Respondent's Pleading below, to the extent the same can be considered one for dismissal for lack of subject matter jurisdiction is a

determination of the definition of "subject matter jurisdiction". In *Hopkins vs. Harrell*, (2002) 574 S.E. 2nd, 747, 352 S.C. 517, the South Carolina Court of Appeals (J. Goolsby) set forth that definition of subject matter jurisdiction as follows:

"Subject matter jurisdiction is the 'power to hear and determine cases of the general class to which the proceedings in question belong.'"

The Common Pleas Court clearly has the power to hear and determine cases to which the proceedings in this instant matter belong pursuant to several sections of the Declaratory Judgments Act. Section 15-53-20, provides that:

"Courts of record within their respective jurisdictions have power to declare rights, status and other legal relations..."

S.C. Code §15-53-30 (1976, as amended) provides that:

"That any person interested under a deed, will, written contract, or other writing constituting a contract or whose rights, status or other legal relationships are effected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations there under."

And most notably section 15-53-90 of the Declaratory Judgments Act provides:

"When a proceeding under this chapter involves the determination of an issue in fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined of other civil actions in the court in which the proceeding is pending. All existing rights to jury trials are hereby preserved."

The gravamen of Appellant's first cause of action is whether a certain contract between the parties involving property in Richland County and Appellant's IRA account, among other things should be declared void as being against public policy because part of the consideration was Respondent's agreement to dismiss certain criminal charges brought by her against the Appellant. (Amended Complaint, p. ____). Respondent admits that she entered into an agreement with Appellant and further admits that as part of the consideration of that agreement she withdrew criminal complaints against the

Appellant. (Answer to Amended Complaint, Motion to Dismiss, and Counterclaims, p. _____).

In light of the Family Court Order sealing the record, which requires that the lower Court not consider any matters related to any action between the parties in the Family Court and/or any reference to any such matters, there is no admissible evidence in the record from which the Court can legitimately determine any fact other than the Appellant's allegations and Respondent's admissions that a certain contract was entered between the parties, the terms of which included as consideration an agreement by Respondent to withdraw criminal complaints in exchange for certain consideration from the Appellant. (Order Sealing Record)

Applying §15-53-20, §15-53-30, and §15-53-90, together with the definition of "subject matter jurisdiction" as set forth in *Hopkins* (supra) it is manifestly clear that the lower Court had the power to declare the rights and particularly the status of the alleged contract; further the lower Court had the power to hear and determine the question of the validity of the contract referenced in the complaint and whether or not that contract violated public policy especially in view of the parties agreement that part of the consideration of the contract on Respondent's part was the agreement to withdraw criminal complaints against the Appellant in exchange for certain consideration provided by the Appellant. Moreover, Appellant's right to a jury trial is preserved and can only be afforded through the Court of Common Pleas.

Accordingly based on the foregoing, it is respectfully submitted that Respondent's Pleading for dismissal for lack of subject matter jurisdiction as to Appellant's first cause

of action should have been denied and the lower court erred in dismissing the Appellant's Amended Complaint.

In the alternative if Respondent's Pleading is viewed for judgment on the pleadings under Rule 12(c) SCRCF it must be denied under the well established rule that a 12(c) motion can only be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. A Judgment on the pleadings is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the Appellant would entitle Appellant to judgment. Lydia vs. Horton 343 S.C. 376, 540 S.E. 2nd, 102 (Ct App 2000).

The pleadings in the lower court allege several causes of action which, if resolved in the Appellant's favor, would have entitled Appellant to judgment. Applying the holding in Lydia (supra) along with the well settled principal that all properly pleaded factual allegations are deemed admitted for purposes of considering a Motion for judgment on the pleadings Baker Hospital vs. Fireman's Fund Ins. Company 314 S.C. 98, 441 S.E. 2nd, 822 (1994), required that Respondent's Pleading, if it be one under Rule 12(c) SCRCF, also be denied.

AS TO APPELLANT'S REMAINING CAUSES OF ACTION

It is clear beyond the need for citation or analytical discussion that having set aside all references to any matters and any facts presented to the lower Court pertaining to any Family Court litigation between the parties as the Court was required to do pursuant to the Family Court Order sealing the record of any proceedings between the parties in the Family Court, that the allegations of Appellant's remaining causes of action clearly give rise to jurisdiction by the lower Court on numerous grounds not the

least of which is that all of the causes of action entitle Appellant to the right of jury trial which right is only affordable through the Court of Common Pleas.

It is of significance to note that S.C. Code §63-3-50, which provides the certain instances where the Family Court has exclusive jurisdiction and which is relied upon most heavily by Appellant, does not give the Family Court exclusive jurisdiction in actions related to contracts between the parties. The section provides exclusive jurisdiction in the following circumstances:

...

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and person property of the marriage and attorney's fees, if requested by either party in the pleadings;

...

(25) to modify or vacate any order issued by the court;

...

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such prohibition; (emphasis added)

S.C. Code § 63-3-50.

As set forth hereinabove the Family Court has jurisdiction over matters to carry out and enforce the provisions of its title only on matters that do not require the intervention of a jury.

The Amended Complaint in the instant case states claims which are brought and are triable *by intervention of a jury*. Accordingly, it is respectfully submitted for the

reasons set forth above as cause of action for declaratory judgment, and for the further reason as set forth herein as to the remainder of Appellant's causes of action the Respondent's Pleading for dismissal on either grounds set forth and particularly on the grounds of subject matter jurisdiction should have been denied.

Assuming *arguendo*, the lower Court was not constrained and limited as set forth herein by the Order of the Family Court sealing the record of any litigation between the parties in the Family Court and assuming further, *arguendo*, that the lower Court could have correctly entertained evidence and information from any prior Family Court litigation between the parties and assuming further *arguendo*, that the agreement attached to Appellant's brief below was proper and could be considered, the lower Court would still have had appropriate jurisdiction including subject matter jurisdiction in this case.

The South Carolina Supreme Court case of Mosley v. Mosier, 279 S.C.. 348, 306 S.E. 2nd, 624 (1983) specifically sets forth that the Family Court has exclusive jurisdiction of an approved settlement agreement unless the agreement itself evidences an indication by the party that jurisdictions can lie elsewhere. Even assuming *arguendo* that this Court could review the agreement submitted by Respondent, contrary to the Order Sealing the Record, such review would clearly manifest and indicate an intention on the part of the parties for the Family Court not to have exclusive jurisdiction over any dispute arising out of any agreement between them. Again assuming *arguendo* this Court could consider the last paragraph of the Agreement, paragraph 15, the same provides "*This agreement is a binding contract and is enforceable as such under law*". This paragraph is preceded by a statement that the agreement if approved is enforceable though the contempt powers of the Family Court. The provision of paragraph 14 would negate the

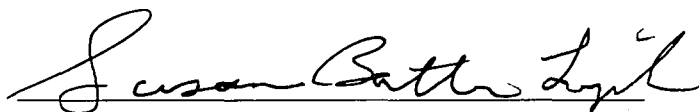
necessity of the final paragraph quoted hereinabove unless the parties had intended that the Family Court would not have exclusive jurisdiction.

Additionally, the contract by its terms inures to the benefit of heirs and assigns over which the Family Court would not have any exclusive jurisdictional rights. And finally the contract incorporates certain releases of claims involving parties other than the Appellant and Respondent over whom the Family Court would again not *necessarily* have jurisdiction in connection with any matters arising out of any such release of claims. If, for example, an action was brought in Circuit Court against any third party referenced in the agreement, the third party could not legitimately defeat the right of a jury trial on any such action merely by claiming a release nor could the Family Court have any jurisdiction under any circumstances over the third party or any such action by Appellant or Respondent against any third party.

The agreement also incorporates an agreement of the parties not to “file any lawsuits, complaints or *grievances* against the other or any agents or assigns of the other...” The prohibition against filing any grievances necessarily relates to either of the parties attorneys and would in and of itself be an agreement clearly prohibited by public policy.

CONCLUSION

In conclusion the Order of the lower Court dismissing the Appellant's Amended Complaint should be reversed and the matter remanded to the lower court for proceedings.



Susan Batten Lipscomb
John Richard Lipscomb
LIPSCOMB LAW FIRM, P.A.
1634 Main St., Suite 200
Columbia, SC 29201
Telephone: (803) 233-6654
Fax: (803) 233-6663
Email: LipscombLaw@Gmail.com
Attorneys for Plaintiff

December 6, 2010
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-DR-40-05911

RECEIVED
DEC 08 2010
SC Court of Appeals

Howard Hammer Appellant

v.

Shirley Hammer a/k/a Shirley Grace Hightower.....Respondent

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Summons and Complaint filed August 18, 2009.
2. Answer, Motion to Dismiss and Counterclaims filed October 1, 2009.
3. Amended Complaint filed November 9, 2009.
4. Answer to Amended Complaint, Motion to Dismiss and Counterclaims
filed November 19, 2009.
5. Reply filed December 11, 2009.
6. Transcript of Record dated March 2, 2010.
7. Plaintiff/Appellant's Motion dated and filed April 2, 2010, for Order
Requiring Compliance with Sealing of Record Order of Family Court and Motion to
Strike from pleadings and Memorandum of Defendant/Respondent all references
pertaining to the record of the Family Court litigation between the parties hand-delivered
to the Honorable L. Casey Manning April 2, 2010.

8. Order of the Honorable John M. Rucker, presiding Judge, Family Court for the Fifth Judicial Circuit sealing record in the case of Shirley Hammer, Plaintiff v. Howard Hammer, Defendant (domestic litigation referenced in Defendant's Memorandum and lower Court Order) dated and filed August 19, 2009.

9. Order of the Honorable L. Casey Manning, dismissing Complaint (not ending action) dated and filed April 14, 2010.

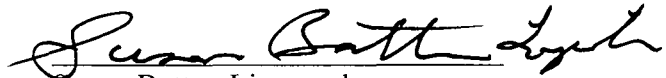
10. Plaintiff's/Appellant's 59(e) Motion filed April 28, 2010.

11. Order denying Motion to Reconsider dated and filed May 18, 2010.

12. Notice of Appeal filed June 17, 2010.

I certify that this designation contains no matter which is irrelevant to this appeal.

December 6, 2010



Susan Batten Lipscomb
1634 Main Street, Suite 200
Columbia, SC 29201
(803) 233-6654
Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer Appellant

v.

Shirley Hammer Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on
December 6, 2010 Initial Brief of Appellant *and Designation of Matter* was served on counsel of record by causing a
copy to be placed in the U.S. Mail postage prepaid addressed as set forth below:

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

Susan B. Lipscomb

RECEIVED
DEC 08 2010
SC Court of Appeals

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
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LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

December 6, 2010

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Howard Hammer v. Shirley Hammer
Civil Action #: 2009-DR-40-05911
Tracking Number: 2010164067

Dear Ms. Gee:

Enclosed for filing please find the original Initial Brief and Designation of Matter to be Included in the Record on Appeal, together with Proof of Service.

By copy of this letter, we are notifying the counsel of record of this communication and serving on them a copy of the documents sent for filing.

Thank you for your assistance in this matter.

RECEIVED
DEC 08 2010
SC Court of Appeals

Very truly yours,



Susan Batten Lipscomb

cc: Desa Ballard, Esquire
Stephanie Nichole Weissenstein, Esquire

The South Carolina Court of Appeals

Howard Hammer,

Appellant,

v.

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

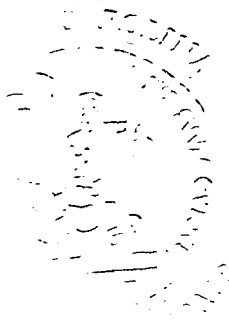
Respondent.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2009-CP-40-05911

ORDER

Pursuant to a telephone conference with the parties, the due date for the Appellant's Initial Brief and Designation of Matter has been extended until December 6, 2010. Thereafter, the Respondent's Initial Brief and Designation of Matter shall be filed and served by January 19, 2011.

IT IS SO ORDERED.



JOHN CANNON FEW, CHIEF JUDGE

BY

Janya C. G.
Clerk

Columbia, South Carolina

cc: Susan Batten-Lipscomb, Esquire
Desa Ballard, Esquire

FILED

11/29/10 *[Signature]*



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

JOHN C. CALHOUN BUILDING
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1890
FAX: (803) 734-2373
E-MAIL: jfew@sccourts.org

November 1, 2010

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

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

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Counsel:

This letter serves as an Order granting Appellant's request for an extension of time in which to file the Appellant's Initial Brief and Designation of Matter. I have extended the due date until November 29, 2010. I realize that this extension may not give you all the time you need to complete the Appellant's Initial Brief and Designation of Matter. I have set a conference call for 10:30 a.m. on Tuesday, November 23, 2010 to discuss an overall approach to setting due dates for all filings in this appeal. **The Appellant is responsible for initiating the conference call by getting all parties on the phone at the allotted time.** The call should last less than ten minutes. The participants in the call will include counsel for all parties and me. In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Tuesday, November 23, 2010.

Sincerely yours,

John Cannon Few, by Janyce A. G...
John Cannon Few
clerk

JCF/laf

FILED

11/1/10



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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FAX: (803) 734-1839
www.sccourts.org

November 1, 2010

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

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Ballard:

The following Order has been endorsed on Respondent's Motion to Dismiss Appeal in the above entitled case on appeal.

"Denied.

s/ John Cannon Few C.J.
For the Court

November 1, 2010."

Please be advised Appellant's Initial Brief and Designation of Matter must be served and filed no later than November 23, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

RECEIVED

OCT 08 2010

SC Court of Appeals

DENIED.

Howard Hammer,

Appellant,

vs.

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

Respondent.

MOTION TO DISMISS APPEAL

FILED

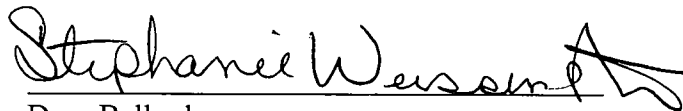
Master 11/10/10

Respondent moves to dismiss this appeal, based on the failure by the appellant to comply with the Rules of Court. In support of this motion, Respondent would show:

1. Notice of Appeal in this matter was filed on or about June 16, 2010.
2. Pursuant to Rule 207, SCACR, the appellant must order the transcript within ten days of the Notice of Appeal and appellant must furnish opposing counsel and the Court with copies of his communication with the court reporter.
3. The transcript was requested on or around June 28, 2010 by Appellant, and ordered on or around July 7, 2010 by Respondent. The Court Reporter is given 60 days to prepare the transcript, pursuant to Rule 207(a)(2). The Court records indicate that Appellant should have received the transcript on August 27, 2010, and Respondent would show that she received a copy of the transcript on September 3, 2010.

4. By letter dated October 6, 2010, Appellant notified the court and Respondent that "we did not receive the transcript until after September 2, 2010." This vague statement is intelligible, and Respondent assumes Appellant received the transcript on or about the date as Respondent. Therefore, the initial brief was due on or before October 4, 2010. (Rule 208(a)(1), SCACR).
5. Appellant did not contact Respondent regarding an extension to file and did not timely contact the court. Appellant's request for an extension is out of time.
6. Pursuant to Rule 260, SCACR, the Court of Appeals may dismiss the appeal for failure of the Appellant to comply with the Rules.

Wherefore, having fully set forth the grounds for the relief sought, Respondent moves to dismiss this appeal.



Desa Ballard
Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR RESPONDENT

October 8, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 08 2010

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

Howard Hammer,

Appellant,

vs.

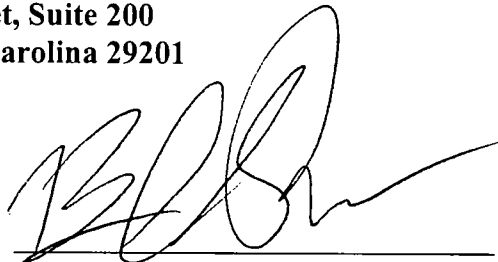
Shirley Hammer, a/k/a
Shirley Grace Hightower,

Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that she has, this date, caused to be served a copy of the **Motion to Dismiss** upon opposing counsel in this matter via by regular U.S. mail delivery, as well as certified U.S. mail, return receipt requested and restricted delivery by depositing all in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Susan Batten Lipscomb
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia South Carolina 29201



Brooks C. Schumacher
Paralegal

October 08, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY

RECEIVED

OCT 07 2010

SC Court of Appeals

Casey Manning Circuit Court Judge

Case No. 2009-CP-40-05911
Tracking Number 2010164067

Howard Hammer Respondent

v.

Shirley Hammer Appellant

**AMENDED AND CORRECTED
PROOF OF SERVICE**

I, Susan Batten Lipscomb, attorney for Defendant-Appellant, do hereby certify that on October 6, 2010, a copy of the **Motion for Extension of time to file Initial Brief and Designation of Matter to be Included in Record on Appeal** was served on counsel of record telefax of the same to them and on October 7, 2010, a copy of the same was served by mailing a copy to them by United States Mail, postage prepaid, addressed as set forth below:

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


Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

October 7, 2010

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
OCT 07 2010
SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer
Civil Action #: 2010-DR-40-05911
Tracking Number: 2010164067

Dear Ms. Gee:

Enclosed for filing please find the original and six copies of an Amended and Corrected Proof of Service of the Motion for Extension of Time to File Initial Brief and Designation of Matter to be Included in the Record on Appeal.

By copy of this letter, we are notifying the counsel of record of this communication and serving on them a copy of the documents sent for filing.

Thank you for your assistance in this matter.

Very truly yours,



Susan Batten Lipscomb

cc: Desa Ballard, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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www.sccourts.org

October 8, 2010

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Lipscomb:

We have received your Motion to Extend Time to File Initial Brief and Designation of Matter on the above case. However, the Proof of Service shows you served the opposing counsel on May 14, 2010. Please provide an Amended Proof of Service within ten (10) days of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Casey Manning Circuit Court Judge

Case No. 2010-CP-40-05911
Tracking Number 2010164067

RECEIVED
OCT 06 2010
SC Court of Appeals

Howard Hammer Respondent

v.

Shirley Hammer Appellant

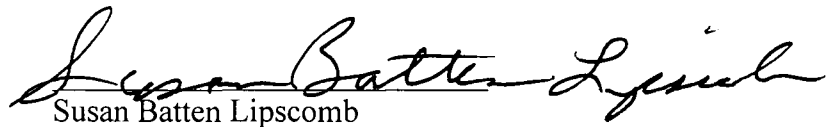
**MOTION TO EXTEND TIME TO FILE INITIAL BRIEF AND DESIGNATION
OF MATTER TO BE INCLUDED IN RECORD ON APPEAL**

Pursuant to Rules 240 and 263, SCRAP, Appellant moves for extension of time to file an Initial Brief and Designation of Matter to be Included in the Record on Appeal. Attorney for Appellant received the Transcript of Record of the hearing on or about Friday, September 3, 2010. Therefore, the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal were due October 4, 2010. The undersigned received the October 1, 2010 letter from the Court stating that the appeal may be dismissed if the status of the transcript was not received within ten days of the date of the letter. The undersigned did not realize the due date until today when responding to that letter. This motion is made as soon as the error was realized and there is no prejudice to Respondent. Attorney for Appellant hereby respectfully requests and moves for a thirty day extension of time from October 4, 2010, to file an Initial Brief and Designation of Matter to be Included in the Record on Appeal.

(Signature on following page)

10/4/10 1st motion
11/3/10
SBL
1

October 6, 2010

A handwritten signature in cursive script, reading "Susan Batten Lipscomb".

Susan Batten Lipscomb
1634 Main Street, Suite 200,
Columbia, SC 29201 Tel.(803) 233-6654
Attorney for Defendant-Appellant

5/3/11
2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Casey Manning Circuit Court Judge

Case No. 2010-CP-40-05911
Tracking Number 2010164067

RECEIVED
OCT 06 2010
SC Court of Appeals

Howard Hammer Respondent

v.

Shirley Hammer Appellant

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Defendant-Appellant, do hereby certify
that on May 14, 2010, **Motion for Extension of time to file a Initial Brief and**

Design: *Date Wrong* **led in Record on Appeal** was served on counsel of
record ailing a copy of the same to them by United States
Mail,] set forth below:

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

And Via Fax

Susan Batten Lipscomb
Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
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LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

October 6, 2010

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
OCT 06 2010
SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer
Civil Action #: 2010-DR-40-05911
Tracking Number: 2010164067

Dear Ms. Gee:

In response to the Court's letter of October 1, 2010, we did not receive the Transcript in the referenced matter until after September 2, 2010. For some reason I thought the Court Reporter had requested an extension. I apologize for not notifying the Court.

Enclosed for filing please find the original and six copies of Appellant's Motion for Extension of Time to File Initial Brief and Designation of Matter to be Included in the Record on Appeal. Thank you for consideration of this Motion.

By copy of this letter, we are notifying the counsel of record of this communication and serving on them a copy of the documents sent for filing.

Thank you for your assistance in this matter.

Very truly yours,


Susan Batten Lipscomb

cc: Desa Ballard, Esquire

*Susan Lipscomb called + said
the civil Action# should be
2009-DR-40-05911*



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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October 1, 2010

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Ms. Lipscomb:

Our records indicate that the transcript in the above matter should have been delivered by August 27, 2010. As of today's date, we have received no information indicating that the court reporter has been granted an extension, nor have we received your initial brief.

If you have not yet received the transcript, you must contact the Office of Court Administration per rule 207 of the South Carolina Appellate Court Rules. The address for Court Administration is as follows:

South Carolina Office of court Administration
1015 Sumter Street, Suite 201
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Desa Ballard, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

August 2, 2010

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

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

Re: Hammer, Howard v. Hammer, Shirley
2010164067

Dear Counsel:

Enclosed are copies of the Court's Orders regarding your Motion to Bifurcate and/or Declare Status of Trial Court Proceedings and Motion to Return to Motion to Bifurcate and/or Declare Status of Trial Court Proceedings and Motion to Seal and Strike.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/dw

The South Carolina Court of Appeals

Howard Hammer,

Appellant,

v.

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

Respondent.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2009-CP-40-05911

ORDER

Appellant has filed a motion to seal the appellate record, arguing the factual background set forth in Respondent's motion to bifurcate and certain orders of the family court attached to the motion were part of the family court record which was ordered sealed.

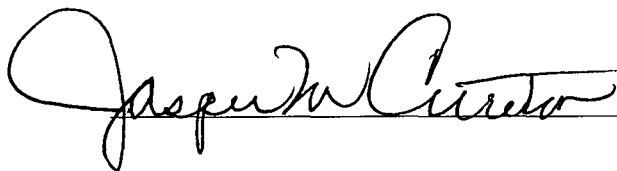
Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the inherent power to control our own records. See Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). Rule 41.1(b), SCRCF, requires a motion to seal to identify, with specificity, the documents or portions of documents for which sealing is considered necessary, to contain a non-confidential description of the documents, and to be accompanied by a separately sealed attachment labeled "Confidential Information to be submitted to Court in Connection with the Motion to Seal." The Rule also requires the moving party to state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

(1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

When ruling on a motion to seal, the court may also consider the public interest in the proceeding; the private or public status of the litigants and case generally; whether release would enhance the public's understanding of an important historical event; whether the public already has access to information contained in the records; whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. Ex parte Capital U-Drive-It, Inc., 369 S.C. at 12, 630 S.E.2d at 470 (2006).

Appellant's motion fails to address the factors listed above. Accordingly, the motion to seal is denied without prejudice to appellant's right to provide the Court with the information required by Rule 41.1(b), SCRPC and Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006).

AND IT IS SO ORDERED.

 A.J.

Columbia, South Carolina

July 30,, 2010

cc: Susan Batten Lipscomb, Esquire
Desa Ballard, Esquire

FILED

7/30/10

The South Carolina Court of Appeals

Howard Hammer,

Appellant,

v.

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

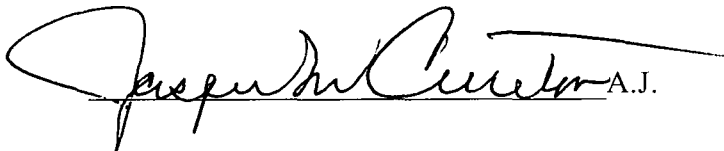
Respondent.

The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2009-CP-40-05911

ORDER

Respondent has filed a "motion to bifurcate and/or declare status of trial court proceedings." Specifically, Respondent is asking this Court to "bifurcate" her counterclaims against Appellant "so that the counterclaims may move forward in the trial court during the pendency of this appeal." We deny Respondent's motion, finding the motion concerns a matter for determination by the trial court. See Rule 205, SCACR ("[T]he Appellate Court shall have exclusive jurisdiction over the appeal; the lower court . . . shall have jurisdiction to entertain petitions for writs of supersedeas Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal."). We specifically note that nothing herein bars Appellant from moving for a stay below.

AND IT IS SO ORDERED.

 A.J.

Columbia, South Carolina

July 30, 2010

FILED
7/30/10 

cc: Susan Batten Lipscomb, Esquire
Desa Ballard, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUL 14 2010
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

Howard Hammer,

Appellant,

vs.

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

Respondent.

**REPLY TO APPELLANT'S RETURN
REGARDING RESPONDENT'S MOTION TO BIFURCATE
AND/OR DECLARE STATUS OF TRIAL COURT PROCEEDINGS**

Respondent Shirley Hammer moved this Honorable Court for an order bifurcating her counterclaims against appellant Howard Hammer so that the counterclaims may move forward in the trial court during the pendency of this appeal. In addition, Mrs. Hammer sought an order from this Court declaring that the remaining counterclaims are unaffected by this appeal pursuant to Rule 205, SCACR, such that the parties can proceed in the trial court and mediation.

Mr. Hammer argues that Mrs. Hammer's motion to bifurcate should be denied on the grounds that, if "this Court reverses the lower court's dismissal of Appellant's complaint for lack of subject matter jurisdiction, and the lower court finds the contract is void, none of Respondent's causes of action would be viable and would be subject to

dismissal” because “all of Respondent's causes of action are premised on the validity of the contract, which Appellant sought to be declared null and void.” (Return, p. 3). Mr. Hammer’s assertions regarding the counterclaims are erroneous.

Mrs. Hammer asserted permissive counterclaims seeking to recover damages for slander of title, tortious interference with an existing contractual relationship, intentional infliction of emotional distress, abuse of process, invasion of privacy/wrongful intrusion as to contracts to sell and purchase, and malicious prosecution related to her attempts to sell her home (which she was entitled to sell by valid court order) and to purchase a new home. Despite having no legal claim to the home, Mr. Hammer filed a *lis pendens* against Respondent’s house. Essentially, Mr. Hammer asserts that, if summary judgment is reversed and if the marital settlement agreement is declared void, then Mrs. Hammer would not have had sole possession of the St. James property. The point Appellant misses is that, when Mrs. Hammer sold the house on St. James, she did have sole, legal possession of the property and was entitled to do with it as she pleased.

Nevertheless, Mr. Hammer’s egregious and harassing behavior and his interference with Mrs. Hammer’s sale of the St. James home caused Mrs. Hammer immediate financial harm. Furthermore, his attempt to block the sale of the home by filing *lis pendens* at a time during which he had no legal claim to the property was improper, just as his attempts to stalk his ex-wife (by either preventing the purchase of her new home or by buying a house in the same neighborhood as she was) were intended to harass her and cause her emotional distress.

Finally, by its very definition pursuant to Rule 13, SCRCP, “a pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or

occurrence that is the subject matter of the opposing party's claim." Mrs. Hammer's counterclaims arise from Mr. Hammer's actions which are unrelated to the Family Court orders and therefore not subject to that jurisdiction. The permissive counterclaims are properly before the circuit court and should be allowed to proceed separate from Mr. Hammer's appeal.

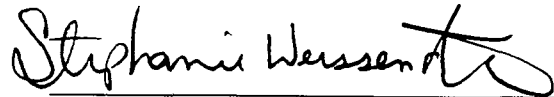
In the second part of his Return, Mr. Hammer avers that Mrs. Hammer's recitation of facts in her Motion to Bifurcate be stricken because she referred to the Family Court record and the contents of the orders. Mr. Hammer continues to claim that the Family Court orders are sealed and, therefore, that any reference to their contents is a violation of the sealing order. He insists that *this* action is a declaratory judgment on "a certain contract between the parties," and he refuses to acknowledge that his "certain contract" is a marital settlement agreement that was turned into family court order, which he unsuccessfully challenged in the family court. Mrs. Hammer cannot understand how Mr. Hammer intends to litigate a contract he insists the court is not allowed to see. Mr. Hammer brought the underlying lawsuit and this appeal against his former wife, Respondent Shirley Hammer, to challenge the validity of their marital settlement agreement; therefore, his claims that any reference to the family court orders and their contents is a violation of the sealing order is ludicrous. To put it in simplest terms: he started it.

Further confusing things is Mr. Hammer's assertion that Mrs. Hammer's reference in her motion to the criminal charges levied against him is misleading, is an attempt to prejudice him, and is not relevant to the motion for bifurcation. Mrs. Hammer would show that the criminal allegations against Mr. Hammer are relevant to all aspects

of this case, primarily because the basis upon which Mr. Hammer rests his claim that the marital contract is void as violating public policy is that the contract required Mrs. Hammer to drop all criminal charges against him. Second, Mr. Hammer's past criminal actions support Mrs. Hammer's claims that he behaved in a harassing manner before and continues to do so even today.

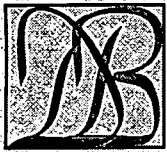
Mrs. Hammer seeks an order of this Court bifurcating this appeal from the matters which remain pending at the trial court level (*i.e.*, Mrs. Hammer's counterclaims) and declaring that the trial court proceedings on her counterclaims may continue during the pendency of this appeal.

Respectfully Submitted by:



Desa Ballard
Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone: (803)796.9299
Facsimile: (803)796.1066
E-mail: desab@desaballard.com
stephanie@desaballard.com
ATTORNEYS FOR RESPONDENT

July 13, 2010



Law Offices of Desa Ballard

Desa Ballard

Certified Mediator
also admitted in D.C.

Harvey M. Watson III
Stephanie Weissenstein

803.796.9299 telephone
803.796.1066 facsimile

www.desaballard.com

226 State Street
West Columbia, SC 29169

July 13, 2010

RECEIVED

JUL 14 2010

SC Court of Appeals

Via U.S. Mail Only
Honorable Tanya Gee
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Howard Hammer v. Shirley Hammer, a/k/a Shirley Grace Hightower*
Appeal from Richland County
Case No: 2009-CP-40-05911
Tracking No: 2010164067

Dear Ms. Gee:

Please find enclosed for filing the original and seven (7) copies of the **Reply to Appellant's Return Regarding Respondent's Motion to Bifurcate and/or Declare Status of Trial Court Proceedings**. I have also enclosed an original and seven (7) copies of a **Certificate of Service** reflecting service of the same by copy of this letter on the opposing counsel. Please clock in and return the additional copy of both documents in the enclosed self-addressed, stamped envelope.

With warm personal regards, I am,

Sincerely yours,

Megan Gresham
Paralegal
megan@desaballard.com

c: Susan B. Lipscomb, Esquire
Shirley Hammer (via e-mail only)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

RECEIVED

JUL 06 2010

SC Court of Appeals

Howard Hammer Appellant,

v.

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

**RETURN TO MOTION TO BIFURCATE AND/OR
DECLARE STATUS OF TRIAL COURT PROCEEDINGS
AND MOTION TO SEAL AND TO STRIKE**

Appellant Howard Hammer submits this Return to Respondent's Motion to Bifurcate and/or Declare Status of Trial Court Proceedings dated June 23, 2010. For the reasons set forth below Appellant requests that Respondent's Motion to Bifurcate be denied, but concurs with and joins in Respondent's request that the Court declare the status of the Trial Court Proceedings.

Appellant's Motion to Bifurcate should be denied on the grounds that:

- a. The Motion is contrary to the promotion of judicial economy and the interest of justice; and
- b. The Motion is a matter for determination by the lower court

Appellant further requests that Respondent's allegedly factual background set forth in the Respondent's Motion be removed and stricken from the record as submission

[Handwritten signature]
1

of the information is in violation of a Family Court order sealing the record in the matter of Hammer vs. Hammer, Family Court case #2005-DR-40-2871 (appropriate portion of Family Court order sealing record attached hereto as Exhibit A).

PROCEDURAL AND FACTUAL BACKGROUND

The factual background and primary issue expected to be before the Appellate Court is whether the lower court erred in dismissing Appellants' complaint for Declaratory Judgment, where Appellant's action alleged that a certain contract between the Appellant and Respondent was void ab initio as against public policy. The Appellant would prove at trial that the contract was based on consideration that required Appellant to agree to an Order of Protection in the Family Court as to Respondent and as to her sister, a third person not a party to any matter involving the issues between the parties in the Family Court. Further Appellant would prove at trial the contract between the parties, upon which the Declaratory Judgment Action is based, violated the public policy of this state in that the contract agreement to enter to an Order of Protection was consideration on his part, required by Respondent for her withdrawal of false criminal charges filed by Respondent and her sister.

Appellant in his complaint in the lower court also alleged, in the alternative, among other causes of action, causes of action for breach of contract and conversion. Respondent made a Motion to Dismiss the complaint on the basis that the Circuit Court lacked subject matter jurisdiction. This appeal is based in part on the fact that no valid evidence was presented to support Respondent's position and the lower court's orders.

Respondent counterclaimed in the lower court for Slander of Title, Tortious Interference with Contract, Interference with Contractual Relationship, Intentional

48
2

Infliction of Emotional Distress, Abuse of Process, Invasions of Privacy/Wrongful Intrusion as to Contracts to Sell and Purchase, and Malicious Prosecution. All of Respondent's causes of action are premised on the validity of the contract, which Appellant sought to be declared null and void.

In the event this Court reverses the lower court's dismissal for lack of subject matter jurisdiction, and the lower court finds the contract is void, none of Respondent's causes of action would then be viable and would be subject to dismissal.

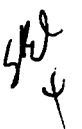
For the foregoing reasons, and in accordance with the principles of judicial economy, Appellant respectfully submits that Respondent's Motion to Bifurcate should be denied, and submits that this Court declare the status of the lower court's proceedings such that the Respondent's causes of action be permitted to proceed in the lower court until a proper motion to stay is made in the lower court, notwithstanding that the counterclaims would be invalid in the event this Court reverses the lower court's dismissal on the basis of subject matter jurisdiction and the lower court determines the contract is void as requested in the complaint for declaratory judgment.

APPELLANT FURTHER MOVES that Respondent's statements of alleged factual background be stricken and removed from the record and that this Court take such action as it deems appropriate in connection with the Order Sealing the Record. This motion is made on the following reasons:

- a. That the factual background directly or indirectly refers to matters ordered sealed by the Family Court order.
- b. That the Family Court orders attached as Exhibits A and B to Respondent's motion and referred to in paragraphs 3 and 4a and 4b of the Motion are part of

the Family Court Record which was ordered sealed and, accordingly, on information and belief are not final in that they are the subject of an appeal previously filed in this Court and/or the subject of the Rule 59(e) Motion remanded for hearing by this Court. In any event the same are irrelevant to the present action and prejudicial.

- c. That paragraph 5 fails to properly characterize the Declaratory Judgment Action, which in fact was brought on the basis that a certain contract between the parties was against the public policy of this state in that the contract was based on Respondent's requirement that Appellant agree to the entry of protective orders for his then ex-wife and sister-in-law, who was not a party to the Family Court action, in consideration for Respondent and her sister withdrawing certain false criminal warrants made against Appellant.
- d. That paragraph 5 in its motion is argumentative, and includes irrelevant, unnecessary, and improper accusations, unsupported by any evidence to the effect that Appellant has refused to comply with various court orders and resorted to the Circuit Court as an attempt to collaterally attack the Family Court proceedings, when the contract at issue in the lower court and in this appeal envisioned an action at law and in Circuit Court, provided that the Agreement was a binding contract and is enforceable as such under law.
- e. That paragraph 7 is misleading and appears to be an attempt to prejudice Appellant in the eyes of this Court in that Respondent is well aware, but does not state that all criminal charges against Appellant by his then wife and sister-in-law were thoroughly investigated by the Solicitor's office of the Fifth



Judicial Circuit for one and one-half years after the contract, found to be without merit, and accordingly dismissed with prejudice.

- f. That paragraph 7 of Respondent's Motion is irrelevant to the issue of bifurcation in that the Respondent is aware that any judgment in her favor on the counterclaims would be a nullity in the event this Court reverses the orders of the lower court, and the lower court decides in Appellant's favor on the substantive public policy issues. Accordingly, Respondent's causes of action will not be ripe for trial until this Court final action in this appeal.

In summary, based on the foregoing, and particularly in that Respondent's counterclaims would fail in the event of the Appellate Court reverses the lower court's orders and the lower court finds in Appellant's favor,

IT IS RESPECTFULLY SUBMITTED that in the interest of judicial economy and the fact that Respondent's claims are dependent on the decision of the Appellate Court in the matter on appeal, that Respondent's Motion to Bifurcate should be denied, and this Court declare that the counterclaims remain in the lower court for appropriate action until such motion to stay is formally presented to the lower court.

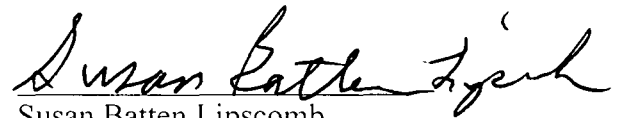
IT IS FURTHER RESPECTFULLY SUBMITTED, upon information and belief, this Court should strike and remove from the record the factual background set forth in Respondent's Motions for the reasons set forth above.

IT IS FURTHER RESPECTFULLY SUBMITTED that, in view of the action sealing the record between the parties in the Family Court action, and further in view of Respondent's use of documents and statements of matters ordered to be sealed, that the

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record in this Court be ordered to be sealed to protect the integrity and requirements of the Family Court Sealing Order.

Respectfully submitted,


Susan Batten Lipscomb

July 6, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SHIRLEY HAMMER,)

Plaintiff,)

vs.)

HOWARD HAMMER,)

Defendant.)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

DOCKET NO.: 05-DR-40-2871

ORDER SEALING RECORDJEANETTE W. McBRIDE
CLERK
& FAMILY COURT

2009 AUG 19 PM 4:46

RICHLAND COUNTY
FILED

The purpose of this Order is to seal the record herein from public inspection on the joint Motion of Plaintiff and Defendant pursuant to Rule 41.1, SCRPC.

In determining the request by Plaintiff and Defendant to seal the record in this matter, the Court has considered the relevant provisions of Rule 41.1, SCRPC. The Court finds that there is no public or professional significance to this litigation between Plaintiff and Defendant. Neither party is a public official and the press has not expressed any interest in these parties or their private matters. It is clear that these parties correctly perceive that the parties and/or their children could be substantially harmed by public disclosure of the private information herein sealed.

The Court further finds that there is no practical alternative other than sealing the entire record in this matter to protect the legitimate private interests of these parties to safeguard themselves and their children. The Court further finds that the public interest will be served in that the sealing of these private matters promotes the voluntary resolution of family-related issues, particularly where the parties have an expectation of confidentiality and privacy, as these parties do.

Based upon the foregoing, the Court finds and concludes that the joint request of Plaintiff and Defendant to seal the record in this matter is proper and complies with the provisions and intent of Rule 41.1, SCRPC.

NOW, THEREFORE, it is accordingly

ORDERED as follows:

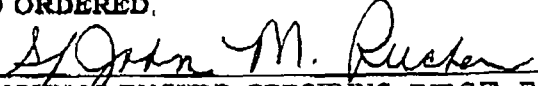
1. The Clerk of the Family Court for Richland County, South Carolina, is hereby directed and ordered to immediately and permanently seal the record herein, by affixing the original of this Order to the outside of the file herein, and is hereby directed and ordered to protect this file against inspection by the public at large or any person(s) or entity(ies).

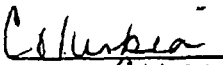
2. The record herein sealed shall not be inspected, opened, or otherwise discussed without an appropriate Order allowing any such activity, which shall only be issued after due and proper notice to both Plaintiff and Defendant and after due hearing.

3. Notwithstanding the foregoing, both Plaintiff and Defendant, their respective counsel, the Guardian *ad Litem* and the Court personnel shall be allowed access to this file and the use thereof in this litigation between Plaintiff and Defendant; provided, however, the documentation therein may be used only in connection with this litigation.

4. Any person(s) or entity(ies) violating the terms and conditions of this Order Sealing Record shall be subject to a contempt citation by this Court and appropriate punishment.

AND IT IS SO ORDERED.


JOHN M. RUCKER, PRESIDING JUDGE, FAMILY
COURT FOR THE FIFTH JUDICIAL CIRCUIT

 South Carolina
Dated: August 19, 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 06 2010

APPEAL FROM RICHLAND COUNTY
Circuit Court

SC Court of Appeals

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer

v.

Shirley Hammer Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for , do hereby certify that on June 17, 2010,

Notice of Appeal in a Civil Case was served on counsel of record by causing a copy to
be mailed in the U. S. Mail, postage prepaid, to her as addressed as set forth below:

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


Susan Batten Lipscomb

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

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JUL 06 2010

SC Court of Appeals

Howard Hammer

v.

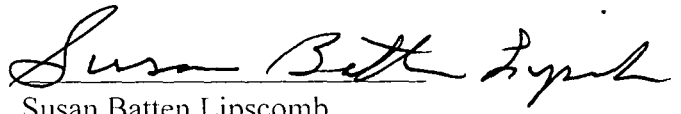
Shirley Hammer Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for , do hereby certify that on July 6, 2010,

Return to Motion to Bifurcate was served on counsel of record by causing a copy to be
mailed in the U. S. Mail, postage prepaid, to her as addressed as set forth below:

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


Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

July 6, 2010

HAND DELIVERED

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201

RECEIVED
1836
JUL 06 2010
25
SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer
Civil Action #: 2009-CP-40-05911

Dear Ms. Gee:

Enclosed for filing please find the original and six copies of Appellant's Return to Respondent's Motion to Bifurcate and/or Declare status of Trial Court Proceedings, together with Proofs of Delivery.

By copy of this letter, we are notifying the counsel of record of this communication and serving on them a copy of the documents sent for filing.

Thank you for your assistance in this matter.

Very truly yours,



Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
(With enclosures)



Law Offices of Desa Ballard

Desa Ballard
Certified Mediator
also admitted in D.C.

Harvey M. Watson III
Stephanie Weissenstein

803.796.9299 telephone
803.796.1066 facsimile

www.desaballard.com

226 State Street
West Columbia, SC 29169

July 09, 2010

RECEIVED

JUL 12 2010

SC Court of Appeals

Via United States Mail
Deborah M. McCurdy
1403 Geiger Avenue
Columbia, South Carolina 29201-1713

Re: *Howard Hammer v. Shirley Hammer a/k/a Shirley Grace Hightower*
Case No: 2009-CP-40-05911

Dear Ms. McCurdy:

We received a copy of Ms. Lipscomb's letter to you dated June 28, 2010, requesting the transcript of the hearing in the above-referenced matter held before Judge Manning on March 2, 2010. We would hereby request a copy of the same transcript. We will promptly remit payment upon receipt of your invoice. Thank you for your assistance.

With warm personal regards, I am,

Sincerely yours,

Megan Gresham
Paralegal
megan@desaballard.com

c: Susan B. Lipscomb, Esquire
Office of Court Administration
The Honorable Tanya Gee
Shirley Hammer (*via e-mail only*)

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

June 28, 2010

Ms. Deborah M. McCurdy
1403 Geiger Avenue
Columbia, SC 29201-1713

RECEIVED

JUL 01 2010

SC Court of Appeals

Re: Howard Hammer v. Shirley Hammer
2009-CP-40-05911

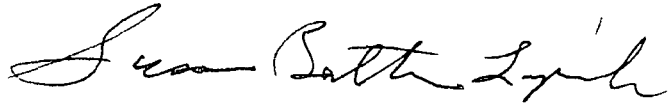
Dear Ms. McCurdy:

Please provide us with a transcript of the hearing before Judge Manning held on March 2, 2010, in the referenced matter.

We will pay your invoice for the Transcript on receipt.

Thank you for your assistance in this matter.

Yours very truly,



Susan Batten Lipscomb

cc: Desa Ballard, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 2, 2010

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
Case Tracking #: 2010164067

Dear Ms. Lipscomb:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

All parties are advised that the case caption for this matter is:

Howard Hammer,

Appellant,

v.

**Shirley Hammer, a/k/a Shirley Grace
Hightower,**

Respondent.

All future filings by any of the parties must feature the correct case caption as shown above.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,


Tanya A. Gee
CLERK

TAG/ec

cc: Desa Ballard, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 2, 2010

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main St., Ste. 200
Columbia, SC 29201

Re: Hammer, Howard v. Hammer, Shirley
Case Tracking #: 2010164067

Dear Ms. Lipscomb:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Desa Ballard, Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 25 2010
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

Howard Hammer,

Appellant,

vs.

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

Respondent.

**MOTION TO BIFURCATE AND/OR
DECLARE STATUS OF TRIAL COURT PROCEEDINGS**

Respondent Shirley Hammer (hereafter "Mrs. Hammer") moves this Honorable Court for an order bifurcating her counterclaims against appellant Howard Hammer (hereafter "Mr. Hammer"), so that the counterclaims may move forward in the trial court during the pendency of this appeal. In addition, Mrs. Hammer seeks an order from this Court declaring that the remaining counterclaims are unaffected by this appeal pursuant to Rule 205, SCACR, such that the parties can proceed in the trial court and mediation. In support of her motion, Mrs. Hammer would show:

I. FACTUAL BACKGROUND

1. Mr. & Mrs. Hammer were previously married to each other, and they have two (2) minor children, of whom Mrs. Hammer has exclusive custody.

2. Mrs. Hammer invoked the jurisdiction of the Richland County Family Court on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. She filed a Second Amended Complaint in the Family Court on December 6, 2007, seeking a divorce and other relief.
3. The Family Court litigation was settled in two phases. First, the property settlement agreement(s) was executed in May 2008 and incorporated into Orders by Judge Jones on May 12, 2008, with the Judgment of Divorce. Second, on June 23, 2009, the parties settled issues relating to child custody, visitation, and related matters. The Family Court entered its Orders approving this Settlement Agreement and Ending the Action on August 19, 2009 (Copies of these Orders are attached as Exhibits "A" and "B").
4. Beginning in May 2009, Mr. Hammer mounted three attacks in the family court against the 2008 and 2009 Settlement Agreements and Family Court Orders:
 - A. On May 4, 2009, Mr. Hammer sought to amend, modify, void, and set aside the May 12, 2008 Order and requested a new trial under Rule 60(b), SCRCF. By Order of Judge Jones entered September 1, 2009, this motion was dismissed with prejudice.
 - B. On or near August 19, 2009, Mr. Hammer, *pro se*, filed a Motion to Withdraw, Rescind, and Repudiate his consent to the June 23, 2009, Settlement Agreement. That motion was denied by Order of the Family Court (Judge Rucker) on January 27, 2010.

C. On September 4, 2009, Mr. Hammer filed a Motion to Reconsider, Amend, Alter, Modify and/or for a New Trial and Stay of the following four family court orders, each dated August 19, 2009:

- (1) Order for Transfer of Individual Retirement Account;
- (2) Order Sealing Record;
- (3) Order Approving Settlement Agreement; and
- (4) Order (Ending Action).

This omnibus motion was denied by Order of Judge Rucker, also on January 27, 2010

5. Mr. Hammer then filed this circuit court action, styled as a “declaratory judgment action,” in which he seeks an order finding that the May 12, 2008 agreement(s), on which the family court finalized his divorce from Mrs. Hammer, were improper. In an effort to disguise his blatant attempt to collaterally attack the family court proceedings (which remained ongoing because of Mr. Hammer’s continued refusals to comply with the various family court orders), Mr. Hammer’s circuit court complaint styled the subject matter as relating to “a certain contract entered into between the parties. . .” (Amended Complaint, Hammer v. Hammer, Case No. 2009-CP-40-05911, Para. 7).
6. In answering (and moving to dismiss) Mr. Hammer’s claims in this circuit court action, Mrs. Hammer asserted several permissive counterclaims seeking to recover damages for slander of title, tortious interference with an existing contractual relationship, intentional infliction of emotional distress, abuse of

process, invasion of privacy/wrongful intrusion as to contracts to sell and purchase, and malicious prosecution. (Answer to Amended Complaint, Motion to Dismiss, and Counterclaims filed November 23, 2009, attached as Exhibit C).

7. Following a hearing on Mrs. Hammer's motion to dismiss, at which Mr. Hammer and his counsel both argued¹, Judge Manning granted Mrs. Hammer's motion to dismiss Mr. Hammer's claims. Judge Manning also denied Mr. Hammer's Motion to Reconsider, which led to this appeal. (Orders dated April 14, 2010 and May 18, 2010, attached to undated Notice of Appeal served on June 17, 2010).

DISCUSSION

Mrs. Hammer's counterclaims against Mr. Hammer are unaffected by this appeal and relate to matters which are not affected by the jurisdictional dispute raised by Mr. Hammer in this appeal. Mrs. Hammer is informed and believes that, pursuant to Rule 205, SCACR, her remaining counterclaims may proceed at the trial court level during the pendency of this appeal.

However, anticipating that Mr. Hammer will assert otherwise, Mrs. Hammer seeks an order from this Court bifurcating this appeal from Mrs. Hammer's counterclaims, so that the trial court proceedings on the permissive counterclaims can proceed.

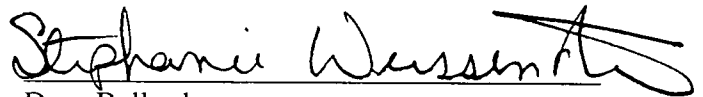
¹ Mr. Hammer filed this action *pro se*. After Mrs. Hammer answered the complaint, Mr. Hammer retained his present counsel. Mr. Hammer is a former member of the South Carolina bar, whose license is currently on interim suspension, based on his arrest for criminal charges including, *inter alia*, assaulting Mrs. Hammer. *Matter of Hammer*, 3778 S.C. 413, 663 S.E.2d 37 (2008).

The trial court has appointed Jean Bergeron, Esquire, as mediator in this matter, and the parties are attempting to agree on a mediation date regarding the matters remaining at the trial court level. At present, Mrs. Hammer is informed and believes that mediation will be scheduled to occur on June 30, 2010.

Wherefore, having fully set forth the grounds for the relief sought, Mrs. Hammer seeks an order of this Court:

- A. Bifurcating this appeal from the matters which remain pending at the trial court level, *i.e.*, Mrs. Hammer's counterclaims; and
- B. Declaring that the trial court proceedings on Mrs. Hammer's counterclaims may continue during the pendency of this appeal.

Respectfully Submitted by:



Desa Ballard

Stephanie Weissenstein

Law Offices of Desa Ballard

226 State Street

West Columbia, South Carolina 29169

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Facsimile: (803)796.1066

E-mail: desab@desaballard.com

ATTORNEYS FOR RESPONDENT

June 23, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
SHIRLEY HAMMER,)
Plaintiff,)
vs.)
HOWARD HAMMER,)
Defendant.)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

Docket No: 05-DR-40-2871

ORDER APPROVING
SETTLEMENT AGREEMENT

2009 AUG 19 PM 4:57
JAMES T. McLAREN
CLERK OF COURT
FAMILY COURT

DATE OF HEARING:

TRIAL JUDGE:

ATTORNEYS FOR PLAINTIFF:

ATTORNEYS FOR DEFENDANT:

GUARDIAN AD LITEM:

COURT REPORTER:

June 23, 2009

John M. Rucker

J. Mark Taylor

Timothy E. Madden

James T. McLaren

Richard G. Whiting

DeeAnne Varnadoe

This matter came before the Court on June 23, 2009 for a two (2) hearing in connection with certain Rules to Show Cause and Motions filed by the parties. Present and attending the hearing were the parties and their respective counsel and the Guardian ad Litem.

The record in this matter reflects that this action was commenced by the filing of a Summons and Complaint on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property and other relief as is more fully set forth in the Complaint. Plaintiff filed an Amended Complaint on September 9, 2005. Defendant filed an Answer and Counterclaim to the Amended Complaint on January 4, 2007. On December 6, 2007 Plaintiff filed a Second Amended Complaint, seeking a divorce and other relief.

On May 9, 2008 the parties entered into an agreement entitled "Partial Settlement of Outstanding Issues" which was approved by Order issued and filed May 12, 2008. The Court-approved Agreement resolved certain financial issues between



the parties, but reserved for later determination custody and visitation and attorney fees (incurred after May 12, 2008) issues. The parties were also divorced by Decree of Divorce issued by this Court on May 12, 2008.

Both parties have served and filed Financial Declarations in conformity with Rule 20 of the Family Court Rules.

At the call of the case on June 23, 2009, the parties, through counsel, requested that the Court allow them additional time to attempt to resolve the custody, visitation and related issues scheduled for hearing on that date, which the Court allowed. After a full day of negotiations, the parties are now before the Court requesting approval of their Settlement Agreement.

The Settlement Agreement of the parties was presented in open Court. Both parties were sworn and testified concerning their understanding of the Settlement Agreement, and the facts and circumstances giving rise to the Agreement.

After complete review of this matter, the Court makes the following findings of salient fact and conclusions of law:

1. Plaintiff and Defendant are citizens and residents of the County of Richland, State of South Carolina, having been citizens and residents of Richland County, South Carolina for more than one (1) year preceding the commencement of this action.

2. I find that this Court has *in personam* jurisdiction over the parties, has subject matter jurisdiction over this action, and that venue is properly laid in said County and State.

3. I find that Plaintiff and Defendant were formerly wife and husband, respectively, having been lawfully divorced by Decree of Divorce issued by this Court on May 12, 2008.

4. I find that two (2) children were born of the parties' former marriage, to-wit: David Hammer, born July 10, 2000 and Michael Hammer, born August 8, 2002. I find that no other children were born of their marriage and none are expected.

5. I find that by way of Settlement Agreement, the parties have resolved all custody and visitation issues between themselves. I find that all parties have submitted themselves and the subject matter of this action to the court for adjudication. I find that this Court has *in personam* jurisdiction over all parties, has jurisdiction over the subject matter of this action, and that venue is proper before this Court.

6. I find that Plaintiff and Defendant entered into the Settlement Agreement attached hereto, which is a full and complete agreement of an integrated nature, intending to fully resolve all controversies relating to child custody and visitation between the parties.

7. I find that there remain pending before the Court certain other Rules to Show Cause and Motions concerning child support and other financial matters which were not addressed or resolved by the Settlement Agreement and which are scheduled to be heard by this Court on June 24, 2009.

8. This Court has reviewed the Settlement Agreement of the parties dated June 23, 2009 and finds as follows:

A. Both parties entered into the attached Settlement Agreement dated June 23, 2009 freely and voluntarily, without duress, coercion, influence of alcohol or other substances which would impair their respective abilities to understand the Agreement, or undue influence;

B. Both parties believe that the Agreement is fair and reasonable and in the best interest of both parties and their children;

C. Both parties have been represented by competent counsel well versed in family law. Each of the parties has expressed satisfaction with their respective counsel.

D. Plaintiff and Defendant acknowledge that Richard G. Whiting, Esquire, of the Richland County Bar was appointed as Guardian ad Litem to represent the interests of Michael and David in the pending Family Court litigation; and the parties hereby acknowledge that Mr. Whiting has properly performed his duties as Guardian ad Litem and that Mr. Whiting shall continue to serve as the Guardian ad Litem for the parties until June 1, 2013 all as appears more fully in the Settlement Agreement; and that Mr. Whiting has recommended approval of this Agreement.

E. Both parties are sufficiently aware of their respective legal rights and responsibilities so as to enable the parties to have a true meeting of the minds.

F. Both parties understand that they have the right to have all issues resolved by the Settlement Agreement adjudicated by the Court, and so understanding, desire to have this Agreement approved by the Court.

8. I find and conclude that the Settlement Agreement dated June 23, 2008 is procedurally and substantively fair and reasonable, is in the best interests of the parties' minor children and should be approved and adopted as an Order of this Court, to be fully enforceable by the contempt powers of this Court.

9. During the pendency of this action, Plaintiff and Defendant have filed various Complaints, Motions, and Rules to Show Cause against the other, as well as various criminal complaints, all of which the parties have agreed to dismiss and end,

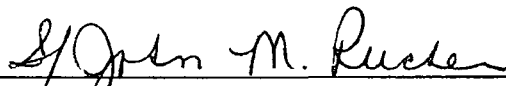
with prejudice. Having reviewed the specific facts and circumstances giving rise to the various incidents, the Court independently finds and concludes that such matters do not rise to the level of contempt and should be dismissed with prejudice and ended. This finding does not, however, address the contempt and other motions directed to the financial issues.

NOW, THEREFORE, it is accordingly,

ORDERED that the Settlement Agreement of the parties dated June 23, 2009 attached hereto is hereby approved and adopted as an Order of the Court and all parties are hereby ordered and directed to comply with the terms and conditions thereof.

IT IS FURTHER ORDERED that all non-financial Rules to Show Cause, Motions and other matters as described above are dismissed with prejudice and ended.

AND IT IS SO ORDERED.



JOHN M. RUCKER, JUDGE, FAMILY FOR
THE FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina
Dated: August 19, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SETTLEMENT AGREEMENT

RICHLAND COUNTY
FILED
2009 JUN 24 AM 9:43
JEANETTE W. McBRIDE
CC, CP, GS
& FAMILY COURT

This document is a **SETTLEMENT AGREEMENT** ("Agreement") entered into and between **Howard Hammer**, hereinafter referred to as "Father", and **Shirley Hammer**, hereinafter referred to as "Mother".

EFFECTIVE DATE

The effective date of this Agreement is June 23, 2009.

FACTS

1. Father and Mother state and acknowledge the following as true and accurate facts:

1.01. Father and Mother were previously married to each other and were divorced by the Order of the Family Court on May 12, 2008.

1.02. During the course of their marriage two children were born. These children are David, born July 10, 2000, and Michael, born August 8, 2002.

1.03. Mother and children currently reside at 320 St. James Street, Columbia, South Carolina. This home is on the market for sale.

1.04. Father currently resides at 1609 Catawba Street, Columbia, South Carolina.

1.05. Father and Mother are parties to Civil Action Number 2005-DR-40-2871, which is pending in the Family Court for Richland County, South Carolina, in which certain issues are not resolved (hereinafter referred to as the "Action").

1.06. Mother is represented by J. Mark Taylor of the firm Moore, Taylor and Thomas, P.A., and Timothy E. Madden, of the firm Nelson Mullins Riley & Scarborough LLP.

1.07. Father is represented by James T. McLaren of the firm McLaren & Lee.

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1.08. The parties now consider it to be in their respective best interests to settle between themselves all matters in issue between them, and have reached a complete agreement and now wish to reduce their agreement to writing and desire that it shall constitute a total agreement between them with respect to the parenting issues regarding their children and to fully and finally resolve the issues raised by certain filings made by each party in the Action.

1.09. Each party recognizes he or she has freely, actively and fully taken part in the negotiations leading to this Agreement over a reasonable period of time.

1.10. Each party fully accepts the terms and conditions of this Agreement and acknowledges and considers the same to be fair and equitable.

1.11. Each party represents and warrants to the other party that he or she is of sound mind, and is fully mentally and emotionally capable of entering this Agreement, and is not under any undue influence or duress as of the execution of this Agreement.

CONSIDERATION

2. In consideration of the mutual and several binding promises, covenants and undertakings detailed in this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties freely and voluntarily agree to the following terms and provisions.

TERMS AND PROVISIONS

3. Both parties agree that each love and are devoted to their children and are dedicated to their proper upbringing. Mother shall be designated as the sole custodial parent, subject to the following parenting schedules and conditions.

The parties shall in good faith consult with each other with respect to any major changes to be made in the children's lives or activities, and with regard to the children's education and religious training, illness and operations (except in

emergencies), health, welfare, and other matters of similar importance affecting the children, whose well-being, education and development shall at all times be the paramount consideration of Mother and Father. However, after such consultation, Mother, as the custodial parent, shall have the right to make the final decision.

The parties agree that the consultations between them concerning their children shall initially take place in the presence of Dr. Martin and shall continue so long as Dr. Martin and the Guardian ad Litem believe it necessary and helpful.

4. Father shall have the following parenting time with the minor children:

A. Alternating weekends. During the school year, Father shall have the children on alternating weekends from Friday at the time school is dismissed (pick up at school) until Monday morning (return to school). Both parties agree that they will endeavor to reside within a thirty minute drive time to their children's school; provided, however, should that change the parties shall confer with the Guardian ad Litem and Dr. Martin to address a possible adjustment to the return time at the conclusion of visitation with their Father for school year weekend visitation. If there is a Friday or Monday holiday from school which is appended to Father's weekend, then Father shall have the children on those holidays and the pick-up or return day and time (as relevant) shall automatically modify to include those holidays. During the summer, Father shall have the children on alternating weekends from Friday at 12:00 p.m. until Monday at 7 p.m., in addition to his exclusive four (4) weeks of extended time during the summer (but not during Mother's three (3) weeks of exclusive time). The weekend which begins Friday, July 3, 2009, shall be Father's first alternating weekend under this schedule.

B. Thursdays. During the school year, Father shall have the children on Thursday from the time school is dismissed (pick up at school) until 8 p.m. During the summer (except as stated otherwise below), Father shall have the children on Thursday overnight from 12:00 p.m. until Friday at 12:00 p.m. Thursday, July 2, 2009, shall be the Father's first Thursday.

C. Summer vacation. During the summer vacation from school, Father shall have the children for four (4) weeks (seven (7) days each segment), up to and including two (2) of which may be consecutive. These weeks shall include his regularly scheduled weekends. He shall identify extended weeks in writing no later than April 30th of each year¹. These weeks shall be exercised Sunday to Sunday, beginning and ending at 12:00 P.M. Within fourteen (14) days of the date he identifies these weeks, Mother shall identify three (3) weeks during the summer (which include her regular weekends) during which Father's Thursdays with the children shall not occur.

5. Jewish Upbringing: Mother and Father have always agreed and hereby re-affirm their agreement and covenant that the children of the marriage, David Samuel Hammer and Michael Lynn Hammer, are Jewish and will be raised in the Jewish religion in accordance with the Orthodox conversion of their sons as per the parties' prior Agreement. ^{conversion H.H. 5th.} Mother and Father further agree that David and Michael will be enrolled in and attend religious and Hebrew school in order to prepare for a traditional Jewish Bar Mitzvah at or about age 13.

Each parent agrees that each child shall have a Bar Mitzvah conducted at Beth Shalom Synagogue having complied with the Synagogue standards for

¹ For 2009, Father shall identify these weeks no later than June 30, 2009.

such to take place on or near their 13th birthday. Each parent agrees to work with the children as necessary in preparing for their Bar Mitzvahs. Father shall have the right to work directly with each child in preparation for the Bar Mitzvah and to cooperate so that the Bar Mitzvah is a meaningful religious experience. The parties further agree that the cost of any Bar Mitzvah party shall be borne equally and shall not exceed Five Thousand (\$5,000) Dollars total.

6. Jewish Holidays

(i.) In odd-numbered years the children will attend religious services with Father on the first day of Rosh Hashanah, commencing two (2) hours prior to the beginning of Rosh Hashanah, and in even-numbered years observe the first Passover Seder with Father and the second night with Mother. Additionally, in odd-numbered years the children shall celebrate the first, third and sixth night of Chanukah with Father and other nights with Mother. In odd-numbered years the children shall attend the *Kol Nidre* Yom Kippur service with Father, commencing two (2) hours prior to the beginning of Yom Kippur, and the following day of Yom Kippur with Mother.

(ii.) In even-numbered years the children will attend religious services with Mother on the first day of Rosh Hashanah, commencing two (2) hours prior to the beginning of Rosh Hashanah, and in odd-numbered years observe the first Passover Seder with Mother and the second night with Father. Additionally in even-numbered years the children shall celebrate the first, third and sixth night of Chanukah with Mother and other nights with Father. In even-numbered years the children shall attend the *Kol Nidre* Yom Kippur service with Mother, commencing two (2) hours prior to the beginning of Yom Kippur, and the following day of Yom Kippur with Father. The

children shall attend the final Yom Kippur service at the Beth Shalom Synagogue honoring their Grandfather whether with Mother or Father.

7. **Other Holidays:**

a. **Thanksgiving:** In the odd-numbered years, the children shall be with Father during the Thanksgiving school break from the time school dismisses (from school) until the day before school resumes. In even-numbered years, the children shall be with Mother during this period; provided, however, that in the year 2010 the children shall be with Father for the full holiday as makeup time.

b. **Christmas/December Break:** During odd-numbered years, the children shall be with Father during the first half of Christmas school break, and in even-numbered years the children shall be with Father during the second half of Christmas school break. The children shall be with Mother during the part of Christmas school break not designated for Father. Christmas school break shall be defined to begin on the day on which school is dismissed (from school) and end on the day before school resumes.

c. **Spring School Break:** In odd-numbered years, the children shall be with Father during the school break from the time school is dismissed (from school) until return to school on the day before school resumes. In even-numbered years, the children shall be with Mother during this period; provided, however, that in the year 2010 the children shall be with Father for the full holiday as makeup time.

d. **School Winter Break:** The children shall be with Father during the school winter break from the time school is dismissed (from school) until

return to school on the day before school resumes in odd-numbered years. In even-numbered years, the children shall be with Mother during this period.

e. **Father's Day:** The children shall spend every Father's Day with Father from 9:00 A.M. to 7:00 P.M.

f. **Mother's Day:** The children shall spend every Mother's Day with Mother from 9:00 A.M. to 7:00 P.M.

7. **Interruption of Scheduled Time:** All Jewish holidays and other holiday visitation listed above shall supersede and override the normal weekend or weekday schedule. After the holiday schedule concludes, the normal weekday and weekend schedule will resume and will not be altered as a result of the holiday.

8. **Timeliness:** Both parties will endeavor to be timely in the pick up and return of their children. Unless arrangements are made in advance, or unless an unforeseen emergency arises, if Father or his representative is thirty (30) minutes or more late picking up the children for his scheduled time, then that scheduled time is deemed forfeited.

9. **Access:** If Father returns either child or the children to Mother for any reason without prior permission during his schedule time with children, the remainder of that time period is deemed to be forfeited for that child or children. Mother shall refrain from, and shall not allow others to entice or distract the children from Father's time with the children.

10. **Changes in Schedule:** By mutual agreement in writing the parties may alter the schedule set forth herein without the necessity of Court Order.

11. **Parenting Rules, Restrictions and Conduct:**

a. Both parents shall have reasonable and at all times private

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telephone and e-mail contact with the child/children and the child/children shall be allowed to have reasonable private telephone/e-mail contact with either parent. (E-mail is limited to age appropriate use and ability to use a computer).

b. The parties are restrained against having any form of physical or verbal confrontation or allowing another to do so in front of the child/children.

c. The parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone else to do so in front of the child/children or in any manner whereby the child/children might learn of the same.

d. The parties shall not discuss with the children any details about the litigation beyond acknowledging the existence of the same. Once an Order is issued the details of it shall not be discussed with the children except to acknowledge it exists and must be complied with. The only exception to this Restraining Order is when the child/children is/are in counseling or under psychological/psychiatric care and the child/children's provider believes it is in the child's therapeutic best interest to discuss the same but this may be done only in that limited context absent a written order to the contrary. This provision is effective until the children reach eighteen (18) years of age.

e. Both parties are restrained from having the child/children on an overnight basis in the presence of an adult party of the opposite to whom the parties are not related by blood or marriage, or any lover/paramour, provided however, this provision shall not restrict either party from having a nanny/child care provider of the opposite sex on an overnight basis when necessary. Neither party shall expose the child/children to conditions which imply a relationship

such as a boyfriend or girlfriend, paramour/lover or some type of improper relationship while the party is still married to another person.

f. The parties are required to keep the child/children in a moral, safe and healthy environment at all times.

g. The parties shall endeavor to assist with any and all school-related matters for the children and shall not hinder or obstruct by any act or failure to act the children's ability to accomplish their education requirements and goals. The parties shall cooperate in connection with homework requirements both religious and secular and both parties shall have the right to be included in and take part in the educational process and assistance with homework (during his or her time) and all other activities of the children. Either parent may attend activities of the children that normally involve parental attendance, or see the children at school and participate in school functions when parental attendance is acceptable to the school.

h. The parties are required to see that the child/children in their care receive proper medical attention and appropriately take prescribed medications or reasonably necessary medical treatments and to that end shall ensure that the child/children in their care attend any scheduled medical appointments and shall exchange medications which are to be taken, all as might be reasonable and appropriate and in compliance with their religious beliefs, a specific Court Order or the law. Both Mother and Father shall have the right to attend any doctor or dental appointment. Mother will not schedule appointments that will intentionally conflict with Father's visitation.

i. The parties are restrained against conduct detrimental to the child/children of any particular nature relating to the particular needs of a given child/children such as not smoking around a child who is asthmatic.

j. Both parties shall be entitled to all records regarding the children as they may involve their education, health care, mental health, and otherwise. To the extent releases are required, both parties agree to timely and promptly sign releases and deliver them to the other so that both parents are kept continually advised as to the care and treatment of their children. Each party agrees to in good faith consider the recommendations of Dr. Martin as to whether or not either child is in need of individual counseling, therapy or care.

k. Both parties shall be entitled to full information concerning the children and any activities that they engage in or may be registered for. Both parties shall be placed on all school, extra-curricular, religious and other mailing and e-mail lists. To the extent that one (1) but not both parents receive notice of events involving the children, the parent receiving notice shall by way of email give notice to the other parent.

l. Father shall have the right to take both of the boys for their haircuts and to be in charge of the scheduling for those haircuts. Father shall schedule the haircuts during his time with the children.

m. Mother shall not schedule any activities which interfere with Father's time with the children. While Father understands it will be necessary to schedule activities that may overlap the time that the children spend in the respective homes of the parents, to the extent that such scheduling impinges upon or takes place during Father's time, he must consent. His consent shall not, however, be unreasonably withheld. If transportation for children's

activities becomes a problem, the parents shall consult with the Guardian ad Litem and/or Dr. Martin to resolve any conflict.

n. Each party shall cooperate with the other in providing those items needed by the children so as to allow the children to participate in the activities planned when the child is with the other parent such as: winter coats, "dress up clothes" and similar items not being maintained by the parent for the child's daily use.

o. The parties acknowledge that the children have received monetary gifts from each extended family. Each parent shall serve as the custodian under the Uniform Gift to Minor Act for any monies or property gifted to the children by his or her family members. Until the children are emancipated, each parent shall provide the other annual statements of the children's accounts. The parties shall cooperate with each other regarding any tax filing or similar requirements.

12. Guardian.

- (1) Richard Whiting of the Richland County Bar, was appointed Guardian ad Litem by the orders issued by Judge Berry Mobley dated December 5, 2008, and Judge John Rucker dated May 22, 2009. Mr. Whiting shall continue to serve as Guardian ad Litem for the benefit of the minor children. In the event Mr. Whiting is unwilling or unable to serve, or is removed from service, another mutually agreeable person shall serve as Guardian. If the parties are unable to agree on a successor Guardian, then the Family Court shall appoint a successor Guardian.

- (2) The Guardian, or his successor, shall serve until June 1, 2013 unless dismissed earlier (or extended later) than this date by mutual agreement of the parties, or relieved (or extended) by Order of the Family Court. Neither party shall unilaterally petition the Family Court to remove the required service of the Guardian prior to June 1, 2013.
- (3) The Guardian shall monitor (not supervise, but maintain general awareness) care of the children by Mother and Father beginning immediately, and shall have the duties, responsibilities, power, and authority detailed in this Agreement.
- (4) The Guardian shall have full powers and authority of investigation of any issue concerning the best interest and welfare of the children.
- (5) The Guardian, in his sole discretion, shall have the authority to temporarily increase, decrease, make up, or suspend the time the children spend with Mother or Father during exigent or emergency circumstances or when fairness or the best interests of the children require any such temporary modification until a hearing can be held before the Family Court. This authority relates to actions, conduct and circumstances occurring after the effective date of this Agreement, and does not give the Guardian the authority to increase, decrease, make up or suspend time for acts or conduct occurring prior to the effective date of this Agreement.
- (6) To the extent there are fees due to the Guardian for the service of the Guardian prior to June 24, 2009, each party shall pay fifty

percent of the Guardian's fees and costs. Beginning June 24, 2009, each party shall pay for any charges he or she causes to be incurred with the Guardian, subject to the right of either party to seek recovery from the other party or reallocation of such fees in any Family Court proceeding involving issues addressed by or services performed by the Guardian.

13. Counseling and Therapy.

a. The parties and children shall continue in counseling, therapy, and treatment with Dr. Tom Martin as required by the Order of Judge Berry Mobley dated December 5, 2008 until such time as the Guardian believes such counseling, therapy or treatment is no longer serving the best interests of the minor children, or until otherwise ordered by the Family Court and discuss such issues with Dr. Martin as the parties, the Guardian or Dr. Martin may believe appropriate. Each party shall pay the charges billed to him or her by Dr. Martin prior to the date of this Agreement. Beginning June 24, 2009, Mother and Father shall pay the cost and expense of Dr. Martin in the same manner as the fees for the Guardian ad Litem.

b. The Guardian shall always have full and free access to Dr. Martin and any professional who counsels with or treats the minor children.

14. Relocation: The parties acknowledge that this agreement is based upon them both living in the greater Columbia Metropolitan Area and that a move outside that area may require an adjustment or modification to the schedules set out herein. The parties agree to address any possible modification or adjustment with Dr. Martin and the Guardian ad Litem so as to resolve that issue. The parent moving from his or her present residence to such a location must provide the other parent at least sixty (60) days written notice of the planned move along with particulars of said move.

15. Pickup/Return: If the Father is not picking up or returning the children to school for any period of visitation, the Mother shall deliver the children to Father's home at the beginning of such period with the Father to return the children to the Mother's home at the conclusion of this scheduled time.

16. No Entry: Neither party shall enter the home of the other unless expressly invited.

17. Contempt and Other Actions. The parties stipulate and agree that it is in their and their children's best interests to resolve those issues between them as set forth herein. By this Agreement, all prior and pending actions, complaints, or motions for contempt or other relief filed by Father against Mother or by Mother against Father and resolved herein are dismissed with prejudice and shall serve as a final adjudication as to those incidents and allegations more specifically set out in the Order approving this Agreement. Any contempt actions filed by Father against Mother and those filed by Mother against the Father seeking enforcement of financial issues shall remain pending and are not addressed or affected by this Agreement.

The parties acknowledge that the Father has pending certain motions pursuant to Rule 60 and Rule 15 of the *South Carolina Rules of Civil Procedure*. Any issues addressed herein shall no longer be addressed in Father's Rule 60 and Rule 15 motions.

b. *Withdrawal of Criminal Complaints.* The parties agree that the issues resolved herein are involved not only in this pending Family Court action but in pending criminal proceedings as well. Both parties desire to put an end as to those issues addressed herein and in the criminal proceedings. This Agreement addresses the Rules and Motions outstanding as to custody and visitation issues and the issues of custody and visitation are concluded herein with finality. Mother shall immediately request all prior and pending criminal matters against Father involving herself and/or the Medlins to be withdrawn, dismissed and permanently ended. If so dismissed: (1) the parties shall simultaneously execute and exchange mutual releases; and (2) the parties shall seek releases from the Medlins and if received shall execute and deliver to the Medlins releases in favor of the Medlins.

I, Howard Hammer, have read this document in its entirety and, fully understanding its contents, do freely and voluntarily sign it this 23rd day of June, 2009.

IN THE PRESENCE OF:

John E. Bernst
Paul H. Horner

Howard Hammer
Howard Hammer

I, Shirley Hammer, have read this document in its entirety and, fully understanding its contents, do freely and voluntarily sign it this 23rd day of June, 2009.

IN THE PRESENCE OF:

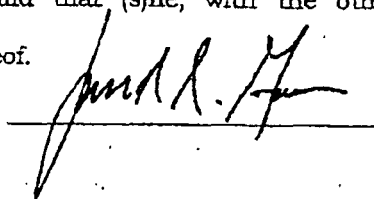
John Mark Taylor
Dwight E. Madden

Shirley Hammer
Shirley Hammer

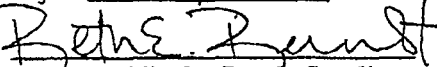
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Howard Hammer sign, seal and as his act and deed deliver the within written Settlement Agreement, and that (s)he, with the other witness subscribed above, witnessed the execution hereof.



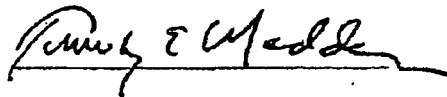
SWORN to before me this 23
day of June, 2009.


Notary Public for South Carolina
My Commission Expires: 2-22-15

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Shirley Hammer sign, seal and as her act and deed deliver the within written Settlement Agreement, and that (s)he, with the other witness subscribed above, witnessed the execution hereof.



SWORN to before me this 23
day of June, 2009.


Notary Public for South Carolina
My Commission Expires: 2-8-12

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SHIRLEY HAMMER,)
)
Plaintiff,)
)
vs.)
)
HOWARD HAMMER,)
)
Defendant.)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

C.A. NO.: 2005-DR-40-2871

ORDER
(Ending Action)

Date of Hearing: June 24, 2009
Hearing Judge: John M. Rucker
Plaintiff's Attorney: Timothy E. Madden
J. Mark Taylor
Defendant's Attorney: James T. McLaren
C. Dixon Lee, III
Court Reporter: Dayton Grainger

2009 AUG 19 PM 4:51
JULIE M. MERRICK
CLERK
FAMILY COURT
RICHLAND COUNTY
SOUTH CAROLINA

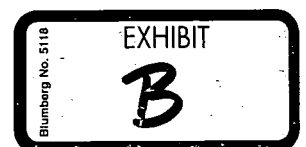
A hearing was held before me on June 24, 2009. Plaintiff ("Mother") was present with her counsel, Timothy E. Madden of the firm Nelson Mullins Riley & Scarborough LLP and J. Mark Taylor of the firm Moore, Taylor & Thomas, PA. Defendant ("Father") was also present with his counsel, James T. McLaren of the firm McLaren & Lee.

Based upon the pleadings, testimony, financial declarations, other evidence and applicable law, the Court makes the following findings of fact and conclusions of law.

JURISDICTION AND VENUE

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action. The issues raised in this action are among those described in S.C. Code § 63-3-530 (1976, as amended).

The parties were previously married to one another and were divorced by the Divorce Decree of this Court dated May 12, 2008. The parties have two (2) children from their



marriage. These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002.

This Court has subject matter and personal jurisdiction. Richland County is the proper venue for this action.

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy.

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*.

PROCEDURAL HISTORY

Settlement

On May 9, 2008, the parties entered into a written partial settlement agreement, titled "Partial Settlement of Outstanding Issues." On May 12, 2008, the undersigned held a hearing to consider approval of the partial settlement as an Order of the Court. At the conclusion of the hearing, the Court ruled the parties' partial settlement should be approved and merged, and entered a written Order adopting and incorporating the parties' partial settlement agreement (the "May 12, 2008 Order"). The May 12, 2008 Order also allowed this civil action to remain on the active roster of cases "...for the sole and limited purpose of allowing the parties to resolve or the Family Court to address the issues of...custody, visitation and future attorney fees related to custody and visitation issues..."

Post-Settlement Filings

Each party filed numerous requests for relief from the Court beginning in late 2008, and these filings are listed below. When a response was made to a filing, it is listed with the description of the original filing.

Mother served her Emergency Motion for Temporary Suspension of Visitation or Alternatively for Supervised Visitation, Additional Restraining Order, and for Fees and Costs dated November 21, 2008.

Mother served a Contempt Complaint dated Nov. 21, 2008 (Rule to Show Cause signed Nov. 24, 2008), relating to allegations of harassment.

Father served a Motion for Supplemental *Pendente Lite* Relief dated December 31, 2008, relating to his request for reduction in child support and fees and costs. Mother served a Return dated May 4, 2009.

Mother served an Amended Motion for Suspension of Visitation (Alternatively, Supervised Visitation), Additional Restraining Order to Prevent Defendant from any Contact or Communication with Plaintiff and/or Coming within 500 Feet of Plaintiff, and Fees and Costs dated February 17, 2008.

Mother served a Contempt Complaint dated March 2, 2009 (Rule to Show Cause signed March 5, 2009), relating to harassment/violation of Order of Protection, failure to transfer funds, failure to pay child support, and fees and costs.

Father served the first Contempt Complaint dated March 13 (Rule to Show Cause signed March 16), alleging the denial of visitation and refusal to communicate. Mother served a Return dated May 4, 2009, and Father served a Reply dated June 8, 2009.

Father served the second Contempt Complaint dated March 13 (Rule to Show Cause signed March 20), alleging the failure to transfer property. Mother served a Return dated May 4, 2009.

Father served a Motion to Dismiss dated March 13, 2009, seeking to dismiss all filings made since the May 12, 2008 Order. Mother served a Return dated April 1, 2009.

Mother served the Motion for Protective Order, and to Quash Subpoenas *Duces Tecum* Issued to CellCo Partnership and Mary Taylor dated March 25, 2009.

Mother served the Motion for Sanctions and Attorneys' Fees and Costs dated April 1, 2009.

Mother served the Motion to Dismiss and/or for Judgment on the Pleadings and/or to Strike dated April 1, 2009, relating to Father's March 13, 2009 contempt complaint.

Father served the Motion to Compel as to Paul Van Wyke, dated April 1, 2009, relating to counseling records.

Father served the Motion to Compel as to Florence Medlin/CellCo Partnership, dated April 1, 2009, relating to cell phone records.

Father served the Motion to Compel as to Mary Taylor, dated April 1, 2009, relating to housekeeping/babysitting information.

Mother served the Amended Motion for Protective Order, and to Quash Subpoenas and Subpoenas *Duces Tecum*, dated May 11, 2009.

Father served the Motion under Rule 15(b), SCRCF dated May 27, 2009.

Father served ten (10) motions to compel subpoena responses dated May 28, 2009, relating to third party subpoenas.

Mother served the Motion for Production of Records, dated May 28, 2009.

Mother served the Written Objection to Subpoena *Duces Tecum* and Motion to Quash dated June 8, 2009.

Father served the Motion to Strike (relating to Mother's May 4 Return to Father's first Contempt Complaint), dated June 8, 2009.

Father served the Motion to Make More Definite and/or Certain (regarding Mother's May 4 Return to Father's first Contempt Complaint), dated June 8, 2009.

Father served the Motion for Supplemental *Pendente Lite* Relief, dated June 12, 2009, related to visitation with the minor children and parenting guidelines/restraining orders.

The Rule 60 Motion and Hearing

Father filed a Motion to Amend, Modify, Set Aside, and/or for a New Trial pursuant to Rule 60, SCRCF, dated March 13, 2009. This motion sought relief due to the alleged actions/inactions of Mother with regard to two real properties and a transfer due to Mother from Father of retirement assets, and claimed the parties' previously approved partial settlement was outside the bounds of reasonableness.

On May 4, 2009, Father served the Amended Motion under Rules 50, 52, 59, and 60, SCRCF dated May 3, 2009 (the "Amended Motion"), along with several supporting affidavits. The Amended Motion "specifically withdraws all grounds of [the] original Motion dated March 13, 2009," and sought to amend, modify, void and/or set aside the May 12, 2008 Order, and obtain a new trial.

Mother served a Return dated May 11, 2009, denying Father's entitlement to relief and requesting Father pay all of Mother's attorney's fees and costs incurred in connection with the defense of the Amended Motion.

Father served a Reply and additional affidavits on May 14, 2009, and the Court held a hearing on May 14, 2009 to consider the respective positions of the parties. The Court, Judge Dorothy Mobley Jones, denied the Amended Motion from the bench. The written Order adjudicating the Amended Motion has not yet been entered.

June 23 and 24, 2009

The parties were scheduled for two days of trials and hearings on June 23 and 24, 2009 regarding the outstanding motions and contempt actions detailed above. At the call of the case, the parties announced to the Court that they were in the process of settlement negotiations.

On June 23, 2009, the Court accepted the parties' agreement regarding custody and visitation, and a separate order which approves this agreement will be issued by the undersigned from this hearing.

On June 24, 2009, the parties appeared before the Court to announce an agreement to resolve all other issues and end the civil action, as detailed in this Order.

THE AGREEMENT

The parties' agreement, as presented to the Court at the June 24, 2009, hearing, is as follows:

1. The May 12, 2008 Order approving the parties' partial settlement agreement is reaffirmed except as specifically modified by the Order issued from the June 23, 2009 hearing (approving the custody and visitation settlement) or as modified by the terms of this Order.

2. Certain provisions of the Partial Settlement of Outstanding Issues, as approved by the May 12, 2008 Order, are implemented as follows:

a. Paragraph 3.C.(b) (pp. 2-3) and Paragraph 4 (pp. 4-5) of the Partial Settlement of Outstanding Issues - Father shall transfer Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) cash by qualified IRA transfer order to Mother by no later than July 24, 2009. This transfer shall take place simultaneously with the building/LLC transfer, detailed immediately below. Father shall not make any distributions from the \$750,000.00 after June 24, 2009, prior to the distribution to Mother.

b. Paragraph 3.D.(a) (p. 3) of the Partial Settlement of Outstanding Issues – Mother shall transfer to Father the building housing Father's law office and the related LLC. Bob Young or another mutually agreeable person shall prepare the paperwork to effectuate this transfer. Father and Mother will cooperate as necessary to make this transfer. This transfer is to take place no later than July 24, 2009 and shall take place simultaneously with the IRA transfer detailed immediately above.

c. Paragraph 3.D.(j) (p. 4) of the Partial Settlement of Outstanding Issues – Mother shall sign and deliver the vehicle titles and related documents for the Mercedes and Porsche vehicles through counsel by no later than July 24, 2009. Father shall receive the vehicles "as is". Mother is not required to pay any taxes on these vehicles. Both parties shall cooperate in signing any and all documents to transfer the tags to Father.

d. Paragraph 3.D.(i) (p. 4) of the Partial Settlement of Outstanding Issues – Father shall receive the personal property awarded to him by the May 12, 2008 Order. Father shall have the opportunity to perform one "walk through" of Mother's home, escorted by his counsel and Mother's counsel, by no later than July 24, 2009.

e. Paragraph 5 (p. 5) of the Partial Settlement of Outstanding Issues – Beginning July 1, 2009, Father's child support obligation will be One Thousand and 00/100 Dollars (\$1,000.00) per month. This child support is to be paid by the first day of each month directly to Mother. If Father is ever more than five (5) days late with this support, Mother may file an affidavit with Family Court requiring Husband's child support obligation to be paid through the Clerk of Court, together with the fee imposed by the Clerk of Court. At the first to occur of Father's license to practice law being restored, or December 31, 2009, the issue of child support shall be automatically reviewed.

3. The motions, as amended, filed under Rule 60 and Rule 15, SCRCP by Father, together with all responses, shall be withdrawn with prejudice, with no right of appeal. The parties will apprise Judge Dorothy Mobley Jones of this withdrawal, and consent to the issuance of any order(s) (if any) which are necessary to implement the terms of this paragraph.

4. All pending contempt complaints, Rules to Show Cause, motions and any other matters filed by either party not otherwise addressed in this Order but which were pending through June 24, 2009, are dismissed with prejudice.

5. Any and all fees which were or could have been awarded in connection with Father's Amended Motion (pursuant to Rule 60, SCRCP) are waived by the parties.

6. Each party shall pay his or her own attorney fees incurred and owing as of June 24, 2009.

7. The undersigned shall retain jurisdiction over this matter.

8. The parties desire for this case to be sealed and shall submit paperwork to the Court requesting this action.

9. This Court retains jurisdiction to issue any Orders necessary to effectuate the May 12, 2008 Order, the Order issued as a result of the June 23, 2009 hearing, and this Order.

APPROVAL OF THE AGREEMENT

In determining whether or not to approve a settlement agreement this Court must find (1) the existence of an agreement; (2) the agreement was entered into freely and voluntarily; (3) the agreement is fair and equitable from procedural and substantive perspectives and (4) the agreement is in the best interest of the minor children.

An agreement exists between these parties. The terms of the Agreement were presented to this Court at the hearing, and summarized in an exhibit, a copy of which is attached as Attachment 1 to this Order.

There is no indication that either party was forced or under any duress or coercion at the time they entered the Agreement or at the time the Agreement was presented to the Court for approval. Each party represented he or she entered the Agreement and attended the hearing for its approval free of any mind-altering or judgment-impairing substances. Each party possesses the requisite mental capacity and state of mind to commit to the terms of the agreement and to seek approval of this Agreement from the Court, and to be bound by the Agreement as an Order of this Court. Therefore, the Agreement was entered into freely and voluntarily.

The parties negotiated and entered the Agreement with benefit and advice of independent experienced counsel. Each party is satisfied with the representation provided to him or her by his or her attorney.

Substantively, the Agreement reflects a resolution of the legal issues which is within the range of fairness given this Court's experience. The Agreement is the product of compromise and negotiation. As the parties directly affected by this Agreement, Father and Mother are in a better position to judge the fairness of it.

Therefore, the Agreement is fair and equitable from both procedural and substantive perspectives.

The parties' Agreement, identified in this Order should, therefore, be adopted, approved and is hereby incorporated into, merged and made the Order of this Court.

NOW, THEREFORE, IT IS ORDERED as follows:

1. The May 12, 2008 Order approving the parties' partial settlement agreement is reaffirmed except as specifically modified by the Order issued from the June 23, 2009 hearing (approving the custody and visitation settlement) or as modified by the terms of this Order.

2. Certain provisions of the Partial Settlement of Outstanding Issues, as approved by the May 12, 2008 Order, are implemented as follows:

a. Paragraph 3.C.(b) (pp. 2-3) and Paragraph 4 (pp. 4-5) of the Partial Settlement of Outstanding Issues – Father shall transfer Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) cash by qualified IRA transfer order to Mother by no later than July 24, 2009. This transfer shall take place simultaneously with the building/LLC transfer, detailed immediately below. Father shall not make any distributions from the \$750,000.00 after June 24, 2009, prior to the distribution to Mother.

b. Paragraph 3.D.(a) (p. 3) of the Partial Settlement of Outstanding Issues – Mother shall transfer to Father the building housing Father's law office and the related LLC. Bob Young or another mutually agreeable person shall prepare the paperwork to effectuate this transfer. Father and Mother will cooperate as necessary to make this transfer. This transfer is to take place no later than July 24, 2009 and shall take place simultaneously with the IRA transfer detailed immediately above.

c. Paragraph 3.D.(j) (p. 4) of the Partial Settlement of Outstanding Issues – Mother shall sign and deliver the vehicle titles and related documents for the Mercedes and Porsche vehicles through counsel by no later than July 24, 2009. Father shall receive the

vehicles "as is". Mother is not required to pay any taxes on these vehicles. Both parties shall cooperate in signing any and all documents to transfer the tags to Father.

d. Paragraph 3.D.(i) (p. 4) of the Partial Settlement of Outstanding Issues – Father shall receive the personal property awarded to him by the May 12, 2008 Order. Father shall have the opportunity to perform one "walk through" of Mother's home, escorted by his counsel and Mother's counsel, by no later than July 24, 2009.

e. Paragraph 5 (p. 5) of the Partial Settlement of Outstanding Issues – Beginning July 1, 2009, Father's child support obligation will be One Thousand and 00/100 Dollars (\$1,000.00) per month. This child support is to be paid by the first day of each month directly to Mother. If Father is ever more than five (5) days late with this support, Mother may file an affidavit with Family Court requiring Husband's child support obligation to be paid through the Clerk of Court, together with the fee imposed by the Clerk of Court. At the first to occur of Father's license to practice law being restored, or December 31, 2009, the issue of child support shall be automatically reviewed.

3. The motions, as amended, filed under Rule 60 and Rule 15, SCRPC by Father, together with all responses, shall be withdrawn with prejudice, with no right of appeal. The parties will apprise Judge Dorothy Mobley Jones of this withdrawal, and consent to the issuance of any order(s) (if any) which are necessary to implement the terms of this paragraph.

4. All pending contempt complaints, Rules to Show Cause, motions and any other matters filed by either party not otherwise addressed in this Order but which were pending through June 24, 2009, are dismissed with prejudice.

5. *Any and all fees which were or could have been awarded in connection with Father's Amended Motion (pursuant to Rule 60, SCRPC) are waived by the parties.*

6. *Each party shall pay his or her own attorney fees incurred and owing as of June 24, 2009.*

7. *The undersigned retains jurisdiction over this matter, and any subsequently filed matter between these parties in the Family Court..*

8. *The undersigned shall issue a separate order addressing the request of the parties to seal the file in this matter.*

9. *This Court retains jurisdiction to issue any Orders necessary to effectuate the May 12, 2008 Order, the Order issued as a result of the June 23, 2009 hearing, and this Order.*

AND IT IS SO ORDERED.


John M. Rucker
Judge of the Family Court

Columbia, South Carolina
Dated: August 19, 2009

DIRECTIONS FOR PAYMENT OF CHILD SUPPORT OR ALIMONY

Shirley Hammer vs. Howard Hammer
C.A. No. 2005-DR-40-2871

- X I. Support ordered is NOT to be paid through the Clerk's office - remainder of form not applicable.
 II. Support payable through Clerk's office - complete remainder of form.

A. Total amount of arrearage, if any \$ _____
B. Payments

CHILD SUPPORT

Base Amount \$ _____
Arrearage \$ _____
5% Fee \$ _____

ALIMONY

Base Amount \$ _____
Arrearage _____
5% Fee _____

C. Frequency (check one)

 weekly semi-monthly (1st and 16th)
 bi-weekly semi-monthly (15th and 30th)
 monthly

D. Date of first payment: _____

E. Paid by: Name: _____
P.O. Box : _____
Street: _____
City: _____
State: _____ Zip: _____
SSN: _____ Driver's License No. _____
Employer: _____
Employer Address: _____

DOB: _____
Height: _____
Weight: _____
Eye Color: _____
Hair Color: _____
Race: _____

F. Paid to: Name: _____
P.O. Box: _____
Street: _____
City: _____
State: _____ Zip: _____
SSN: _____
Driver's License No. _____

G. Wage Withholding ordered:
 ordered not ordered required by Code Section 20-7-1315(B)

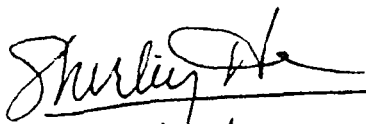
SCCA/446(4/98)

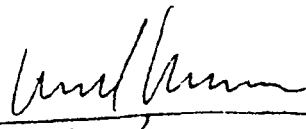
Prepared by: Nelson Mullins Riley & Scarborough LLP
Date: August 17, 2009

ATTACHMENT 1

Hammer Terms of Settlement

1. Husband shall transfer \$750,000 cash by qualified IRA transfer order to Wife. To be done simultaneously with building/LLC transfer, discussed below. Husband shall not make any distributions from the \$750,000 prior to distribution to Wife.
2. Wife shall transfer to Husband building and related LLC. Bob Young or other mutually agreeable person to prepare the documents. Husband and Wife cooperate as necessary. Complete IRA transfer and building/LLC transfer within 30 days of June 24, 2009, simultaneously.
3. Wife shall sign and deliver the vehicle titles and related documents through counsel. Husband takes cars as is, where is. Wife not required to pay taxes. Any documents necessary to straighten out tags shall be done. Documents signed within 30 days.
4. Husband shall receive personal property awarded under the May 12, 2008. Husband shall have opportunity of a walk through of Wife's home, escorted by his counsel and with Wife's counsel. Walk through within 30 days.
5. Beginning July 1, 2009, child support shall be \$1000 per month to be paid by the first day of each month, with five day clause. At the first to occur of Husband's license to practice law being restored, or December 31, 2009, the issue of child support shall be automatically reviewed.
6. Rule 60 and Rule 15 motions, together with responses, withdrawn with prejudice, no appeal.
7. All pending rules, motions, and other matters through June 24, 2009, are dismissed with prejudice.
8. Any Rule 60 fees are waived.
9. Each party shall pay his or her fees and costs through June 24, 2009.
10. Judge Rucker, as the judge who handled these matters, shall retain jurisdiction.
11. The parties request record be sealed.


6/24/09


6/24/09

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2009-CP-40-05911

Howard Hammer,)

Plaintiff,)

vs.)

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)

Defendant.)

**ANSWER TO AMENDED
COMPLAINT, MOTION TO DISMISS
AND COUNTERCLAIMS**

2009 NOV 23 AM 10:08
JEANETTE W. M. BRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Defendant, responding to the amended complaint of the Plaintiff, denies that the Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows:

1. The motion to dismiss set forth in Defendant's Answer, Motion to Dismiss and Counterclaim filed on October 5, 2009 is incorporated by reference herein, and no defenses or claims set forth in Defendant's previously filed Answer, Motion to Dismiss and Counterclaims or the First Amended Answer, Motion to Dismiss and Counterclaims filed on November 3, 2009 are waived.
2. Defendant admits the allegations of Paragraph 1, except denies that she is a resident of Richland County.
3. Responding to Paragraph 3, Defendant admits that the parties entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, and that this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order"). The Family Court expressly retained jurisdiction to enforce this Order. As to the remaining assertions therein, Defendant believes no responsive pleading is required to the allegations in Paragraph 3, but to the extent this paragraph may be interpreted as an allegation against Defendant, such claim is denied.
4. Defendant denies that this Court has subject matter jurisdiction over matters contained in Plaintiff's complaint, and therefore denies Paragraphs 2 and 4. Subject matter jurisdiction is proper only in Family Court.

ANSWER TO FIRST CAUSE OF ACTION

5. Paragraph 5 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and



repeats and re-alleges her answers to Paragraphs 1-4.

6. Defendant admits only that she caused criminal warrants to be issued against Plaintiff. The remaining allegations set forth in Paragraph 6 are denied.
7. The assertions made in Paragraph 7 do not require a response; but, to the extent that any allegation may be derived therein against Defendant, Defendant denies these allegations and specifically incorporates her responses in Paragraph 3 above.
8. Defendant denies the allegations of Paragraph 8, except Defendant admits that she entered into an Agreement with Plaintiff that was incorporated into an order of the Family Court, as more fully described in Paragraph 3 above; that Plaintiff insisted that Defendant withdraw her own criminal complaints and request that the Richland County solicitor nol prosee with leave to restore charges brought by the Solicitor against Plaintiff, which Defendant eventually agreed to do in exchange for an Order of Protection; and, that Plaintiff, upon his own insistence, executed general releases in favor of Defendant and Florence and Alan Medlin in exchange for the execution of general releases in favor of Plaintiff by Defendant and Florence and Alan Medlin.
9. Defendant denies the allegations of Paragraph 9 and expressly incorporates her answer in Paragraph 8 above.
10. Defendant denies that this Court has jurisdiction over any matter related to The Family Court Order.
11. Defendant denies the allegations and assertions set forth in Paragraph 11, and specifically denies the Plaintiff is entitled to any of the relief claimed. Defendant is informed and believes that declaratory relief is not warranted because S.C. Code Ann. Section 15-53-70 precludes such relief since such relief would not terminate the controversy between the parties and, because jurisdiction resides exclusively in the Family Court.

ANSWER TO SECOND CAUSE OF ACTION

12. Paragraph 12 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-11.
13. Defendant admits that Plaintiff performed some, but not all, obligations required of him by The Family Court Order. Defendant denies that she failed to perform any obligations under The Family Court Order. The remaining allegations set forth in Paragraph 13 are denied.
14. Defendant denies the allegations in Paragraph 14. By way of additional response, Defendant would show that pursuant to the requirements of The Family Court Order, she deeded the real property located at 1 Rice Court in Columbia, South Carolina to

Plaintiff, who sold that real property to a third party and kept the proceeds from that sale.

ANSWER TO THIRD CAUSE OF ACTION

15. Paragraph 15 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-14.
16. Defendant denies the allegations in Paragraph 16.
17. Defendant denies the allegations of Paragraph 17.
18. Defendant denies the allegations of Paragraph 18.
19. Defendant denies the allegations of Paragraph 19.
20. Defendant denies the allegations of Paragraph 20.
21. Defendant denies the allegations of Paragraph 21.
22. Defendant denies the allegations of paragraph 22.

ANSWER TO FOURTH CAUSE OF ACTION

23. Paragraph 23 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-22.
24. Defendant denies the allegation of paragraph 24.
25. Defendant denies the allegations of paragraph 25.

ANSWER TO FIFTH CAUSE OF ACTION

26. Paragraph 26 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs Paragraphs 1-25.
27. Defendant denies the allegations of Paragraph 27.
28. Defendant denies the allegations of Paragraph 28 and further alleges that she had the exclusive right to possess 320 St. James in Columbia, South Carolina pursuant to an Order of the Richland County Family Court dated September 12, 2005.

29. Defendant denies the allegations of paragraph 29.

30. Defendant denies the allegations of paragraph 30.

ANSWER TO SIXTH CAUSE OF ACTION

31. Paragraph 31 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-30.

32. No responsive pleading is required to the legal conclusions stated in Paragraph 32.

33. The allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 are denied.

DEFENSES

36. This Court lacks subject matter jurisdiction over the matters contained in the Amended complaint.

37. The Amended Complaint fails to state facts sufficient to constitute a cause of action.

38. The claims asserted are barred by the doctrine of *res judicata*.

39. The Amended Complaint should be dismissed because there is another action pending between the parties for the same relief.

40. Plaintiff is not entitled to the relief requested because he is pursuing the same remedies in the family court.

41. Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Plaintiff is estopped, inter alia, because pursuant to the requirements of The Family Court Order, Defendant deeded the real property at 1 Rice Court, Columbia, South Carolina to Plaintiff, who sold that real property to a third party and then kept the proceeds from that sale.

42. Plaintiff is precluded from the relief sought because he executed a general release in favor of Defendant.

43. Plaintiff is precluded from the relief sought because there is an adequate remedy at law in the Family Court.

COUNTERCLAIMS
(Allegations Common to All Counterclaims)

44. To the extent relevant to these counterclaims, the responses set forth above are incorporated herein as fully as if repeated verbatim.
45. Defendant was the sole owner of the real estate located at 320 St. James Street, Columbia, South Carolina, 29205 ("320 St. James") at all relevant times.
46. On or about February 9, 2009, Defendant placed 320 St. James on the market for sale.
47. On July 31, 2009, Plaintiff filed a *lis pendens* against 320 St. James (a copy of which is attached as **Exhibit A**) but did not provide notice of the *lis pendens* to Defendant.
48. At the time he filed the *lis pendens*, Plaintiff had no interest in or claim against 320 St. James.
49. Upon information and belief, Plaintiff's purpose in filing the *lis pendens* was to prevent the closing of the sale of 320 St. James under the contract of sale that had been entered into between Defendant and her purchaser.
50. On August 18, 2009, Plaintiff filed the complaint in this action but did not serve Defendant. The complaint alleges no interest of Plaintiff in 320 St. James.
51. On or about August 19, 2009, Plaintiff communicated with the closing attorneys for Defendant's purchaser under the contract of sale for 320 St. James, stating that he would cancel the *lis pendens* if Defendant's purchaser would instead buy his house at 1609 Catawba Street, Columbia, SC, 29205, provided Plaintiff could purchase 320 St. James.
52. Plaintiff also communicated to the purchaser's closing attorneys the false information that the pool at 320 St. James had a current leak.
53. On or about July 25, 2009, Defendant entered into a contract to purchase the real estate located at 421 River Club Road in Lexington County, SC ("421 River Club"). The closing was contingent on Defendant's consummation of the sale of 320 St. James because Defendant was to use the proceeds from that sale to fund the purchase of 421 River Club.
54. Upon information and belief, after Plaintiff became aware of Defendant's contract of sale to purchase 421 River Club, Plaintiff and/or his agent contacted Defendant's seller and offered to purchase 421 River Club for more than Defendant's contract price.
55. Because of Plaintiff's interference, including but not limited to his filing of the *lis pendens* and the complaint, Defendant's original contract of sale with her purchaser

failed. Eventually, Defendant was able to sell 320 St. James to her purchaser on August 20, 2009, but on significantly less favorable terms than the original contract of sale.

56. On information and belief, sometime after Defendant purchased 421 River Club, Plaintiff began negotiating to purchase real estate in the same neighborhood as, and right down the street from, Defendant's new home at 421 River Club, and Plaintiff has now consummated that purchase.
57. On or about September 8, 2009, Plaintiff served the complaint on Defendant.
58. Plaintiff's actions caused and continue to cause Defendant to sustain severe emotional distress as well as financial loss.

**FIRST COUNTERCLAIM
(SLANDER OF TITLE)**

59. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
60. Plaintiff published false statements about Defendant's title to 320 St. James by filing the *lis pendens* and the complaint and/or making other false statements that Plaintiff had a claim to or interest in 320 St. James.
61. Upon information and belief, Plaintiff's false statements were made with malice for the purpose of preventing the closing of the sale of 320 St. James and to harass Defendant.
62. Plaintiff's false statements were derogatory to Defendant's title to 320 St. James and caused the original contract of sale to fail.
63. Plaintiff's false statements caused special damages to Defendant in the form of the lost sale of the property and the diminution of its sales price.
64. Plaintiff's false statements diminished the value of Defendant's property interest in 320 St. James.
65. Plaintiff's false statements constituted a slander of Defendant's title to 320 St. James for which Defendant is entitled to recover actual and punitive damages from Plaintiff.

**SECOND COUNTERCLAIM
(TORTIOUS INTERFERENCE WITH AN EXISTING CONTRACTUAL RELATIONSHIP)**

66. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
67. On information and belief, Plaintiff was aware of Defendant's contract to sell 320 St.

James.

- 68. Upon information and belief, Plaintiff through his actions, including but not limited to his false statements, intended to cause the breach of Defendant's original contract to sell 320 St. James.
- 69. Plaintiff had no justification for his actions because he had no interest in 320 St. James.
- 70. Plaintiff's actions constituted a tortious interference with Defendant's existing contractual relationship.
- 71. Plaintiff's tortious interference with Defendant's existing contractual relationship caused damage to Defendant as set forth above for which Defendant is entitled to recover actual and consequential damages from Plaintiff.

**THIRD COUNTERCLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE)**

- 72. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
- 73. Through his conduct, Plaintiff intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct.
- 74. Plaintiff's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community.
- 75. Plaintiff's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.
- 76. Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff for damages as set forth above.

**FOURTH COUNTERCLAIM
(ABUSE OF PROCESS)**

- 77. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
- 78. Upon information and belief, Plaintiff had an ulterior purpose in bringing this action: to harass Defendant and to prevent the Defendant from selling 320 St. James and from purchasing 421 River Club.
- 79. Plaintiff's willful actions in the use of process was not proper in the regular conduct

of proceedings and was intended to gain an objective not legitimate in the use of process.

80. Defendant suffered damages as a result of Plaintiff's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.

**FIFTH COUNTERCLAIM
(INVASION OF PRIVACY/WRONGFUL INTRUSION
AS TO CONTRACTS TO SELL AND PURCHASE)**

81. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
82. Plaintiff intruded into Defendant's private contractual arrangements involving the sale of 320 St. James and the purchase of 421 River Club.
83. Plaintiff intruded into Defendant's private contractual arrangements for which she had normal expectation to be free from exposure to Plaintiff.
84. Plaintiff's intrusion caused emotional distress to Defendant and was a blatant and shocking disregard of her rights.
85. Plaintiff's course of conduct was intentional.
86. Defendant suffered damage as a result of Plaintiff's invasion of Defendant's privacy for which Defendant is entitled to recover actual and punitive damages from the Plaintiff.

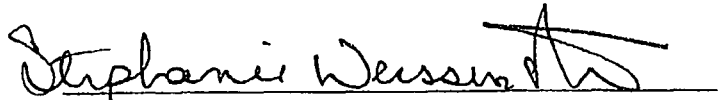
**SIXTH COUNTERCLAIM
(MALICIOUS PROSECUTION)**

87. Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.
88. The filing of this action by Plaintiff was filed with malice in instituting the proceedings, without probable cause.
89. On information and belief, Plaintiff's claims will be resolved in favor of Defendant.
90. Defendant has suffered injuries and damages as set forth above as the result of the actions of the plaintiff as described herein.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

- A. Dismissing the amended complaint in its entirety;

- B. For actual and punitive damages on the counterclaims set forth above;
- C. For the costs of this action and prejudgment interest as permitted by law;
- D. For such other and further relief as may be appropriate.



Desa Ballard
Stephanie Weissenstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone: (803)796.9299
Facsimile: (803)796.1066
E-mail: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR DEFENDANT

November 19, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

6277
IN THE COURT OF COMMON PLEAS

Howard Hammer,

Petitioner,

vs.

Shirley Hammer AKA Shirley Grace Hightower,

Respondent.

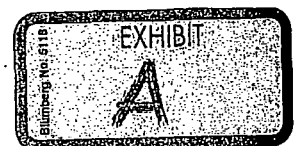
LIS PENDENS

2009 JUL 31 PM 4:42
FILED
RICHLAND COUNTY
JEANETTE W. McBRIDE
C.S.P. & G.S.

NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced by the above-named Petitioner against the above-named Respondents concerning among other things and matters the property described as follows:

All that certain piece, parcel, or lot of land, together with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and designated as Lot 6, Block A, on a plat prepared for Carolina Research and Development Foundation by McNair, Gordon, Johnson & Karasiewicz, dated May 1, 1981, and recorded in the Office of the RMC for Richland County in Plat Book Z at pages 363 and 363-A. Being more specifically shown and delineated on a plat prepared for Howard Hammer by Cox and Dinkins, Inc., dated June 20, 1985. Said lot is bounded and measures as follows: On the Southwest by St. James Street, whereon it fronts and measures first in a curved line the chord distance of 6.96 feet, and then in a straight line the distance of 71.09 feet; on the Northwest by Lot 7, Block A, whereon it measures 69.73 feet; on the North by Lot 8, Block A, whereon it measures 39.33 feet; on the East by Lot 10, Block A, whereon it measures 73.37 feet; and on the Southeast by Lot 5, Block A, whereon it measures 44.16 feet. Be all measurements a little more or less.

This being the same property conveyed to Howard Hammer by deed of Will H. Byrd Jr., dated July 25, 1985, and recorded July 26, 1985, in Deed Book D751 Page, 584, with an undivided one half interest in said property thereafter being conveyed to Shirley Hightower Hammer by



deed of Howard Hammer dated February 23rd, 2004 and recorded on February 27th, 2004 in Deed Book/Page 00906 – 3447, the remaining undivided one half interest of Howard Hammer being conveyed to Shirley Hammer by deed of Howard Hammer dated May 20th, 2008 and recorded June 18th, 2008 in Deed Book/Page 1439 – 1279 for which reference to each of deeds is hereby incorporated herein.

Said conveyance having been made is subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to any shown on recorded plats.

TMS# 11307-09-16

The action will sound inter alia in causes for breach of contract and tort.

Respectfully Submitted,



Howard Hammer, Petitioner

Pro-Se

July 30, 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2009-CP-40-05911

Howard Hammer,)

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

Shirley Hammer, a/k/a)
Shirley Grace Hightower,)

Defendant.)

The undersigned certifies that she has, this date, caused to be served a copy of the **Answer to Amended Complaint, Motion to Dismiss and Counterclaims** upon opposing counsel in this matter via by regular U.S. mail delivery by depositing all in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Susan Batten Lipscomb
Lipscomb Law Firm, PA
6326 St. Andrews Rd.
Columbia, South Carolina 29212


Stacy Ohrin
Paralegal

November 19, 2009

LOODB Received: 11/24/09

Via: ☐ Email ☐ Fax ☐ Hand Delivery
☒ U.S. Mail ☐ Overnight/Express

Calendared: _____

Archived: 11/24/09

Copy / Fax / Email: Client SO:SW

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 NOV 23 AM 10:09

RICHLAND COUNTY
FILED

RECEIVED

JUN 25 2010

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Case No. 2009-CP-40-05911

Howard Hammer,

Appellant,

vs.

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

Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that she has, this date, caused to be served a copy of the **Motion to Bifurcate and/or Declare Status of Trial Court Proceedings along with Certificate of Service** upon opposing counsel in this matter by depositing both in the United States Mail, with sufficient first class postage affixed, addressed as follows:

Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, PA
1634 Main Street, Suite 200
Columbia, South Carolina 29201


Jena K. Breedlove
Paralegal

June 23, 2010



Law Offices of Desa Ballard

Desa Ballard

Certified Mediator
also admitted in D.C.

Harvey M. Watson III
Stephanie Weissenstein

803.796.9299 telephone
803.796.1066 facsimile

www.desaballard.com

226 State Street
West Columbia, SC 29169

June 23, 2010

RECEIVED

JUN 25 2010

SC Court of Appeals
1664 25

Via U.S. Mail Only
The Honorable Tanya Gee
1015 Sumter Street
Post Office Box 11629
Columbia South Carolina 29211

Re: *Howard Hammer v. Shirley Hammer, a/k/a Shirley Grace Hightower*
Appeal from Richland County
Case No: 2009-CP-40-05911

Dear Ms. Gee:

Please find enclosed for filing the original and seven (7) copies of the **Motion to Bifurcate and/or Declare Status of Trial Court Proceedings**, along with proof of service on opposing counsel on the last page of the motion. Also enclosed is a check in the amount of \$25.00 to cover the filing fee for the motion.

Please clock in the extra copy and return to me in the enclosed self-addressed and stamped envelope. Thank you for your assistance.

With warm personal regards, I am,

Sincerely yours,

Jena Breedlove

Jena Breedlove
Paralegal

jena@desaballard.com

c: Susan B. Lipscomb, Esquire
Shirley Hammer (via e-mail only)

POS 6/17/10
PM/HD 6/17/10

RECEIVED

JUN 17 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-0591-17

2010/6/17

Howard Hammer Appellant

v.

Shirley Hammer Respondent

NOTICE OF APPEAL IN A CIVIL CASE

Howard Hammer appeals the following Orders of the Honorable L. Casey Manning dated April 14, 2010 (Exhibit A hereto) and the Order Denying Plaintiff's Motion Pursuant to Rule 59(e) dated May 18, 2010, (Exhibit B hereto), written notice of which was mailed Friday, May 21, 2010, and received by Appellant on Monday, May 24,

2010

Susan Batten Lipscomb
Susan Batten Lipscomb

Other Counsel of Record:

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

RECEIVED

JUN 17 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

L. Casey Manning, Circuit Court Judge

Case No. 2009-CP-40-05911

Howard Hammer Appellant

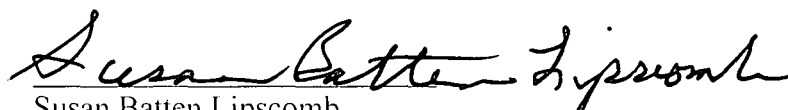
v.

Shirley Hammer Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on June
17, 2010, **Notice of Appeal in a Civil Case** was served on counsel of record by causing a
copy to be hand delivered addressed as set forth below:

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


Susan Batten Lipscomb

LIPSCOMB LAW FIRM, PA

Susan Batten Lipscomb
Attorney at Law

John Richard Lipscomb
Attorney at Law

1634 Main St., Suite 200, Columbia, SC 29201
Tel.: (803) 233-6654 Fax: (803) 233-6663
LipscombLaw@Gmail.com
www.LipscombLawFirmSC.com

June 17, 2010

The Honorable Tanya Gee
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201

RECEIVED

JUN 17 2010

SC Court of Appeals

Re: Hammer v. Hammer
Civil Action #: 2009-CP-40-05911

Dear Ms. Gee:

Enclosed please find the original and two copies Notice of Appeal in a Civil Case together with a Proof of Service and a check in the amount of \$100.00 for the filing fee. Please file the original and return two clocked copies of the Notice of Appeal and Proof of Service to me.

By copy of this letter, we are notifying the counsel of record of this communication. We have caused a copy of the Notice of Appeal and Proof of Service to be served on them by hand delivery as indicated in the Proof of Service.

Thank you for your assistance in this matter.

Very truly yours,



Susan Batten Lipscomb

Enclosures

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP4005911

ORIGINAL

Howard Hammer

vs.

Shirley Hammer

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP;
 SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGEThis judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this
16th day of April, 2010, to attorneys of record or to parties (when appearing pro se) as follows:Susan Batten Lipscomb
Howard HammerDesa Ballard
Kate Landess
Stephanie Nichole Weissenstein

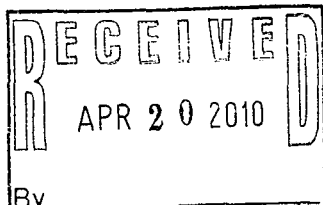
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

SCRCP APP-24/FORM 4

cc H14
4-20-10
[Signature]

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2009-CP-40-05911

Howard Hammer,

Plaintiff,

vs.

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

Defendant.

ORDER DISMISSING COMPLAINT

(Does not end action)

2010 APR 14 PM 3:11
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Defendant Shirley Hightower moved for dismissal of Plaintiff's complaint because this Court lacks subject matter jurisdiction. Present at the March 2, 2010, hearing on this motion were Desa Ballard, attorney for Defendant, and Plaintiff Howard Hammer, who argued on his own behalf with the assistance of his lawyer, Susan Lipscomb. For the reasons set forth below, Defendant's motion to dismiss for lack of subject matter jurisdiction is GRANTED.

FINDINGS OF FACT

This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr. Hammer"), seeking a declaratory judgment and other relief in connection with "*a certain contract*" entered between the parties in May 2008 ("May 2008 Contract"), which was incorporated into an order of the Family Court. Mr. Hammer asserts that the May 2008 Contract is void *ab initio* as violating public policy because a key term of the contract is a payment of funds by Mr. Hammer to Defendant Shirley Hammer in exchange for her agreement to drop certain criminal charges against Mr. Hammer. The contract also included terms involving, among other matters, property located at 320 St. James Street,

Columbia, South Carolina, which was formerly the marital home, and retirement (IRA) accounts.

The “May 2008 Contract” is a partial settlement of family court litigation that has been pending since September 2, 2005. More significantly, the Family Court expressly “adopted, approved, incorporated into, merged, integrated with and made” the May 2008 contract a court order. *Hammer v. Hammer*, C.A. NO: 2005-DR-40-2871 (Order of Judge Dorothy Mobley Jones at page 4, paragraph 1 (May 12, 2008) (the “May 2008 Order”). In the Order, the Family Court expressly retained “jurisdiction to issue any orders necessary to effectuate the terms of the Agreement.” *Id.* at 4, ¶ 2 (A copy of the May 2008 Order is attached as Exhibit “A”).

Mrs. Hammer invoked the jurisdiction of the Family Court on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. She filed a Second Amended Complaint on December 6, 2007, seeking a divorce and other relief. The Family Court litigation was settled in two phases. First, the divorce and property settlements were agreed to on May 9, 2008 and made Orders by Judge Jones on May 12, 2008. Second, on June 23 and 24, 2009, the parties settled issues relating to child custody, visitation, and related issues. The Family Court entered its Orders approving this Settlement Agreement and Ending the Action on August 19, 2009. The 2009 Family Court Order expressly re-affirmed the May 2008 Order.

Beginning in May 2009, Mr. Hammer mounted at least four attacks on the 2008 and 2009 Settlement Agreements and Family Court Orders:

First, on May 4, 2009, Mr. Hammer sought to amend, modify, void, and set aside the May 12, 2008 Order and requested a new trial under Rule 60(b). By Order of Judge

Jones entered September 1, 2009, this motion was dismissed with prejudice in view of the August 19, 2009, Orders.

Second, Mr. Hammer, *pro se*, filed a motion to withdraw, rescind, and repudiate his consent to the June 23, 2009, Settlement Agreement, incorporated by the 2009 Order. That motion was denied by Order of the Family Court (Judge Rucker) on January 27, 2010.

Third, September 4, 2009, Mr. Hammer filed a Motion to Reconsider, Amend, Alter, Modify and/or For a New Trial and Stay of the following four family court orders, each dated August 19, 2009: (1) Order for Transfer of Individual Retirement Account; (2) Order Sealing Record; (3) Order Approving Settlement Agreement; and (4) Order (Ending Action). This omnibus motion was denied by Order of Judge Rucker on January 27, 2010.

Finally, Mr. Hammer filed this declaratory judgment action in the Court of Common Pleas. Both in her Answer and First Amended Answer, Motion to Dismiss, and Counterclaims to the Complaint, Mrs. Hammer asserted three affirmative defenses: (1) lack of subject matter jurisdiction (Rule 12(b)(1), SCRCP); (2) failure to state facts sufficient to constitute a cause of action (Rule 12(b)(6), SCRCP); and (3) *res judicata* (Rule 8(c), SCRCP).

CONCLUSIONS OF LAW

S.C Code Ann. § 20-3-690 provides that “[t]he *family courts of this State have subject matter jurisdiction over all contracts relating to property* which is involved in a proceeding under this article *and over the construction and enforcement of those*

contracts.” S.C. Code Ann. § 20-3-690 (emphasis added). This section refers to Divorce and settlement agreements in South Carolina.

Further, S.C. Code Ann. § 63-3-50 provides:

(A) The family court has exclusive jurisdiction

...

(2) to hear and determine actions for divorce a vinculo matriomii, separate support and maintenance, legal separation, and in other marital litigation between parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney’s fees, if requested by either party in the pleadings;

...

(25) to modify or vacate and order issued by the court;

...

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such prohibition;

S.C. Code Ann. § 63-3-50. Each claim raised by Mr. Hammer in this court has already been heard and determined by the Family Court, which had exclusive subject-matter jurisdiction under S.C. Code Ann. § 63-3-50(A)(2)(25) & (30), and under S.C. Code Ann. § 20-3-690 (1976, as amended).

The First and Fourth Causes of Action for a Declaratory Judgment in Mr. Hammer’s complaint declare the May 2008 Family Court Order void as against public policy. These issues were heard by the Family Court, which rejected Mr. Hammer’s post-trial attack on the June 2009 Settlement Agreement and August 19th order approving the settlement agreement and order ending the action. (Family Court Orders,

January 27, 2010). The August 19, 2009, Order ending the action expressly reaffirmed the May 12, 2008, Order as later modified by the August 19, 2009, Order. Consequently, the May 2008 and the August 19, 2009, orders are both indivisible and indistinguishable.

Accordingly, the public policy attack was already heard, determined, and rejected by the Family Court. (Family Court Order Regarding Defendant's *Pro Se* Motion, January 27, 2010).

The Second, Third, Fifth, and Sixth causes of action in Mr. Hammer's complaint to this circuit court complaint all relate to disposition of the marital home, to transfer of Mr. Hammer's IRA account, and to other matters intrinsically related to the domestic relations litigation within the exclusive jurisdiction of the family court.

All of the property settlements in the May 2008 and June 2009 Settlement Agreements are in connection with the divorce proceeding. The law in this State expressly grants exclusive subject matter jurisdiction to the family court over the construction and enforcement of all these contracts. S.C. Code Ann. §§ 63-3-50(A)(2)(25) & (30), 20-3-690.

Plaintiff argues that this Court has concurrent jurisdiction with the Family Court as to the issues set forth in the May 2008 contract and argues that Plaintiff has the right to choose his forum for litigating the matters. In the seminal case of *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), our Supreme Court expressly held that, once a settlement agreement is approved by the Family Court, it may be enforced only by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction. *Id.* at 353, 306 S.E. 2d at 627 ("With the court's approval, the terms become a part of the decree and are binding on the parties and the court. However,

unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the court and enforceable by contempt.”).

Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements. *See* May 2008 Order at 4, ¶ 2; 2009 Order Ending Action at 8, ¶¶ 7 and 9. Accordingly, under *Moseley*, the Family Court, and only the Family Court, has continuing subject matter jurisdiction over the claims raised by the Amended Complaint. *See also, Swentor v. Swentor*, 336 S.C. 472, 478-79, 520 S.E.2d 330, 334 (1999) (holding that, even in the face of an agreement to arbitrate, the Family Court does not lose jurisdiction).

Even if this Court had concurrent jurisdiction, which it plainly does not under applicable law, the family court would still have exclusive jurisdiction over the May 2008 Court Order and incorporated contract because litigation began in the family court first, and has continued there.

It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive. *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981). In affirming a circuit court order dismissing a complaint for lack of subject matter jurisdiction, the Supreme Court held: “Here, actions involving the same parties, substantially the same issue (the parties’ respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction. The family court acquired jurisdiction first, therefore, it acquired exclusive jurisdiction to hear all further

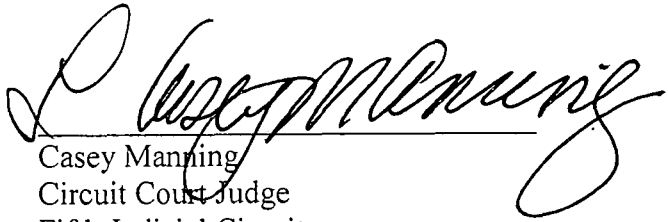
proceedings in the case." See: *Tucker v. Tucker*, 264 S.C. 172, 177, 213 S.E.2d 588 (1975)" (emphasis added). *Id.* at 575, 281 S.E.2d at 110.

Here the family court acquired jurisdiction on September 2, 2005, almost four years before Mr. Hammer filed his complaint in this case.

Collectively, the Family Court Orders concern the same parties' in litigation and concern the same claims and issues, all of which were adversely determined against Mr. Hammer. Accordingly, he is barred from re-litigating those claims and issues here.

THEREFORE, for the reasons set forth above, Defendant Shirley Hammer's Motion to Dismiss for lack of subject matter jurisdiction is GRANTED. This order does not end the action as to Defendant's counterclaims.

IT IS SO ORDERED.


Casey Manning
Circuit Court Judge
Fifth Judicial Circuit


March 14, 2010

Exhibit B

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2009CP4005911

IN THE COURT OF COMMON PLEAS

Howard Hammer

vs.

ORIGINAL

Shirley Hammer

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this _____ day of _____, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Susan Batten Lipscomb

Howard Hammer

ATTORNEY(S) FOR THE PLAINTIFF(S)

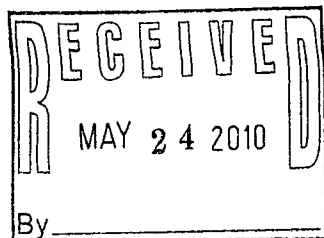
Desa Ballard

Kate Landess

Stephanie Nichole Weissenstein

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4



Jeanette W. McBride
Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2009-CP-40-05911
	)	
Howard Hammer,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING
	)	MOTION TO RECONSIDER
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant.	)	

RICHLAND COUNTY
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 JEANETTE W. McBRIDE
 C.C.P. & G.S.

The Court issued an Order dated April 14, 2010 dismissing Plaintiff's complaint in the referenced matter. Plaintiff filed "Plaintiff's 59(e) Motion" on April 28, 2010. Plaintiff's motion for reconsideration is DENIED.

The findings of fact and conclusions of law set forth in the Order of this Court dated April 29, 2010 are incorporated hereto, by reference. Further, this motion is denied based on the following findings of fact and conclusions of law:

1. This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr. Hammer"), seeking a declaratory judgment and other relief in connection with "*a certain contract*" entered between the parties in May 2008 ("May 2008 Contract"). This Court found that the "certain contract" had been incorporated into an order of the Family Court, being a partial settlement of family court litigation that has been pending since September 2, 2005 which was "adopted, approved, incorporated into, merged, integrated with and made" a court order. Hammer v. Hammer, C.A. NO: 2005-DR-40-2871 (Order of Judge Dorothy Mobley Jones at p 4, (May 12, 2008).

2. Plaintiff argues that this Court erred in finding that the "*certain contract*" was incorporated into a Family Court order on the basis that there was "no admissible evidence of record on which the Court could base such finding" and because this court could not, therefore, take judicial notice of the Family

Court pleadings or orders. The Plaintiff alleges that because of there is a sealing order filed in the Family Court, no filings associated with that action are admissible in this matter.

3. The sealing order provides that the parties and court may access and use the file in connection with this [domestic] litigation. Although this particular case is not captioned in the family court, I find that Plaintiff's civil court suit is a continuation of a marital dispute still ongoing in the family court since September 2, 2005. Therefore, I find that this Court may take notice of all portions of the family court record despite the sealing order. Further, the Court may take judicial notice of any filed pleadings, sealed or not. SCRE. 201(b).

4. Plaintiff initiated this action in the civil court raising the issue of whether the Family Court agreement of May 2008 (and related orders) is void because of public policy and therefore unenforceable. Plaintiff created the necessity that this Court have access to, and take notice of, the Family Court filings in the parties' related domestic case.

5. Plaintiff argues that his 2nd, 3rd, 4th, 5th and 6th causes of action should not be dismissed because there was "no evidence of record from which the Court could make a finding that" those causes of action are not "intrinsically related to the domestic relations litigation". All of plaintiff's causes of action address or allege breach of contract, conversion of property referenced in the contract, or breach of faith stemming from "that certain contract" from May 2008, which is the settlement agreement incorporated into the Family Court order. Therefore, since these remaining allegations in the motion to reconsider are premised on the incorrect notion by Plaintiff that this Court may not consider the prior orders of the Family Court, there was suitable evidence in the record to support the Court's findings. The Plaintiff's motion for reconsideration is denied.

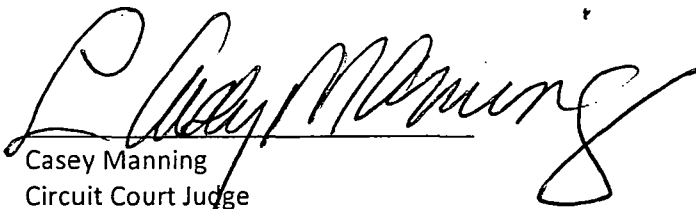
6. Plaintiff argues that this Court has concurrent jurisdiction with the Family Court as to the issues set forth in the May 2008 contract (i.e. "*certain contract*") and argues that Plaintiff has the right to choose his forum for litigating the matters, claiming this Court's interpretation of case law and statutory

law is incorrect. It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive. McDonald v. McDonald, 276 S.C. 573, 281 S.E.2d 109 (1981). Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements.

7. Plaintiff argues that the motion to dismiss was improperly granted because the Plaintiff is entitled to address a jury with his cause(es) of action under the declaratory judgment statutes and Article 3 of the Constitution. The Sixth Amendment, which applies against the states (see, Gideon v. Wainwright, 372 U.S. 335 (1963)), only pertains to criminal prosecutions. Further, the Seventh Amendment, providing for jury trials in civil cases, only applies in federal court, and has never been incorporated into the 14th Amendment due process clause and applied against the states. The plaintiff's arguments are without merit.

THEREFORE, for the reasons set forth above, Plaintiff's motion pursuant to Rule 59(e) is DENIED.

IT IS SO ORDERED.


Casey Manning
Circuit Court Judge
Fifth Judicial Circuit


March 2010
Richland County