

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

FEB 24 2016

SC SUPREME COURT

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
Case No.: 2009-CP-40-05911
Case No.: 2010-CP-40-02889

1634 Main, L.P.

v.

Shirley Hammer, Respondent,

v.

Howard Hammer, Appellant,

and

Howard Hammer, Appellant,

v.

Shirley Hammer, Respondent.

NOTICE OF APPEAL

Howard Hammer hereby appeals the following orders and rulings of the Honorable Joseph M. Strickland, Master-in-Equity for Richland County, in the foregoing cases:

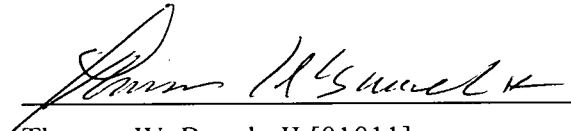
- a. Order Approving Accounting and all rulings contained therein filed May 29, 2015. This Order is attached hereto as **Exhibit A**. As to this order, Appellant

Howard Hammer timely filed a Rule 59 and 60 motion for reconsideration within 10 days after receipt of written notice of entry of this order. This motion is attached hereto as **Exhibit B**.

- b. The bench rulings and pronouncements placed on the record on January 27, 2016, by which Judge Strickland determined that he would neither hear arguments nor issue any rulings on Appellant's motion to reconsider his Order Approving Accounting. The transcript of hearing attached as **Exhibit C**.
- c. The failure of Respondent Shirley Hammer and the lower court to perform their obligations included in the January 21, 2014 order in these cases, which order, inter alia, transferred real and personal property to Respondent Shirley Hammer to satisfy judgments; which order required Respondent to sell the transferred property in a commercially reasonable manner and account to the lower court for the income, assets, and sales proceeds; and which order then required the lower court to issue an order of distribution securing to each party her or his respective share of the proceeds of sale. In September 2015 Respondent sold the transferred real property for \$825,000.00, from which she was authorized to pay herself the monetary judgments of \$335,168.76, plus the costs of sale of the property. After the sale, Respondent reported that after satisfying the judgments and paying the costs of sale the closing attorney was holding over \$300,000.00 in escrow. No proceeds of the sale have been distributed to Appellant Howard Hammer, the Respondent has not accounted for income, and the lower court will not hear and rule on any further matters in these cases. The Order of January 21, 2014, is attached hereto as **Exhibit**

D. The parts of this order relevant to this appeal were affirmed by this Court (Memorandum Opinion 2014-MO-045).

This Notice of Appeal is filed within 30 days of the January 27, 2016, bench rulings of the lower court ordering that it would not hear or rule on Appellant's motion to reconsider, nor would it require an appropriate accounting or issue an order for distribution as required by Exhibit D.



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

ATTORNEYS FOR APPELLANT

February 24, 2016

Other Counsel of Record:

Desa A. Ballard, Esquire
Ballard & Watson
Post Office Box 6338
West Columbia, SC 29171
Attorney for Respondent Shirley Hammer

EXHIBIT A

RECEIVED
From MIE (Scott) via Email 06-01-2015

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

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

ORDER APPROVING ACCOUNTING

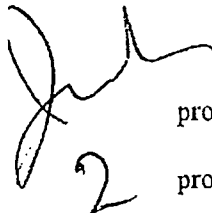
RICHLAND COUNTY
FILED
2015 MAY 29 PM 4:12
JEANNETTE W. McBRIDE
C.C.P. & G.S.

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

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

EXHIBIT
A
tabbles

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

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

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

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

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

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

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

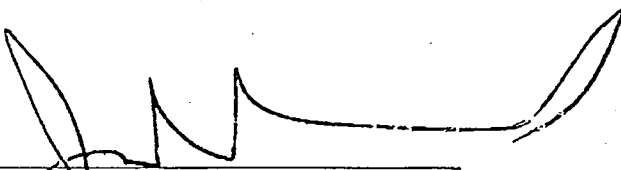
Shirley's accounting accurately sets forth the judgments noted in the January 21, 2014 order, the Supreme Court's judgments entered in both appeals, plus interest on those appeals at the post-judgment rate, expenses she has incurred in paying unpaid and overdue bills for 1634 Main LP that were found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

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

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

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

IT IS SO ORDERED.



Joseph Strickland
Master in Equity

May 13, 2015

EXHIBIT B

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

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

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

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

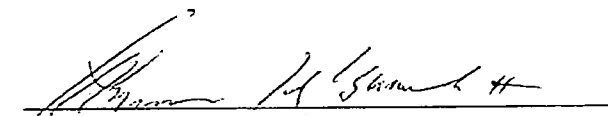
2. Allowing the recovery of new claims by way of motion is contrary to and a denial of due process under state and federal constitutions. No summons and complaint for these claims was filed. No complaint setting forth the basis of the claims was filed. It is improper to grant relief where a complaint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

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

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

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

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


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

June 18, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Shirley Hammer)
Plaintiff,)

vs.)

Howard Hammer)
Defendant.)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Shirley Hammer)
Plaintiff,)

vs.)

1634 Main, LP)
Defendant,)

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

ORDER APPROVING ACCOUNTING

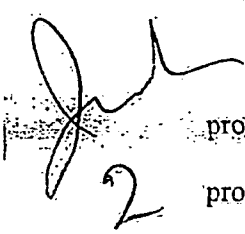
2015 MAY 29 PM 4:12
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

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



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

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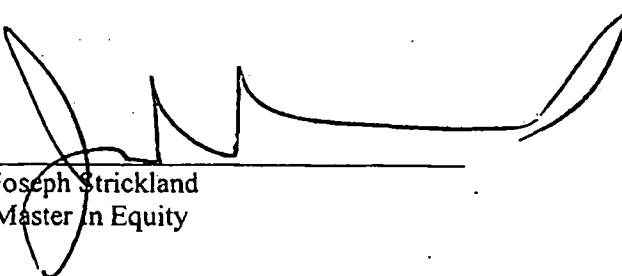
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IT IS SO ORDERED.

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

Joseph Strickland
Master in Equity

May 13, 2015



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

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

June 12, 2015

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

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

Dear Ms. McBride:

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

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

Sincerely yours,

Beth Cogan, Paralegal
beth@desaballard.com

Enclosure

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

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

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

**CERTIFICATE OF SERVICE
ORDER APPROVING
ACCOUNTING**

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

The undersigned certifies that she, on June 12, 2015, caused to be served the Order Approving Accounting on Counsel of Record by electronic mail and by placing it in the US Mail, first class delivery, with sufficient postage to the following addresses:

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

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

Beth Cogan

Beth Cogan, Paralegal

June 12, 2015

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

IN THE COURT OF COMMON PLEAS
 J.R. 2009-CP-40-05911
 2010-CP-40-02889

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

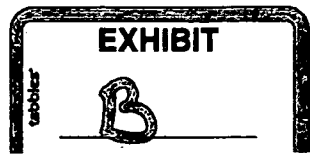
2013 APR 22 AM 11:40
 JEFFREY T. & J. HOBRIDE
 RICHLAND COUNTY
 FIDELITY & SECURITY
 S.C. Code

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

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

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

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



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

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

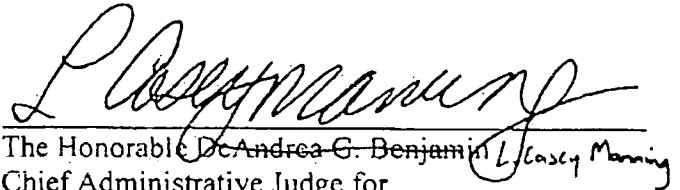
YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING THE FOLLOWING:

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

been made to you within the past five years; and

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

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


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

April 18, 2013
Columbia, South Carolina

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

A handwritten signature in cursive script, appearing to read "Amy L. Westbrook", written over a horizontal line.

Amy L. Westbrook

EXHIBIT C

1 State of South Carolina

In the Court Of Common Pleas

2 County of Richland

3

4 HOWARD HAMMER,

Plaintiff,

6 vs.

NO. 2009-CP-40-5911

7 SHIRLEY HAMMER A/K/A SHIRLEY GRACE
8 HIGHTOWER,

Defendant.

10

1634 MAIN, LP,

Plaintiff,

12 vs.

NO. 2010-CP-40-2889

13 SHIRLEY HAMMER A/K/A SHIRLEY GRACE
14 HIGHTOWER,

Defendant.

16 vs.

17 HOWARD HAMMER,

Additional Defendant on
Counterclaim.

20 SHIRLEY HAMMER,

Plaintiff,

22 vs.

NO. 2013-CP-40-6898

23 HOWARD HAMMER, 1634 MAIN, LP, ALVIN
24 HAMMER; SH5, LLC; SH4, LLC; SH3 LLC
HASCI, LLC, D&M CHATEAU, LLC; HEART
OF COLUMBIA, LLC; ALVIN J. HAMMER,
25 AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF BERNSTEIN HAMMER; JOYE



1/27/2016

1 ELIZABETH LIFE ESTATE; STANLEY)
HAMMER; DEPARTMENT OF THE TREASURY-)
2 IRS; CHATEAU DEVILLE ASSOCIATION,)
INC.; AND/OR CHATEAU DEVILLE,)
3 HORIZONTAL PROPERTY REGIME; DAVID)
HAMMER, A MINOR UNDER THE AGE OF 14,)
4)
Defendants.)
5 _____)

6 STATUS CONFERENCE HEARING
7 BEFORE THE HONORABLE JOSEPH STRICKLAND

8
9 DATE: January 27, 2016
10 TIME: 10:00 a.m. - 10:35 a.m.
11 LOCATION: Richland County Courthouse
1701 Main Street
12 Columbia, South Carolina

13 REPORTED BY: KATHRYN J. LINDLER

14 _____
15 COMPUSCRIPTS, INC.
Client Focused. Deadline Driven.
16 CHARLESTON COLUMBIA HILTON HEAD GREENVILLE MYRTLE BEACH
17 1-888-988-0086
www.southcarolinareporters.com
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APPEARANCES:

Attorneys for the Plaintiff Howard Hammer:

Robinson, McFadden & Moore, PC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201

By: Thomas W. Bunch, II, Esquire,

Attorneys for the Defendant Shirley Hammer:

Ballard & Watson
226 State Street
West Columbia, South Carolina 29169

By: Desa Ballard, Esquire,

Attorneys for the Defendants Heart of Columbia, HASCI,
LLC, Alvin Hammer, Stanley Hammer:

Lewis, Babcock & Griffin
1513 Hampton Street
Columbia, South Carolina 29201

By: Keith M. Babcock, Esquire,

Attorneys for the Defendant Chateau DeVille:

Joel Morris Deason
P. O. Box 212069
Columbia, South Carolina 29221

By: Joel M. Deason, Esquire.

1 THE COURT: I called the status conference based
2 on your letters and quite frankly I thought we were done,
3 everything is over. Tell me what we have not yet done as
4 far as you're concerned.

5 MR. BUNCH: Your Honor, I think there are several
6 outstanding matters. In May I believe it was you entered
7 an order in the supplemental proceeding cases, the '09 and
8 2010 cases, approving what I would call an interim
9 accounting which was an accounting presented by Mrs. Hammer
10 prior to the sale of the property. We filed a motion to
11 reconsider and have tried to get that scheduled over the
12 course of the last several months. That has never been
13 scheduled. So that motion which was filed in June is still
14 outstanding. No order has ever been issued on that motion.

15 Also in that same case as I understand the January 21
16 or in those same cases, not one case, but in those same
17 cases as I understand your January 21, 2014, order which
18 transferred the property to Mrs. Hammer, the property in
19 question to Mrs. Hammer, the property was to be sold,
20 Mrs. Hammer was supposed to take from that sale the
21 payment from her judgments and cost of sale and the rest
22 of the money was to be held in escrow pending further
23 order of the Court for distribution. And that still needs
24 to be done. There's been no motion or request for a
25 distribution by Mrs. Hammer. The motion to reconsider on

1 the preliminary accounting needs to be heard before there
2 can be an order on distribution, because that would impact
3 an order of distribution.

4 Your Honor, the other thing to my knowledge that
5 needs to be heard is in the foreclosure case, the 2013
6 case. Mrs. Hammer was given certain deadlines to
7 prosecute that action or bring it to a conclusion. She
8 elected -- the Court scheduled a hearing in April to bring
9 that matter to a conclusion and they elected not to go
10 forward. We filed a motion to dismiss in that case based
11 on not meeting your order as well as Supreme Court's order
12 setting deadlines to do that.

13 What happened was in the meantime you had already
14 issued the charging lien order in the foreclosure case so
15 we appealed that order and there was correspondence
16 between you and me and Ms. Ballard as to the status of the
17 motion to dismiss and the culmination of all that was you
18 needed to wait until the conclusion of that appeal in the
19 foreclosure case regarding the charging lien. Well, the
20 Supreme Court dismissed or denied or whatever they did
21 with that appeal. So now that the remittitur was issued
22 and we're back here and that motion to dismiss has never
23 been addressed by the Court. So I think those are the
24 issues that I would bring to the attention of the Court.
25 I do know that Mr. Babcock is here because he received

1 notice to come to Court and he may have something to say
2 on behalf of his clients even though they're technically
3 no longer in the case. I think that the posture of the
4 case is impacting his clients.

5 THE COURT: Mr. Babcock.

6 MR. BABCOCK: Thank you, Your Honor. Just for
7 the record I'm here representing Alvin Hammer, HASCI, Heart
8 of Columbia, Alvin Hammer as personal representative of the
9 Estate of Eleanor Hammer and Stanley Hammer in the 2013
10 foreclosure case. As Your Honor may recall, you issued an
11 order dismissing those Defendants from the case. We had an
12 issue which we raised concerning -- tried to tie down the
13 amount of the charging lien that was -- that issue was
14 denied by Your Honor, went up on appeal and was dismissed.
15 So that case is done. I'm here today because I got a
16 status conference notice and wanted to come and just
17 clarify the situation. My clients as well as the
18 Bernsteins do have an interest in having the various
19 motions Mr. Bunch referenced heard as soon as they can be,
20 because the issue of the amount of the charging lien is
21 still hanging out there and the Bernsteins and the Hammers
22 aren't really able to proceed forward, distributing money
23 and proceeding forward in the normal course of action. So
24 we're not in the case, but we are interested if those
25 issues can go forward as expeditiously as possible, that

1 would be helpful.

2 THE COURT: Before Ms. Ballard responds, I was
3 going to say from my perspective I thought the appeals and
4 orders affirming the Court's ruling in all those cases
5 handled everything. Was I mistaken in that? I thought the
6 case was over. I think they were done.

7 MS. BALLARD: Your Honor, could I respond?

8 THE COURT: Sure.

9 MS. BALLARD: The January 21, 2014, order set
10 forth the procedure for Mrs. Hammer to sell the property
11 and provide an accounting which she did and we filed the
12 supplemental accounting in accordance with that order in
13 October of 2015 and that, we believe, under the
14 January 2014 order did end the case. In fact the
15 supplemental accounting says on its face that it ends the
16 case. We filed this in October including the HUD statement
17 from the sale and showing the distribution that was
18 supposed to be made. Then 30 days after that had been
19 filed, nothing had been filed challenging that or objecting
20 to that so Mr. -- so I wrote to the Supreme Court on
21 November 19, 2015, with a copy to Mr. Bunch and Mr. Babcock
22 and said case is over FYI for your information, and
23 Mr. Bunch sent a letter on November 23 to the Supreme Court
24 and said no it's not essentially referencing what he has
25 referenced this morning. We then spoke -- I communicated

1 with Judge Barber. Since the Supreme Court had assigned
2 the matter to Judge Barber initially, I wrote to him on
3 December 21, 2015, I'm sorry I don't have copies of this,
4 asking if he could help us determine whether the file was
5 in fact closed or not. Judge Barber called Mr. Bunch and
6 me the week after Christmas, told us that was his last week
7 on the bench because he was retiring and I think he made
8 some phone calls and tried to figure out what the status
9 was, but was unable to do so. So after the first of the
10 year, I wrote to Your Honor and said Mr. Bunch still claims
11 that there is something outstanding.

12 Our position is that there is nothing outstanding in
13 either, when I say either case, the 2009/2010 case is
14 consolidated, that's the one that was the subject of your
15 January 21, 2014 order. When we filed the final
16 accounting, we complied with the order and indicated in
17 there that there were no excess funds to be distributed.
18 So that was the end of that. The motion that Mr. Bunch
19 claims still remains to be heard related to the accounting
20 that we filed before we sold the property. That was an
21 interlocutory order that would not have been appealable
22 anyway. So when the final accounting was filed that
23 mooted that issue. I think if Mr. Bunch wanted to take
24 issue with the accounting, he would've had to file
25 something with this Court within 30 days which he did not

1 do. So when I wrote to Judge Barber on December 21 I
2 enclosed to him a proposed order that said there's nothing
3 still pending. But he did not execute that order and
4 basically told us to come back and see you, and that's why
5 I contacted you.

6 The 2013 case is essentially over. The charging
7 order remains in place. The amount of it is still
8 undetermined, because Mr. Bunch won't allow the proceeds
9 of the sale, the remaining proceeds of the sale, to be
10 distributed. So I can't...

11 MR. BUNCH: Your Honor, I have nothing to do with
12 that.

13 THE COURT: I was going to ask how is he
14 preventing that.

15 MS. BALLARD: The closing attorney met with
16 Mr. Bunch and somebody, I don't remember who.

17 THE COURT: Who is the closing attorney?

18 MS. BALLARD: The closing attorney was Bru Pender
19 with the Craig Law Firm and Mr. Bunch told him he was still
20 planning to file an appeal that would affect the
21 distribution of those monies. So the closing attorney has
22 only distributed a portion of the money primarily the
23 judgments, the initial judgments from Judge James, but I
24 think he's waiting for you to confirm that there is nothing
25 that remains pending.

1 THE COURT: Mr. Babcock, that's what your clients
2 are concerned about?

3 MR. BABCOCK: Yes. Tying that amount down, yes,
4 Your Honor.

5 THE COURT: Mr. Bunch.

6 MR. BUNCH: Your Honor, I can't understand what
7 procedure Ms. Ballard is following. All I can go by is the
8 January 21, 2014, order which was your order. It was
9 affirmed on appeal. It's the law of the case. And that
10 order on page 12 at paragraph number 6 states that Mrs.
11 Hammer shall pay herself from the proceeds of sale three
12 things. The first is the costs for marketing the sale of
13 the property. The second is the total amount of the
14 judgments and the third is attorneys' fees and costs for
15 sanctions. The third issue is gone. You issued
16 sanctions -- that was -- that's been paid.

17 THE COURT: Actually I was reversed initially by
18 the Supreme Court, because I didn't give Mr. Hammer due
19 process I guess in a nutshell, but then we did have another
20 hearing and I certainly ordered sanctions against him and
21 those were paid.

22 MR. BUNCH: Those were paid.

23 THE COURT: So that's over with.

24 MR. BUNCH: Which leaves us back with two things
25 that were supposed to happen after the sale -- three things

1 actually. The first is payment of costs of sale of the
2 marketing directly to Mrs. Hammer from the proceeds of sale
3 and second the payment of the judgments directly from the
4 proceeds of the sale. And then paragraph 7 says any
5 additional funds shall be escrowed until an accounting can
6 be performed and distribution ordered by this Court. So
7 that's the operative order. It's the law of the case.
8 There's been no order of this Court.

9 The odd and unclear procedure that Ms. Ballard
10 followed is before a sale ever occurred, she filed a
11 preliminary accounting. I don't need to go into the
12 merits of that, but we think there are problems with that
13 preliminary accounting and we have asked the Court to
14 reconsider that order. And so that motion has never been
15 heard or disposed of. Instead of filing a motion to
16 approve a distribution, Ms. Ballard has filed something
17 she calls a final accounting and says this ends the case.
18 There's no order of the Court ending the case. We are
19 stuck in limbo, Your Honor.

20 If we have matters that need to be appealed, we are
21 stuck in limbo because of the failure to follow the
22 January 21, 2014, order and the failure -- and the fact
23 that we need a reconsideration of this order from last
24 summer in order to get to what the distribution should be.
25 That's really where we are. She can't just file something

1 and say the case is over. That comes from the Court.

2 THE COURT: Actually when we finished with the
3 sanctions, I think the order I signed did say that
4 concludes all the cases.

5 MR. BUNCH: If the Court is not going to hear
6 anything else in these cases, that's fine. I just need to
7 know that as well. I don't think that's proper or
8 appropriate, but I don't have any confirmation from the
9 Court as to the status of the cases and the fact that these
10 are over with. If you're not going to hear them, then that
11 would be up to you, but I would like confirmation from the
12 Court. Maybe a Form 4 that just says these cases are over
13 and the Court is not hearing any further matters.

14 THE COURT: Let me interrupt. There's another
15 attorney in the courtroom. Who are you representing?

16 MR. DEASON: Your Honor, Joel Deason. I'm just
17 here to follow these proceedings. I do represent Chateau
18 DeVille Homeowners Association which was named as a
19 Defendant in the foreclosure case. Really as a corollary
20 matter, my clients have an interest really -- we have other
21 suits that these matters could possibly affect. So I'm
22 mostly just taking notes.

23 THE COURT: That's fine. I just want the record
24 to be complete and just indicate that you were here in
25 whatever capacity.

1 MR. DEASON: Yes, sir.

2 THE COURT: Ms. Ballard.

3 MS. BALLARD: Thank you, Your Honor. We followed
4 the January 21, 2014, order to the letter. If Mr. Bunch
5 didn't like the procedure that Your Honor prescribed in the
6 January 21, 2014, order, he could've raised that on appeal
7 which he did file and which was affirmed and what your
8 order required is not that we file -- not that we seek an
9 order of the court. It required that any additional funds
10 after the sale would be held in escrow. We filed a
11 supplemental accounting. It ordered us to file a
12 supplemental accounting. So we did that and we advised the
13 Court that there were no additional funds. In fact the
14 sale's funds from the sale were not sufficient to make Mrs.
15 Hammer whole. As he quoted the order any additional funds
16 would be held in escrow. There were no additional funds
17 and we made that very clear in the accounting that we filed
18 in October.

19 THE COURT: That's the status of it today?

20 MS. BALLARD: That's the status of it today.

21 THE COURT: Mr. Bunch, why do you and your client
22 think there is money that's available that basically he
23 should get? Basically if I remember the arguments you made
24 earlier he's entitled to the overage I guess or if there's
25 surplus funds after the judgment is satisfied he thinks he

1 should get that money, is that your position?

2 MR. BUNCH: Yes. We think there's a lot of money
3 in surplus and we think that your order that is still
4 subject of the motion to reconsider is incorrect in how
5 it -- in what it said Mrs. Hammer was entitled to. That's
6 the -- if you want the numbers, that may help you follow
7 it. The sale's price of the property was \$825,000. There
8 was -- the judgments and the taxes were paid which I think
9 --

10 THE COURT: The judgments have been marked
11 satisfied.

12 MR. BUNCH: The judgments have been marked
13 satisfied. Those were paid. You approved costs in May I
14 guess it was of about \$118,000. There was commission of
15 about \$82,000. There were real estate taxes paid at the
16 sale. There was attorneys' fees the closing attorney paid
17 at the sale. When you total all this up, it comes up to --
18 and then -- it comes up to about \$601,000. That's assuming
19 that their accounting is correct and that's subject to
20 appeal in and of itself. Assuming their accounting was
21 correct, these amounts total about \$601,000 once you take
22 out sanctions.

23 So there's still 200 plus thousand dollars at least
24 subject to dispute. We have lots of other disputes about
25 the money and in fact if we were successful in our

1 position, there would be -- if we were successful in our
2 position, there would be a lot more money coming to
3 Mr. Hammer out of the sale of property. The bottom line
4 is, Your Honor, the property sold for \$825,000 to satisfy
5 about \$335,000 in judgments. So where has the other money
6 gone? Is really -- where has the other money gone and
7 where has the income gone, the \$200,000 income gone, that
8 Mrs. Hammer received while she owned the property. It
9 just doesn't pass muster. We need a -- the only thing we
10 need from you, Your Honor, and the only thing I would want
11 out of the status conference is either a decision to hear
12 the outstanding motions at an appropriate time or a
13 decision by you to say no I'm not hearing anything else,
14 these cases are over in my opinion.

15 THE COURT: Mr. Babcock, how does all this affect
16 your clients?

17 MR. BABCOCK: It affects my clients based upon
18 what we argued earlier, we need to know the amount of the
19 charging order. If Mr. Bunch is correct and everything is
20 paid and there is money coming to Mr. Hammer, then there
21 would be no money for a charging order. That could be
22 dismissed and my folks can proceed on. If it's not and
23 there's some other number, then we need to know what it is.
24 We're sitting in limbo right now, because we don't know
25 exactly how much the charging order is for. That's been

1 the problem all along.

2 THE COURT: Ms. Ballard.

3 MS. BALLARD: Your Honor, the money has all been
4 accounted for in the final accounting or the supplemental
5 accounting we filed in October. If anybody had any
6 questions about it, I would have thought it would be
7 appropriate to file a motion. That's why I waited 30 days
8 before I notified the Supreme Court that everything was
9 concluded. Nothing was filed. The reason the supplemental
10 accounting did in fact end the case is because the
11 January 21, 2014, order said that it would and it said if
12 there were any funds left over, and there have not been any
13 funds left over. We explained that thoroughly in our
14 supplemental accounting when we filed it. We showed that
15 Mrs. Hammer had not received any income from the property.
16 All the different categories that Your Honor ordered to be
17 paid were included in the supplemental accounting that we
18 filed. I think we came up 50 something thousand dollars
19 short which would be the amount that Mr. Babcock's clients
20 are interested in that would have to be paid out of the
21 charging order. But the case is over. The case has been
22 over since October. Mr. Bunch doesn't have a right to file
23 a motion to reconsider from an interlocutory order that
24 couldn't have been appealed anyway and even if he did when
25 we filed the final accounting in October that superceded

1 and made moot any motion that he had pending regarding the
2 preliminary numbers. It seems to me that the thing that
3 should have been done if he wanted to challenge anything
4 regarding the final accounting was to file something within
5 30 days challenging the final accounting and he did not do
6 that.

7 THE COURT: Is the charging order now not needed?

8 MS. BALLARD: No, it's still needed until we get
9 this money distributed from the sale and determine how much
10 we will need out of the charging order to make Mrs. Hammer
11 whole and we were on the road to doing that until Mr. Bunch
12 said wait, we still got something pending. So we kind
13 of -- we put all that on hold, but Mr. Babcock and I have
14 been discussing how to resolve that.

15 THE COURT: How long will it take you think to
16 resolve that charging order?

17 MS. BALLARD: We had it resolved. The only hold
18 up is Mr. Bunch's assertion that there is still something
19 pending. We are ready to resolve that today. We had a
20 number agreed on and we were ready.

21 MR. BABCOCK: Your Honor, that was in the nature
22 of settlement discussions.

23 MS. BALLARD: Yes.

24 MR. BABCOCK: And we tried to do that, but I
25 think from our perspective as we're sitting here today the

1 issues that Mr. Bunch raised to come up with a firm number
2 would be most helpful. We can still talk settlement, but
3 that's a settlement discussion rather than a decision on
4 the merits.

5 MS. BALLARD: The supplemental accounting set
6 forth what the excess number was, Your Honor. So I think
7 the numbers are pretty final at this point.

8 THE COURT: Well, my position is the case is
9 over. It was referred to me as supplemental proceedings
10 and unfortunately kind of got out of hand. I think I got
11 the case in 2013?

12 MS. BALLARD: That sounds right.

13 THE COURT: Here it is 2016 and we're still
14 dealing with it. Unfortunately I know anything that
15 Mr. Hammer may have done was dealt with with the sanctions,
16 but again I can't help remember why I thought it was
17 necessary to impose sanctions on Mr. Hammer and quite
18 frankly his credibility is kind of shot with me and
19 something -- this matter could have been resolved in a few
20 hours three years ago, but Mr. Hammer stonewalled and maybe
21 I was gullible and maybe I was too nice based on his
22 reputation as an attorney. I was completely dumbfounded by
23 the way this thing proceeded. Mr. Aiken isn't here. I was
24 also surprised -- I mean Mr. Aiken must have known what
25 Mr. Hammer was doing. I don't know that, because he's not

1 here today to talk about it, but as far as I'm concerned
2 everything is over. If you all want to talk about the
3 charging order issue, we don't have anything else in the
4 courtroom today until 4:00 this afternoon so you all can
5 use the courtroom all day if you need to, but as far as I'm
6 concerned, I'm not even sure I have jurisdiction to rule on
7 anything any more, because of the appellate cases and their
8 need and the rulings by the Supreme Court.

9 MS. BALLARD: Your Honor, I prepared a proposed
10 status conference order which says essentially what Your
11 Honor just said. I would pass it up to Your Honor to
12 consider as possibly executing indicating that there's
13 nothing pending before this Court.

14 THE COURT: I'm not sure what this means, though.
15 If I don't have authority to do it, which I don't think I
16 do --

17 MS. BALLARD: You have the right to issue an
18 order as a result of the status conference. This proposed
19 order just says there's nothing pending.

20 THE COURT: Where does this writing come from?

21 MS. BALLARD: You scheduled the status
22 conference.

23 THE COURT: I did.

24 MS. BALLARD: I think Rule 16 allows you to do
25 that.

1 THE COURT: To do an order in a status conference
2 where I believe the case is over and I don't have
3 jurisdiction?

4 MS. BALLARD: A Form 4 will be just as good.

5 MR. BUNCH: Your Honor, I'm satisfied with what
6 you put on the record today that you have no further
7 dealings with this case. As far as you're concerned it is
8 over and there's no reason to enter -- I haven't even
9 looked at the order. I have no idea what it says. There's
10 no reason to enter that order. If you want to enter a Form
11 4 saying the case is dismissed or whatever you want to do.

12 THE COURT: I'm inclined not to enter anything.
13 We do have a record here. Very capable court reporter.
14 And again I don't think I have power to sign anything quite
15 frankly. The case was referred to me and I think we did
16 our duty even though it took a little longer than I thought
17 necessary and the Appellate Court has visited this and we
18 have the status of the case now. I understand now what the
19 dispute is about, but my belief is that everything is done
20 in the supplemental proceedings in this cases and,
21 Ms. Ballard, I'm not going to sign the order.

22 MS. BALLARD: That's fine.

23 THE COURT: I'll hand it back to you.

24 MS. BALLARD: I was trying to make it easier for
25 all of us.

1 MR. BUNCH: Your Honor, does your ruling also
2 apply to the 2013 case, the foreclosure case?

3 MS. BALLARD: I was going to suggest that we 40J
4 that, Your Honor. All we need from that case is the
5 charging order which we already have. And I had indicated
6 to the Supreme Court that we were going to dismiss that
7 with prejudice once the charging order was dealt with.
8 There's nothing further to do.

9 THE COURT: Again I'm not sure you need my input
10 on that either. Yes, sir, Mr. Babcock.

11 MR. BABCOCK: Your Honor, we've already been
12 dismissed from that case. So for my clients that case is
13 over. As to the remaining people, the charging order
14 doesn't deal with them, but as to my clients, the case is
15 over. She has a charging order which is a separate issue.

16 MS. BALLARD: We have to foreclose the charging
17 order in order to collect on it, but I feel confident that
18 Mr. Babcock and I can resolve it once Mr. Bunch finally
19 accepts the case is over.

20 THE COURT: Anything else today?

21 MS. BALLARD: Thank you, Your Honor.

22 MR. BUNCH: On the 40J, Your Honor, because
23 Ms. Ballard does not have the authority to just 40J a case,
24 Your Honor. I think that requires consent of counsel and
25 court approval and if you're saying you have no further

1 jurisdiction in the matter, then I don't think she can 40J
2 the case. I think your ruling earlier would apply the same
3 way to the 2013 foreclosure case.

4 THE COURT: Let me do some research on that
5 myself, but again today I'm inclined not to do anything,
6 because I don't think I have the power to do anything at
7 this point. Anything else today?

8 MR. BUNCH: If there's any appeal that we need to
9 take, then we need something definitive on the 2013 case as
10 well, the status of that.

11 THE COURT: Why do you need that?

12 MR. BUNCH: Because you appeal from final orders
13 and if the court is saying now it has no further
14 jurisdiction and it's on the record today, I would consider
15 that to be the final order. If you're going to consider
16 it, then we are left in limbo while, you know, not knowing
17 whether to go ahead and appeal now or wait for your
18 decision.

19 THE COURT: I won't consider it then. Again
20 please understand my position. This is something I thought
21 could be resolved in two hours three years ago, and it's
22 kind of gotten out of hand and I think partly my fault,
23 because I know Mr. Hammer testified initially. I had no
24 reason not to believe that what he was saying was true when
25 he testified he had no assets and lived on Social Security

1 and was doing everything for his children and at first I
2 believed him and then I found out he was simply -- well,
3 the sanctions dealt with that. So I won't go into all
4 that. Quite frankly I'm not sure there's anything I need
5 to do further. Now if I'm making a mistake, as you know
6 the Appellate Court can certainly correct me and that's
7 part of the system so I accept that, but I don't think
8 there's anything really for me to do. Now again you and
9 Mr. Babcock can get together, Ms. Ballard.

10 MS. BALLARD: We have done that.

11 THE COURT: Yes, and resolve this. Mr. Bunch, I
12 think you're okay. If the Appellate Court says no, Judge
13 Strickland has to do something else to get you up here,
14 I'll consider that at the time. I don't think they will,
15 though, because I really don't think I have the power to do
16 anything at this point.

17 MR. BUNCH: Then I should consider your ruling on
18 the supplemental proceedings case also applies to the 2013
19 case as well?

20 THE COURT: Again Mr. Babcock's clients have been
21 dismissed. That's something I may need to look at.

22 MS. BALLARD: Your Honor, we don't plan to take
23 any further action other than foreclosing the charging
24 order if that's necessary to do. We don't plan to seek any
25 recovery against any of Mr. Hammer's other assets that are

1 named in that case.

2 THE COURT: You're saying it's moot?

3 MS. BALLARD: I'm saying it's moot as to
4 Mr. Hammer. The only thing we obtained out of it was the
5 charging order which I think is sufficient to protect
6 Mrs. Hammer and we don't intend to seek any further relief
7 on that matter.

8 THE COURT: You don't need me to do that. The
9 parties can stipulate to that.

10 MS. BALLARD: That's why I suggested a 40J, but
11 it sounds like there's opposition to that.

12 THE COURT: I understand Mr. Bunch's position.

13 MR. BUNCH: Your Honor, there is opposition,
14 because that case should be dismissed, because they refused
15 to move forward under this Court's order as well as the
16 Supreme Court's order. That's why there's opposition.
17 That's the subject of our motion to dismiss. I don't think
18 that case should -- I mean the problem is these -- we're
19 saying these cases should've ended two years ago and
20 they'll never end, well, by 40J-ing it they're giving
21 themselves the opportunity to come back and gouge more
22 money out of Mr. Hammer. Let's end the cases based on
23 their failure to prosecute the cases under the Court's
24 orders.

25 THE COURT: Ms. Ballard, do you have a problem

1 with that?

2 MS. BALLARD: Have a problem with what?

3 THE COURT: With just ending the cases. He said
4 based on your failure to prosecute. I'm not sure you agree
5 with that, but can't you all stipulate to a dismissal?

6 MS. BALLARD: We can certainly dismiss the
7 foreclosure as long as the charging order remains in place.

8 MR. BUNCH: I'm not agreeable with that either,
9 Your Honor. The case needs to be dismissed with prejudice
10 because they were under two court orders to move forward
11 and they came -- they were under two court orders to move
12 forward. The hearing notice came out that the case was
13 scheduled in April and they came to court and said we are
14 not ready to move forward. That's as simple as that. They
15 never prosecuted that case and missed all the deadlines
16 with this court as well as the Supreme Court. I think
17 their hands are kind of tied.

18 THE COURT: Again if I'm making a mistake by not
19 doing anything, the Appellate Court certainly will correct
20 me.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: But I think from my perspective
23 everything is over and I don't really have the power to do
24 anything. Thank you all.

25 (At this time, this concludes the status conference.)

1/27/2016

1 CERTIFICATE OF REPORTER

2
3 I, Kathryn J. Lindler, Court Reporter and Notary
4 Public for the State of South Carolina at Large, do hereby
5 certify:

6 That the foregoing testimony
7 was taken before me on the date and at the time and
8 location stated on Page 1 of this transcript; that the
9 witness was duly sworn to testify to the truth, the whole
10 truth and nothing but the truth; that the testimony of the
11 witness and all objections made at the time of the
12 examination were recorded stenographically by me and were
13 thereafter transcribed; that the foregoing deposition as
14 typed is a true, accurate and complete record of the
15 testimony of the witness and of all objections made at the
16 time of the examination to the best of my ability.

17 I further certify that I am neither related to
18 nor counsel for any party to the cause pending or
19 interested in the events thereof.

20 Witness my hand, I have hereunto affixed my
21 official seal this 3rd day of February, 2016, at
22 Columbia, Richland County, South Carolina.

23
24 *Kathryn J Lindler*



25 Kathryn J. Lindler
Notary Public for South Carolina
My commission expires June 4, 2018

EXHIBIT D

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009- CP-40-059118
 2010-CP-40-2889

Shirley Hammer,

Howard Hammer,

Shirley Hammer
 PLAINTIFF(S)

1634 Main,LP,
 DEFENDANT(S)

Submitted by: Stephanie Weissenstein, Esquire

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

2010 JAN 11 AM 9:05
 RICHLAND COUNTY
 FILED
 W. ROSEN
 500 S. G.

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

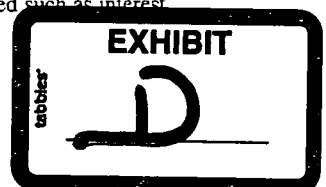
INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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



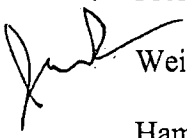
STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Shirley Hammer)
)
 Plaintiff,)
)
 vs.)
)
 Howard Hammer)
)
 Defendant,)
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 STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Shirley Hammer)
)
 Plaintiff,)
)
 vs.)
)
 1634 Main, LP)
)
 Defendant,)
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

IN THE COURT OF COMMON PLEAS
 CA# 2009-CP-40-05911
 CA# 2010-CP-40-2889

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

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

The matter before the court is a hearing in the nature of supplemental proceedings. Present at the hearing on January 9, 2014 were the Plaintiff and her counsel, Stephanie Weissenstein. Also present was Howard Hammer, who appeared *pro se* in the Hammer v. Hammer matter, and as agent for 1634 Main, LP. Art Aiken appeared as counsel for 1634 Main, LP and as counsel for Howard Hammer for the 1634 Main matter.



STATEMENT OF THE CASE

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

Plaintiff holds judgments against the defendant debtors, as follows:

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

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

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

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

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

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

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

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

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

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

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

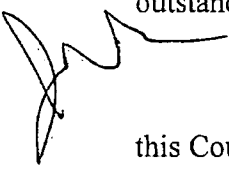
Neither Mr. Hammer nor 1634 Main LP has filed any responses to the written discovery served upon them, as they were required to do by this court's order dated June 10, 2013.

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

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

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

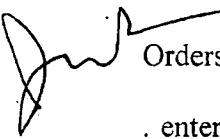
On September 9, 2013, the defendant debtors filed a motion for summary judgment alleging that transfer of the real property is beyond the power of this court, under S.C. Code §15-31-310, *et. seq.* A hearing was scheduled for January 9, 2014 for purposes of addressing all outstanding issues, and notice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



At the hearing on January 9, 2014, Counsel for Plaintiff renewed Plaintiff's request that this Court execute against property owned by Howard Hammer and 1634 Main, LP to satisfy the judgments. Mr. Hammer made an oral motion to dismiss Plaintiff's claim for execution against property on the basis that a separate action seeking foreclosure of judgments filed by Plaintiff on November 4, 2013 (Case No. 2013-CP-40-06898) divested this court of its jurisdiction over the supplemental proceedings. Counsel for 1634 Main, LP joined in the motion, and argued that only a foreclosure proceeding could divest his client of property for purposes of satisfying a judgment. Counsel for Plaintiff noted that the foreclosure matter would be rendered moot if these supplementary proceedings resulted in an execution against property owned by the judgment debtors, and that the foreclosure matter was filed in order to attach other property to the

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

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

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

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

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

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

BEGINNING at a Bldg. Corner at the westernmost corner of Parcel B whereat said property corners with property now or formerly of Martha W. Fowler, et al, along the eastern margin of the right-of-way of Main Street a distance of 107.4 feet, more or less, from its intersection with Blanding Street, and running along property now or formerly Martha W. Fowler, et al N70°16'01"E - 209.01 feet to a ½" rod; thence turning and running along property now or formerly of Lexington State Bank, as follows: S19°27'00" E -17.80 feet to a point; N71°09'40"E -211.75 feet to an "X" on concrete; thence turning and running along the western margin of the right-of-way of Sumter Street S19°25'59"E -42.33 feet to an "X" on concrete; thence turning and running along property now or formerly of James L. Tapp Co., Inc., as follows: S71°06'28"W -211.73 feet to an "X" on concrete: S19°27'00"E -0.77 feet to an "X" on concrete thence turning and running along property now or formerly of Kimbrell's Investment, Co. S70°17'08"W -208.84 feet to an "X" on concrete; thence turning and running along the eastern margin of the right-of-way of Main Street N19°36'31"W -61.03 feet to the POINT OF BEGINNING.

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

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

Tax Map #09014-04-19

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

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

According to evidence of record in these proceedings and the public records, Mr.

Hammer owns, among other assets:

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

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

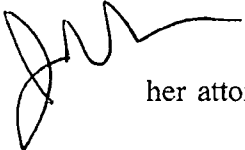
According to the evidence and documents of record, 1634 Main LP owns an unknown percentage of the real estate located at 1634 and 1632 Main Street, Columbia, SC, as described above.

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

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

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

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

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

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

ORDERS

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

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

Defendants' Motion for Summary Judgment is DENIED.

Howard Hammer's Motion for Recusal is DENIED.

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

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


IT IS FURTHER ORDERED:

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

5. Mrs. Hammer shall immediately take such action as she deems necessary or appropriate to market and sell the assets transferred to her in this order in a commercially-reasonable manner (including such treatment as is necessary of the limited partnership and corporate entity for purposes of selling the assets. Mrs. Hammer may use any income from the building for regular maintenance and operating expenses of the real property.
6. Mrs. Hammer shall pay to herself from the sales proceeds:
 - a. Any and all costs incurred in connection with the marketing and sale of the property;
 - b. The total amount of the judgments held by her against Howard Hammer and 1634 Main LP as set forth above. Post-judgment interest on the judgments shall stop on the judgments upon execution of this order.
 - c. The attorney fees and costs awarded herein plus post-judgment interest at the rate established by Order of the Supreme Court dated January 3, 2014.
7. Mrs. Hammer shall escrow any additional funds that remain after the above disbursements, until an accounting can be performed and distributions ordered by this Court.
8. Mrs. Hammer is and has all powers as an owner of the real and personal property conveyed to her in this order, and she may collect rents or other income and take such other actions as may be appropriate to manage, market and sell the real property located at 1634 and 1632 Main Street, Columbia, South Carolina.

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

IT IS SO ORDERED.



Joseph Strickland,
Master In Equity
For Richland County

January 21, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECORDED

FEB 24 2016

SC SUPREME COURT

Appeal from Richland County
Joseph M. Strickland, Master-In-Equity
Case No.: 2009-CP-40-05911
Case No.: 2010-CP-40-02889

1634 Main, L.P.

v.

Shirley Hammer, Respondent,

v.

Howard Hammer, Appellant,

and

Howard Hammer, Appellant,

v.

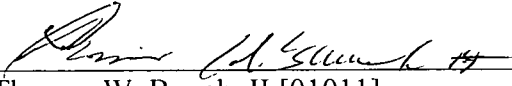
Shirley Hammer, Respondent.

PROOF OF SERVICE

I certify that I have served the **Notice of Appeal** upon opposing counsel and the Richland County Clerk of Court by depositing a copy of it in the United States Mail, postage prepaid, on **February 24, 2016** addressed as follows:

Desa Ballard (for Shirley Hammer)
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

The Honorable Jeanette W. McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202


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

ATTORNEYS FOR APPELLANT