

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONOC

April 26, 2012

The Honorable Daniel E. Shearhouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED

APR 27 2012

S.C. Supreme Court

RE: Beach, Nancy v Gresham Communication

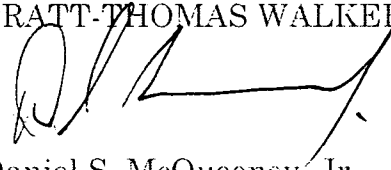
Dear Mr. Shearhouse:

Please be advised that I represent the respondents in the above-referenced case. As such, I received your correspondence dated April 24, 2012, requesting my availability for oral arguments on June 5, 6, 7, 19 and 20. I am currently available on all of those dates. Please let me know if you need anything further. By copy of this letter to opposing counsel, I am notifying him of this communication.

Thank you for your courtesies.

Sincerely,

PRATT-THOMAS WALKER, PA


Daniel S. McQueeney, Jr.

DSM/cas

c: J. Seth Whipper, Esquire



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

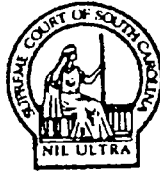
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
From: Daniel E. Shearouse
Date: April 24, 2012
RE: June Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the June 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of June 5, 6, 7, 19 and 20. Please notify this office in writing prior to May 1, 2012 as to any scheduling conflicts for the June term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Beach, Nancy v. Gresham Communications



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Jackson Seth Whipper, Esquire
From: Daniel E. Shearouse
Date: April 24, 2012
RE: June Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the June 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of June 5, 6, 7, 19 and 20. Please notify this office in writing prior to May 1, 2012 as to any scheduling conflicts for the June term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Beach, Nancy v. Gresham Communications

Hopkins, Debbie

From: Shealy, Brenda
Sent: Wednesday, April 04, 2012 1:51 PM
To: Hopkins, Debbie
Subject: FW: Beach v. Gresham Communications

From: Shealy, Brenda
Sent: Wednesday, April 04, 2012 1:48 PM
To: 'Chip McQueeney'
Subject: RE: Beach v. Gresham Communications

The Court has advised that we are continuing this case. It will re-scheduled. We will have to work out a time and get back to you with a date and time. Hope you feel better.

Thanks, Brenda

From: Chip McQueeney [mailto:dsm@p-tw.com]
Sent: Wednesday, April 04, 2012 12:40 PM
To: Shealy, Brenda
Subject: RE: Beach v. Gresham Communications

Brenda:

I also wanted to let you know that my physician's office is trying to get me an appointment with a specialist this afternoon or possibly early tomorrow morning. In case you need to contact me and I do not have access to e-mail or a land line, my cell phone number is 843-509-2763. Thanks.

Chip McQueeney

From: Shealy, Brenda [mailto:BShealy@sccourts.org]
Sent: Wednesday, April 04, 2012 9:43 AM
To: Chip McQueeney
Subject: FW: Beach v. Gresham Communications

Mr. McQueeney,

The Court does not want to delve specifically into your medical condition, but will need something a little more definitive from you. It is suggested that you might want to get a medical statement from your physician stating that you cannot appear for oral argument for the Beach case tomorrow.

Thanks,
Brenda Shealy
Chief Deputy Clerk

From: Chip McQueeney [mailto:dsm@p-tw.com]
Sent: Wednesday, April 04, 2012 9:37 AM

To: Hopkins, Debbie
Cc: jsw@whipperlaw.com
Subject: Beach v. Gresham Communications

Ms. Hopkins:

I represent the respondent in the above-referenced case. As we discussed by phone this morning, I have had a medical issue arise which will prevent me from being able to appear for the oral argument scheduled for tomorrow at 10:30am. I have contacted Mr. Whipper, who is the counsel for the appellants, and he has consented to have the hearing continued, if the Court will permit it. Please let me know if you need any further information from me. I apologize for the inconvenience to both Mr. Whipper and the Court.

Daniel S. McQueeney, Jr., Esq.
Pratt-Thomas Walker, P.A.
16 Charlotte Street (29403)
P.O. Drawer 22247
Charleston, SC 29413-2247
Direct phone number: (843) 727-2256
Fax: (843) 579-4811



F A X S H E E T

Date: 4/4/2012 11:11:39 AM
To: CHIP MCQUEENEY
Fax Number: 843-606-8001
Subject: Patient Document
Re: Mt Pleasant Family Practice

If you have any questions, please contact:

Blake, Patricia A

at Voice #: 843-884-1341

Number of Page(s): 2 (page(s) total, including this cover sheet)

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

This message is intended only for use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient or responsible for delivering this message to the intended recipient, please be aware that any dissemination, distribution or copying of this communication is prohibited. If you have received this message in error, please notify us immediately by calling the phone number listed above. Please return the original message to us at the above address via US mail. We will be happy to reimburse you for the postage. Thank You.

 Mt. Pleasant
Family Practice
ROPER ST. FRANCIS PHYSICIANS

April 4, 2012

RE: DANIEL SIMMONS MCQUEENEY
DOB: 07/22/1979

To whom it may concern:

Please excuse patient from Court because he is under Dr. William E. Wilson's care today 4/4/12 to 4/10/12. He can resume work on 4/10/12.

If I can answer any questions or be of any more help, please do not hesitate to call 843-884-1341.

Sincerely,



Dr. Valerie Scott/pab

Hopkins, Debbie

From: Shealy, Brenda
Sent: Wednesday, April 04, 2012 1:53 PM
To: - SC Everyone
Subject: Beach v. Gresham

This is to advise that the case of Beach v. Gresham Communications has been continued. It will be rescheduled at a later date and you will all be advised.

Thanks, Brenda

Hopkins, Debbie

From: Shealy, Brenda
Sent: Wednesday, April 04, 2012 12:20 PM
To: Hopkins, Debbie
Subject: FW: Beach v. Gresham Communications
Attachments: Note from Roper St. Francis.pdf

We will have to set as a 4th case one day. Ask me later

From: Chip McQueeney [mailto:dsm@p-tw.com]
Sent: Wednesday, April 04, 2012 11:58 AM
To: Shealy, Brenda
Cc: jsw@whipperlaw.com
Subject: RE: Beach v. Gresham Communications

Ms. Shealy:

Attached, please find a note from my physician's office. I have spoken with Mr. Whipper about designating the case without oral arguments. We both believe that oral argument would be preferable in this appeal. Andy Gowder, the other attorney from my office who has some familiarity with this case, is in depositions today and tomorrow. He would not be prepared to appear for oral arguments tomorrow morning. I have copied Mr. Whipper on this e-mail. Please let me know if you need any other information from me. Thank you.

Chip McQueeney

From: Shealy, Brenda [mailto:BShealy@sccourts.org]
Sent: Wednesday, April 04, 2012 9:43 AM
To: Chip McQueeney
Subject: FW: Beach v. Gresham Communications

Mr. McQueeney,

The Court does not want to delve specifically into your medical condition, but will need something a little more definitive from you. It is suggested that you might want to get a medical statement from your physician stating that you cannot appear for oral argument for the Beach case tomorrow.

Thanks,
Brenda Shealy
Chief Deputy Clerk

From: Chip McQueeney [mailto:dsm@p-tw.com]
Sent: Wednesday, April 04, 2012 9:37 AM
To: Hopkins, Debbie
Cc: jsw@whipperlaw.com
Subject: Beach v. Gresham Communications

Ms. Hopkins:

I represent the respondent in the above-referenced case. As we discussed by phone this morning, I have had a medical issue arise which will prevent me from being able to appear for the oral argument scheduled for tomorrow at 10:30am. I have contacted Mr. Whipper, who is the counsel for the appellants, and he has consented to have the hearing continued, if the Court will permit it. Please let me know if you need any further information from me. I apologize for the inconvenience to both Mr. Whipper and the Court.

Daniel S. McQueeney, Jr., Esq.
Pratt-Thomas Walker, P.A.
16 Charlotte Street (29403)
P.O. Drawer 22247
Charleston, SC 29413-2247
Direct phone number: (843) 727-2256
Fax: (843) 579-4811

Hopkins, Debbie

From: Shealy, Brenda
Sent: Wednesday, April 04, 2012 10:02 AM
To: Hopkins, Debbie
Subject: FW: Beach v. Gresham Communications

So you can keep for your files

From: Chip McQueeney [mailto:dsm@p-tw.com]
Sent: Wednesday, April 04, 2012 10:06 AM
To: Shealy, Brenda
Subject: RE: Beach v. Gresham Communications

Ms. Shealy:

I am trying to get in to see another physician as soon as possible from the practice. My regular physician is off on Wednesdays and will not be in until tomorrow morning, but we are trying to reach him by cell phone. I will keep you updated with what is happening. Thank you for your help.

Chip

From: Shealy, Brenda [mailto:BShealy@sccourts.org]
Sent: Wednesday, April 04, 2012 9:43 AM
To: Chip McQueeney
Subject: FW: Beach v. Gresham Communications

Mr. McQueeney,

The Court does not want to delve specifically into your medical condition, but will need something a little more definitive from you. It is suggested that you might want to get a medical statement from your physician stating that you cannot appear for oral argument for the Beach case tomorrow.

Thanks,
Brenda Shealy
Chief Deputy Clerk

From: Chip McQueeney [mailto:dsm@p-tw.com]
Sent: Wednesday, April 04, 2012 9:37 AM
To: Hopkins, Debbie
Cc: jsw@whipperlaw.com
Subject: Beach v. Gresham Communications

Ms. Hopkins:

I represent the respondent in the above-referenced case. As we discussed by phone this morning, I have had a medical issue arise which will prevent me from being able to appear for the oral argument scheduled for tomorrow at 10:30am. I have contacted Mr. Whipper, who is the counsel for the appellants, and he has consented to have the

hearing continued, if the Court will permit it. Please let me know if you need any further information from me. I apologize for the inconvenience to both Mr. Whipper and the Court.

Daniel S. McQueeney, Jr., Esq.
Pratt-Thomas Walker, P.A.
16 Charlotte Street (29403)
P.O. Drawer 22247
Charleston, SC 29413-2247
Direct phone number: (843) 727-2256
Fax: (843) 579-4811

Hopkins, Debbie

From: Chip McQueeney <dsm@p-tw.com>
Sent: Wednesday, April 04, 2012 9:37 AM
To: Hopkins, Debbie
Cc: jsw@whipperlaw.com
Subject: Beach v. Gresham Communications

Ms. Hopkins:

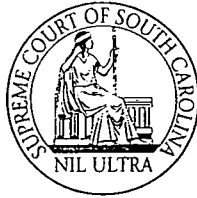
I represent the respondent in the above-referenced case. As we discussed by phone this morning, I have had a medical issue arise which will prevent me from being able to appear for the oral argument scheduled for tomorrow at 10:30am. I have contacted Mr. Whipper, who is the counsel for the appellants, and he has consented to have the hearing continued, if the Court will permit it. Please let me know if you need any further information from me. I apologize for the inconvenience to both Mr. Whipper and the Court.

Daniel S. McQueeney, Jr., Esq.
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16 Charlotte Street (29403)
P.O. Drawer 22247
Charleston, SC 29413-2247
Direct phone number: (843) 727-2256
Fax: (843) 579-4811

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APR - 4 2012

S.C. Supreme Court



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 26, 2012

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Pratt-Thomas & Walker, PA
P. O. Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellants	15 minutes
Respondent	15 minutes
Appellants in Reply	5 minutes

This case is scheduled for hearing on Thursday, April 5, 2012 at 10:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins

Administrative Assistant

DES/dmh

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW COWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONOC

February 21, 2012

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211-1330

RE: Beach, Nancy v Gresham Communication

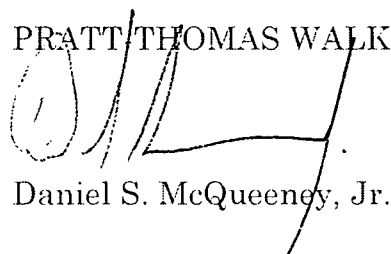
Dear Mr. Shearouse:

Please be advised that I represent the respondents in the above-referenced case. As such, I received your correspondence dated February 27, 2012, requesting my availability for oral arguments on April 3, 4, 5, 17, and 18. I am currently available on all of those dates. Please let me know if you need anything further. By copy of this letter to opposing counsel, I am notifying him of this communication.

Thank you for your courtesies.

Sincerely,

PRATT/THOMAS WALKER, PA



Daniel S. McQueeney, Jr.

RECEIVED

FEB 28 2012

SC SUPREME COURT

c: J. Seth Whipper, Esquire



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17 and 18. Please notify this office in writing prior to February 24, 2012 as to any scheduling conflicts for the April term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Beach, Nancy v. Gresham Communications



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

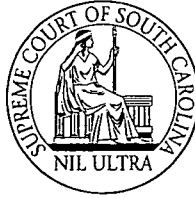
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Jackson Seth Whipper, Esquire
From: Daniel E. Shearouse
Date: February 17, 2012
RE: April Preliminary List

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Beach, Nancy v. Gresham Communications



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 9, 2012

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Pratt-Thomas & Walker, PA
P O Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications

Dear Counsel:

When the roster for March 2012 term of Court was prepared, the above referenced case was not scheduled. Our records indicate that you are counsel of record in this case.

This case will be placed on the April 2012 Preliminary List of Cases. Court will meet the days of April 3, 4, 5, 17 and 18.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/lda

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

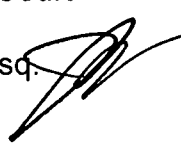
RECEIVED

JAN 31 2012

S.C. SUPREME COURT

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

To: Daniel E. Shearouse, Clerk
South Carolina Supreme Court

From: Jackson Seth Whipper, Esq. 

Date: January 31, 2012

Re: March Preliminary List
Scheduling Conflict

cc: W. Andrew Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.

Please take note that I serve as a legislator in the South Carolina General Assembly. Presently, the Budget Debate is scheduled for the week of March 12, 2012. Because of the preparations for that debate and its carryover, I am requesting a date in April, 2012.

Please contact at the above with your concerns.



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Jackson Seth Whipper, Esquire
From: Daniel E. Shearouse
Date: January 24, 2012
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21. Please notify this office in writing prior to January 31, 2012 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Beach, Nancy v. Gresham Communications



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
From: Daniel E. Shearouse
Date: January 24, 2012
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Beach, Nancy v. Gresham Communications

The Supreme Court of South Carolina

Nancy R. Beach,

Respondent,

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc.,
Gresham Broadcasting, Inc.,
and Rudy H. Gresham,

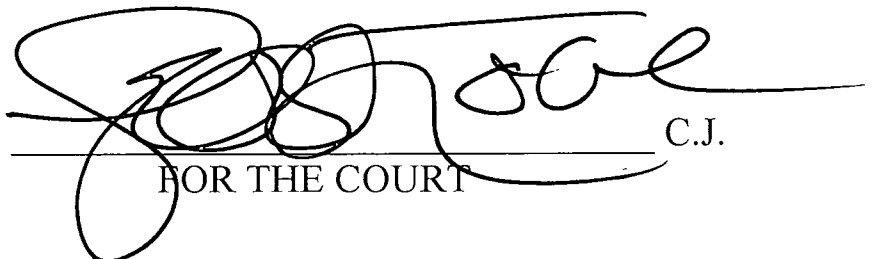
Appellants.

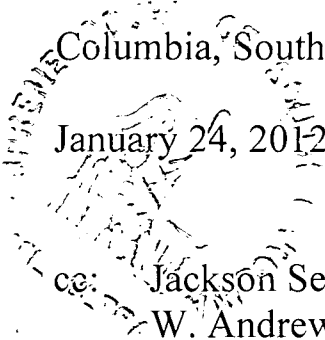
Harris L. Beach, Jr., Special Referee
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court. Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT



Columbia, South Carolina

January 24, 2012

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
The Honorable Tanya Gee



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

January 10, 2012

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Pratt-Thomas & Walker, PA
P O Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications

Dear Counsel:

The Court has decided to seek certification of this case from the Supreme Court. It will be placed in held in abeyance status. Oral argument scheduled for Tuesday, January 24, 2012, is cancelled.

Very truly yours,

A handwritten signature in cursive script, reading "V. Claire Allen".

CLERK

TAG/vca

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
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E. DOUGLAS PRATT-THOMAS

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CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

KATHLEEN FOWLER MONOC

September 19, 2011

Tanya A. Gee, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Beach, Nancy v Gresham Communication

18831 Dec.

Dear Ms. Gee:

I represent the respondents in the above-referenced case. As such, I received your correspondence dated September 9, 2011, requesting my availability for oral arguments on December 5 through December 8. I am currently available on all of those dates. Please let me know if you need anything else from me. By copy of this letter to opposing counsel, I am notifying him of this communication.

Thank you for your courtesies.

Sincerely,

PRATT-THOMAS WALKER, PA

Daniel S. McQueeney, Jr.

DSM/cas

c: J. Seth Whipper, Esquire

RECEIVED
SEP 20 2011
SC Court of Appeals

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

September 22, 2011

Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508

Dear Ms. Gee:

I represent the Defendant in the above-referenced case. I have received your letter dated September 9, 2011, requesting my availability for oral arguments. I am currently available on December 5 through December 8.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/ccg

xc: William Saunders

SC Court of Appeals

SEP 23 2011

RECEIVED

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

October 31, 2011

Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508

Dear Ms. Gee:

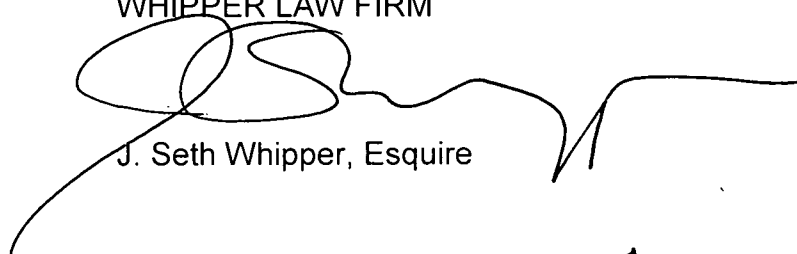
I represent the Defendant in the above-referenced case. I have received your letter requesting my availability for oral arguments. I am currently available on the dates in January, 2012 as set out in your letter.

By copy of this letter we are serving the same on Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM


J. Seth Whipper, Esquire

JSW/ccg

xc: William Saunders

RECEIVED
NOV 01 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
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 16, 2011

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

We have received the Record on Appeal, Supplemental Record on Appeal and all final briefs in this matter. Unfortunately, some corrections will need to be made in order for the record(s) and briefs to be accepted by this Court.

Within ten days of the date of this letter, you are requested to provide an original Certificate of Compliance for the Record on Appeal, as well as one for the Supplemental Record on Appeal. The certificates previously received are copies.

Within the same timeframe, you must provide a gray cover for the original, unbound Final Reply Brief and you must have the copies of the Appellant's Final Reply Brief bound in gray covers, pursuant to Rule 267, SCACR. If you would like to pick up the copies, please call our office at least 24 hours prior to your arrival so that the copies can be made available without delay.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

For good cause having been shown, the time for serving and filing the Record on Appeal, Final Brief of Appellant and Final Reply Brief of Appellant in the above entitled matter is hereby extended until January 10, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

FILED

12/31/10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 23 2010
SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

Motion for Extension of Time to File and Serve Record on Appeal, Final Briefs, and the
Supplemental Record on Appeal

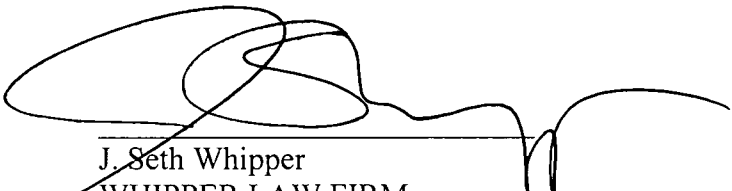
The Appellants move for an Order extending the time to file and serve the Record on Appeal, Final Briefs, and the Supplemental Record on Appeal. Appellants make this motion because Respondent and Appellants required additional time to identify the documents needed for a Supplement Record on Appeal; further, a review of the record revealed that there were two additional documents that were missing from the Record on Appeal and that were a part of Appellants' arguments in their Final and Reply Briefs. The primary document was not identified until the afternoon of December 21, 2010, therefore as a result of these circumstances Appellants request an additional 10 days to file the Record on Appeal, Final Briefs, and the Supplemental Record on Appeal.

Appellants have consulted with Respondent's counsel who will not object to this extension.

12-29-10
1-10-11

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

December 21, 2010



J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED
DEC 23 2010
SC Court of Appeals

Nancy R. Beach Respondent,

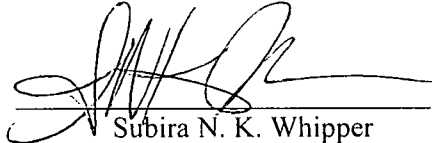
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Motion for Extension of Time to File and Serve Record on Appeal, Final Briefs, and the Supplemental Record on Appeal and Proof of Service on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on October, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, Post Office Drawer 22247, Charleston, South Carolina 29413.

December 21, 2010


Subira N. K. Whipper

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

RECEIVED
DEC 23 2010
SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

December 21, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-50
Motion for Extension of Time to File and Serve Record on Appeal, Final Briefs, and the Supplemental Record on Appeal- For Filing
Proof of Service – For Filing

Dear Ms. Barber:

Find enclosed one original and two copies each of the above-referenced documents for filing and conforming. Also, enclosed is a check in the amount of \$25.00 for the requisite filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeny. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Signature on next page

ck # 8454
25

Page 2

December 21, 2010

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Record on Appeal, Final Briefs, and the Supplemental Record on Appeal- *For Filing*
Proof of Service – *For Filing*

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/snkw

Enclosure

xc: William Saunders (w/enclosure)

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

For good cause having been shown, the time for filing the Record on Appeal and serving and filing the Appellants' Final Brief and Appellants' Final Reply Brief in the above entitled matter is hereby extended until December 29, 2010.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY


CLERK

Columbia, South Carolina

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

FILED

12/22/10 

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 1992-CP-15-508

ck # 8432

\$25

RECEIVED

DEC 14 2010

SC Court of Appeals

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,

a/k/a Gresham Communications, Inc.; Gresham

Broadcasting, Inc., and Rudi H. Gresham Appellant.

Motion for Extension of Time to File and Serve Final Brief and Record on Appeal

The Appellants move for an Order extending the time to file and serve their Final Brief and Record on Appeal in this matter for a period of fifteen (15) days beginning December 7, 2010. Appellants make this motion based upon an oversight on the dates when the material was due, impending litigation in the Circuit Court, staff shortages, and failed settlement negotiations.

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

December 7, 2010

J. Seth Whipper

WHIPPER LAW FIRM

4592 Durant Avenue (29405)

Post Office Box 70070

N. Charleston, South Carolina 29415

ATTORNEYS FOR APPELLANTS

12-7-10
12-29-10

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

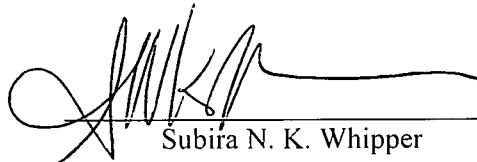
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Motion for Extension of Time to File and Serve Final Brief and Record on Appeal and Proof of Service on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on October, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, Post Office Drawer 22247, Charleston, South Carolina 29413.

December 7, 2010


Subira N. K. Whipper

RECEIVED

DEC 14 2010

SC Court of Appeals

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

December 7, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

DEC 14 2010

SC Court of Appeals

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508

Motion for Extension of Time to File and Serve Final Brief and Record on Appeal

Dear Ms. Barber:

Find enclosed one original and six (6) copies each of the above-referenced documents for filing and conforming. Also included is the requisite filing fee of \$25.00 paid by check. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney, Esq. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

SK # 8452
25

(signature on next page)

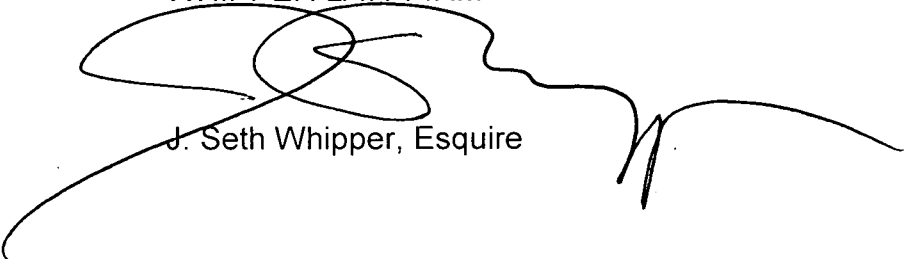
Page 2

December 7, 2010

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Final Brief and Record on Appeal

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/snkw

Enclosure

xc: William Saunders
W. Andy Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

RECEIVED

NOV 18 2010

SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

November 17, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-508

Certificate of Service: Record On Appeal – For Filing

Dear Ms. Barber:

Find enclosed one original and eight copies each of the above-referenced documents for filing and conforming. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM

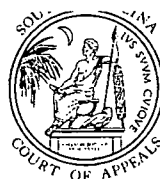


J. Seth Whipper, Esquire

JSW/snkw

Enclosure

xc: William Saunders (w/enclosure)



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

November 2, 2010

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

The following Order has been endorsed on your "Motion for Leave to Supplement the Record on Appeal" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

November 02, 2010."

The following Order has been endorsed on your "Motion to File Record on Appeal Out of Time" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

November 02, 2010."

Please be advised the Record on Appeal, including all supplemental material, must be served and filed no more than fifteen days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

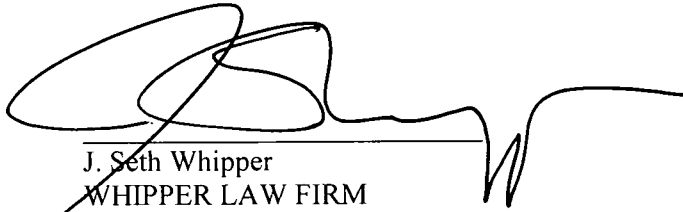
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

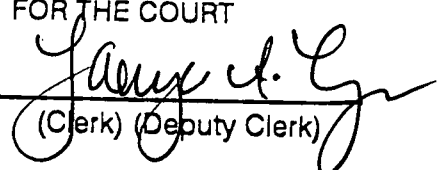
Motion to File Record on Appeal Out of Time

The Appellants move to file Record on Appeal out of Time because of pending motion to add material to the Record on Appeal and the practical considerations of efficiency and expense in providing a Record on Appeal in one bound volume.

October 10, 2010


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

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

By: 

(Clerk) (Deputy Clerk)

FILED

11/2/10

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

OCT 14 2010

Nancy R. Beach SC Court of Appeals

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Motion to File Record on Appeal Out of Time and Proof of Service on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on October, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, Post Office Drawer 22247, Charleston, South Carolina 29413.

October 10, 2010


Subira N. K. Whipper

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

RECEIVED

OCT 14 2010

SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

October 10, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-50
Motion to File Record on Appeal Out of Time - *For Filing*
Proof of Service – *For Filing*

Dear Ms. Barber:

Find enclosed one original and eight copies each of the above-referenced documents for filing and conforming. Also, enclosed is a check in the amount of \$25.00 for the requisite filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Signature on next page

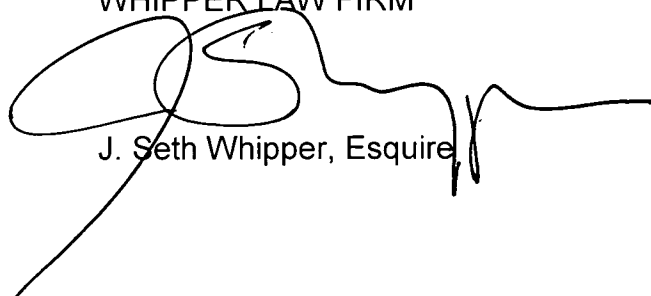
Page 2

October 10, 2010

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-508
Motion to File Record on Appeal Out of Time - *For Filing*
Proof of Service – *For Filing*

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/snkw

Enclosure

xc: William Saunders (w/enclosure)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

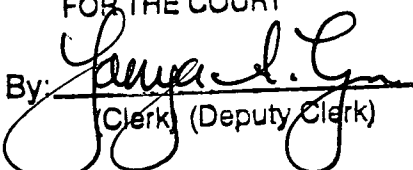
RECEIVED
SEP 28 2010
SC Court of Appeals

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

By: 
(Clerk) (Deputy Clerk)

Case No. 1992-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

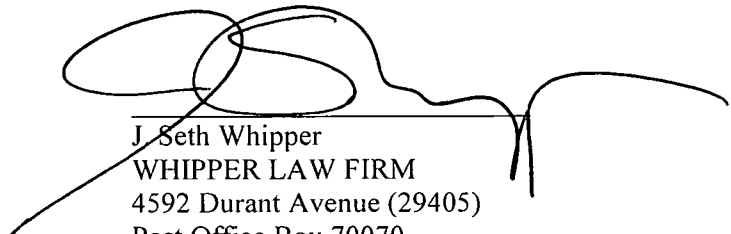
MOTION FOR LEAVE TO SUPPLEMENT THE
RECORD ON APPEAL PURSUANT TO SCRAP 212(b)

The Appellants move to supplement the Record on Appeal by including the Transcript of the hearing that is the basis of the September 22, 2006 Order as referred to in this Court's Order of September 8, 2010. Moreover, reference to this hearing is made in Respondent's Initial Brief and Appellant's Reply Brief.

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

September 24, 2010

COUNSEL FOR THE RESPONDENT:
W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED
SEP 28 2010
SC Court of Appeals

Nancy R. Beach Respondent,

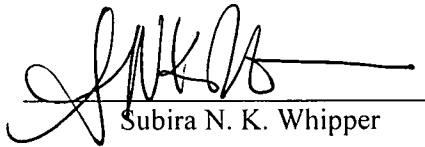
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Motion for Leave to Supplement the Record on Appeal Pursuant to SCRAP 212(b) on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on September 24, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, Post Office Drawer 22247, Charleston, South Carolina 29413.

September 24, 2010


Subira N. K. Whipper

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

September 24, 2010

RECEIVED

SEP 28 2010

SC Court of Appeals

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-508
Motion for Leave to Supplement the Record on Appeal Pursuant to SCRAP 212(b) – For Filing
Proof of Service – For Filing

Dear Ms. Barber:

Find enclosed one original and eight copies each of the above-referenced documents for filing and conforming. Also, enclosed is a check in the amount of \$25.00 for the requisite filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Signature on next page

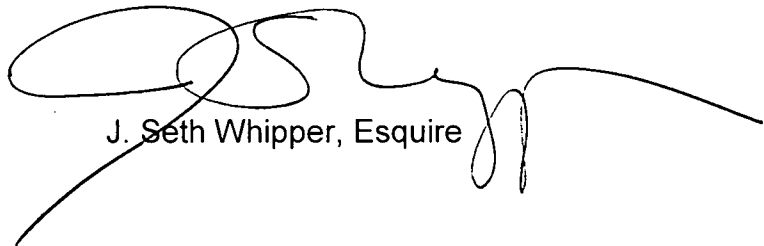
Page 2

September 24, 2010

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham*
Case No.: 92-CP-15-508
**Motion for Leave to Supplement the Record on Appeal Pursuant to SCRAP
212(b) – For Filing**
Proof of Service – For Filing

Sincerely,

WHIPPER LAW FIRM

A handwritten signature in black ink, appearing to read 'J. Seth Whipper', with a long horizontal flourish extending to the right.

J. Seth Whipper, Esquire

JSW/snkw

Enclosure

xc: William Saunders (w/enclosure)

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

Appellants filed a motion to "Amend Designation of Matter and for Extension of Time to File Record on Appeal." Although titled as a motion to amend its designation of matter, Appellants are seeking to strike items 4-6, 9, 12, 12, 15-17, 20-22, 30, and 34-36 from Respondent's designation of matter. Appellants contend the items are not "appropriate or necessary for resolution of the issues on appeal." Respondent contends its designations help explain the procedural posture of the current appeal and support her argument that Appellants are seeking to relitigate a September 22, 2006 order. After careful consideration, Appellants' motion is denied. However, nothing in this order prevents Appellants from filing a motion

pursuant to Rule 222(c), SCACR, after the appeal has concluded. Appellants have thirty days to file and serve the Record on Appeal.

AND IT IS SO ORDERED.

Jacqueline A. S.

Columbia, South Carolina

9/8/2010

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

FILED

Carter 9/9/10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
AUG 19 2010
SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

REPLY TO RESPONDENT'S RETURN TO APPELLANTS' MEMORANDUM IN
SUPPORT OF MOTION TO AMEND

Appellants' appeal asserts the following issues:

- i. Special Referee erred in holding that transfer of broadcast license was within ten year limitation of judgment;
- ii. The Special Referee erred in disallowing the tender in satisfaction of the underlying judgment;
- iii. The Special Referee erred in finding Gresham and Saunders in contempt;
- iv. The Special Referee's attachment of the FCC license, and subsequent sale was illegal and contrary to FCC law;

- v. The Special Referee erred by failing to direct proper distribution of excess value of license;

None of the items referred to in Respondent's Return to Appellants' Memorandum in Support of Motion to Amend Designation of Matter are necessary to decide the questions in this appeal.

There is no substantive content in an Approval of Assignment from the FCC. More importantly, only one of the federal items listed by Respondents is relevant to the issues raised in this appeal and none of the federal items listed by Respondents were considered by the Special Referee.

Finally, except for a very nondescript document – the nonsubstantive April 3, 2007 FCC Assignment Approval, consisting of a one-sided page, – none of the federal items are cited in the legal argument of Respondent's Initial Brief. Rule 210(c), SCACR clearly states the Record on Appeal shall not include matter which was not presented to the lower court or tribunal. The distinction in Appellants' position is that the authority of the court to act is being collaterally challenged on the basis of subject matter jurisdiction, an approach that is proper under the law and procedure.

The federal question was added because in the interim of filing our Notice of Appeal and filing Appellants' Initial Brief and Designation of Matter, the March 3, 2009 opinion was issued by the FCC. (Exhibit A) This opinion represents the legal and binding authority of the FCC on the issue decided: the [state] Court's attachment of the WPAL-FM license exceeded its authority and to this extent its order is void *ab initio* as violative of the Act and Commission policy. *emphasis added*. The written opinion is submitted to this Court to validate the existence of the ruling and to give notice of the precedent and the extent of the ruling. The FCC decision followed full briefing by all parties. The FCC did approve the assignment of the license to Respondent's successor, but that holding is under appeal. Respondent's successor did not appeal

the holding that a state court's order attaching a broadcast license is void *ab initio*. Void *ab initio* means null from the beginning, as from the first moment; hence, the collateral challenge to the Special Referee's authority to attach Gresham's broadcast license.

Only under particular circumstances may a party raise an issue for the first time at the appellate level. In this appeal, the issue of subject matter jurisdiction was raised at the Appellate Court when the Federal Agency with exclusive control of a certain matter declared the South Carolina court via Special Referee with authority to issue final judgments to not have the authority to attach an FCC broadcast license and sell it to satisfy a state court monetary judgment.

Our Court can not sit as an appellate court for the Federal Communications Commission. Relative to the documents filed at the FCC by counsel, these documents, if not considered by the trial court on the primary issues of this appeal, have no relevance and no basis for being a part of the Record on Appeal.

Further, in this appeal, Appellants argued that the Court of Common Pleas lost jurisdiction of the collection action because the ten (10) year life of the monetary judgment had lapsed before the judgment creditor had title to the FCC broadcast license. If the execution is not completed prior to the end of the ten (10) year period, the Court has no authority to deliver the res to the judgment creditor. In this case, the subject judgment was entered in June, 1998 and the judgment creditor did not obtain title to the license until March, 2009. This is another particular circumstance where subject matter jurisdiction may be challenged for the first time in late-term litigation.

Respondent's reference to its items 4-6, 12-13, 20-22 as substantiation of the Special Referee and Court of Appeals ruling on the subject matter jurisdiction issue is overstated. The

Special Referee's orders of February 21, 2007 and November 27, 2007 were not taken-up by the Court of Appeals because the appeals were never perfected in their initial stage. As to the appeal of the March 26, 2007 order, the Court of Appeals issued an unpublished opinion ruling that the challenge to the Receiver's appointment had not been made at the trial level and therefore was not reviewable. So the matter was not heard on the merits. Gresham did argue to the Court of Appeals that the Receiver's appointment contravened FCC standards. The brief in that appeal is included in Appellant's Amended Designation of Matter as item 22.

As noted earlier, items 13 and 15-17 are all forms and briefs to the FCC that did not come before the Special Referee and are of no legal significance because the FCC March 3, 2009 order sets forth the Commission's law and policy. (Exhibit A) Moreover, these briefs are voluminous and can not be used to re-argue the FCC issues in this Court.

Respondent in its Return to Appellants' Memorandum in Support of Motion to Amend Designation of Matters clarifies that items 35 and 36 of its Designation are pleadings served on Appellants based on the alleged acts of its principal during a hearing in September, 2006. The Special Referee's rulings in June, 2008 and December, 2008 are in response to allegations regarding behavior after November, 2007. Please note that Appellants' attempt to perfect an appeal of the November, 2007 order was not denied until March, 2008; hence, the directives of the November, 2007 order were stayed until that date. Further, Respondent did not properly pursue the Rule to Show Cause prior to the May/June 2008 hearings in order to prosecute the post-November, 2007 allegations: Respondents are required to file a Petition with supporting affidavit and request the court to issue an order demanding that Appellant show cause on a date and time certain at a place named in the order and explain why he should not be held in contempt of court. The petition, affidavit, and order must be served by the county sheriff upon the

Appellant personally. None of the aforementioned procedures were executed. Respondent's items 35 and 36 must be stricken.

Respondent's designated item 30 was not argued at any hearing prior to October 2008. This appeal goes to orders issued after hearings held no later than June 23, 2008. Respondent hopefully is confused about the timing of hearings involved in this appeal. In his December 3, 2008 order, the Special Referee discussed the value of the license only as a result of hearing the unsworn report of the Receiver in May, 2008. In his recitation of facts, the Special Referee acknowledged that "it appears that the value of the asset is in excess of the judgment therefore any additional costs or expenses can be absorbed in the increased valuation"; hence, our assertion of error on that point, because he did not complete the ruling. Respondent's item 30 is not a subject of this appeal.

Respondent's designated item 34 is already in the Record in this Court. In the subject order, this court merely denies, without opinion, motions filed by both parties.

CONCLUSION

The federal documents cited by Respondents will add to the Record on Appeal nearly 170 pages of unconsidered and irrelevant material. The March 3, 2009 FCC Decision with citations and footnotes is six (6) pages long and fully explains how and why the FCC ruled. This decision even highlights Respondent's claim of owning some of the same property that they allege in this Court is under the control and possession of Appellant, but undisclosed.

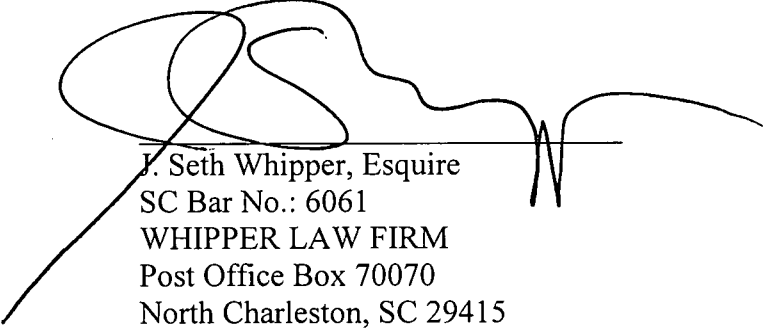
Respondent's items 35 and 36 are pleadings and process served and prosecuted in 2007; those documents are not applicable to 2008. Respondent's item 30 is a motion that was not argued until after October, 2008 and not subject to the May/June 2008 hearings. Respondent's item 34 is an order issued in the instant appeal, so it is a part of the Record before this court.

Appellant acknowledges that there have been prior attempts to appeal the Special Referee's rulings and further acknowledges that two of these attempts were not perfected. No ruling was made on the FCC issue except when Appellants appeared pro se: that appearance cannot qualify as a merits hearing. Moreover, Appellants' proposed designation items 3, 7, and 23 allow for the discussion of any issues raised by prior recorded court rulings.

Finally, the April 3, 2007 FCC Approval of Assignment from Gresham to Receiver is relevant to the issue of when the judgment creditor is assigned the FCC license; the judgment creditor takes conditional control of the license on March 3, 2009, more than 10 years beyond the life of the 1998 judgment.

Respectfully Submitted,

August 16, 2010



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Federal Communications Commission
Washington, D.C. 20554

March 3, 2009

DA 09-540

In Reply Refer to:

1800B3-KV

Released: March 3, 2009

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In re: WPAL-FM, Ridgeville, SC
Facility ID No. 25374
File Nos. BALH-20070327AEK and BALH-
20070406ADD
Applications for Assignment of License

Gentleman:

We have before us an application (the "Application") for Commission consent to the assignment of the license of Station WPAL-FM, Ridgeville, South Carolina, (the "Station") from Charles W. Cherry, Receiver for Gresham Communications, Inc. ("Receiver"), to Caswell Capital Partners, LLC ("Caswell").¹ Previously, the staff granted an assignment application from Gresham Communications, Inc. ("Gresham") to the Receiver.² We also have before us a Petition to Deny the Application and a petition for reconsideration of the grant of the Involuntary Assignment Application (collectively, the "Petitions"), both filed by Gresham.³ For the reasons stated below, we grant in part and deny in part the Petitions, and grant the Application.

Background. The Assignment Applications arise out of a South Carolina court-ordered sale to satisfy a judgment against the former licensee, Gresham.⁴ Specifically, in August 2006, after purchasing the debt that was the subject of the judgment, Caswell petitioned the South Carolina Court of Common

¹ File No. BALH-20070406ADD.

² File No. BALH-20070327AEK ("Involuntary Assignment Application").

³ Collectively, unless referring to a specific assignment application, we will refer to the Involuntary Assignment Application and the Application as the "Assignment Applications."

⁴ In 2002, Commission staff granted an assignment application from Gresham to Caswell. That transaction, however, was never consummated. File No. BALH-20020620AAD.

Pleas (the "Court") to collect on the judgment.⁵ At the hearing, William Saunders ("Saunders"), president of Gresham, testified that Gresham's sole asset was the WPAL-FM Station license.⁶ On September 22, 2006, the Court ordered that the Station's license be attached and sold at a judicial sale.⁷

On February 15, 2007, the sheriff auctioned the Station's license to the high bidder, Caswell.⁸ Subsequently, the Court appointed the Receiver to effectuate the assignment of the license to Caswell.⁹ On March 27, 2007, the Receiver then filed the Involuntary Assignment Application. The Commission granted the unopposed application on April 3, 2007.¹⁰ Thereafter, on April 6, 2007, the Receiver filed the Application to assign the Station to Caswell.¹¹ On May 7, 2007, Gresham filed for reconsideration of the grant of the Involuntary Assignment Application,¹² and several days later, on May 11, 2007, Gresham petitioned to deny the pending Application to assign the Station license to Caswell. In response, the Receiver and Caswell jointly filed Oppositions.¹³ Over the next eighteen months each of the parties filed numerous additional pleadings, many of which pertained to matters before the Court.¹⁴

The Petitions raise several arguments in opposition to the assignment of the Station license to the Receiver and to Caswell. First, Gresham contends that the court improperly ordered that the Station's license be attached in violation of the Communications Act of 1934, as amended, (the "Act"). Next, Gresham asserts, the judicial sale of the Station's license further violated the Act by ordering the sale of a "bare license." Lastly, Gresham asserts that the State Court Order cannot be honored because it conflicts with a prior federal court order which enjoins Gresham and Saunders from transferring or disposing of the Station until a judgment for copyright infringement has been satisfied.¹⁵

⁵ Caswell is the assignee of a June 2, 1998, judgment on a promissory note against Gresham obtained by Nancy R. Beach. "Assignment of Judgment Interest," Attachment 4, Petition for Reconsideration.

⁶ September 22, 2006, Order at 2, Attachment 6, Petition for Reconsideration.

⁷ February 21, 2007 Order at 1, Attachment 8, Petition to Deny. ("State Court Order").

⁸ November 27, 2007, Order at 2, Letter Filing by Receiver and Caswell (Mar. 20, 2008).

⁹ *Id.* at 3.

¹⁰ *Public Notice, Broadcast Actions*, Report No. 46459 (Apr. 6, 2007).

¹¹ *Public Notice, Broadcast Applications*, Report No. 26462 (Apr. 11, 2007).

¹² On May 11, 2007, Gresham filed an erratum to its petition for reconsideration.

¹³ The "Opposition to Petition to Deny" and the "Opposition to Petition for Reconsideration" (collectively "the Oppositions") were filed on June 1, 2007.

¹⁴ In particular, the parties filed the following pleadings with the Commission: the Receiver and Caswell filed a "Motion for Leave to file Supplement to 'Opposition to Petition to Deny'" (Jun. 22, 2007) and a "Motion for Leave to file Supplement to 'Opposition to Petition for Reconsideration'" (Jun. 22, 2007); the Receiver and Caswell filed a "Supplement to 'Opposition to Petition to Deny'" (Jun. 22, 2007) and a "Supplement to 'Opposition to Petition for Reconsideration'" (Jun. 22, 2007) (collectively "First Supplement"); Gresham filed several "Motions for Extension of Time to Reply to Oppositions" (Jun. 15, 2007, Jun. 22, 2007, Jul. 6, 2007, Jul. 26, 2007, Aug. 27, 2007, Sep. 10, 2007, and Sep. 18, 2007); Gresham filed a "Reply to Opposition to Petition to Deny" (Sep. 25, 2007) and a "Reply to Opposition to Petition for Reconsideration" (Sep. 25, 2007) (collectively, the "Reply"); the Receiver and Caswell filed a "Second Supplement to Opposition to Petition for Reconsideration" (Dec. 26, 2007) and a "Second Supplement and Request for Expedited Action" (Dec. 26, 2007) (collectively, the "Second Supplement"); the Receiver and Caswell filed a First Letter (Mar. 20, 2008); Gresham filed a "Petition for Dismissal of Assignment Application" (Apr. 7, 2008); the Receiver and Caswell filed an "Opposition to Petition for Dismissal of Assignment Application" (May 2, 2008); the Receiver and Caswell filed a Second Letter (Jun. 5, 2008) and a Third Letter (Jun. 12, 2008); and the Receiver and Caswell filed a "Third Supplement to the Opposition to Petition to Deny and Request for Expedited Action" (Dec. 19, 2008) ("Third Supplement").

¹⁵ *Chi-Boy Music et al v. Gresham Communications and William Saunders*, Order, CA No. 6:0101955-24, (D. S.C. Sep. 16, 2002), Attachment 9, Petition to Deny ("Federal Court Order").

Discussion. Section 310(d) of the Act,¹⁶ requires the Commission to determine whether the proposed transfer or assignment of a broadcast license would be in the public interest. Pursuant to Section 309(d)(1) of the Act,¹⁷ any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁸ This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.¹⁹ If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity. In addition, with respect to petitions for reconsideration, Section 1.106²⁰ of the Commission's Rules (the "Rules") and established case law provides that, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."²¹ We review Gresham's arguments against the Assignment Applications against this standard.

State Court Order. The Commission's long-standing policy is to accommodate the actions of state courts, thereby avoiding conflicts between state and federal authority, unless a public interest determination under the Act would compel a different result.²² Indeed, the U.S. Supreme Court has stated that "the principle of fair accommodation between State and federal authority . . . *should* be observed" if the state's laws "can be effectively respected while at the same time reasonable opportunity is afforded for the protection of that public interest" which underlies licensing decisions.²³ The Commission defers to judicial determinations in many areas, including bankruptcy matters, private disputes, and the interpretation and enforcement of contracts for the sale of a broadcast station. The Commission, in contrast, retains exclusive authority to license broadcast stations.²⁴ Thus, the Commission has exclusive authority over a station's license, but it is also charged with the responsibility of accommodating state law, where appropriate. When, however, a state court's decision is contrary to Commission policy, the Commission is neither bound by the state court order nor need recognize it.²⁵

It is well established that a broadcast license does not confer a property right, but rather is a valuable privilege to utilize the airwaves, subject to certain limitations, including restrictions on the right

¹⁶ 47 U.S.C. § 310(d).

¹⁷ 47 U.S.C. § 309(d)(1).

¹⁸ See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

¹⁹ 47 U.S.C. § 309(d)(2).

²⁰ 47 C.F.R. § 1.106(c).

²¹ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686 (1964); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

²² *Radio Station WOW v. Johnson*, 326 US 120, (1945) ("*Radio Station WOW*"); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985) ("*Arecibo Radio*").

²³ *Radio Station WOW*, 326 US at 132.

²⁴ See e.g. *Arecibo Radio*, 101 FCC 2d at 549 (honoring court order requiring licensee to execute assignment application in favor of another party).

²⁵ See, e.g., *Kirk Merkley*, Memorandum Opinion and Order, 94 FCC 2d 829 (1983) ("*Merkley I*"), *recon. denied*, 56 RR 2d 413 (1984) ("*Merkley II*"), *aff'd sub nom.* *Merkley v. FCC*, 776 F.2d 365 (1985). (declining to recognize court order based on contract with a prohibited reversionary interest that was tantamount to a vested security interest in a license).

to assign licenses.²⁶ As the Commission has stated, “[t]he extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable.”²⁷ Rather the Commission has repeatedly observed that a “license, as distinguished from a station’s physical assets, is not subject to a mortgage, security interest, or lien, pledge, *attachment*, seizure, or similar property right.”²⁸

Here, the State Court Order is facially inconsistent with the Commission’s policy prohibiting attachment of a Station license. The Court acknowledged that a licensee does not hold any property rights in the license itself. It also recognized that the Commission permits licensee creditors to have an interest in the proceeds from a sale of the license.²⁹ Nevertheless, the Court held: “the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license . . . be and hereby is attached.”³⁰ In a further order, on February 21, 2007, the Court opined that the Station’s license “was properly subject to attachment and that such License was thereby attached.”³¹ In a recent order, the Court noted that:

The only asset that was identified and levied upon was the FCC license. It was sold . . . at a judicial sale in order to satisfy the judgment. Although the judgment has now expired, the fact that it was “sold” is not affected. The asset was . . . purchased by bid of Caswell, Inc. at the proper judicial sale. *The issue of Federal Communication [sic] Commission approval is a formality and a collateral matter and should not affect the fact that the property was actually sold.*³²

The Receiver and Caswell assert that the Court *intended* to grant a security interest in the proceeds from the sale of the license.³³ We find that the Court’s plain language states otherwise. Moreover, we reject as unsupported the Receiver’s and Caswell’s argument that the Commission’s prohibition against attachment of a broadcast license is only of concern when an automatic right of reversion is involved. The prohibition on treating a broadcast license as a property right is premised on the rationale “that such hypothecation endangers the independence of the licensee who is and who should be at all times responsible for and accountable to the Commission”³⁴ Finally, the Receiver and Caswell contend that we should honor the State Court Order because Caswell would have received the proceeds from the Station’s sale had it not submitted the winning bid and that the State Court Order expressly provides that the sale is subject to Commission approval. We disagree. To give effect to this portion of the State Court Order would require that we ignore our longstanding policy against the attachment of a broadcast license.

In these circumstances, the Commission’s general deference to state court orders is not warranted. We find that the Court’s attachment of the WPAL-FM license exceeded its authority and to this extent its

²⁶ See 47 U.S.C. § 310(d).

²⁷ *Radio KDAN*, Memorandum Opinion and Order, 11 FCC 2d 934, n.1, *recon denied*, 13 RR 2d 100 (1968), *aff’d on procedural grounds sub nom. W.H.Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969) (“*Radio KDAN*”).

²⁸ *Merkley II*, 56 RR 2d at 416. (emphasis added).

²⁹ See September 22, 2006, Order at 2 -3, Attachment 6, Petition for Reconsideration.

³⁰ *Id.* at 3.

³¹ February 21, 2007, Order at 1, Attachment 8, Petition to Deny.

³² December 3, 2008, Order at 3, Attachment A, Third Supplement. (emphasis added).

³³ See Opposition at 7.

³⁴ *Radio KDAN*, 13 RR 2d at 102.

order is void *ab initio* as violative of the Act and Commission policy.³⁵ However, in cases of bankruptcy or receivership, the Commission does permit trustees or receivers to hold licenses on a temporary basis pending disposition of station assets.³⁶ This policy serves the public interest because, as the Commission has acknowledged, "these assets would be of comparatively little value if the Commission did not permit the operating authorization to accompany them pending ultimate passage of all [assets] to a qualified buyer."³⁷ In a further order³⁸ appointing the Receiver, the Court stated that, upon receipt of Commission approval, the Receiver is ordered to take possession of, operate, and manage Gresham's property and station license "to conserve the business and assets of the Station until a sale of the Station's assets is confirmed and a purchaser is found for the station acceptable to the Receiver and the FCC and the FCC has granted its consent for transfer of the FCC license to such purchaser."³⁹ This order is a valid exercise of the Court's authority under state law. Therefore, notwithstanding the invalidity of the State Court Order *vis-à-vis* attachment of the Station's license, we find no reason to overturn the staff's action granting the Involuntary Assignment Application.

Bare License. Gresham next argues that grant of the Application would constitute a sale of a prohibited "bare license." In particular, Gresham notes that the Asset Purchase Agreement submitted with the Application seeks to transfer only the local public inspection file and the Station license. The Commission has historically refused to permit a price to be placed on the transfer of a bare license.⁴⁰ When weighing a bare license allegation, the Commission will review "the entirety of the proposed transaction"⁴¹ and whether the assignee would have the ability to maintain broadcast operations.⁴² The Commission will permit a license assignment, as is the case here, where other rights, commitments, or physical assets exist. First, the Receiver proposes to assign to Caswell the Station's intangible assets, namely, the license and related authorizations as well as some tangible assets, specifically, the local public inspection file and its advertiser lists.⁴³ This list constitutes evidence of sufficient assets to counter Gresham's allegation.⁴⁴ Next, the Asset Purchase Agreement references other tangible Station assets that Caswell has acquired through other transactions, including "the WPAL-FM tower, antenna and most of the station's furniture fixtures and equipment."⁴⁵ In short, Caswell possesses the technical assets required

³⁵ Having found that the court's order is void *ab initio* insofar as it attaches the WPAL-FM license, we dismiss as moot Gresham's arguments that the court improperly enjoined it from appearing before us and raising arguments against grant of the assignment applications.

³⁶ See e.g., *O.D.T. International et. al.*, Memorandum Opinion and Order, 9 FCC Rcd 2575, 2576 (1994) ("*O.D.T. International*"); and *Arecibo Radio*, 101 FCC 2d at 550-551.

³⁷ *O.D.T. International*, 9 FCC Rcd at 2576.

³⁸ Involuntary Assignment Application, Attachment 2, Order Appointing Receiver (March 26, 2007).

³⁹ *Id.* at 2 ¶3. Additionally, "[a]fter a purchaser (or purchasers) is found acceptable to Receiver and the FCC, Receiver is directed to make all necessary application with the FCC in order to effect the proper transfer or assignment of the licenses, together with such further assets as the Receiver should deem appropriate, to such purchaser." *Id.* at ¶ 4.

⁴⁰ *Donald L. Horton*, Memorandum Opinion and Order, 10 FCC 2d 271, 273 (1967). *Accord*, *Edward B. Mulrooney*, Order, 13 FCC 2d 946 (1968), *Bonanza Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 906 (1967).

⁴¹ *FM Broadcasters of Douglas County*, Memorandum Opinion and Order, 10 FCC Rcd 10429 (1995).

⁴² See *American Music Radio*, Memorandum Opinion and Order, 10 FCC Rcd 8769, 8772-73 (1995). ("*American Music Radio*").

⁴³ Section 1.1, Asset Purchase Agreement, Application.

⁴⁴ See *KPAL Broadcasting Corp.*, Memorandum Opinion and Order, 28 FCC 2d 46, 48 (1970) (presence of rights and commitments along with license outweighs bare license allegation).

⁴⁵ Asset Purchase Agreement, Application, Section 1.2 and i.

to assure continuation of broadcast service.⁴⁶ For this reason also, this transaction does not implicate the prohibition on transfer of a bare license. Thus, we find that transfer of a bare license is not at issue here.

Prior Federal Court Order. Lastly, Gresham argues that grant of the Application is barred by a prior Federal Court Order which enjoins Gresham from “transferring or disposing of the radio station owned by them until the judgment has been satisfied, or by further order of the court.”⁴⁷ Gresham’s claim is without merit. In *Cumulus Licensing, LLC*,⁴⁸ the Bureau stated that a decision to grant an assignment application “is permissive only and does not prejudice the outcome of . . . [any] court proceeding and any relief to which the parties are entitled under the civil suit.”⁴⁹ Similarly, we emphasize that our decision today to grant the Application is permissive only and should not impede private remedies in any future court proceedings.⁵⁰ To the extent that Gresham believes that consummation of the proposed assignment by the Receiver contravenes a court order, he should seek relief from that court.

Conclusions/Actions. We find no error in the staff’s grant of the Involuntary Assignment Application. Moreover, we have examined the Application and we find Caswell to be fully qualified to be the licensee of Station WPAL-FM and that grant of the Application will further the public interest, convenience, and necessity. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny and the Petition for Reconsideration filed by Gresham Communications, Inc., ARE GRANTED IN PART to the extent indicated herein and DENIED in all other respects.

IT IS FURTHER ORDERED, that the Application (File No. BALH-20070406ADD) to for consent to assign the license of Station WPAL-FM, Ridgeville, South Carolina from Charles W. Cherry, II, Receiver for Gresham Communications, Inc., to Caswell Capital Partners, LLC; IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴⁶ See *American Music Radio*, 10 FCC Rcd at 8772. See also *Eileen S. Bailey*, Memorandum Opinion and Order, 14 FCC Rcd 16755 (1999) (acquisition of operational assets from a third party is consistent with Commission policy and does not implicate the “bare license” policy), and *Arecibo Radio*, 101 FCC 2d at 550-551 (physical assets and license assigned from different parties to assignee does not constitute assignment of bare license).

⁴⁷ Federal Court Order at 1-2, Attachment 9, Petition to Deny.

⁴⁸ 21 FCC Rcd 2998 (MB 2006).

⁴⁹ *Id.* at 3007.

⁵⁰ Moreover, according to papers filed by Amos Workman, attorney for *Chi-Boy Music et al.*, this judgment was satisfied in full on December 12, 2008. See Satisfaction of Judgment, Attachment C, Third Supplement.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

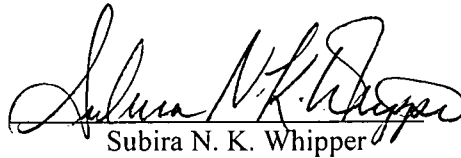
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Reply to Respondent's Return to Appellants' Memorandum in Support of Motion to Amend on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on August 16, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

August 16, 2010


Subira N. K. Whipper

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J. SETH WHIPPER

RECEIVED

AUG 19 2010

SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

August 16, 2010

Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
**Reply to Respondent's Return to Appellants' Memorandum in Support of
Motion to Amend – For Filing
Proof of Service – For Filing**

Dear Ms. Gee:

Find enclosed one original and eight copies each of the above-referenced documents for filing and conforming. Please return two of the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(Signature on Second Page)

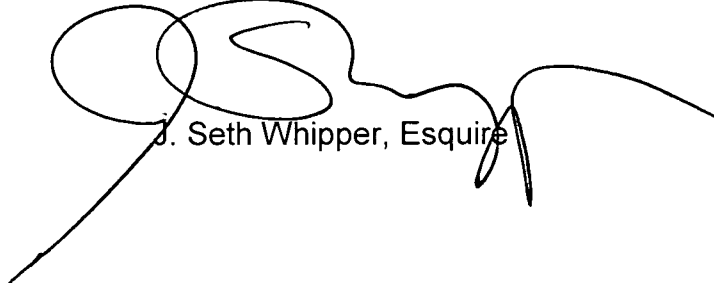
Page 2

August 16, 2010

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
**Reply to Respondent's Return to Appellants' Memorandum in Support of
Motion to Amend – *For Filing*
Proof of Service – *For Filing***

Sincerely,

WHIPPER LAW FIRM

A handwritten signature in black ink, appearing to be 'J. Seth Whipper', is written over the printed name. The signature is stylized with a large, looping 'J' and a long, sweeping horizontal stroke.

J. Seth Whipper, Esquire

JSW/snkw

xc: William Saunders

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

August 18, 2010

RECEIVED

AUG 19 2010

SC Court of Appeals

Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
**Reply to Respondent's Return to Appellants' Memorandum in Support of
Motion to Amend – For Filing
Proof of Service – For Filing**

Dear Ms. Gee:

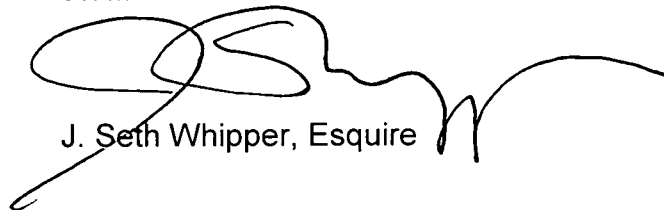
Please be advised that the above-referenced documents were sent on August 16, 2010 via the United States Postal Service; however, they were returned due to heightened security restrictions.

By copy of this letter we are notifying,, Messrs. Gowder and McQueeny of the same. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/snkw

xc: William Saunders

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

For good cause having been shown, the time for serving and filing a Reply to Respondent's Return to Appellants' Motion to Amend Designation of Matter in the above entitled matter is hereby extended until August 14, 2010.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

8/12/2010

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

FILED
8/12/10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 04 2010

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

SC Court of Appeals

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

v.

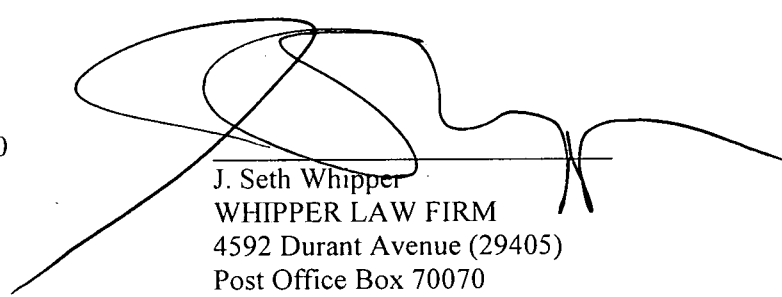
Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

Motion for Extension of Time to File and Serve Reply to Respondent's Return to Appellant's
Motion to Amend Designation of Matter

The Appellants move for an Order extending the time to file and serve their Reply Brief in this matter for a period of ten (10) days beginning August 2, 2010. Appellants make this motion based upon the nature of the arguments raised by the respondents. Appellants have consulted with Respondent's counsel who will not object to this extension.

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

August 2, 2010



J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS


Subira N. K. Whipper

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

August 2, 2010

RECEIVED

AUG 04 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

SC Court of Appeals
8269 825

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508

**Motion for Extension of Time to File and Serve Reply to Respondent's
Return to Appellant's motion to Amend Designation of Matter- For Filing**

Dear Ms. Barber:

Find enclosed one original and six (6) copies each of the above-referenced documents for filing and conforming. Also included is the requisite filing fee of \$25.00 paid by check. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney, Esq. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(signature on next page)

Page 2

August 2, 2010

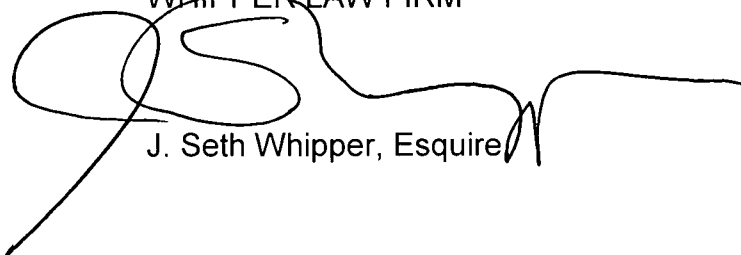
Re: *Nancy R. Beach v. Gresham Communications of Waltherboro, Inc., et. al.*

Case No.: 92-CP-15-508

**Motion for Extension of Time to File and Serve Reply to Respondent's
Return to Appellant's Motion to Amend Designation of Matter- *For Filing***

Sincerely,

WHIPPER LAW FIRM

A handwritten signature in black ink, appearing to be 'JSW', with a long horizontal line extending to the right.

J. Seth Whipper, Esquire

JSW/snkw

Enclosures

xc: William Saunders

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

JUL 27 2010

SC Court of Appeals

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

Respondent's Return to Appellants' "Memorandum in Support of Motion to Amend"

Respondent respectfully submits this Return to Appellants' "Memorandum in Support of Motion to Amend." By way of background, the present memorandum supports a previous motion to amend the designations of matter filed by Appellants on or around May 25, 2010, the same day Appellants were originally required to serve the Record on Appeal. Appellants' original motion failed to explain that Appellants essentially sought to strike material designated by Respondent in its Initial Brief and Designation of Matter filed on or around February 1, 2010. Appellants previously filed an Initial Reply Brief and Designation of Matters in Reply without requesting such relief.

Initially, at this point in the appeal, an order striking material designated by Respondent and referred to by Respondent in its brief would severely prejudice Respondent. In fact,

Respondent would essentially need to draft another Initial Brief removing any material stricken from its Designation of Matter.

Furthermore, all of the documents attacked by Appellants are properly included in this appeal for the following reasons:

1. Items 4-6, 9, 12-13, 20-22: Initially, all of these documents have been referenced in Respondent's initial brief. The present appeal constitutes the fourth separate appeal in which Appellants have directly or collaterally attacked the special referee's order dated September 22, 2006. Respondent successfully defended the special referee's order in all of the three (3) previous challenges. In addition, the special referee entered orders on February 21, 2007; March 26, 2007; and November 27, 2007, essentially rendering Appellants' challenge to the September 22, 2006 order moot. In particular, although Appellants now contend for a third time on appeal that the September 22, 2006 order should be voided for purportedly failing to expressly state that any transfer of Appellants' Federal Communications Commission (FCC) license would be subject to FCC approval, the February 21, 2007 order clarified that any transfer of Appellants' FCC license would be subject to the approval of the FCC. Further, the March 26, 2007 order appointed a special referee to effectuate this transfer, and, on April 3, 2007, the FCC approved the assignment from Appellants to the court-appointed receiver. Items 4-6, 9, 12, and 13 of Respondent's Designation of Matter were designated to explain this contextual background of the present appeal, as set forth in Respondent's Initial Brief. A major theme of Respondent's Initial Brief is that Appellants' arguments on appeal are not timely raised or have been raised and rejected previously—this argument is supported by these designated matters.

2. Items 13, 15-17: Again, items 13 and 15-17 were referenced in Respondent's Initial Brief, so that if these matters are stricken, Respondent would be required to re-draft its Initial Brief. The present appeal challenges two orders of the special referee denying a third attempt to collaterally attack the September 22, 2006 order of the special referee. The orders challenged in the present appeal were entered on June 10, 2008 and December 3, 2008. In *Appellants'* Initial Brief and Designation of Matter, filed on or around April 1, 2009, *Appellants* designated a letter opinion of the FCC entered on March 3, 2009 despite the fact that this opinion had not been presented to the special referee in consideration of the challenged orders, which pre-dated the FCC's letter opinion. Respondent moved before this Court to strike this letter opinion from *Appellants'* designation of matter on this ground—that it was not presented to the lower court in consideration of the orders on appeal. Respondent's motion was denied by this Court. Unbelievably, *Appellants* now seek to strike the pleadings and other matter considered by the FCC in issuing their letter opinion on the grounds that these matters have not been presented to the special referee in consideration of the challenged orders. In short, if Appellants may designate a matter which was not included in the lower court record, then Respondent should at least be granted an opportunity to explain the full context of that matter instead of causing this Court to have to consider the matter with reference to only one small piece of the whole. In addition, the gravamen of Appellants' present appeal is that the September 22, 2006 order should be declared void. Although subsequent orders of the special referee render this issue moot, Respondent should be permitted to include matters relevant to this issue in the Record on Appeal. Respondent has done just this, using the designated matters to explain why the FCC's letter opinion actually permitted

the transfer of the FCC license.

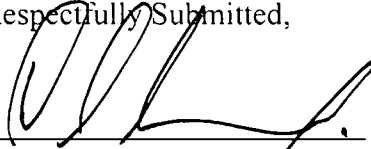
3. Items 35 and 36: Once more, both Item 35 and 36 are referenced in Respondent's Initial Brief, and Respondent would be required to re-draft its Initial Brief if the designated matter were stricken. Also once more, Appellants attempt to ignore that this supplemental proceeding has been continuing since August 2006. Appellant Gresham Communications, Inc. and its principal, William Saunders, were held in contempt of the special referee by order dated November 27, 2007. Although the November 27, 2007 order has already been affirmed by this Court on appeal, Appellants now contend on appeal that there was never any petition for rule to show cause or rule to show cause. As a result, Respondent's have designated these matters to show their existence.
4. Item 30: Respondent referred to this item in its Initial Brief. Appellants raise the issue of whether the judicial sale should be set aside for inadequate consideration in the present appeal. This motion was filed by Appellants before the special referee's order denying Gresham's motion for reconsideration on December 3, 2009. In Respondent's Initial Brief, Respondent explained that the motion had not been ruled upon and, therefore, was not properly before this Court. Incidentally, Appellants have continued to address this motion before the special referee, too. This motion would constitute a fourth collateral attack of the September 22, 2006 order. The motion is relevant because it shows the matter was raised, but not ruled upon. Therefore, the issue should be affirmed, as explained in Respondent's Initial Brief.
5. Item 34: This item was referenced in Respondent's Initial Brief and would greatly prejudice Respondent if stricken. As Respondent explained in its Initial Brief, Appellants seek to raise the FCC opinion letter for the first time on appeal. Respondent sought to

strike this argument because it had not been raised to or ruled upon by the special referee.

This item shows that Respondent objected to consideration of the FCC letter opinion, which was a decision adverse to Appellants, in the present appeal.

Based on the foregoing, Respondent respectfully requests that Appellants' "Motion to Amend" be DENIED.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "W. Andrew Gowder, Jr.", written over a horizontal line.

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2256
Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent, **RECEIVED**

v.

JUL 27 2010

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

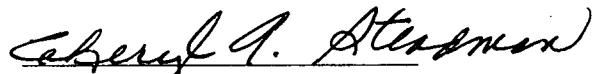
Appellant. **SC Court of Appeals**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Respondent's Return to Appellants' "Memorandum in Support of Motion to Amend" in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

Done this 26th day of July, 2010.



Cheryl A. Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

KATHLEEN FOWLER MONOC

July 26, 2010

RECEIVED

JUL 27 2010

SC Court of Appeals

The Honorable Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

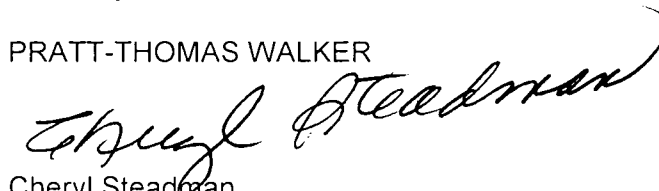
Dear Ms. Barber:

Please find enclosed for filing the original and six (6) copies of the Respondent's Return to Appellants' Memorandum in Support of Motion to Amend and the original Proof of Service upon the Appellant's Counsel of Record in the above matter. in the above matter.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me at (843) 727-2260.

Sincerely,

PRATT-THOMAS WALKER



Cheryl Steadman
Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire (w/encl.)
Judith Aidoo (w/encl.)



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 16, 2010

W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Pratt-Thomas & Walker, PA
P O Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Counsel:

The following Order has been endorsed on your request for an extension to serve and file a Return to the Memorandum in Support of the Motion to Amend the Designation of Matter in the above entitled case on appeal.

"Granted.

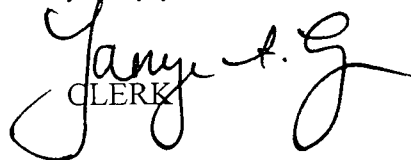
John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

July 16, 2010."

Please be advised the Return to the Memorandum must be served and filed no more than ten days from the date of this letter.

Very truly yours,


CLERK

TAG/ec

cc: Jackson Seth Whipper, Esquire

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403PO DRAWER 22247
CHARLESTON, SC 29413-2247PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

KATHLEEN FOWLER MONOC

July 8, 2010

The Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RECEIVED

JUL 12 2010

SC Court of Appeals

Re: Nancy Beach v Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., and Rudi H. Gresham
Civil Action No. 1992-CP-15-00508

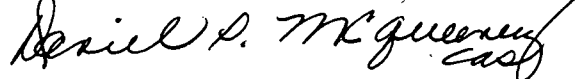
Dear Ms. Gee:

Please be advised that this firm represents the Respondents in the above-referenced case. On June 28, 2010, Appellant filed and served a Memorandum in Support of its Motion to Amend the Designation of Matter. I am writing to request a ten (10) day extension of time within which to serve a Return to this Memorandum. Appellant's memorandum, which was not included with its original motion, essentially seeks to strike a great portion of Respondents' designated matters from the Record on Appeal. As a result, I will need a little more time to go through each designated matter to explain in the Return why it was designated and why it is relevant to this appeal.

No previous extension has been requested by or granted to Appellant. I have enclosed our firm's check in the amount of \$25.00 to cover the filing fee for this request. By copy of this letter to attorneys for Appellant, I am advising Appellant of our request. Your courtesies and consideration of this matter are greatly appreciated.

Sincerely,

PRATT-THOMAS WALKER, P.A.



Daniel S. McQueeney, Jr., Esq.

DSM, jr./cas

c: Seth Whipper, Esquire

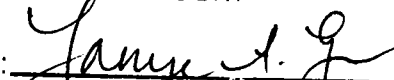
FILED



GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By:


(Clerk) (Deputy Clerk)
July 16, 2010

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

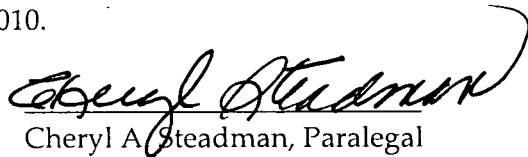
Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **letter to the Court requesting ten (10) day extension to serve a Return to Appellant's Memorandum in Support of its Motion to Amend the Designation of Matter** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

Done this 8th day of July, 2010.



Cheryl A. Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

RECEIVED

JUN 30 2010

SC Court of Appeals

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

MEMORANDUM IN SUPPORT OF MOTION TO AMEND

Appellant proposes the within Amended Designation of Matter because the Amended Designation of Matter, aids the Court's review of the record and provides the Court with documents that are properly relevant and pertinent to the issues raised by the briefs of both parties.

Referring to Respondent's Designation of Matter attached herein: items 4, 5, 6, 9, 12, 13, 15-17, 20-22 are not relevant, and, particularly items 13, 15-17 are pleadings that were not in any way considered by the lower court or are properly before this Court for consideration. Further, items 35 and 36 are undated and cannot be validly considered appropriate or necessary for resolution of the issues raised by this appeal. Item 30 has not been ruled upon and raises no issues under consideration in the present appeal. Item 34 is presently a part of the record of this Court, and, therefore, need not be included in the Designation of Matter.

Appellant hereby requests that any arguments related to excluded material be governed accordingly.

June 28, 2010

Respectfully Submitted

J. Seth Whipper, Esquire
Attorney for Appellant
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach,

Respondent,

v.

Gresham Communications of
Walterboro, Inc., a/k/a
Gresham Communications
Inc., Gresham Broadcasting,
Inc., and Rudi H. Gresham,

Appellants.

**Respondent's Designation of Matter
To Be Included in the Record on Appeal**

Respondent proposes the following to be included in the Record on Appeal:

1. Assignment from Nancy R. Beach to Caswell
2. Petition for Supplemental Hearing dated August 24, 2006
3. September 22, 2006 Order
4. Notice of Appeal of September 22, 2006 Order
5. Order of Dismissal in Appeal of September 22, 2006 Order
6. Remittitur of Appeal from September 22, 2006 Order
7. Appellant's Motion to Stay September 22, 2006 Order
8. Respondents' Return to Motion to Stay September 22, 2006 Order
7. February 21, 2007 Order
8. March 26, 2007 Order
9. Notice of Appeal of March 26, 2007 Order
10. Appellant's Initial Brief in Appeal of March 26, 2007 Order
11. Court of Appeals Opinion in Appeal of March 26, 2007 Order
12. Remittitur of Appeal of March 26, 2007 Order
13. April 3, 2007 FCC Approval of Assignment from Gresham to Receiver
14. April 25, 2007 Order

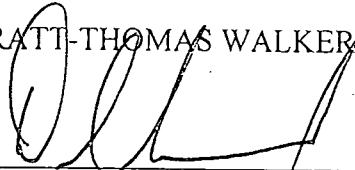
RECEIVED
JUN 30 2010
SC Court of Appeals

15. Receiver's Application for FCC Approval of Transfer to Caswell
16. Gresham's Petition for Rehearing of FCC Decision Approving Transfer from Gresham to Receiver
17. Gresham's Petition to Deny Receiver's Application for FCC Approval of Transfer from Receiver to Caswell (with all attachments)
18. September 20, 2006 Hearing Transcript, pp. 6, 14, 28, 29
19. November 27, 2007 Order
20. Notice of Appeal of November 27, 2007 Order
21. Order of Dismissal of November 27, 2007 Order
22. Remittitur of Appeal of November 27, 2007 Order
23. Notice of Redemption and Tender of Payment (with all attachments and exhibits)
24. Amended Notice of Redemption and Tender of Payment
25. Caswell's Return to Notice of Redemption (with all exhibits)
26. June 10, 2008 Order
27. Motion to Reconsider June 10, 2008 Order
28. Memorandum in Support of Reconsideration of June 10, 2008 Order
29. Affidavit of Thomas Daniel
30. Motion to Set Aside Judicial Sale dated October 20, 2008
31. December 3, 2008 Order
32. Notice of Appeal of June 10, 2008 Order and December 3, 2008 Order
33. Letter Withdrawing Funds from Clerk of Court
34. Order Denying Caswell's Motion to Strike Reference to March 3, 2009 FCC Decision
35. Petition for Rule to Show Cause
36. Order Granting Petition for Rule to Show Cause

To the extent such matters are duplicative to those matters designated by Appellant, I hereby consent that such matters need only be included one (1) time in the Record on Appeal. I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.

A handwritten signature in black ink, appearing to read 'W. Andrew Gowder, Jr.', written over a horizontal line.

W. Andrew Gowder, Jr. (#7895)

Daniel S. McQueeney, Jr. (#6802)

16 Charlotte Street

P.O. Box 22247

Charleston, SC 29413-2247

(843) 727-2229

Attorneys for Respondent

February 1, 2010
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

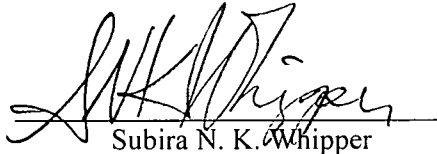
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellants' Proposed Amended Designation of Matter and the Memorandum in Support of Motion to Amend on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on June 28, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

June 28, 2010


Subira N. K. Whipper

RECEIVED

JUN 30 2010

SC Court of Appeals

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

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JUN 30 2010

SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

June 28, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Proposed Amended Designation of Matters – For Filing
Memorandum in Support of Motion to Amend
Proof of Service – For Filing

Dear Ms. Barber:

Find enclosed one original and eight copies each of the above-referenced documents for filing and conforming. Please return two of the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeny. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(Signature on Second Page)

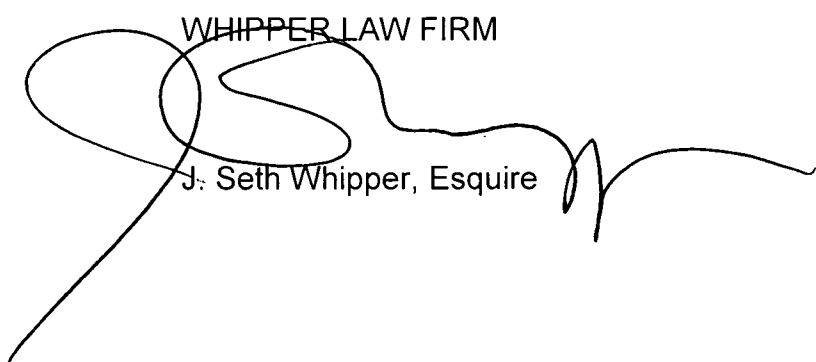
Page 2

June 28, 2010

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Proposed Amended Designation of Matters – For Filing
Proof of Service – For Filing

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/snkw

xc: William Saunders

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JUN 30 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

AMENDED DESIGNATION OF MATTER

Respondent proposed the following be included in the Record on Appeal:

1. Assignment of Judgment Interest: Beach v. Gresham Communications of Walterboro, Inc., et. al.: to Caswell Capital Partners, LLC (92-CP-15-508)
2. Petition for Supplemental Hearing: Beach v. Gresham Communications of Walterboro, Inc., et. al.: (92-CP-15-508;
3. Order (09/22/06): Beach v. Gresham Communications of Walterboro, Inc., et. al.: (92-CP-15-508) w/attachments: Radio Broadcast Station License (08/16/00 to 12/01/03) and Revised License Authorization – WPAL-FM.
4. Order (10/02/06): Beach v. Gresham Communications of Walterboro, Inc., et.al.: (92-CP-15-508); Setting Sale of FCC License;
5. Amended Order (10/04/06) Beach v. Gresham Communications of Walterboro, Inc., et. al.: (92-CP-15-508; Resetting sale of FCC License;

6. Notice of Sale (10/04/06): Beach v. Gresham Communications of Walterboro, Inc., et. al.; (92-CP-15-508)
7. Order (02/21/007): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Dismissing Motion to Stay/Ordering Judicial Sale;
8. Order (03/26/07); Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Appointing Receiver;
9. Judgment In a Civil Case: (6/4/98) Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); (\$61,903.10);
10. Decree (6/2/98): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Setting Judgment Amount and Attorney Fees;
11. Order (11/27/07): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Contempt Order;
12. Order (6/10/08): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Denial to Tender;
13. Order (12/3/08): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Order of Reconsideration;
14. 2nd Sup. to Mem.in Support of Def. Motion to Reconsider with Exhibits, and Attchments: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508)
15. Proposed Order Granting Def. Motion to Reconsider 6/6/08 Order: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
16. Transcript (6/23/08) Motion to Reconsider 6/6/08 Order: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
17. Transcript (5/16/08) Tender of Payment of 6/4/98 Judgment: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
18. Letter Decision, Media Bureau FCC, DA 09-540, Ref# 1800B3-KV: In Re: WPAL-FM at 4. (Mar. 3, 2009).
19. Def. reply to Plnt.'s Mem. Op. to Redemption.; Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
20. Def. Motion to Consider: 06/11/08; Beach v. Gresham Communications of Walterboro, Inc.,et.al. (92-CP-15-08);

21. Def Motion to Stay Execution of Order: 066/08 Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15- 08);

22. Appellant's Initial Brief in Appeal of March 26, 2007 Order

23. Court of Appeals Opinion in Appeal of March 26, 2007 Order

24. September 20, 2006 Hearing Transcript pp. 6, 8-15, 26-29

25. Notice of Redemption and Tender of Payment (with all attachments and exhibits)

26. Amended Notice of Redemption and Tender of Payment

27. Caswell's Return to Notice of Redemption (with all exhibits)

28. Motion to Reconsider June 10, 2008 Order

29. Memorandum in Support of Reconsideration of June 10, 2008 Order

30. Affidavit of Thomas Daniel

31. Letter With drawing Funds from Clerk of Court

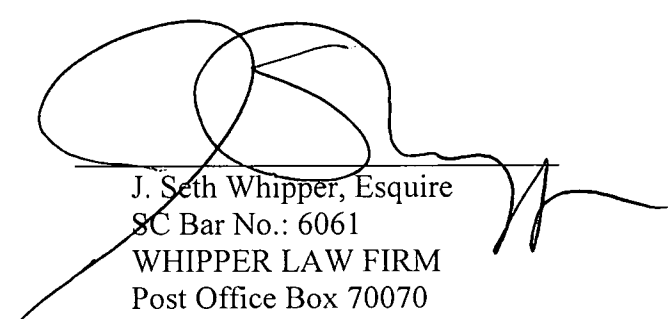
32. Appellant's Motion to Stay September 22, 2006 Order

33. Respondents' Return to Motion to Stay September 22, 2006 Order

34. April 25, 2007 Order

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

June 28 2010


J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant



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 25, 2010

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

We have received your "Motion to Extend Time to Reply" and your "Reply" in the above mentioned case on appeal.

Please be advised that your Reply was timely served and filed and is accepted by the Court. Therefore, your motion is not necessary and we are requesting that the filing fee be refunded to you at the above address.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

June 25, 2010

Thomas B. Timerlake
Div. of Finance and Personnel
1015 Sumter Street, Suite 101
Columbia, S.C. 29201

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Timberlake:

We received a request for an extension to serve and file a Reply in the above entitled appeal. Counsel for the Appellant provided this office with a twenty-five dollar (\$25.00) filing fee in the form of a check, which was deposited on June 22, 2010. However, this request is not necessary at this time.

Please refund the \$25.00 filing fee to:

J. Seth Whipper
Whipper Law Firm
4592 Durant Avenue(29405)
PO Box 70070
N. Charleston, SC 29415

Thank you for your assistance in this matter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Jackson Seth Whipper, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 14 2010

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

SC Court of Appeals

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

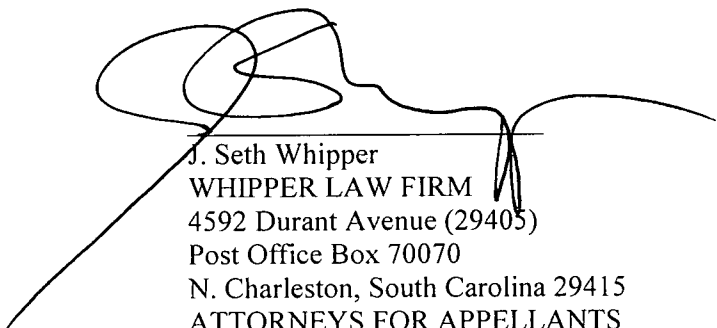
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

Motion to Extend Time to Reply

Appellants move to extend the time to file the attached Reply to Respondent's Return to Appellants' Motion to Amend Designation of Matters and for Extension of Time to File Record on Appeal. Appellants make this request because the time for responding to the return was mistakenly computed from the date of receipt of Respondents' return. Respondents' return was received on June 7, 2010. Appellants request this relief out of time. Dixon v. Besco Engineering, Inc. 320 SC 174, 463 S.E.2d 636, 638 (Ct. App. 1995).

June 10, 2010


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

Motion not necessary

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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JUN 14 2010

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

SC Court of Appeals

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

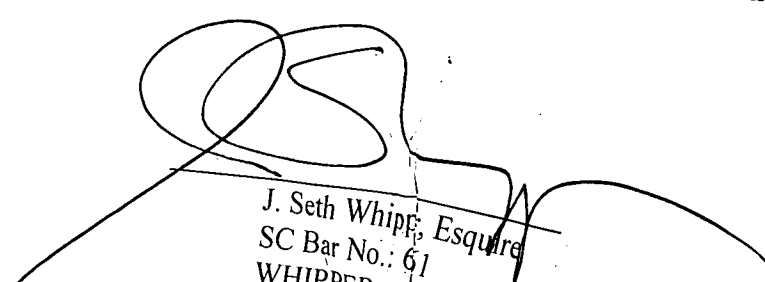
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Proposed Reply and Motion to Extend Time to Reply on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on June 10, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

June 10, 2010


J. Seth Whipper, Esquire
SC Bar No.: 61
WHIPPER LAW FIRM
Post Office Box 0070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108
Attorney for Appellant

RECEIVED

JUN 14 2010

SC Court of Appeals
8193 25

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

June 10, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Proposed Reply – For Filing
Motion to Extend Time to Reply – For Filing
Proof of Service – For Filing

Dear Ms. Barber:

Find enclosed one original and two copies each of the above-referenced documents for filing and conforming. Also, enclosed is a check in the amount of \$25.00 for the requisite filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeny. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(Signature on Second Page)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 14 2010

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

SC Court of Appeals

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

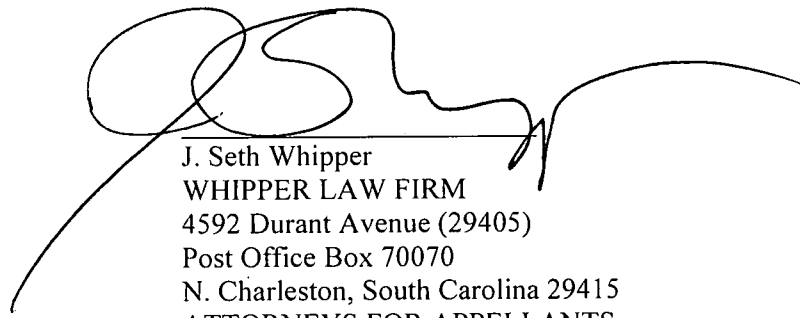
REPLY

Appellants do not seek to add material to the Designation of Matter but propose to remove and reduce the material designated. Appellants propose to confer with Respondent to hopefully agree on the content of the Designation of Matter.

As to the history of this case before this Court of Appeals, until the present appeal, only one appeal was perfected and decided by this Court. The issues raised in each appeal have been justiciable, ripe, and meritorious.

Appellants are attempting to file a Designation of Matter that is consistent and aligned with the briefs submitted by the parties. Appellants desire to insure that the Designation of Matter is not overly and needlessly voluminous.

June 10, 2010



J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
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FAX: (803) 734-1839
www.sccourts.org

June 16, 2010

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

In connection with your motion to amend the designation of matter, please file an amended designation which specifies what you wish to add to the record on appeal.

Please send this document to this office within ten (10) days.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

RECEIVED

JUN 08 2010

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

**Respondent's Return to Appellants' "Motion to Amend Designation of Matters and for
Extension of Time to File Record on Appeal"**

Initially, Respondent has no objection to Appellants' request for a sixty (60) day extension of the time in which to file the Record on Appeal in this matter. However, Respondent objects to Appellants' request to amend Appellants' Designations of Matter.

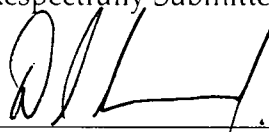
As this Court's records will reflect, Appellants filed the present notice of appeal on or around December 31, 2008. Since that time, both parties have filed initial briefs and designations of matter, and Appellants have filed a reply brief. The time to designate matter is over, and Appellants cite no specific documentation which would help clarify the issues on appeal.

In addition, this appeal involves what should be a simple supplemental proceeding to collect on a judgment. The matter was referred to a special referee. The special referee's initial order enforcing the judgment against Appellants was appealed, dismissed and remitted. A subsequent order enforcing the judgment was unappealed by Appellants. A third order appointing a receiver over Appellants' property was appealed, and this Court affirmed in favor of Respondent. A fourth order holding Appellants in contempt for failing to comply with the other orders enumerated above was appealed, dismissed and remitted.

The present appeal essentially involves a fifth (and sixth and seventh) attempt, well after the fact, to collaterally attack the first order issued by the special referee in this proceeding and to substantially expand the scope of this supplemental proceeding. Although Appellants fail to describe any document which is so pertinent to this appeal that this Court should re-open the designations of matter, Respondent respectfully contends no further expansion of this appeal is warranted.

In short, Respondent cannot consent to an additional designation without knowing what Appellants propose to designate. Further, Respondent objects to any designation because the scope of this appeal has already been expanded well beyond its legal parameters. In the event this Court should determine to permit Appellants' additional designation of matter, Respondent would respectfully request that this Court concomitantly permit Respondent to amend its initial brief and designation of matter in response thereto within thirty (30) days after the additional designation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'WAG', is written over a horizontal line.

W. Andrew Gowder, Jr.

Daniel S. McQueeney, Jr.

PRATT-THOMAS WALKER, P.A.

P.O. Drawer 22247

Charleston, SC 29413-2247

843-727-2229

Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 08 2010
SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

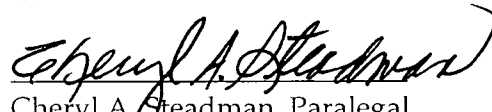
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Respondent's Return to Appellants' "Motion to Amend Designation of Matters and for Extension of Time to File Record on Appeal"** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

William Saunders
6191 Chisolm Road
Johns Island, SC 29455

Done this 4th day of June, 2010.


Cheryl A. Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

KATHLEEN FOWLER MONOC

June 4, 2010

RECEIVED

JUN 08 2010

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

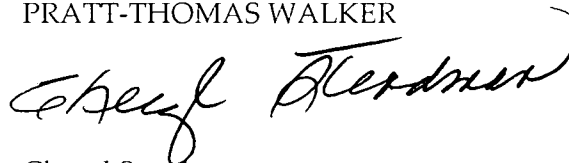
Dear Ms. Gee:

Please find enclosed for filing the original and six (6) Respondent's Return to Appellants' Motion to Amend Designation of Matters and for Extension of Time to File Record on Appeal in the above matter. I have also served one (1) copy of the Respondent's Return to counsel for Appellant.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me at (843) 727-2260.

Sincerely,

PRATT-THOMAS WALKER



Cheryl Steadman
Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire (w/encl.)
William Saunders (w/encl.)
Judith Aidoo (w/encl.)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

RECEIVED

MAY 26 2010

SC Court of Appeals
8179 25

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

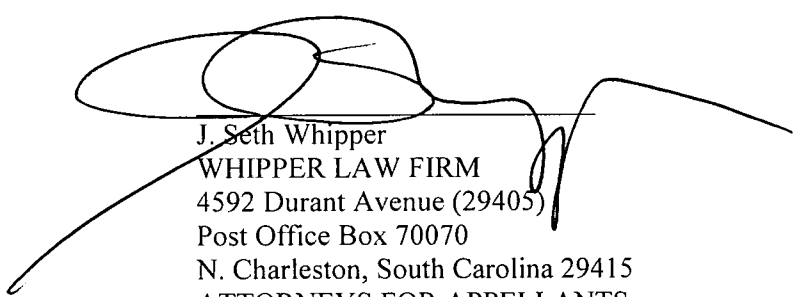
MOTION TO AMEND DESIGNATION OF MATTERS AND
FOR EXTENSION OF TIME TO FILE RECORD ON APPEAL

The Appellants move for an Order extending the time to file Record on Appeal in this matter for a period of sixty (60) days beginning May 25, 2010; and Appellants move for an Order allowing the amendment of Designation of Matters. Appellants make these requests in order to aid the Courts review of the record and to provide the court with documents that are properly relevant and pertinent to the issues raised by the briefs of the parties. Appellants have consulted with Respondent's counsel but at the time of this filing are still awaiting response.

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

MAY 26 2010

SC Court of Appeals

Nancy R. Beach Respondent,

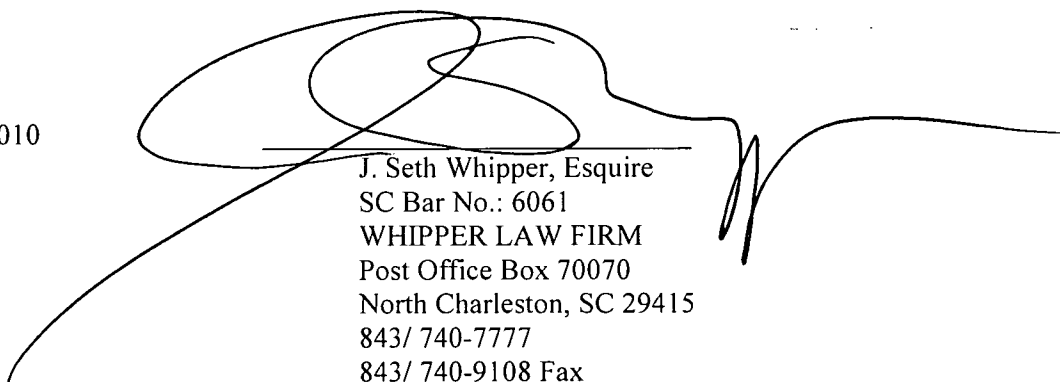
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellants' Motion to Amend Designation of matters and for Extension of Time to File Record on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on May 25, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

May 25, 2010



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

May 25, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
**MOTION TO AMEND DESIGNATION OF MATTERS AND
FOR EXTENSION OF TIME TO FILE RECORD ON APPEAL – Filing**

Dear Ms. Barber:

Find enclosed one original and six (6) copies of the above-referenced document for filing and conforming. Also, please find a check in the amount of \$25.00 for the filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(Signature on Second Page)

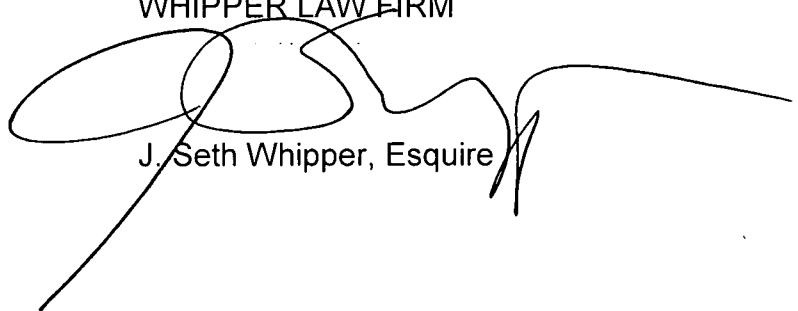
Page 2

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508

**MOTION TO AMEND DESIGNATION OF MATTERS AND
FOR EXTENSION OF TIME TO FILE RECORD ON APPEAL – Filing**

Sincerely,

WHIPPER LAW FIRM

A large, stylized handwritten signature in black ink, appearing to read 'J. Seth Whipper', is written over the typed name. The signature features a large, looping 'W' and a long, sweeping horizontal stroke at the end.

J. Seth Whipper, Esquire

JSW/tsd

Enclosures

xc: William Saunders

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

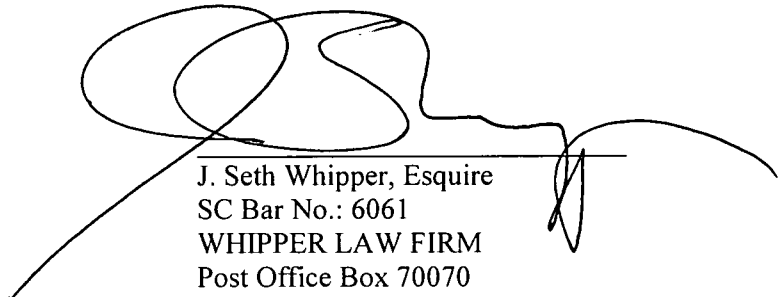
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have served one copy of the Appellant's Reply Brief on Nancy R. Beach by depositing a copy of it in the United States mail, postage prepaid, on April 26, 2010, addressed to their attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29403.

April 26, 2010



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

April 26, 2010

RECEIVED

APR 27 2010

SC Court of Appeals

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Caswell Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Appellant's Reply Brief – For Filing
Proof of Service – For Filing

Dear Ms. Barber:

Find enclosed one original and two copies each of the above-referenced documents for filing and conforming. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeny. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

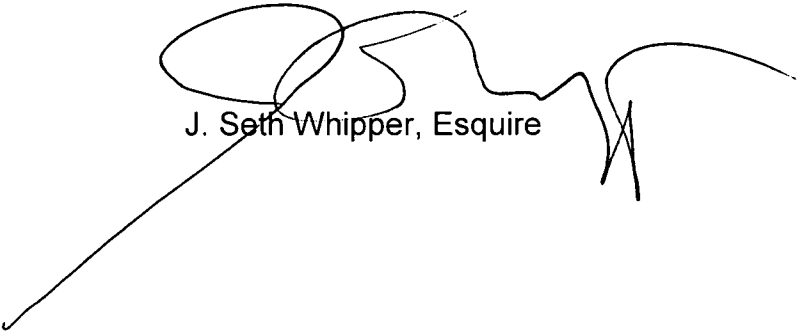
(Signature on Second Page)

Page 2

Re: *Nancy R. Beach v. Caswell Communications of Waltherboro, Inc., et. al.*
Case No.: 92-CP-15-508
Appellant's Reply Brief – For Filing
Proof of Service – For Filing

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/tsd

Enclosures

xc: William Saunders



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

April 27, 2010

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

The following Order has been endorsed on your "Motion for Extension of Time to File and serve Reply Brief" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

April 27, 2010."

Please be advised the Appellants' Initial Reply Brief must be served and filed on or before April 30, 2010.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 19 2010

SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

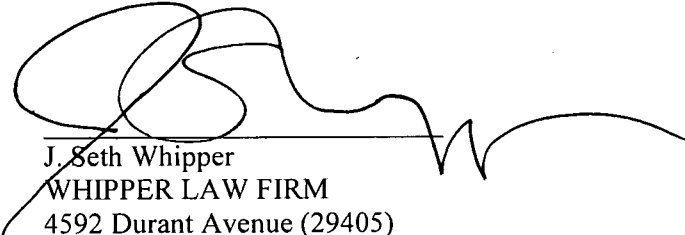
MOTION FOR EXTENSION OF TIME TO FILE AND SERVE REPLY BRIEF

The Appellants move for an Order extending the time to file and serve their Reply Brief in this matter for a period of thirty (10) days beginning April 14, 2010. Appellants make this motion in light of counsel's interrupted schedule and other obligations. Appellants have consulted with Respondent's counsel who will not object to this extension.

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

4-4-10 2nd
4/30/10

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APR 19 2010

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

SC Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

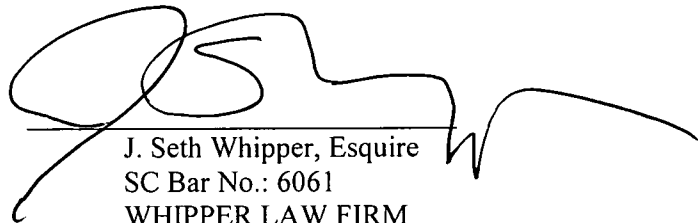
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellants' Motion for Extension of Time to File and Serve Reply Brief on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on April 14, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

April 14, 2010



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

April 14, 2010

RECEIVED

APR 19 2010

SC Court of Appeals

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

1031 25

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Reply Brief- For Filing

Dear Ms. Barber:

Find enclosed one original and six (6) copies each of the above-referenced documents for filing and conforming. Also included is the requisite filing fee of \$25.00 paid by check. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeny, Esq. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(signature on next page)

Page 2

April 14, 2010

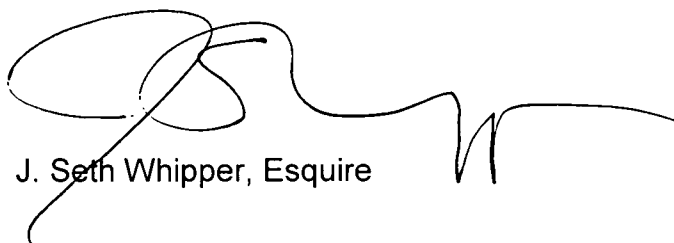
Re: *Nancy R. Beach v. Gresham Communications of Waltherboro, Inc., et. al.*

Case No.: 92-CP-15-508

Motion for Extension of Time to File and Serve Reply Brief- *For Filing*

Sincerely,

WHIPPER LAW FIRM

A handwritten signature in black ink, appearing to read "J. Seth Whipper", with a long horizontal flourish extending to the right.

J. Seth Whipper, Esquire

JSW/snkw

Enclosures

xc: William Saunders
W. Andy Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.



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

March 19, 2010

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

The following Order has been endorsed on your "Motion for Extension of Time to File and Serve Reply Brief" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 18, 2010."

Please be advised the Appellant's Initial Reply Brief must be served and filed on or before April 14, 2010.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAR 12 2010
SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

MOTION FOR EXTENSION OF TIME TO FILE AND SERVE REPLY BRIEF

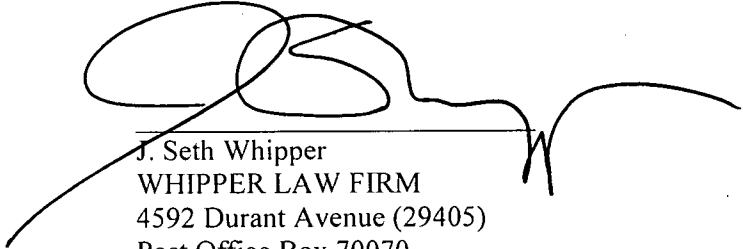
The Appellants move for an Order extending the time to file and serve their Reply Brief in this matter for a period of thirty (30) days beginning March 11, 2010. Appellants make this motion in light of counsel's interrupted schedule and other obligations. Appellants have consulted with Respondent's counsel who will not object to this extension.

WHEREFORE, the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413

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


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

By: V. Clair Allen
(Clerk) (Deputy Clerk)
3/18/10

- 1 -
FILED
3/19/10

3/15/10
4/14/10
2nd Reg
HBB

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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MAR 12 2010

SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

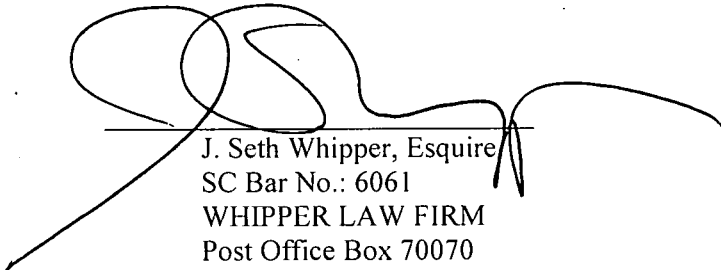
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellants' Motion for Extension of Time to File and Serve Reply Brief on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on March 10, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

March 10, 2010



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

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MAR 12 2010

SC Court of Appeals
1028 25

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

March 10, 2010

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Reply Brief- For Filing

Dear Ms. Barber:

Find enclosed one original and six (6) copies each of the above-referenced documents for filing and conforming. Also included is the requisite filing fee of \$25.00 paid by check. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney, Esq. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(signature on next page)

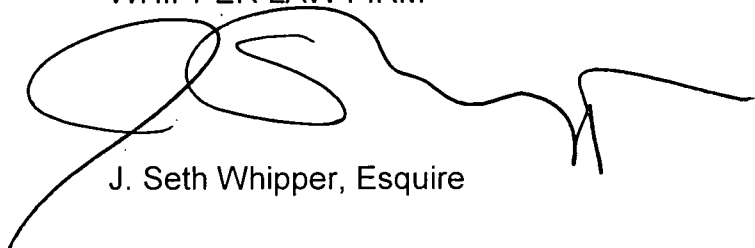
Page 2

March 10, 2010

Re: *Nancy R. Beach v. Gresham Communications of Waltherboro, Inc., et. al.*
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Reply Brief- *For Filing*

Sincerely,

WHIPPER LAW FIRM

A handwritten signature in black ink, appearing to read "J. Seth Whipper", with a long horizontal flourish extending to the right.

J. Seth Whipper, Esquire

JSW/snkw

Enclosures

xc: William Saunders
W. Andy Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.



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

February 19, 2010

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

The following Order has been endorsed on your "Motion for Extension of Time to File and Serve Reply Brief" in the above entitled case on appeal.

"Granted.

Johon Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

February 18, 2010."

Please be advised the Appellant's Initial Reply Brief must be served and filed on or before March 15, 2010.

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. Carter".

Elizabeth A. Carter
Docketing Specialist

JAG
JAG/ec

cc: W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire

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FEB 10 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

GRANTED.

John Cannon FCW

FOR THE COURT

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

By Jane A. G.

Feb. 18, 2010

Case No. 1992-CP-15-508

FILED

2/19/10

Nancy R. Beach. Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham

Appellant.

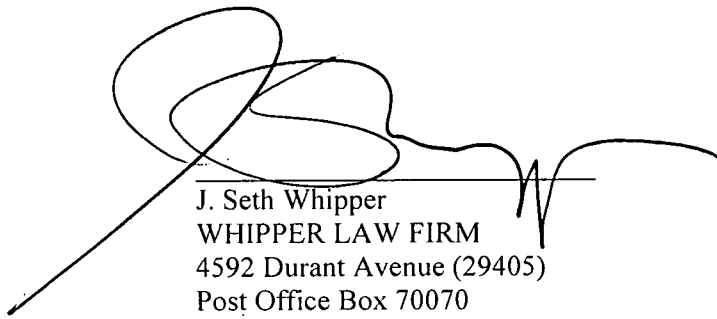
MOTION FOR EXTENSION OF TIME TO FILE AND SERVE REPLY BRIEF

The Appellants move for an Order extending the time to file and serve their Reply Brief in this matter for a period of thirty (30) days beginning February 10, 2010. Appellants make this motion in light of his interrupted schedule. Appellants have consulted with Respondents counsel who will not object to this extension.

WHEREFORE the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

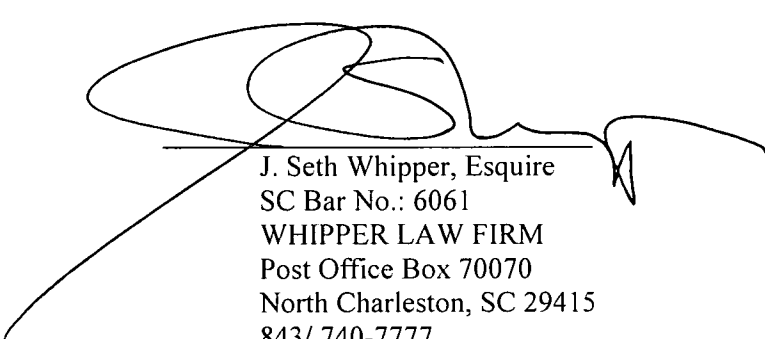
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellants' Motion for Extension of Time to File and Serve Reply Brief on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on February 9, 2010, addressed to the attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

February 9, 2010


J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

February 9, 2010

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FEB 10 2010

SC Court of Appeals

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508

Motion for Extension of Time to File and Serve Reply Brief- For Filing

Dear Ms. Barber:

Find enclosed one original and six (6) copies each of the above-referenced documents for filing and conforming. Also included is the requisite filing fee of \$25.00 paid by check. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

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Thank you for your anticipated assistance and cooperation.

(signature on next page)

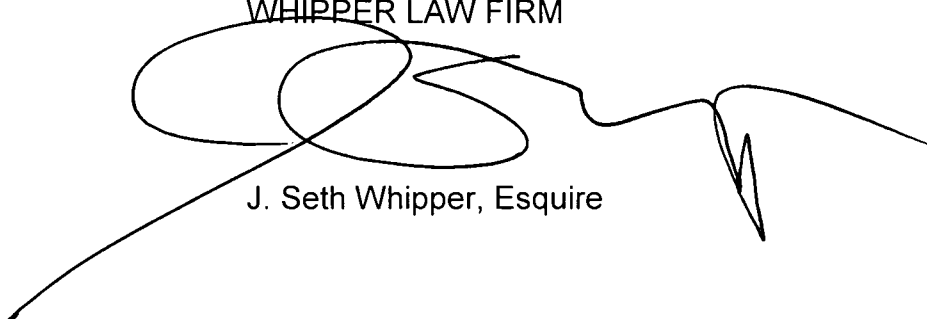
Page 2

February 9, 2010

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Reply Brief- *For Filing*

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/snkw

Enclosures

xc: William Saunders
W. Andy Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach,

Respondent,

v.

Gresham Communications of
Walterboro, Inc., a/k/a
Gresham Communications
Inc., Gresham Broadcasting,
Inc., and Rudi H. Gresham,

Appellants.

**Respondent's Designation of Matter
To Be Included in the Record on Appeal**

Respondent proposes the following to be included in the Record on Appeal:

1. Assignment from Nancy R. Beach to Caswell
2. Petition for Supplemental Hearing dated August 24, 2006
3. September 22, 2006 Order
4. Notice of Appeal of September 22, 2006 Order
5. Order of Dismissal in Appeal of September 22, 2006 Order
6. Remittitur of Appeal from September 22, 2006 Order
7. Appellant's Motion to Stay September 22, 2006 Order
8. Respondents' Return to Motion to Stay September 22, 2006 Order
7. February 21, 2007 Order
8. March 26, 2007 Order
9. Notice of Appeal of March 26, 2007 Order
10. Appellant's Initial Brief in Appeal of March 26, 2007 Order
11. Court of Appeals Opinion in Appeal of March 26, 2007 Order
12. Remittitur of Appeal of March 26, 2007 Order
13. April 3, 2007 FCC Approval of Assignment from Gresham to Receiver
14. April 25, 2007 Order

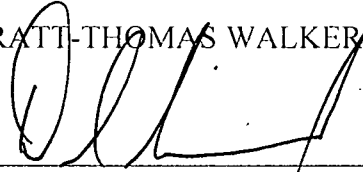
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FEB 03 2010
SC Court of Appeals
ORIGINAL

15. Receiver's Application for FCC Approval of Transfer to Caswell
16. Gresham's Petition for Rehearing of FCC Decision Approving Transfer from Gresham to Receiver
17. Gresham's Petition to Deny Receiver's Application for FCC Approval of Transfer from Receiver to Caswell (with all attachments)
18. September 20, 2006 Hearing Transcript, pp. 6, 14, 28, 29
19. November 27, 2007 Order
20. Notice of Appeal of November 27, 2007 Order
21. Order of Dismissal of November 27, 2007 Order
22. Remittitur of Appeal of November 27, 2007 Order
23. Notice of Redemption and Tender of Payment (with all attachments and exhibits)
24. Amended Notice of Redemption and Tender of Payment
25. Caswell's Return to Notice of Redemption (with all exhibits)
26. June 10, 2008 Order
27. Motion to Reconsider June 10, 2008 Order
28. Memorandum in Support of Reconsideration of June 10, 2008 Order
29. Affidavit of Thomas Daniel
30. Motion to Set Aside Judicial Sale dated October 20, 2008
31. December 3, 2008 Order
32. Notice of Appeal of June 10, 2008 Order and December 3, 2008 Order
33. Letter Withdrawing Funds from Clerk of Court
34. Order Denying Caswell's Motion to Strike Reference to March 3, 2009 FCC Decision
35. Petition for Rule to Show Cause
36. Order Granting Petition for Rule to Show Cause

To the extent such matters are duplicative to those matters designated by Appellant, I hereby consent that such matters need only be included one (1) time in the Record on Appeal. I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.



W. Andrew Gowder, Jr. (#7895)

Daniel S. McQueeney, Jr. (#6802)

16 Charlotte Street

P.O. Box 22247

Charleston, SC 29413-2247

(843) 727-2229

Attorneys for Respondent

February 1, 2010
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

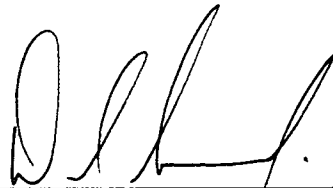
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Respondent's Brief and Designation of Matter** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

William Saunders
6191 Chisolm Road
Johns Island, SC 29455

Done 1st^H of February, 2010.



Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2256
ATTORNEYS FOR RESPONDENT

RECEIVED
FEB 03 2010
SC Court of Appeals

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.WISELAW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

February 1, 2010

RECEIVED

FEB 03 2010

SC Court of Appeals

The Honorable Jeanette Barber
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

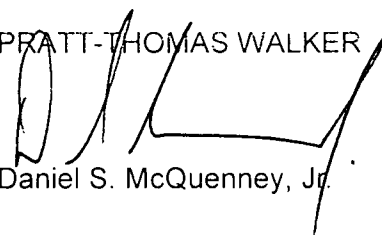
Dear Ms. Barber:

Please find enclosed for filing the original and seven copies of the Respondent's Brief and Designation of Matter in the above matter. I have enclosed a prepaid envelope for return of the copy of the clocked document.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me.

Sincerely,

PRATT-THOMAS WALKER


Daniel S. McQuenney, Jr.

DSM/cas

Enclosures as stated

c: J. Seth Whipper, Esquire
Judith Aidoo



The South Carolina Court of Appeals

JEANETTE F. BARBER
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

January 21, 2010

W. Andrew Gowder, Jr, Esquire
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Gowder:

The following Order has been endorsed on your "Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter" in the above entitled case on appeal.

"Granted. 10 day extension from the date of this order.

s/ Jasper M. Cureton A.J.
For the Court

January 20, 2010."

Please be advised the Appellant's Initial Brief and Designation of Matter must be served and filed on or before February 1, 2010.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

JFB/ec

cc: Jackson Seth Whipper, Esquire

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 06 2010

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

SC Court of Appeals

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief
and Designation of Matter

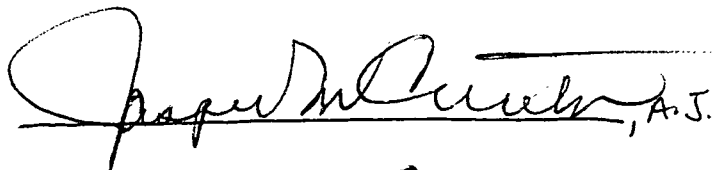
W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

Other Counsel of Record:
J. Seth Whipper, Esq.
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, SC 29415
Attorneys for Appellant

Granted. 10 day extension
from the date of this
order.

FILED

1/20/10

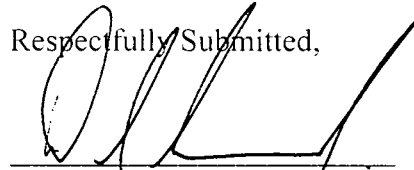
 J.S.

Jan. 20, 2010

1-4-10
Rec'd 1/19/10

Pursuant to Rule 263(b), SCACR, Respondent moves the court for a fifteen (15) day extension of the time in which to serve and file its initial brief and designation of matter, which are currently due on January 4, 2010. Respondent's counsel and Appellant's counsel are continuing to work toward a resolution to this matter. Counsel for Appellant has joined in the request and has graciously consented to the extension request.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'DMcQ', is written over a horizontal line.

Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2256
Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

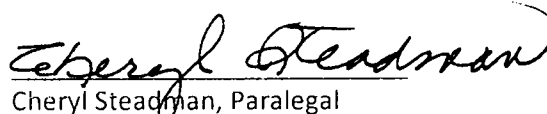
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

William Saunders
6191 Chisolm Road
Johns Island, SC 29455

Done 4th^H of January, 2010.



Cheryl Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2229
ATTORNEYS FOR RESPONDENT

RECEIVED
JAN 06 2010
SC Court of Appeals

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.WISELAW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

January 4, 2010

RECEIVED

JAN 06 2010

SC Court of Appeals

68390 25

The Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

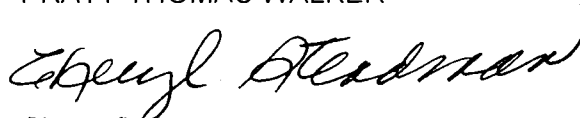
Dear Ms. Barber:

Please find enclosed for filing the original and six (6) Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter and original Proof of Service in the above matter. I have also served one (1) copy of the Respondent's Motion to counsel for Appellant. Also enclosed is our firm's check in the amount of Twenty-Five (\$25) Dollars for the filing fee. As stated in the Motion, both parties are continuing to work toward resolution of this issue and the additional costs and time may not be needed.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me at (843) 727-2260.

Sincerely,

PRATT-THOMAS WALKER

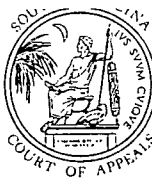


Cheryl Steadman
Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire (w/encl.)
William Saunders (w/encl.)
Judith Aidoo (w/encl.)



The South Carolina Court of Appeals

JEANETTE F. BARBER
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

November 25, 2009

W. Andrew Gowder, Jr., Esquire
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Gowder:

The following Order has been endorsed on your second "Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter" in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

November 25, 2009."

The following Order has been endorsed on your third "Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter" in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

November 25, 2009."

Please be advised the Respondent's Initial Brief and Designation of Matter must be served and filed on or before January 4, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JFB/ec

cc: Jackson Seth Whipper, Esquire

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 19 2009

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

SC Court of Appeals

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

**Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief
and Designation of Matter**

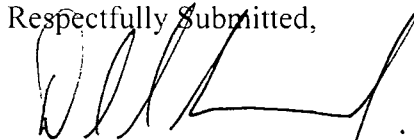
W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

Other Counsel of Record:
J. Seth Whipper, Esq.
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, SC 29415
Attorneys for Appellant

11-19-09 45 days
1-4-10 3rd

Pursuant to Rule 263(b), SCACR, Respondent moves the court for a forty-five (45) day extension of the time in which to serve and file its initial brief and designation of matter, which are currently due on November 19, 2009. Respondent's counsel and Appellant's counsel are working to bring resolution to this matter. Counsel for Appellant has joined in the request and has graciously consented to the extension request.

Respectfully Submitted,



Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2256
Attorneys for Respondent

GRANTED

KAYE G. HEARN, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)
November 25, 2009

FILED

11/25/09 

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

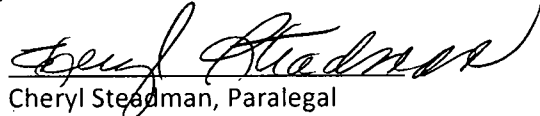
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

William Saunders
6191 Chisolm Road
Johns Island, SC 29455

Done 18th^H of November 2009.



Cheryl Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2229
ATTORNEYS FOR RESPONDENT

RECEIVED

NOV 19 2009

SC Court of Appeals

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.WISELAW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

November 18, 2009

RECEIVED

NOV 19 2009

SC Court of Appeals

The Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

Dear Ms. Barber:

Please find enclosed for filing the original and six (6) Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter and original Proof of Service in the above matter. I have also served one (1) copy of the Respondent's Motion to counsel for Appellant. Also enclosed is our firm's check in the amount of Twenty-Five (\$25) Dollars for the filing fee. As stated in the Motion, both parties are working to resolve this issue and the additional costs and time may not be needed.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me at (843) 727-2260.

Sincerely,

PRATT-THOMAS WALKER



Cheryl Steadman
Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire (w/encl.)
William Saunders (w/encl.)
Judith Aidoo (w/encl.)

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

RECEIVED

NOV 13 2009

SC Court of Appeals

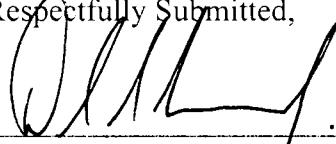
**Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief
and Designation of Matter**

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

11-12-09 17 days
11-19-09 2nd

Pursuant to Rule 263(b), SCACR, Respondent moves the court for a seven (7) day extension of the time in which to serve and file its initial brief and designation of matter, which are currently due on November 12, 2009. Respondent's counsel has not had sufficient time to prepare an initial brief and designation due to other matters that have required immediate attention. Counsel for Appellant has graciously consented to the extension request.

Respectfully Submitted,



Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2256
Attorneys for Respondent

Charleston, South Carolina
November 11, 2009

GRANTED

KAYE G. HEARN, C.J.
FOR THE COURT

By: V. Clair Allen, Deputy
(Clerk) (Deputy Clerk)
November 25, 2009

FILED
11/25/09

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

RECEIVED
NOV 13 2009
SC Court of Appeals

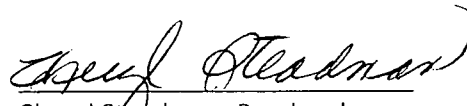
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

William Saunders
6191 Chisolm Road
Johns Island, SC 29455

Done 11TH of November 2009.



Cheryl Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2229
ATTORNEYS FOR RESPONDENT

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.WISELAW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

November 11, 2009

The Honorable Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

Re: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc., NOV 13 2009
and Rudi H. Gresham
Case No. 1992-CP-15-00508

RECEIVED

SC Court of Appeals
68021 05

Dear Ms. Barber:

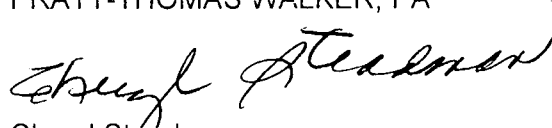
Please find enclosed the Respondent's Motion for Extension of the Time in Which to serve and File Respondent's Initial Brief and Designation of Matter in the above matter. I am also enclosing the Certificate of Service and our firm's check in the amount of Twenty-Five (\$25) Dollars for the filing fee.

By copy of this letter to attorneys for Appellants, I am advising Appellants of our request.

Your courtesies and consideration of this matter are greatly appreciated.

Sincerely,

PRATT-THOMAS WALKER, PA



Cheryl Steadman

Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: Seth Whipper, Esquire
William Saunders

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

For good cause having been shown, the time for serving and filing the Respondent's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until November 12, 2009.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For the Court

BY



CLERK

Columbia, South Carolina

10-13-09

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

OCT 07 2009

SC Court of Appeals

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

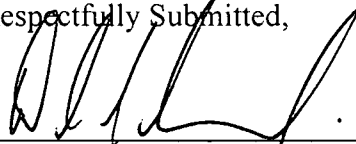
**Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief
and Designation of Matter**

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

Other Counsel of Record:
J. Seth Whipper, Esq.
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, SC 29415
Attorneys for Appellant

Pursuant to Rule 263(b), SCACR, Respondent moves the court for a thirty (30) day extension of the time in which to serve and file its initial brief and designation of matter, which are currently due on October 12, 2009. Respondent's counsel is preparing for a trial in Berkeley County for the week of October 12, 2009, and has not had sufficient time to prepare an initial brief and designation. Counsel for Appellant has graciously consented to the extension request.

Respectfully Submitted,



Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2256
Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED
OCT 07 2009
SC Court of Appeals

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

PROOF OF SERVICE

I, Cheryl Steadman an employee of Pratt-Thomas Walker, P.A. hereby certify that on October 6, 2009, I placed a copy of the Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter to J. Seth Whipper, counsel of record for Appellant and to William Saunders by placing the same in the United States mail, first-class postage pre-paid, to:

J. Seth Whipper, Esq.
Whipper Law Firm
4592 Durant Avenue
N. Charleston, SC 29405

Mr. William Saunders
6191 Chisolm Road
Johns Island, SC 29455


Cheryl Steadman, Paralegal

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.WISELAW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

October 6, 2009

The Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RECEIVED

OCT 07 2009

SC Court of Appeals
67766 25

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

Dear Ms. Barber:

Please find enclosed for filing the original and six (6) Respondent's Motion for Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter and original Proof of Service in the above matter. I have also served one (1) copy of the Respondent's Motion to counsel for Appellant. Also enclosed is our firm's check in the amount of Twenty-Five (\$25) Dollars for the filing fee.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me at (843) 727-2260.

Sincerely,

PRATT-THOMAS WALKER



Cheryl Steadman
Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire (w/encl.)
William Saunders (w/encl.)
Judith Aidoo (w/encl.)

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Special Referee Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

Respondent filed a motion seeking to strike a Federal Communication Commission opinion listed in Appellants' designation of matter to be included in the record on appeal and all references to the opinion in Appellants' initial brief. Respondent argues the FCC opinion was issued after the orders being challenged on appeal and, therefore, were not presented to or considered by the special referee. By return, Appellants argue the FCC opinion held that the special referee's order attaching Gresham Communications' broadcast license was *void ab initio* and, therefore, the special referee lacked subject matter jurisdiction to decide the issue of title of the broadcast license. Appellants' maintain the opinion would aid in the resolution of the appeal.

Appellants also moved for leave pursuant to Rule 60, SCRCF, requesting the special referee be able to reconsider his earlier rulings in light of the FCC opinion. Respondent argues

that Appellants have raised this same issue in a previous appeal to this Court and the motion should be denied.

After careful consideration of the parties' motions, returns, and Appellants' reply, we deny Respondent's motion to strike. Further, Appellants motion for leave pursuant to Rule 60, SCRCP is also denied. Respondent's motion for an extension to file Respondent's initial brief and designation of matter is granted. Respondent has thirty days to serve and file the same.

AND IT IS SO ORDERED.

Kaye L. Heam

Columbia, South Carolina

Sept 10, 2009

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire

FILED

9/10/09 NR



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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September 10, 2009

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

W. Andrew Gowder, Jr., Esquire
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Counsel:

Enclosed is a copy of an Order of the Court in regards to the above case.

Counsel for the Respondent is advised that the Respondent's Initial Brief and Designation of Matter must be served and filed no more than thirty (30) days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JFB/ec



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 9, 2009

W. Andrew Gowder, Jr., Esquire
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Gowder:

It has now come to the Court's attention that "Respondent's Return to Motion for Relief Pursuant to Rule 60 (b), SCRCPP" was timely served and filed. According to our records the Return should have been served and filed no later than June 11, 2009.

If you would like the Court to consider the Return out of time, then you may serve and file the appropriate motion, in accordance with Rule 240, SCACR, within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. F. Barber".

CLERK

JFB/ec

cc: Jackson Seth Whipper, Esquire

RECEIVED

JUN 23 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

**APPELLANT'S REPLY TO RESPONDENT'S RETURN TO APPELLANT'S MOTION
FOR LEAVE TO FILE MOTION FOR RELIEF PURSUANT TO SCRCP 60(b)**

REPLYING to the Respondent's Return, Appellant's reiterate that Rule 60(b) of the South Carolina Rules of Civil Procedure provides that the court may relieve a party or his legal representation from a final judgment, order or proceeding for the following reasons "... (4) the judgment is void." In the case at hand, the Federal Body that has exclusive jurisdiction of FCC licenses has ruled the Special Referee's Order attaching the Gresham License is void ab initio. Relief under subsection (4) of Rule 60(b) "is a matter of right rather than discretionary with the court." JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 487 (2d ed. 1996); see, Richardson Construction Company, Inc. v. Meek Engineering and Construction, Inc., 274 S.C. 307, 262 S.E. 2d 913 (1980). The Federal Communications Commission's ruling was not appealed by the Respondent. The state court in this case has no jurisdiction, power, or authority to attach a federal broadcast license.

The request to take this matter to the lower tribunal is required by the rule and is distinct from the prior appeal because it deals specifically with the actions of the trial court in relation to

the broadcast license, and its conveyance to a judgment debtor. The federal body acknowledged that appointment of receivers to manage radio station operations is permitted; however, no state court has the authority to attach a broadcast license and convey it to any person, actor, or entity.

Respondent's **estoppel** argument is not relevant, and not supported by the trial court's rulings and orders. Appellant's request for leave to seek relief is based on the lack of subject matter jurisdiction of the state court when attaching a federal broadcast license and conveying that license by judicial sale. "We find that the Court's attachment of the WPAL-FM license exceeded its authority and to this extent its order is **void ab initio** as **violative** of the Act and Commission policy." (Attachment A, pg 4-5) This Federal Communications Commission (hereafter "FCC") ruling is the law in this case: Respondent did not appeal this ruling to the FCC.

In an order dated December 3, 2008, the Special Referee ruled that Respondent may not pursue any other asset of the corporation not already identified and liquidated by judicial sale; the only such item liquidated by judicial sale is the FCC license for operation of a radio station; and the license was sold in the usual course of judicial sale and purchased by Caswell, Inc. for valuable consideration. (Attachment B, pg 3-4). Respondent did not appeal those rulings, and those holdings are the law of this case.

The FCC and the Special Referee have made it clear that the broadcast license was the sale item conveyed at the judicial sale. The court's Notices of Sale and Amended Order of Sale and Order of Sale all advertised the sale only of the license (Attachments C, D, E, F). The FCC, responding to Respondent's argument that if Caswell had received proceeds from the sale and was not the winning bidder, there would be no contravention of FCC policy, said "We disagree." Further, even though the Special Referee provides that the sale is subject to Commission approval, the FCC held that "to give effect to this portion of the State Court Order would require that we ignore our longstanding policy against the attachment of a broadcast license." (Attachment A, pg 4). Whether a broadcast license is sold alone or with other assets, a state court exceeds its jurisdiction whenever it attaches a broadcast license.

CONCLUSION

For purposes of judicial economy, and with the clear limits on jurisdiction restated by the FCC, the lower tribunal should be given the opportunity to reconsider its earlier rulings. The Special Referee

has agreed to hear motions on June 23, 2009, and a date certain to deal with all motions is a proper option for galvanizing the issues. Leave to have the matters heard by the trial court is in order.

The basis for the motion has changed in part because of the FCC rulings and that explains, partially, the late request.

Appellant has met clearly the prima facie threshold for review under SCRCP 60(b): the trial court's order exceeded its authority; the prospective application, i.e. the FCC assignment proceedings, is no longer equitable, and the motion is filed at a reasonable time in light of the March 3, 2009 affirmation of the FCC's federal jurisdiction over broadcast licenses.

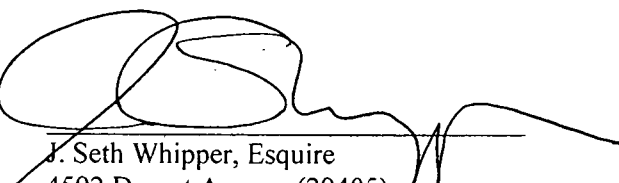
We urge the Court of Appeals to immediately allow this motion to be heard on June 23, 2009.

Respectfully Submitted,

WHIPPER LAW FIRM

Attorney for Defendant

June 22, 2009



J. Seth Whipper, Esquire
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North Charleston, South Carolina 29415
• 843/ 740-7777
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jsw@whipperlaw.com



Federal Communications Commission
Washington, D.C. 20554

March 3, 2009

DA 09-540
In Reply Refer to:
1800B3-KV
Released: March 3, 2009

Charles W. Cherry, II
Receiver for Gresham Communications, Inc.
5200 SW 18th Street
Plantation, FL 33317

Caswell Capital Partners, LLC
c/o Erwin G. Krasnow, Esquire
Garvey Schubert Barer
1000 Potomac Street, NW, 5th Floor
Washington, DC 20007

Gresham Communications, Inc.
c/o Dan J. Alpert, Esquire
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, Virginia 22201

In re: WPAL-FM, Ridgeville, SC
Facility ID No. 25374
File Nos. BALH-20070327AEK and BALH-
20070406ADD
Applications for Assignment of License

Gentleman:

We have before us an application (the "Application") for Commission consent to the assignment of the license of Station WPAL-FM, Ridgeville, South Carolina, (the "Station") from Charles W. Cherry, Receiver for Gresham Communications, Inc. ("Receiver"), to Caswell Capital Partners, LLC ("Caswell").¹ Previously, the staff granted an assignment application from Gresham Communications, Inc. ("Gresham") to the Receiver.² We also have before us a Petition to Deny the Application and a petition for reconsideration of the grant of the Involuntary Assignment Application (collectively, the "Petitions"), both filed by Gresham.³ For the reasons stated below, we grant in part and deny in part the Petitions, and grant the Application.

Background. The Assignment Applications arise out of a South Carolina court-ordered sale to satisfy a judgment against the former licensee, Gresham.⁴ Specifically, in August 2006, after purchasing the debt that was the subject of the judgment, Caswell petitioned the South Carolina Court of Common

¹ File No. BALH-20070406ADD.

² File No. BALH-20070327AEK ("Involuntary Assignment Application").

³ Collectively, unless referring to a specific assignment application, we will refer to the Involuntary Assignment Application and the Application as the "Assignment Applications."

⁴ In 2002, Commission staff granted an assignment application from Gresham to Caswell. That transaction, however, was never consummated. File No. BALH-20020620AAD.

Pleas (the "Court") to collect on the judgment.⁵ At the hearing, William Saunders ("Saunders"), president of Gresham, testified that Gresham's sole asset was the WPAL-FM Station license.⁶ On September 22, 2006, the Court ordered that the Station's license be attached and sold at a judicial sale.⁷

On February 15, 2007, the sheriff auctioned the Station's license to the high bidder, Caswell.⁸ Subsequently, the Court appointed the Receiver to effectuate the assignment of the license to Caswell.⁹ On March 27, 2007, the Receiver then filed the Involuntary Assignment Application. The Commission granted the unopposed application on April 3, 2007.¹⁰ Thereafter, on April 6, 2007, the Receiver filed the Application to assign the Station to Caswell.¹¹ On May 7, 2007, Gresham filed for reconsideration of the grant of the Involuntary Assignment Application,¹² and several days later, on May 11, 2007, Gresham petitioned to deny the pending Application to assign the Station license to Caswell. In response, the Receiver and Caswell jointly filed Oppositions.¹³ Over the next eighteen months each of the parties filed numerous additional pleadings, many of which pertained to matters before the Court.¹⁴

The Petitions raise several arguments in opposition to the assignment of the Station license to the Receiver and to Caswell. First, Gresham contends that the court improperly ordered that the Station's license be attached in violation of the Communications Act of 1934, as amended, (the "Act"). Next, Gresham asserts, the judicial sale of the Station's license further violated the Act by ordering the sale of a "bare license." Lastly, Gresham asserts that the State Court Order cannot be honored because it conflicts with a prior federal court order which enjoins Gresham and Saunders from transferring or disposing of the Station until a judgment for copyright infringement has been satisfied.¹⁵

⁵ Caswell is the assignee of a June 2, 1998, judgment on a promissory note against Gresham obtained by Nancy R. Beach. "Assignment of Judgment Interest," Attachment 4, Petition for Reconsideration.

⁶ September 22, 2006, Order at 2, Attachment 6, Petition for Reconsideration.

⁷ February 21, 2007 Order at 1, Attachment 8, Petition to Deny. ("State Court Order").

⁸ November 27, 2007, Order at 2, Letter Filing by Receiver and Caswell (Mar. 20, 2008).

⁹ *Id* at 3.

¹⁰ *Public Notice, Broadcast Actions*, Report No. 46459 (Apr. 6, 2007).

¹¹ *Public Notice, Broadcast Applications*, Report No. 26462 (Apr. 11, 2007).

¹² On May 11, 2007, Gresham filed an erratum to its petition for reconsideration.

¹³ The "Opposition to Petition to Deny" and the "Opposition to Petition for Reconsideration" (collectively "the Oppositions") were filed on June 1, 2007.

¹⁴ In particular, the parties filed the following pleadings with the Commission: the Receiver and Caswell filed a "Motion for Leave to file Supplement to 'Opposition to Petition to Deny'" (Jun. 22, 2007) and a "Motion for Leave to file Supplement to 'Opposition to Petition for Reconsideration'" (Jun. 22, 2007); the Receiver and Caswell filed a "Supplement to 'Opposition to Petition to Deny'" (Jun. 22, 2007) and a "Supplement to 'Opposition to Petition for Reconsideration'" (Jun. 22, 2007) (collectively "First Supplement"); Gresham filed several "Motions for Extension of Time to Reply to Oppositions" (Jun. 15, 2007, Jun. 22, 2007, Jul. 6, 2007, Jul. 26, 2007, Aug. 27, 2007, Sep. 10, 2007, and Sep. 18, 2007); Gresham filed a "Reply to Opposition to Petition to Deny" (Sep. 25, 2007) and a "Reply to Opposition to Petition for Reconsideration" (Sep. 25, 2007) (collectively, the "Reply"); the Receiver and Caswell filed a "Second Supplement to Opposition to Petition for Reconsideration" (Dec. 26, 2007) and a "Second Supplement and Request for Expedited Action" (Dec. 26, 2007) (collectively, the "Second Supplement"); the Receiver and Caswell filed a First Letter (Mar. 20, 2008); Gresham filed a "Petition for Dismissal of Assignment Application" (Apr. 7, 2008); the Receiver and Caswell filed an "Opposition to Petition for Dismissal of Assignment Application" (May 2, 2008); the Receiver and Caswell filed a Second Letter (Jun. 5, 2008) and a Third Letter (Jun. 12, 2008); and the Receiver and Caswell filed a "Third Supplement to the Opposition to Petition to Deny and Request for Expedited Action" (Dec. 19, 2008) ("Third Supplement").

¹⁵ *Chi-Boy Music et al v. Gresham Communications and William Saunders*, Order, CA No. 6:0101955-24, (D. S.C. Sep. 16, 2002), Attachment 9, Petition to Deny ("Federal Court Order").

Discussion. Section 310(d) of the Act,¹⁶ requires the Commission to determine whether the proposed transfer or assignment of a broadcast license would be in the public interest. Pursuant to Section 309(d)(1) of the Act,¹⁷ any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁸ This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.¹⁹ If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity. In addition, with respect to petitions for reconsideration, Section 1.106²⁰ of the Commission's Rules (the "Rules") and established case law provides that, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."²¹ We review Gresham's arguments against the Assignment Applications against this standard.

State Court Order. The Commission's long-standing policy is to accommodate the actions of state courts, thereby avoiding conflicts between state and federal authority, unless a public interest determination under the Act would compel a different result.²² Indeed, the U.S. Supreme Court has stated that "the principle of fair accommodation between State and federal authority . . . *should* be observed" if the state's laws "can be effectively respected while at the same time reasonable opportunity is afforded for the protection of that public interest" which underlies licensing decisions.²³ The Commission defers to judicial determinations in many area, including bankruptcy matters, private disputes, and the interpretation and enforcement of contracts for the sale of a broadcast station. The Commission, in contrast, retains exclusive authority to license broadcast stations.²⁴ Thus, the Commission has exclusive authority over a station's license, but it is also charged with the responsibility of accommodating state law, where appropriate. When, however, a state court's decision is contrary to Commission policy, the Commission is neither bound by the state court order nor need recognize it.²⁵

It is well established that a broadcast license does not confer a property right, but rather is a valuable privilege to utilize the airwaves, subject to certain limitations, including restrictions on the right

¹⁶ 47 U.S.C. § 310(d).

¹⁷ 47 U.S.C. § 309(d)(1).

¹⁸ See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

¹⁹ 47 U.S.C. § 309(d)(2).

²⁰ 47 C.F.R. § 1.106(c).

²¹ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686 (1964); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

²² *Radio Station WOW v. Johnson*, 326 US 120, (1945) ("*Radio Station WOW*"); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985) ("*Arecibo Radio*").

²³ *Radio Station WOW*, 326 US at 132.

²⁴ See e.g. *Arecibo Radio*, 101 FCC 2d at 549 (honoring court order requiring licensee to execute assignment application in favor of another party).

²⁵ See, e.g., *Kirk Merkley*, Memorandum Opinion and Order, 94 FCC 2d 829 (1983) ("*Merkley I*"), *recon. denied*, 56 RR 2d 413 (1984) ("*Merkley II*"), *aff'd sub nom.*, *Merkley v. FCC*, 776 F.2d 365 (1985). (declining to recognize court order based on contract with a prohibited reversionary interest that was tantamount to a vested security interest in a license).

to assign licenses.²⁶ As the Commission has stated, “[t]he extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable.”²⁷ Rather the Commission has repeatedly observed that a “license, as distinguished from a station’s physical assets, is not subject to a mortgage, security interest, or lien, pledge, *attachment*, seizure, or similar property right.”²⁸

Here, the State Court Order is facially inconsistent with the Commission’s policy prohibiting attachment of a Station license. The Court acknowledged that a licensee does not hold any property rights in the license itself. It also recognized that the Commission permits licensee creditors to have an interest in the proceeds from a sale of the license.²⁹ Nevertheless, the Court held: “the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license . . . be and hereby is attached.”³⁰ In a further order, on February 21, 2007, the Court opined that the Station’s license “was properly subject to attachment and that such License was thereby attached.”³¹ In a recent order, the Court noted that:

The only asset that was identified and levied upon was the FCC license. It was sold . . . at a judicial sale in order to satisfy the judgment. Although the judgment has now expired, the fact that it was “sold” is not affected. The asset was . . . purchased by bid of Caswell, Inc. at the proper judicial sale. *The issue of Federal Communication [sic] Commission approval is a formality and a collateral matter and should not affect the fact that the property was actually sold.*³²

The Receiver and Caswell assert that the Court *intended* to grant a security interest in the proceeds from the sale of the license.³³ We find that the Court’s plain language states otherwise. Moreover, we reject as unsupported the Receiver’s and Caswell’s argument that the Commission’s prohibition against attachment of a broadcast license is only of concern when an automatic right of reversion is involved. The prohibition on treating a broadcast license as a property right is premised on the rationale “that such hypothecation endangers the independence of the licensee who is and who should be at all times responsible for and accountable to the Commission”³⁴ Finally, the Receiver and Caswell contend that we should honor the State Court Order because Caswell would have received the proceeds from the Station’s sale had it not submitted the winning bid and that the State Court Order expressly provides that the sale is subject to Commission approval. We disagree. To give effect to this portion of the State Court Order would require that we ignore our longstanding policy against the attachment of a broadcast license.

In these circumstances, the Commission’s general deference to state court orders is not warranted. We find that the Court’s attachment of the WPAL-FM license exceeded its authority and to this extent its

²⁶ See 47 U.S.C. § 310(d).

²⁷ *Radio KDAN*, Memorandum Opinion and Order, 11 FCC 2d 934, n.1, *recon denied*, 13 RR 2d 100 (1968), *aff’d on procedural grounds sub nom., W.H.Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969) (“*Radio KDAN*”).

²⁸ *Merkley II*, 56 RR 2d at 416. (emphasis added).

²⁹ See September 22, 2006, Order at 2 -3, Attachment 6, Petition for Reconsideration.

³⁰ *Id.* at 3.

³¹ February 21, 2007, Order at 1, Attachment 8, Petition to Deny.

³² December 3, 2008, Order at 3, Attachment A, Third Supplement. (emphasis added).

³³ See Opposition at 7.

³⁴ *Radio KDAN*, 13 RR 2d at 102.

order is void *ab initio* as violative of the Act and Commission policy.³⁵ However, in cases of bankruptcy or receivership, the Commission does permit trustees or receivers to hold licenses on a temporary basis pending disposition of station assets.³⁶ This policy serves the public interest because, as the Commission has acknowledged, "these assets would be of comparatively little value if the Commission did not permit the operating authorization to accompany them pending ultimate passage of all [assets] to a qualified buyer."³⁷ In a further order³⁸ appointing the Receiver, the Court stated that, upon receipt of Commission approval, the Receiver is ordered to take possession of, operate, and manage Gresham's property and station license "to conserve the business and assets of the Station until a sale of the Station's assets is confirmed and a purchaser is found for the station acceptable to the Receiver and the FCC and the FCC has granted its consent for transfer of the FCC license to such purchaser."³⁹ This order is a valid exercise of the Court's authority under state law. Therefore, notwithstanding the invalidity of the State Court Order *vis-à-vis* attachment of the Station's license, we find no reason to overturn the staff's action granting the Involuntary Assignment Application.

Bare License. Gresham next argues that grant of the Application would constitute a sale of a prohibited "bare license." In particular, Gresham notes that the Asset Purchase Agreement submitted with the Application seeks to transfer only the local public inspection file and the Station license. The Commission has historically refused to permit a price to be placed on the transfer of a bare license.⁴⁰ When weighing a bare license allegation, the Commission will review "the entirety of the proposed transaction"⁴¹ and whether the assignee would have the ability to maintain broadcast operations.⁴² The Commission will permit a license assignment, as is the case here, where other rights, commitments, or physical assets exist. First, the Receiver proposes to assign to Caswell the Station's intangible assets, namely, the license and related authorizations as well as some tangible assets, specifically, the local public inspection file and its advertiser lists.⁴³ This list constitutes evidence of sufficient assets to counter Gresham's allegation.⁴⁴ Next, the Asset Purchase Agreement references other tangible Station assets that Caswell has acquired through other transactions, including "the WPAL-FM tower, antenna and most of the station's furniture fixtures and equipment."⁴⁵ In short, Caswell possesses the technical assets required

³⁵ Having found that the court's order is void *ab initio* insofar as it attaches the WPAL-FM license, we dismiss as moot Gresham's arguments that the court improperly enjoined it from appearing before us and raising arguments against grant of the assignment applications.

³⁶ See e.g., *O.D.T. International et. al.*, Memorandum Opinion and Order, 9 FCC Rcd 2575, 2576 (1994) ("*O.D.T. International*"); and *Arecibo Radio*, 101 FCC 2d at 550-551.

³⁷ *O.D.T. International*, 9 FCC Rcd at 2576.

³⁸ Involuntary Assignment Application, Attachment 2, Order Appointing Receiver (March 26, 2007).

³⁹ *Id.* at 2 ¶3. Additionally, "[a]fter a purchaser (or purchasers) is found acceptable to Receiver and the FCC, Receiver is directed to make all necessary application with the FCC in order to effect the proper transfer or assignment of the licenses, together with such further assets as the Receiver should deem appropriate, to such purchaser." *Id.* at ¶ 4.

⁴⁰ *Donald L. Horton*, Memorandum Opinion and Order, 10 FCC 2d 271, 273 (1967). *Accord*, *Edward B. Mulrooney*, Order, 13 FCC 2d 946 (1968), *Bonanza Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 906 (1967).

⁴¹ *FM Broadcasters of Douglas County*, Memorandum Opinion and Order, 10 FCC Rcd 10429 (1995).

⁴² See *American Music Radio*, Memorandum Opinion and Order, 10 FCC Rcd 8769, 8772-73 (1995). ("*American Music Radio*").

⁴³ Section 1.1, Asset Purchase Agreement, Application.

⁴⁴ See *KPAL Broadcasting Corp.*, Memorandum Opinion and Order, 28 FCC 2d 46, 48 (1970) (presence of rights and commitments along with license outweighs bare license allegation).

⁴⁵ Asset Purchase Agreement, Application, Section 1.2 and i.

to assure continuation of broadcast service.⁴⁶ For this reason also, this transaction does not implicate the prohibition on transfer of a bare license. Thus, we find that transfer of a bare license is not at issue here.

Prior Federal Court Order. Lastly, Gresham argues that grant of the Application is barred by a prior Federal Court Order which enjoins Gresham from “transferring or disposing of the radio station owned by them until the judgment has been satisfied, or by further order of the court.”⁴⁷ Gresham’s claim is without merit. In *Cumulus Licensing, LLC*,⁴⁸ the Bureau stated that a decision to grant an assignment application “is permissive only and does not prejudice the outcome of . . . [any] court proceeding and any relief to which the parties are entitled under the civil suit.”⁴⁹ Similarly, we emphasize that our decision today to grant the Application is permissive only and should not impede private remedies in any future court proceedings.⁵⁰ To the extent that Gresham believes that consummation of the proposed assignment by the Receiver contravenes a court order, he should seek relief from that court.

Conclusions/Actions. We find no error in the staff’s grant of the Involuntary Assignment Application. Moreover, we have examined the Application and we find Caswell to be fully qualified to be the licensee of Station WPAL-FM and that grant of the Application will further the public interest, convenience, and necessity. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny and the Petition for Reconsideration filed by Gresham Communications, Inc., ARE GRANTED IN PART to the extent indicated herein and DENIED in all other respects.

IT IS FURTHER ORDERED, that the Application (File No. BALH-20070406ADD) to for consent to assign the license of Station WPAL-FM, Ridgeville, South Carolina from Charles W. Cherry, II, Receiver for Gresham Communications, Inc., to Caswell Capital Partners, LLC; IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴⁶ See *American Music Radio*, 10 FCC Rcd at 8772. See also *Eileen S. Bailey*, Memorandum Opinion and Order, 14 FCC Rcd 16755 (1999) (acquisition of operational assets from a third party is consistent with Commission policy and does not implicate the “bare license” policy), and *Arecibo Radio*, 101 FCC 2d at 550-551 (physical assets and license assigned from different parties to assignee does not constitute assignment of bare license).

⁴⁷ Federal Court Order at 1-2, Attachment 9, Petition to Deny.

⁴⁸ 21 FCC Rcd 2998 (MB 2006).

⁴⁹ *Id.* at 3007.

⁵⁰ Moreover, according to papers filed by Amos Workman, attorney for *Chi-Boy Music et al.*, this judgment was satisfied in full on December 12, 2008. See Satisfaction of Judgment, Attachment C, Third Supplement.

THE STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

COURT OF COMMON PLEAS
CASE NO.: 92-CP-15-508

NANCY R. BEACH,)
PLAINTIFF,)

ORDER OF RECONSIDERATION

VS.)

GRESHAM COMMUNICATIONS OF)
WALTERBORO, INC., a/k/a)
GRESHAM COMMUNICATIONS, INC.)
GRESHAM BROADCASTING, INC.,)
and RUDI H. GRESHAM,)

DEFENDANTS.)

2008 DEC -3 PM 4:23

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

THIS MATTER COMES BEFORE ME pursuant to the Defendants' motion to reconsider my Order dated June 6, 2008, with regard to an attempted satisfaction of this judgment in this case and the distribution of certain funds deposited with the Clerk of Court.

A hearing was held before me at the Colleton County Courthouse on June 23, 2008. Present at that hearing were W. Andrew Gowder, Jr., Esquire, and Chip McQueeney, Esquire, representing the Plaintiff and William H. Waring, III, Esquire, and J. Seth Whipper, Esquire, representing the Defendants. The evidence was submitted, arguments made and a transcript prepared and submitted to the Court by a licensed court reporter.

I. ISSUES:

Should the Order of June 6, 2008, being reconsidered hereunder be modified in any way.

II. DISCUSSION:

I have reviewed the earlier Order of the Court as well as the Defendants' Motion for Reconsideration, the transcript of the hearing on reconsideration which I have just recently received, the briefs of all of the parties and the authorities cited hereunder as well as the report of the receiver which I have just received. I held off any decision until the report of

the receiver was received at the request of Mr. Whipper as set forth in the transcript.

It appears from the record that I became involved as Special Referee for the purposes of a supplemental proceeding in 2006. A hearing was held which resulted in the finding that Gresham Communication, Inc., the Defendant, had no assets other than the FCC license. It was determined that the license was an asset of the corporation and could be sold at a judicial sale. A sale was held and the license was sold to Caswell, Inc., which bid the amount of the judgment due and owing at that time. Some months later the Defendants' submitted to the Clerk of Court for Colleton County, South Carolina, funds in the amount of One Hundred Eight Thousand Dollars (\$08,000.00) in order to "settle" the judgment and retrieve the license that had been judicially sold. The plaintiff declined to settle on these terms and the action came forward for a hearing and resulted in the order being reconsidered here.

The Defendants' argued that they should have a right to be allowed to satisfy the judgment and retrieve the asset by virtue of the tendering of the One Hundred Eight Thousand Dollars (\$108,000.00). They argue that the One Hundred Eight Thousand Dollars (\$108,000.00) being the amount of the original judgment at the time of the judicial sale, should be the amount acceptable as payment. I find that argument is incorrect in this case. The figure set forth is the figure due at a certain point in time and is merely a snapshot of the amount due on that date. Since then there has accrued substantial interest and costs and fees for receivers which need to be added to any amount to satisfy the judgment.

However, that entire situation in question is now moot because of the fact as pointed out by the Defendants' that the ten year limitation on judgments has expired and the judgment is now null and void. It would now be improper to proceed against any other collateral of the judgment debtor not already executed against. As was set forth in Wells, Special Receiver vs. Sutton, 299 SC 19, 382 SE 2nd 14 (1989) judgments in South Carolina expire at the end of ten years from the date of their filing and any execution must be issued within the ten years in order to be valid. In this case only one asset was levied upon and identified as part of the execution process. That asset was the FCC license for a radio station. No other properties were identified or if identified were levied upon prior to the expiration of the ten year period. It would appear therefore, that there is no more judgment to be satisfied.

The tender of the monies by the Defendants' to the Clerk of Court did not equal the true amount due for interest and fees under the judgment as was obvious to both the

Defendants and the Plaintiff and was therefore an offer to settle the dispute between the parties. When the Plaintiff declined to accept the amount tendered there was no agreement and the Defendants should be able to recover their funds. Also, it appears from the testimony or at least from the arguments of counsel that the funds presented were not assets of the debtors estate but were posted by a third party or law firm on behalf of the judgment debtor. As such, I cannot find that they are an identified asset of the estate subject to execution even if such issues were not moot at this time.

The only asset that was identified and levied upon was the FCC license. It was sold pursuant to statute and pursuant to the Rules of Civil Procedure at a judicial sale in order to satisfy the judgment. Although the judgment has now expired, the fact that it was "sold" is not affected. The asset was sold pursuant to the rules and statutes and was purchased by bid of Caswell, Inc., at the proper judicial sale. The issue of Federal Communication Commission approval is a formality and a collateral matter and should not affect the fact that the property was actually sold.

It would appear at this point in time that the judgment has expired and that there can be no further attempts to identify assets in order to satisfy that judgment. The only asset levied upon remains the FCC license which now as far as the execution process is concerned belongs to Caswell, Inc. The parties can negotiate and resell the license but there is no right to repurchase.

With regard to the value of the license, it has been submitted to the court that people have offered to purchase the license for sums ranging from 1.5 to 2 million dollars. We do not have a new figure and it is unclear what affect this present economic downturn would have. Nonetheless, it appears that the value of the asset is in excess of the judgment therefore any additional costs or expenses can be absorbed in the increased valuation.

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148-3
I have concluded as a matter of law that this court has in rem jurisdiction to reconsider its own order and has done so as a result of the Defendants' motion. Based upon the preceding Findings of Fact, Issues and Discussion; it is,

ORDERED, that the ten year limitation on judgments has expired and the judgment in this action is now null and void; and it is,

FURTHERED ORDERED that the Plaintiff may not pursue any other asset of the corporation not already identified and liquidated by judicial sale; and it is,

FURTHER ORDERED that the only such item liquidated by judicial sale is the Federal Communication Commissions license for operation of a radio station; and it is,

FURTHER ORDERED that the license was sold in the usual course of judicial sale and purchased by Caswell, Inc., for valuable consideration; and it is,

FURTHER ORDERED that the tender by the Defendants' to the Plaintiff by depositing monies with the Clerk of Court is now null and void having been rejected by the Plaintiff as being insufficient; and it is,

FURTHER ORDERED that the funds tendered to the Clerk of Court are to be returned by the Clerk to the third party owner of the funds or to the party so tendering those funds after thirty (30) days of the date of this Order; and it is,

FURTHER ORDERED that any finding or Order not inconsistent herein are affirmed as the findings and order of the court as part of its Order of June 6, 2008.

AND IT IS SO ORDERED.



Harris L. Beach, Jr.
Special Referee

Walterboro, South Carolina
December 3 2008



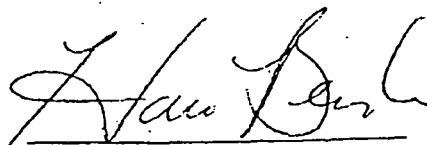
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	C.A NO. 92-CP-15-508
NANCY R. BEACH,	)	NOTICE OF SALE
Plaintiff,	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
Defendants	)	

06 OCT -4 PM 3:56
 EMILY L. GRANT
 COLLETON COUNTY
 COMMON PLEAS

Upon authority of a Decree dated the 2nd day of October, 2006, I will offer for sale to the highest bidder for cash, at public auction, the FCC License in the name of the judgment debtor, at 202 Cam Street, Walterboro, South Carolina on the 27th day of October, 2006, at 12 noon or shortly thereafter

The license shall be sold for cash to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Special Referee, at the conclusion of the bidding, cash or certified check in the amount of five (5%) percent of the bid; the said deposit to be applied to the purchase price.

Should the highest bidder fail to comply within thirty days from the date of sale, the Special Referee will resell the license at the risk and expense of the defaulting bidder upon the same terms as above set out.



Harris Beach
 Special Referee

October 2, 2006
 Walterboro, SC

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

)

C.A NO. 92-CP-15-508

NANCY R. BEACH,

)

ORDER

Plaintiff,

)

)

GRESHAM COMMUNICATIONS OF
WALTERBORO, INC., a/k/a GRESHAM
COMMUNICATIONS, INC., GRESHAM
BROADCASTING, INC., AND RUDI H.
GRESHAM,

)

)

)

)

)

Defendants

)

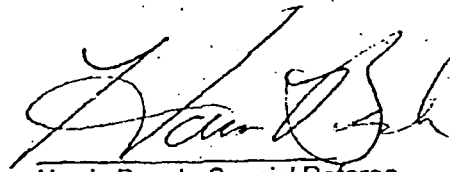
06 OCT -2 AM 11:18

PAUL J. GRANT
COLLETON COUNTY
COMMON PLEAS

Pursuant to this Court's prior Order, dated September 22, 2006, providing for the sale of the FCC License in the name of the judgment debtor, sale of this license will be held in the office of Harris Beach, authority for selling as special referee, at 202 Cam Street, Walterboro, SC 29488 on October 20, 2006 at 12:00 noon.

This sale shall be advertised pursuant to South Carolina Code Ann. § 15-39-635 for fifteen (15) days prior to sale. Conduct of the sale will be in accordance with South Carolina law.

IT IS SO ORDERED.



Harris Beach, Special Referee
Colleton County

October 2, 2006
Walterboro, South Carolina.

11/1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

C.A NO. 92-CP-15-508

NANCY R. BEACH,

AMENDED ORDER

Plaintiff,

GRESHAM COMMUNICATIONS OF
WALTERBORO, INC., a/k/a GRESHAM
COMMUNICATIONS, INC., GRESHAM
BROADCASTING, INC., AND RUDI H.
GRESHAM,

Defendants

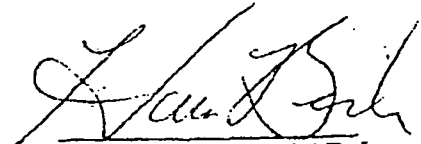
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COLLETON COUNTY
COMMON PLEAS

Pursuant to this Court's prior Order, dated September 22, 2006, providing for the sale of the FCC License in the name of the judgment debtor, sale of this license will be held in the office of Harris Beach, authority for selling as special referee, at 202 Carn Street, Walterboro, SC 29488 on October 27, 2006 at 12:00 noon.

This sale shall be advertised pursuant to South Carolina Code Ann. § 15-39-635 for fifteen (15) days prior to sale. Conduct of the sale will be in accordance with South Carolina law.

IT IS SO ORDERED.


Harris Beach, Special Referee
Colleton County

October 3, 2006
Walterboro, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

C.A NO. 92-CP-15-508

NANCY R. BEACH,

NOTICE OF SALE

Plaintiff,

GRESHAM COMMUNICATIONS OF
WALTERBORO, INC., a/k/a GRESHAM
COMMUNICATIONS, INC., GRESHAM
BROADCASTING, INC., AND RUDI H.
GRESHAM,

Defendants

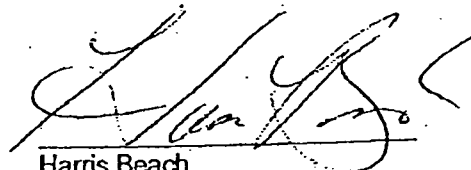
06 OCT 23 PM 2:03

PLAINT
COLLETON COUNTY
COMMON PLEAS

Upon authority of a Decree dated the 2nd day of October, 2006, I will offer for sale to the highest bidder for cash, at public auction, the FCC License in the name of the judgment debtor, at 202 Cam Street, Walterboro, South Carolina on the 10th day of November, 2006, at 12 noon or shortly thereafter

The license shall be sold for cash to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Special Referee, at the conclusion of the bidding, cash or certified check in the amount of five (5%) percent of the bid; the said deposit to be applied to the purchase price.

Should the highest bidder fail to comply within thirty days from the date of sale, the Special Referee will resell the license at the risk and expense of the defaulting bidder upon the same terms as above set out.



Harris Beach
Special Referee

October 20, 2006
Walterboro, SC

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

JUN 23 2009

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

SC Court of Appeals

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

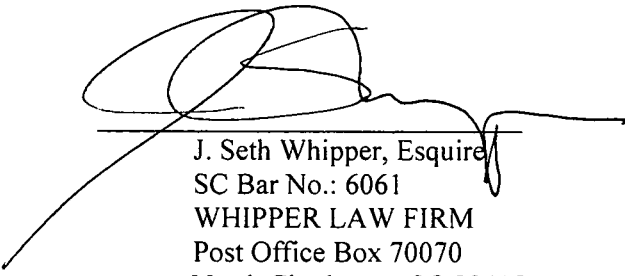
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellant's Reply to Respondent's Return to Appellant's Motion for Leave To File Motion for Relief Pursuant To SCRCP 60(b) on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on June 22, 2009, addressed to their attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

June 22, 2009


J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

RECEIVED

JUN 23 2009

SC Court of Appeals

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

June 22, 2009

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Appellant's Reply to Respondent's Return to Appellant's Motion for Leave To
File Motion for Relief Pursuant To SCRCP 60(b) **-For Filing**

Dear Ms. Barber:

Find enclosed one original and eight [✓] copies each of the above-referenced documents for filing and conforming. Please return two conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Mr. Andrew Gowder, Jr., Daniel McQueeney, Jr., Esq., and Special Referee Harris L. Beach. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

(Signature on Second Page)

Page 2

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*
Case No.: 92-CP-15-508
Appellant's Reply to Respondent's Return to Appellant's Motion for Leave To
File Motion for Relief Pursuant To SCRCP 60(b) **-For Filing**

Sincerely,

WHIPPER LAW FIRM

A handwritten signature in black ink, appearing to read 'J. Seth Whipper', is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

J. Seth Whipper, Esquire

JSW/snkw

Enclosures

xc: William Saunders
Dan Alpert, Esq.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 18 2009

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

SC Court of Appeals

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham

Appellants.

Respondent's Return to Motion for Relief Pursuant to Rule 60(b), SCRC

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

J. Seth Whipper, Esq.
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, SC 29415
Attorneys for Appellant

Respondent respectfully submits this return to Appellants' motion, entitled "Motion for Leave to File Motion for Relief Pursuant to SCRCP 60(b)." Appellants have previously raised the issues covered in the present motion, and this Court rejected such arguments. Furthermore, the Special Referee entered an order on November 27, 2007, judicially estopping Appellants from the assertions contained in the present motion. Accordingly, relief to file should be DENIED.

I. Appellants have previously raised the issues covered in this motion, and this Court's prior ruling is the law of the case

"Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009).

Here, Appellants raised the same issues they do now in a prior brief to this Court. **Ex. 1, Initial Br.** This Court expressly affirmed the Special Referee, and the appeal was remitted. **Ex. 2, COA Op.; Ex. 3, Remittitur.** Accordingly, such issues are the law of the case in this matter.

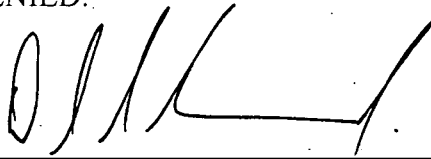
II. Appellants have been judicially estopped from raising these issues

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). "The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries." Hayne Fed. Credit Un. v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997).

In an order entered November 27, 2007, the Special Referee ruled: "I hold Saunders and Gresham judicially estopped from any present or future argument that the February 15, 2007 judicial sale failed to transfer all of Gresham's interest in the assets of WPAL FM to the extent that it is based on Saunders' false testimony." **Ex. 4, Nov. 27, 2007, p.8.** The appeal from this order was dismissed and remitted. Therefore, this is also the law of this case.

Conclusion

In short, Appellants now attempt to raise issues which have already been decided. Accordingly, Appellants' motion should be DENIED.



W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

FINAL BRIEF OF APPELLANT

J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

EXHIBIT

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STATEMENT OF ISSUES ON APPEAL

I. SPECIAL REFEREE APPOINTMENT OF RECEIVER VIOLATES FEDERAL COMMUNICATIONS COMMISSION PROHIBITION ON JUDICIAL SALE OF FCC LICENSE.

II. SPECIAL REFEREE APPOINTMENT OF RECEIVER CONTRAVENES FEDERAL COMMUNICATIONS COMMISSION STANDARDS.

STATEMENT OF THE CASE

Gresham Communications has held the broadcast license of station WPAL-FM for more than thirty (30) years. On January 2, 1988, Gresham Communication (hereinafter, "Gresham") executed Promissory Notes in the total amount of \$165,072.00 at 8% interest per year. (R. p. 1, 2) Nancy R. Beach was the holder of the notes. On August 18, 1992, Ms. Beach filed suit to collect on the notes against Gresham and others. (R. p. 3) On June 2, 1998, the Colleton County Court of Common Pleas issued a final decree ordering payment of \$56,276.10.

In 2006, Nancy Beach sold her interest in the June 2, 1998 judgment to Caswell Capital Partners, LLC who initiated an action on August 23, 2006, to collect on the 1998 judgment. (R. p. 10, 11) On September 22, 2006, the Colleton County Court of Common Pleas, Special Referee Harris Beach presiding, ruled that the FCC license held by Gresham was subject to attachment and subject to judicial sale to satisfy the 1998 money judgment. (R. p. 16, line 18)

Gresham had appealed the September, 2006 Order but the appeal was not perfected and a concurrent Motion to Stay filed by Gresham in the Common Pleas Court was dismissed. On February 15, 2007, the Special Referee ordered that the subject FCC license be sold and concluded the sale on that same day. (R. p. 23, line 15) The Special Referee further ordered that "the judgment debtor is to take any and all actions necessary to complete the application for FCC approval of the transfer [of] the license to the successful bidder at the sale." On March 26, 2006, the Special Referee filed an order appointing a Receiver to act on behalf of the Plaintiff-Respondent and Caswell Capital Partners, LLC to obtain

assignment of Gresham's FCC license. (R. p. 27, line 18) On March 30, 2007, Appellants served the Notice of Appeal to the courts and the parties.

ARGUMENT

I.

SPECIAL REFEREE APPOINTMENT OF RECEIVER VIOLATES FEDERAL COMMUNICATIONS COMMISSION PROHIBITION ON JUDICIAL SALE OF FCC LICENSE.

In his March 26, 2007, Order the Special Referee found that "the Plaintiff and the successful bidder [] were entitled to the appointment of a receiver to complete the application necessary to obtain FCC approval of the transfer." (R. p. 27, line 15) The "transfer" is the involuntary assignment of Gresham's FCC license to Caswell Capital Partners, LLC, the alleged successful bidder at the February 15, 2007, judicial sale of the FCC license. The appointment of the Receiver continues the violation of the Federal Communications Commission prohibition on treating a license as a vested property interest. Section 301, 304, 309(h), 310(d), of the Communications Act, as amended (47 U.S.C. §§ 301, 304, 309(h) and 310(d)), and Section 73.1150 of the Commission's Rules (47 C.F.R. § 73.1150). See, Radio KDAN, Inc., 11 FCC 2d 934, recon. denied 13 RR2d 100 (1968), affirmed on procedural grounds sub nom., W.H. Hansen v. FCC, 413 F.2d 374 (D.C. Cir. 1969). Even though a court has the authority to grant interests relative to a broadcast station's physical property, the court may not treat a broadcast license as a physical property; and a lien, mortgage, security interest, or reversionary interest in a broadcast license is not permitted. (R. p. 18)

In In re Merkley, 94 F.C.C.2d 829 recon. denied, 56 RR 2d 413 (1984), aff'd sub nom., Merkley v. FCC, 776 F.2d 365 (D.C. Cir. 1985), a court-appointed Receiver filed an application with the FCC for the involuntary assignment of a broadcast license. The FCC denied the Receiver's application. The Commission restated its rulings:

"The Commission has consistently held that a broadcast license, as distinguished from the station's plant or physical assets, is not an owned asset or vested property interest so as to be subject to a

mortgage, lien, pledge, attachment, seizure, or similar property right. See Sections 301, 304, 309(h), 310(d), of the Commission's Rules. See also Radio KDAN, Inc., 11 FCC 2d 934, recon. denied 13 RR2d 100 (1968) affirmed on procedural grounds sub nom. W.H. Hansen v. FCC, 413 F.2d 374 (D.C. Cir. 1969). As stated in Radio KDAN, "This principle is firmly rooted in Commission practice, its rationale being that such hypothecation endangers the independence of the licensee who is and who should be at all times responsible for and accountable to the Commission in the exercise of the broadcasting trust." 13 RR 2d at 102. In re Merkley, 94 F.C.C.2d at 830-31. In a second Merkley case, In re Merkley, 56 RR2d 413 (1984), the Commission, citing Twelve Seventy, Inc. 6 RR2d 301, 304 said "Credit cannot be extended in reliance upon the license as an asset from which the licensee's obligations may be satisfied."

Finally, the D.C. Court of Appeals stated as follows:

"To be sure, state courts faced with contract disputes involving conflicting claims to broadcast stations realize that the physical assets are worthless without the licenses, and so are inclined to fashion remedial orders that treat the two as a bundle. That understandable inclination, however, runs afoul of the Commissions insistence that a broadcast license be treated distinctly..." Kidd Communications v. FCC, 427 F.3d 1 (D.C. Cir. 2005).

Accordingly, the objectives of the Receiver contravenes the rules and policies of the Commission and is not permitted under the law that guides the Commission. The appointment of a Receiver to execute the order to sell the FCC license of Gresham is as unlawful as the initial rulings and can not be enforced.

II.

SPECIAL REFEREE APPOINTMENT OF RECEIVER CONTRAVENES FEDERAL COMMUNICATIONS COMMISSION STANDARDS.

There are several standards controlling the Commissions posture in cases such as the subject collection action: the ability of licensees to exercise their discretion in conveying licenses; protecting licensee's ability to exercise free choice over as wide a range of potential assignees as possible; limiting the choices available to a licensee by cornering the market on essential station assets puts private gain ahead of the public interest; deep concern regarding acquisitions that appear coercive or otherwise unfair.

See, Turner Communications Corp., 42 RR2d 1315 (1978) and Albert J. Feyl, 15 F.C.C. 823, 826 (1951).

In the instant case, there was only one bidder: a company partly owned by the Plaintiff (R. p. 23, line 14); the majority owner of Gresham appeared at a Supplemental proceeding without legal counsel (R. p. 33, line 7); the record is devoid of any information on trade-market notice of the judicial sale; the bargaining position of the Plaintiff relative to that of the Defendant was not equal; and the Defendant was ordered to cooperate with their hostile bidder. (R. p. 24, line 6) The licensee was placed in the position of forfeiting the license which in fact is not a property interest tantamount to an automobile or a dwelling, but a privilege in the public interest.

In Radio KDAN, Inc. 11 FCC2d 934 (1968), the Commission, on its own motion, dismissed an application to assign the license of Station KDAN because the proposed assignment "contemplates little more than the sale of a naked license" and "Commission policy bars such a sale."

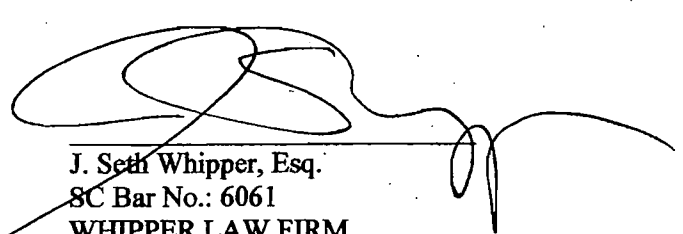
All of the law, rules, and policies are against the appointment and duties of the Receiver herein. The Receiver's very existence is an affront to the proscriptions of the Federal Communications Commission and this Court of Appeals can adjudicate the issue especially since the requirements of the Commission and the development of its jurisprudence is clear. The appointment of the Receiver is merely another step in the enforcement of the judicial sale first authorized by the September, 2006 Order and is illegal and unlawful. The appointment of the Receiver herein must be set aside, stayed, and this collection action dismissed.

CONCLUSION

The Order appointing a Receiver is another stage in this action to collect upon a money judgment. This Order appointing a Receiver is another act to transfer Gresham's FCC license as the object of attachment and judicial sale. This Order and the Receiver are outside of the law, rules, and policies of the Federal Communications Commission. This action and all of its beginnings in September, 2006 are unlawful and must be dismissed, set aside or stayed.

Respectfully Submitted,

October 13, 2007



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Attorney for Appellant

Skip Navigation

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Nancy R. Beach, Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc; Gresham
Broadcasting, Inc., and Rudi H. Gresham,
Appellants.

Appeal From Colleton County
Harris Beach, Special Referee

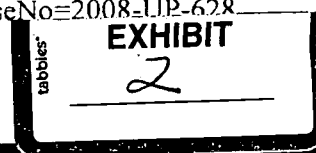
Unpublished Opinion No. 2008-UP-628
Submitted November 3, 2008 – Filed November 12, 2008

AFFIRMED

Jackson Seth Whipper, of North Charleston, for
Appellant.

W. Andrew Gowder, Jr., and Daniel S.
McQueeney, Jr., both of Charleston, for
Respondent.

PER CURIAM: Gresham Communications, Inc. (Gresham) appeals the special referee's appointment of a receiver to facilitate the assignment of Gresham's Federal Communications Commission (FCC) license. On appeal, Gresham contends the appointment of a receiver violates an FCC prohibition on a judicial sale and the appointment of a receiver contravenes FCC standards. We affirm^[1] pursuant to Rule 220(b), SCACR, and the following authorities: Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004) (stating an unappealed ruling, right or wrong is the law of the case); In re Care and Treatment of McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (explaining an issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not



supported by authority); Midlands Util., Inc. v. Dep't. of Health and Env'tl. Control, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1990) (stating the appointment of a receiver is within the discretion of the circuit judge).

AFFIRMED.

WILLIAMS, PIEPER, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 31, 2008

REMITTITUR

The Honorable Patricia C. Grant
101 Hampton St
PO Box 620
Walterboro, SC 29488-0620

Re: Beach, Nancy v. Gresham Comm. (2)
1992-CP-15-00508

Dear Ms. Grant:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

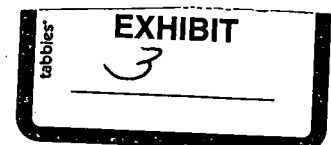
Sincerely,

A handwritten signature in cursive script that reads "V. Claire Allen".

V. Claire Allen
Deputy Clerk of Court

VCA/lf

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.



STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
C.A. NO. 92-CP-15-508

NANCY R. BEACH,

Plaintiff,

- v -

GRESHAM COMMUNICATIONS OF
WALTERBORO, INC., a/k/a
GRESHAM COMMUNICATIONS, INC.,
GRESHAM BROADCASTING, INC.,
And RUDI R. GRESHAM

Defendants

ORDER

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2007 NOV 27 PM 1:03

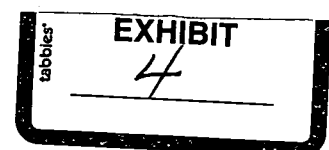
11/23/07
This matter comes before the Court on Plaintiff's Rule to Show Cause. The Plaintiff, Caswell Capital Partners, LLC, is the successor-in-interest to a judgment obtained by Nancy R. Beach against the Defendant Gresham Communications of Walterboro, Inc. a/k/a Gresham Communications, Inc. (Gresham). As such, Plaintiff moved this Court for a Rule to Show Cause why Gresham and its principal, William Saunders, should not be held in contempt of this Honorable Court and the Court's orders, beginning with its Order of September 22, 2006, for failure to give truthful sworn testimony in this Supplemental Proceeding.

On September 20, 2006, this Court took the sworn testimony of William Saunders, who testified, in pertinent part:

Q. I mean, Mr. Saunders, would you answer a question regarding what are the assets of Gresham Communications, Inc.?

A. You've got the answer. It's the license. That's all it owns.

Q. Are there any other assets?



A. No, that's all it owns.

(September 20, 2006 Supplemental Hearing Transcript pp. 28-29). Based solely on that sworn testimony, on Plaintiff's motion, this Court issued an Order finding, in part: "In the course of his testimony, Mr. Saunders identified that the sole valuable asset currently owned by the judgment debtors was an FCC broadcasting license under which Gresham Communications currently operates an FM radio station, WPAL FM 100.9" (September 22, 2006 Order ¶ 4). As a result, this Court cited case law explaining: "[L]icensees do have a proprietary right in the proceeds from a sale of a license, and may grant a security interest in those proceeds." (September 22, 2006 Order ¶ 6, quoting MLQ Investors L.P. v. Pacific Quadracasting, Inc., 146 F.3d 746, 749 (9th Cir. 1998) (other citations and quotation marks omitted)). Relying on this case law, this Court directed Gresham's interest in the license "and associated documents and records (including the stations' local public file and advertiser lists)" be sold in a public judicial sale to partially satisfy Plaintiff's judgment. (September 22, 2006 Order ¶6; February 21, 2007 Order p.2).

11/5/07
Thereafter, Gresham appealed the September 22, 2006 order, but the appeal was summarily dismissed and the case remitted to this court for further proceedings. On February 15, 2007, a judicial sale occurred, and Plaintiff became, subject to the FCC's approval, the owner of Gresham's interest in the license. On February 21, 2007, this Court issued an Order governing Plaintiff's application for an FCC license transfer approval and requiring Gresham's cooperation in that process. Although Plaintiff requested the Court appoint a receiver for Gresham's assets to facilitate and expedite the transfer application process, Gresham assured the Court it would cooperate with the

process. Based on this assurance, the Court refused to appoint a receiver at that time. However, the Court's order provided that if Gresham did not take the required administrative action after request by Plaintiff and within a stipulated amount of time, the Court would, after notice, appoint a receiver.

That is exactly what happened. Gresham, despite its promises to this Court, failed to cooperate and, on March 26, 2007, this Court appointed Charles Cherry, II as receiver. Gresham appealed that order to the South Carolina Court of Appeals, which appeal is still pending.

Subsequent to the judicial sale of Gresham's interest in this asset, and in opposition to the receiver's application to obtain FCC approval of the license assignment, William Saunders submitted a sworn Declaration to the FCC on May 11, 2007. In this declaration, which was attached to Gresham's Petition to Deny the Application, Saunders swore, under penalty of perjury:

3. The WPAL-FM tower, transmission equipment, studio equipment, files, tower land lease, programming rights, and trademark and other intellectual property, all continue to be under the ownership and control of Gresham Communications, Inc.

11/13/07
11/13/07
(Saunders's Sworn Declaration ¶13). In fact, Gresham's main substantive argument against the validity of the assignment was that the judicial sale solely affected the license, when Gresham owned other assets necessary to operate the station. Gresham told the FCC that the only asset the Receiver has been awarded is a "bare license" and "a bare license is not properly assignable, even to a Receiver, under Commission policies." Gresham is attempting to thwart the FCC's approval of the assignment of the WPAL-FM license based on his perjured sworn testimony to this Court, upon which the

Court relied.

Based on the clear and blatant contradiction between Saunders's testimony on September 20, 2006 before this Court and Saunders's sworn declaration submitted to the FCC, Plaintiff requested and this Court issued a Rule to Show Cause to Gresham and Saunders to appear and show cause as to why they should not be held in contempt and for other and further relief.

On August 22, 2007, Saunders appeared before this Court at the Rule to Show Cause hearing and answered questions under oath put to him by Plaintiff's counsel and by this Court. In answer to those questions, Saunders testified to the following:

1. Gresham does own assets, including real estate assets, which he did not disclose at the supplemental proceeding.
2. Saunders tried to explain the contradiction between his testimony at the hearing that Gresham's only asset was its interest in the license and the testimony in the FCC affidavit that it owned many assets involved in the operation of the station by stating that he meant to include all of the assets involved in the operation of the radio station when he said "license."
3. When pressed by Plaintiff's counsel, he admitted that, if Gresham's interest in the "license" was sold at the judicial sale, and the term "license" included all of Gresham's assets, then all of Gresham's interest in those assets likewise was sold at that sale.¹

Accordingly, Saunders's sworn declaration presented to the FCC could not have been true because, as Saunders admits, Gresham's interest in these assets was sold at the February 15, 2007 judicial sale and currently belongs to the receiver, Charles

Cherry, II, pending the FCC's approval of the license transfer.

FINDINGS OF FACT

1. Plaintiff does not agree that Gresham had an interest in the tower, tower land lease and certain other broadcast assets of WPAL-FM relevant to this proceeding. However, Plaintiff convincingly argues that whatever interest Gresham held in those assets were sold as part of the license at the judicial sale. Consequently, I find that in addition to the proceeds from the sale of the WPAL-FM license, all of Gresham's interest in any and all assets related to the operation of the station, including the WPAL-FM tower, transmission equipment, studio equipment, files, tower land lease, programming rights, and trademark and other intellectual property were sold as part of the sale of the interest in the "license" at the February 15, 2007 judicial sale.

2. I find Saunders's sworn testimony before this Court on September 20, 2006 was not truthful. Even accepting, for the sake of argument, that Saunders meant "all radio station operation assets" when he said "license," he concedes he failed to reveal other assets, such as real estate, when he was asked to list the assets of Gresham at the September 20, 2006 hearing. I find that Saunders could not have been confused by so basic a question, he was competent to testify, and he understood the question posed.

3. Furthermore, I refuse to find Saunders's explanation concerning his understanding of the word "license" convincing. I reiterate Saunders knew exactly what the question and answer meant and that, assuming for the moment that he thought that Gresham did actually have an interest in the other radio station assets, he was obligated to reveal those in answer to the questions posed.

4. I find Saunders' willful and knowing dissemination of false testimony unnecessarily prolonged this litigation and burdened Plaintiff's case. Further, this false testimony provided the cornerstone of Gresham's arguments before the FCC as to why by this Court's prior orders are unlawful.

5. To the extent Gresham had any interest in "radio station assets" including "[t]he WPAL-FM tower, transmission equipment, studio equipment, files, tower land lease, programming rights, and trademark and other intellectual property", those assets, as Saunders concedes, were sold at the February 15, 2007 judicial sale. Therefore, I find Saunders's declaration to the FCC on May 11, 2007 in opposition to the transfer of the FCC license was not true when given.

6. To the extent Gresham had any interest in real estate on September 20, 2006, Saunders' testimony that he owned no such assets on that date was untruthful. On August 22, 2006, Saunders testified that in fact Gresham has and continues to own two parcels of real estate.

LAW/ANALYSIS

I. Civil Contempt

11/23/06
"The power to punish for contempt is inherent in all courts." Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). "Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." Id. Civil contempt must be proved by clear and convincing evidence. Durlach v. Durlach, 359 S.C. 64, 71, 596 S.E.2d 908, 912 (2004). The trial court's decision regarding contempt will be reversed only if the finding is without evidentiary support or

the court has abused his discretion. Brandt v. Gooding, 368 S.C. 618, 627, 630 S.E.2d 259, 263 (2006).

"Contempt results from the willful disobedience of an order of the court, and before a court may hold a person in contempt, the record must clearly and specifically demonstrate the acts or conduct upon which such finding is based." Floyd v. Floyd, 365 S.C. 56, 74, 615 S.E.2d 465, 474 (Ct. App. 2005). Moreover, a party may be held in civil contempt for introducing fraudulent evidence. See Brandt, 368 S.C. at 627, 630 S.E.2d at 264 (affirming the trial court's finding of civil contempt for a party's introduction of a fraudulent document into evidence).

In this case, Saunders falsely testified at the September 20, 2006 hearing that Gresham's sole asset was an FCC license when he knew Gresham owned other assets, including, he contends, broadcast-related assets and real estate. Furthermore, Saunders's May 11, 2007 affidavit stating Gresham owned this property at that time was also false, and Saunders knew the statement to be false at the time he made it. Accordingly, Saunders and Gresham willfully introduced false and misleading testimony before this Court and the FCC. Therefore, I hold them in civil contempt of this Court.

II. Judicial Estoppel

1123
57

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). "The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries." Hayne Fed. Credit Un. v. Bailey,

327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). Five elements are required for the application of judicial estoppel:

- (1) two inconsistent positions must be taken by the same party or parties in privity with each other;
- (2) the two inconsistent positions were both made pursuant to sworn statements;
- (3) the positions must be taken in the *same or related* proceedings involving the same parties in privity with each other;
- (4) the inconsistency must be part of an intentional effort to mislead the court; and
- (5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position.

Wright v. Craft, 372 S.C. 1, 38, 640 S.E.2d 486, 506 (Ct. App. 2006).

In this case, Saunders and Gresham have taken two totally inconsistent positions pursuant to sworn testimony before this Court and the FCC. Moreover, these positions were both taken in proceedings involving the transfer of Gresham's FCC license to Plaintiff. As a result, I hold Saunders and Gresham judicially estopped from any present or future argument that the February 15, 2007 judicial sale failed to transfer all of Gresham's interest in the assets of WPAL FM to the extent that it is based on Saunders' false testimony.

CONCLUSIONS OF LAW

Based on the forgoing, I order the following:

1. Saunders and the Gresham are hereby ordered to turn over, immediately, any and all assets in Saunders or Gresham's possession to the receiver appointed by this court, Mr. Charles Cherry, II, for disposition according to his appointment and this court's order related to the judicial sale. These include but are not limited to those radio station assets that are housed in the offices of The Chronicle on King Street in

Charleston, S.C. and in Saunders' garage and anywhere else they are located. This is to be done by Gresham and Saunders, through counsel, communicating with Plaintiff's counsel within 3 days of the day of this order where and when, during reasonable business hours, those items may be picked up and to accomplish the turn over of those assets within 7 days of the date of this order. Specifically, Gresham and Saunders are directed to provide written authorization and direction to James French, the landlord of the former studio facility located at the office building at 1109 King Street, Charleston S.C. (The Chronicle building) and any and all other landlords owning real property used either to operate WPAL FM or store radio station assets, to release, without delay or any limitation, all radio station assets stored at that address to the Receiver, Charles Cherry II, forthwith. Failure by Saunders or Gresham to make this communication through their counsel, to affirmatively make available these items or to fail to take any action, including the payment of any sums due the landlords to facilitate release of these items will be a violation of this order and a further instance of contempt that will be punishable by this court. Interference with or intimidation of the Receiver or his representatives in any way during the accomplishment of the directives of this order constitutes further contempt of this court and is punishable by the Court as such. I hereby invoke the court's authority under the South Carolina Code to use the full law enforcement authority of any and all South Carolina jurisdictions as necessary to enforce this rule. This court will, issue further orders as necessary to obtain possession of these assets, without further notice to the parties.

2. This court's previous order, dated February 21, 2007, is hereby amended to include in the judicial sale the proceeds from the sale of the WPAL-FM license and the

interest of Gresham in any and all radio station assets as part of Gresham's interest in the "license" of WPAL-FM, including, but not limited to the WPAL-FM tower, transmission equipment, studio equipment, files, tower land lease, programming rights, trademark and other intellectual property, and any associated documents and records (including the stations' local public file and advertiser lists).

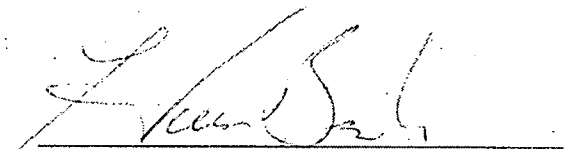
3. As a direct result of their contempt of this court, Saunders and Gresham are hereby ordered to pay Plaintiff all attorney's fees and costs incurred by the Plaintiff since the date of the contempt: September 20, 2006, as well as the Receiver's fees and costs incurred since his appointment. The Plaintiff shall within five (5) days of the date of this order submit to this court the amount of those fees and costs and the court will supplement this order by ordering that the Gresham entities and Saunders pay those amounts immediately, but in no event more than five (5) days from the date of the supplemental order. Failure to do so will result in further proceedings by this Court, to enforce this penalty for contempt.

11/25/10
4. In its several orders effecting the sale of this asset to satisfy this judgment, the court has required Gresham to cooperate and take no action to thwart the culmination of the sale of its interest in the license and other radio station assets to the successful bidder at the judicial sale. To that end, this court appointed a receiver to process that application, when Gresham failed to cooperate, in violation of this court's order. Despite these clear mandates, Gresham and its principal, William Saunders, have continued to oppose, delay and otherwise frustrate the license transfer process, all in violation of this court's orders. To make the intent of this court abundantly clear, the Gresham entities before this court and Williams Saunders, their principal are hereby

enjoined from taking any further action to oppose, delay and frustrate, in any way, the license application process to the extent it is based on the false testimony of Saunders. Further, the Gresham entities and Saunders are ordered to fully cooperate in the turnover and immediate transfer of all broadcast-related assets to the Receiver as described herein. Failure to heed this court's order in this regard, as in all others described in this order, is contempt of this court and compliance with this court's order, and punishment for the contempt will be dealt with using the full range of this court's remedies under the laws of the State of South Carolina, including legal sanctions, fines and penalties, the award of attorneys' fees and costs and imprisonment.

5. Finally, Gresham and Saunders are hereby ordered to provide the Court, within 3 days of the date of this order, all relevant information related to Gresham's real estate holdings to permit the Court to take appropriate action, including an immediate sale of said real estate, in furtherance of its previous Orders.

IT IS SO ORDERED.


Harris Beach
Special Referee 11-27-07

11/27/07
The pertinent testimony is as follows:

- Q Mr. Saunders, the transcript indicates you were
21 sworn by the Court, do you remember that?
22 A Yes.
23 Q All right, sir. And you did answer the questions
24 that I put to you?
25 A Yes.
0037
1 Q After you were sworn?
2 A Yes.

3 Q All right, sir.
4 A And I'm responsible for that whatever punishment
5 I need to get out of that, sir, I'll take.
6 Q And it's your testimony today that the license,
7 when you said the license, that includes the
8 tower and the transmission equipment and anything
9 else that has to do with the--
10 A Broadcasting.
11 Q --broadcasting?
12 A Yes.
13 Q All right. So is it your testimony then, that
14 when we sold the license out here on the front
15 steps of this building, that we also sold any
16 rights you may have in all of those other assets?
17 A Yeah, it went along with... with the... with the
18 license. I mean, I don't know how... I wasn't
19 arguing that point at that... But y'all didn't
20 put that there. You know, I was talking about
21 the if you... if you get if you get the license,
22 FCC and everybody says you got to have those
23 equipment to broadcast.
24 Q And just so we're clear--
25 A But again, I'm not... I was not... I was not a
0038

1 part of... of the sale. I was not here, I know
2 nothing about the sale.
3 Q But just so we're clear, it's your testimony that
4 with the license, the sale of the license, went
5 the tower and the transmission equipment and
6 everything else involved in the broadcast?
7 A It should, I don't know whether it did or not.
8 But you're asking me now another... I don't know
9 whether it did or not. Again there was nobody
10 that was involved that knew anything about
11 broadcasting.
12 Q It's clear when you answered my question about
13 what are the assets of Gresham, you did not
14 mention the tower?
15 A No.
16 Q You did not mention the transmission equipment,
17 correct?
18 A No.
19 Q You did not mention the studio equipment?
20 A No.
21 Q You did not mention the files--
22 A No.
23 Q --did you? The tower land lease?
24 A No.
25 Q Programming rights or any intellectual property;
0039

1 is that correct?
2 A Yes, that's correct.

Transcript of Hearing August 23, 2007, page 36 line 20 to page 39 line 2.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
INC., and Rudi H. Gresham.

Appellant.

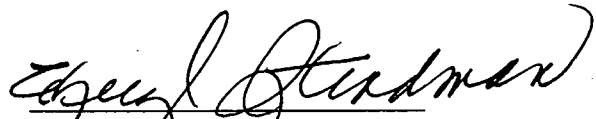
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Respondent's Return of Motion** in the above-referenced matter has been served upon counsel listed below by mailing copies properly addressed with sufficient postage affixed thereto via United States Mail to:

J. Seth Whipper, Esquire
4592 Durant Avenue
North Charleston, SC 29415

William Saunders
6191 Chisolm Road
Johns Island, SC 29455

Done 15TH of June 2009.



Cheryl Steadman, Paralegal
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2229
ATTORNEYS FOR RESPONDENT

RECEIVED
JUN 18 2009
SC Court of Appeals

PROFESSIONAL ASSOCIATION

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E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

June 15, 2009

The Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

Dear Ms. Barber:

Please find enclosed for filing the original and six (6 Respondent's Return to Motion for Relief Pursuant to Rule 60(b), SCRCP and Certificate of Service in the above matter. I have also served one (1) copy of the Respondent's Return of Motion to counsel for Appellant.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me at (843) 727-2260.

Sincerely,

PRATT-THOMAS WALKER



Cheryl Steadman

Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire (w/encl.)
William Saunders (w/encl.)
Judith Aidoo (w/encl.)

RECEIVED

JUN 18 2009

SC Court of Appeals

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JUN 02 2009

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

SC Court of Appeals

**APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee**

Case No. 92-CP-15-508

Nancy R. Beach **Respondent,**

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham **Appellant.**

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE

J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

PERTINENT FACTS

In the instant appeal, the Appellants filed and served its Notice of Intent to Appeal on December 31, 2008. On March 3, 2009, the Federal Communications Commission (hereinafter, FCC), exercising its federal jurisdiction over broadcast licenses, held that the Special Referee's Decree attaching the FCC license was "void ab initio".

ARGUMENT

Appellant's arguments regarding the FCC's ruling challenge the right and propriety of the Special Referee to assert authority over the Gresham broadcast license. In other words, Appellant raises the issue of lack of subject matter jurisdiction of the Special Referee to decide the issue of title of the Gresham broadcast license. Subject matter jurisdiction may not be waived, nor conferred by consent of the parties. J.F. Flanagan, S.C. Civil Procedure, 2nd Ed., 90 (1996). "A challenge to subject matter jurisdiction may be made at anytime, even sua sponte by the court hearing the appeal. J.F. Flanagan, *Id.* at 90; *Hallums v. Bowens*, 318 S.C. 1, 428 S.E. 2d 894 (Ct.App.1993). Subject matter jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong". J.F. Flanagan, *Id.* at 89; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E. 2d 598 (1994).

Appellant's position as to the lack of jurisdiction over the question of who controls the disposition of a federal privilege has been raised before in this proceeding. Appellant's arguments in their Initial Brief merely goes in-depth as to how the Special Referee was without the power to hear and determine the right to title of a broadcast license.

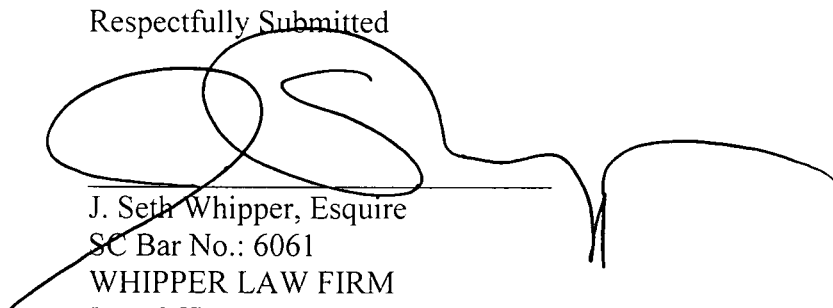
The inclusion of the opinion in the Designation of Matter is to aid the Court of Appeals in its consideration of the issue of subject matter jurisdiction.

CONCLUSION

The Appellant's Initial Brief and Designation of Matter do not require amendment.

Respectfully Submitted

June 1, 2009



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

JUN 02 2009

SC Court of Appeals

Nancy R. Beach Respondent,

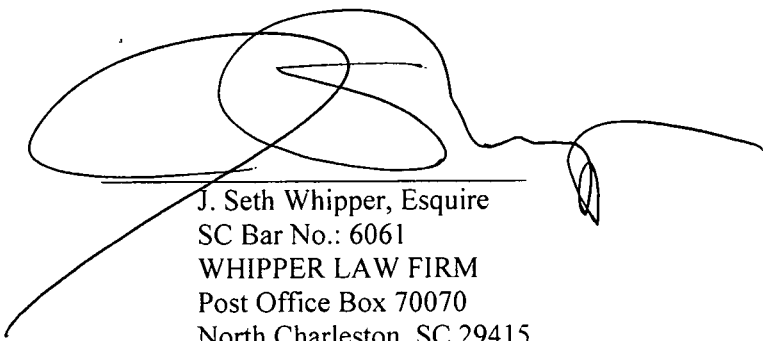
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Appellant's Return to Respondent's Motion to Strike on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on June 1, 2009, addressed to their attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413.

June 1, 2009


J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

JUN 02 2009

SC Court of Appeals

Nancy R. Beach Respondent,

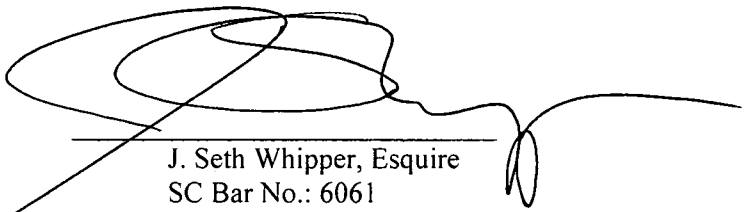
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one (1) original and eight (8) copies of the Appellant's Return to Respondent's Motion to Strike on the South Carolina Court of Appeals by depositing a copy of it in the United States mail, postage prepaid, on June 1, 2009, addressed to the Clerk of Court, Jeanette Barber, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211.

June 1, 2009


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Attorneys and Counselors at Law

4592 Durant Avenue
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RECEIVED

JUN 02 2009

SC Court of Appeals

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

June 1, 2009

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Appellant's Return To Respondent's Motion to Strike- For Filing
Proof of Service – For Filing

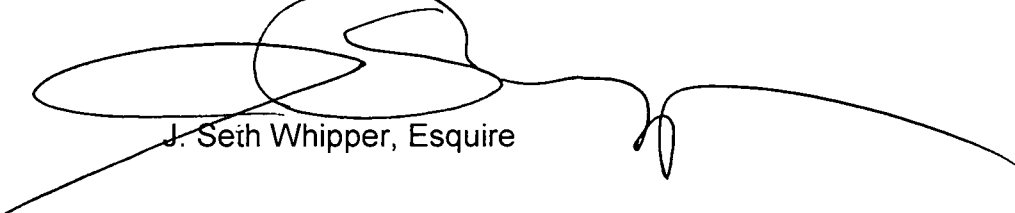
Dear Ms. Barber:

Find enclosed one original and eight copies each of the above-referenced documents for filing and conforming, except Proof of Service. Please return two of the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney, Esq. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,
WHIPPER LAW FIRM


J. Seth Whipper, Esquire

Page 2

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Appellant's Return To Respondent's Motion to Strike- For Filing

JSW/snkw

Enclosures

xc: William Saunders

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

RECEIVED
JUN 08 2009
SC Court of Appeals

Nancy R. Beach.
Respondent.

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham
Appellant.

MOTION FOR LEAVE TO FILE MOTION FOR RELIEF PURSUANT TO SCRPC 60(b)

COMES NOW the appellant, Gresham Communication of Walterboro, Inc. aka Gresham Communications, Inc. (hereinafter 'Gresham') requesting leave to argue and file a Motion for Relief from Judgment pursuant to SCRPC 60(b). The motion as postured presently is based on Rule 60(b)(4) and 60(b)(5).

RELEVANT PROCEDURAL HISTORY

In 2006, Nancy Beach sold her interest in the June 2, 1998 judgment to Caswell Capital Partners, LLC (hereinafter, 'Caswell'), who then initiated an action on August 23, 2006, to collect on the 1998 judgment. On September 22, 2006, the Colleton County Court of Common Pleas, Special Referee Harris Beach presiding, ruled that the Federal Communications Commission (hereinafter 'FCC') license held by Gresham was subject to attachment and subject

to judicial sale to satisfy the 1998 money judgment. On February 15, 2007, the Special Referee ordered that the subject FCC license be sold and concluded the sale on that same day. The Special Referee also ruled that **“the sale of the license would be final upon the FCC grant of consent to the assignment, and that if the judgment debtor satisfies the full amount of the underlying judgment in this matter, together with all interest, fees and costs due under the judgment before the FCC grant of assignment of the license, then the FCC assignment application would be withdrawn.”** (Exhibit A)

On February 15, 2007, Caswell purchased the Gresham broadcast license for an amount shockingly less than the value of the license. The sale was allowed despite argument regarding the propriety of the Court's actions. The Special Referee further ordered that “the judgment debtor is to take any and all actions necessary to complete the application for FCC approval of the transfer [of] the license to the successful bidder at the sale.” On March 26, 2006, the Special Referee filed an order appointing a Receiver to act on behalf of Gresham and to assist Caswell Capital Partners, LLC to obtain assignment of Gresham's FCC license.

The FCC tentatively approved the assignment application until recently, on March 3, 2009. Prior to that date, on April 7, 2008, Gresham tendered to the Court, pursuant to its order, an amount equal to the full amount of the “judgment in this matter” (\$56,276.10), “together with all interest, fees and costs due under the judgment” (\$49,992.68) for a total of \$106,268.78 intended to satisfy the underlying judgment and known fees. Caswell objected to the tender.

The parties argued their positions before the Special Referee on May 16, 2008. On June 10, 2008, the Special Referee, in an order prepared by Caswell without input and without a request for an alternative order from Gresham, filed his rulings denying the tender and granting

Caswell all relief prayed for in a Memorandum and Petition/Motion for Rule to Show Cause and their objections to the tender.

On June 11, 2008, Gresham filed and served a Motion for Reconsideration of the June 10, 2008 Order and Motion to Stay Execution of the Order. Gresham's motion asked for reconsideration of every ruling in the June 10 Order and several other issues raised by the Special Referee's rulings. Following a stay of the June 10 Order, Gresham's motion was argued on June 23, 2008.

On October 31, 2008, Gresham served and filed Notice of Motion and Motion to Set Aside a Judicial Sale. The motion was based on on the grounds that the transfer of title to any asset of Gresham Communications would violate an outstanding Federal Court injunction issued September 16, 2002; that the pre-sale value of Gresham assets was acknowledged to be approximately \$2 million and the present estimate is approximately \$1.6 million, and therefore, the purchase price at the judicial sale is so grossly inadequate as to shock the conscience of the Court, and, therefore, based on the forgoing, because of Plaintiff's pre-sale knowledge of the value and breadth of Gresham assets, the inadequacy was accompanied by other circumstances that warrant the intervention of the Court; and, to proceed with this execution would result in a manifestly gross injustice. This motion is pending and is a subject of the instant request.

On December 3, 2008, the Special Referee granted the reconsideration, finding as follows: the ten year limitation on judgments has expired; Caswell may not pursue any other asset of Gresham's not liquidated by judicial sale; the only item liquidated by judicial sale was the FCC license for operation of a radio station; the license was sold in the usual course of judicial sale and purchased by Caswell; the tender of money deposited with the Clerk of Court is now moot because the judgment is now null and void; that funds tendered to the Clerk of Court

be returned to the third party owner; and that any finding or Order not inconsistent herein are affirmed as part of the June 6, 2008 order. Caswell did not appeal that Order.

On December 31, 2008, however, Gresham filed and served its Notice of Intent to Appeal. In, the meantime, the FCC issued its ruling which discussed, in part, the legality and propriety of the Court's Order. Specifically, on March 3, 2009, the Federal Communications Commission, as a part of its exercise of its federal jurisdiction over broadcast licenses, held that the Special Referee's Decree attaching the FCC license was "**void ab initio.**" Specifically, the Federal Communications Commission stated:

Here, the State Court Order is facially inconsistent with the Commission's policy prohibiting attachment of a Station license. The Court acknowledged that a licensee does not hold any property rights in the license itself. It also recognized that the Commission permits licensee creditors to have an interest in the proceeds from a sale of the license. Nevertheless, the Court held: "the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license . . . be and hereby is attached." In a further order, on February 21, 2007, the Court opined that the Station's license "was properly subject to attachment and that such License was thereby attached."

* * *

The Receiver and Caswell assert that the Court *intended* to grant a security interest in the proceeds from the sale of the license. We find that the Court's plain language states otherwise. Moreover, we reject as unsupported the Receiver's and Caswell's argument that the Commission's prohibition against attachment of a broadcast license is only of concern when an automatic right of reversion is involved. The prohibition on treating a broadcast license as a property right is premised on the rationale "that such hypothecation endangers the independence of the licensee who is and who should be at all times responsible for and accountable to the Commission" Finally, the Receiver and Caswell contend that we should honor the State Court Order because Caswell would have received the proceeds from the Station's sale had it not submitted the winning bid and that the State Court Order expressly provides that the sale is subject to Commission approval. **We disagree.** To give effect to this portion of the State Court Order would require that we ignore our longstanding policy against the attachment of a broadcast license.

In these circumstances, the Commission's general deference to state court orders is not warranted. We find that the Court's attachment of the WPAL-FM license exceeded its authority and to this extent its order is void *ab initio* as violative of the Act and Commission policy. Media Bureau, Decision Letter,

FCC DA 09-540 at 4-5 (2009). (**Exhibit B**) Caswell has not appealed that FCC decision or legal reasoning.

On April 8, 2009, Gresham served and filed an Amended Notice of Motion and Motion to Set Aside A Judicial Sale. During the pending of this action and the FCC application process, the federal judgment was satisfied; further, the FCC's afore-cited ruling voided the Special Referee's Order that attached and sold Gresham's FCC broadcast license and found that same Order illegal. This ruling was not appealed by the Beach assignee, Caswell.

The Special Referee has agreed to hear all motions on June 23, 2009.

DISCUSSION

In October 2008, when the initial motion was filed, this case was before the Special Referee and under deliberations. As a result of his December 3, 2008 rulings and the March 3, 2009 FCC ruling, this matter requires additional action by the lower tribunal. Moreover, Respondent Caswell resolved the question of the federal injunction and altered one of the grounds of the October 31, 2008 motion. Gresham's motions are meritorious and could relieve the Appellate Court of the necessity of further appeal.

The FCC's Media Bureau clearly stated that "we find that the Court's [Special Referee] attachment of the WPAL-FM license exceeded its authority and to this extent its order is void ab initio as violative of the Act and Commission policy." Id., FCC DA 09-540 at 4-5. The Latin term "void ab initio" means 'null from the beginning.' "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable'. Generally, a judgment is void only if a courts acts without jurisdiction. Thomas & Howard Co., Inc. v. T.W. Graham and Co., 318 SD.C. 286, 457 S.E.2d

340, 343 (1995). Thus, the FCC has ruled that the Court has exceeded its jurisdiction in attaching the FCC license, as claimed by Gresham throughout this case.

In light of the clear limits on State Court jurisdiction that have been determined by the FCC to have been exceeded, it appears that it is no longer equitable that this judgment should have prospective application, and as such, all authority granted to the Receiver and Caswell as the assignee of Nancy Beach must be rescinded. “Rule 60 (b)(5) is based on the historical power of a court of equity to modify its decree {in light of subsequent conditions}”. Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 590 S.E.2d 02 (Ct. App. 2003). The Court can not in the respect of the law abide by a ruling and orders that shall have no authority or power, and place the court in the posture of a lawbreaker.

As the FCC Ruling was issued on March 3, 2009 and was not appealed by Caswell, the timing of this motion is reasonable. Caswell is attempting to maintain the application on an erroneous and inconsistent holding of the FCC where the FCC allowed the Receiver to act under the authority of the void order; that ruling has been appealed by Gresham.

CONCLUSION

For purposes of judicial economy, and with the clear limits on jurisdiction restated by the FCC, the lower tribunal should be given the opportunity to reconsider its earlier rulings. The Special Referee has agreed to hear motions on June 23, 2009, and a date certain to deal with all motions is a proper option for galvanizing the issues. Leave to have the matters heard by the trial court is in order.

The basis for the motion has changed in part because of the FCC rulings and that explains, partially, the late request.

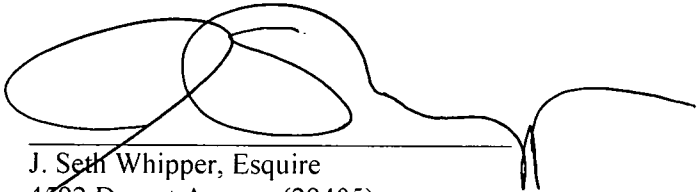
Appellant has met clearly the prima facie threshold for review under SCRCP 60(b): the trial court's order exceeded its authority; the prospective application, i.e. the FCC assignment proceedings, is

no longer equitable, and the motion is filed at a reasonable time in light of the March 3, 2009 affirmation of the FCC's federal jurisdiction over broadcast licenses.

We urge the Court of Appeals to immediately allow this motion to be heard on June 23, 2009.

Respectfully Submitted,
WHIPPER LAW FIRM
Attorney for Defendant

June 5, 2009



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jsw@whipperlaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	C.A NO. 92-CP-15-508
NANCY R. BEACH,	)	ORDER
	)	
Plaintiff,	)	
	)	
GRESHAM COMMUNICATIONS OF)	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants	)	

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before the Court on February 15, 2007, to rule on the Motion to Stay, dated November 28, 2006, filed by Gresham Communications of Walterboro, Inc., also known as Gresham Communications, Inc. and Gresham Broadcasting, Inc., (collectively, GRESHAM). CASWELL COMMUNICATIONS, INC., (CASWELL) successor-in-interest to the judgment creditor, Nancy R. Beach and Caswell Capital Partners, LLC, opposed the Motion. After hearing arguments of counsel for both parties, I hereby DISMISS the Motion to Stay and ORDER that the judicial sale scheduled at 12:00 noon February 15, 2007 take place as previously ordered and as publicly noticed, on certain conditions as described below.

1. The Motion to Stay is dismissed as moot.

The Motion has been rendered moot by the dismissal of the appeal. On September 22, 2006 this Court issued an order following a supplemental proceeding in which this Court ordered that the FCC license for WPAL -FM, FCC Facility ID Number 25374, licensed by the FCC to Ridgville, South Carolina (the "License") held by Gresham Communications Inc. was properly subject to attachment and that such License was thereby attached. Further, the Court ordered that the debtor's interest in the License be sold in the normal course of a judicial sale in this County to satisfy the judgment, after notice, according to the law of the State of South Carolina. The defendants took an appeal of this order on December 8, 2006. On December 29,

Ex. A

2006, however, the Court of Appeals dismissed the appeal and ordered that the case be remitted to Circuit Court, which it was on January 17, 2007.

The appeal having been exhausted, the September 22 Order is now not subject to further challenge. Accordingly, this Court orders that the Motion to Stay is dismissed and the sale will proceed.

2. The judgment debtor is ordered to take any and all actions necessary to complete the application for FCC approval of the transfer the license to the successful bidder at the sale.

Though a license holder, its creditor or a buyer cannot take rights in a license contrary to those of the Federal Communication Commission (FCC) which issues it, a federal license may be bought and sold and a creditor may obtain a security interest in and attach the proceeds of the sale of a license, subject to the FCC's approval of that sale.

In this case, the Court has recognized that the judgment debtor is a holder of such a license, together with its associated documents and records, the sale of the License and the associated records which accompany it will produce proceeds and those proceeds of the sale, once approved by the FCC, may be attached by the judgment creditor. Accordingly, this court may order the sale of such License, subject to FCC approval, with the proceeds which have been attached by order of this court, subject to collection by the judgment creditor in satisfaction of its judgment.

LLP
11/12/07
Accordingly, the Court will sell the License and associated documents and records (including the stations' local public file and advertiser lists) at a public judicial sale schedule for this date. That judgment debtor, as assignee, and the Successful Bidder, as assignor, will promptly and without delay apply for FCC approval of the assignment of that License to the Successful Bidder. The sale will be final upon the FCC grant of consent to the assignment. If the judgment debtor satisfies the full amount of the underlying judgment in this matter, together with all interest, fees and costs due under the judgment before the FCC grant of assignment of License, then the FCC assignment application will be withdrawn.

The judgment creditor had requested, in order to facilitate the application for transfer by the successful bidder at the judicial sale, that a receiver be appointed to act for the judgment debtor in requesting the transfer. I decline to appoint a receiver at this time, but instead ORDER THAT THE JUDGMENT DEBTOR MUST FULLY AND TIMELY COOPERATE WITH THE PREPARATION AND FILING OF THE APPLICATION FOR FCC APPROVAL OF THE ASSIGNMENT OF THE LICENSE TO THE SUCCESSFUL BIDDER, AND, PENDING THE EFFECTIVE TRANSFER OF THE LICENSE TO THE SUCCESSFUL BIDDER, MAINTAIN IN EFFECT THE LICENSE AND OPERATE RADIO STATION WPAL-FM ACCORDANCE WITH THE LICENSE, APPLICABLE LAWS, REGULATIONS AND POLICIES, on pain of contempt of this Court.

IT IS FURTHER ORDERED that, should the judgment debtor fail or refuse to sign any forms, provide any information necessary to complete or file the application for FCC consent to assignment of the License, or take any action necessary to complete the application for FCC consent to the assignment WITHIN FIVE (5) DAYS of a request of judgment debtor through its counsel, Matthias Chaplin, this Court will immediately appoint a receiver to take those actions on behalf of the judgment debtor to enable the application for approval to be timely filed with, and processed and granted by the FCC.

1842/13
IT IS FURTHER ORDERED that Gresham, its officers, agents, servants, employees, and anyone in active concert or participation with it who receive actual notice of this Order, by personal service or otherwise, cooperate with the Successful Bidder in order to facilitate the assignment of Gresham's FCC licenses to the Successful Bidder, and it enjoined from interfering in any way with said assignment, or application for FCC consent thereto. Gresham, its officers, agents, servants, employees and anyone in active concert or participation with it who receives actual notice of this Order, by personal service or otherwise, shall promptly sign any applications or other instruments or documents that may be necessary or appropriate to obtain any required FCC consent for the assignment to Successful Bidder of the licenses.

permits and other authorizations issued to Gresham by the FCC. Gresham shall promptly provide Successful Bidder with all passwords, designators, identification numbers and like information useful or necessary to access the FCC's computerized licensing and reporting systems in connection with facilities, towers, report or application of WPAL FM stations or related facilities, including, without limitation, the following: all authorization call signs together with the tax payer identification number associated with each such call sign in the FCC's licensing records, all federal regulation (FRN) numbers, CDBS and IBFS passwords and account numbers, and all ULS passwords and account numbers. In the event that officers of Gresham shall refuse to affirmatively indicate a willingness to execute such applications or related documents and to provide the above-described information to access the FCC's computerized licensing and reporting systems as requested and to actually execute such applications as requested, the Clerk of the Court shall subscribe such document with the same effect as if such officers had signed the document on behalf of Gresham for the purposes of placing such applications before the FCC for the FCC's consideration in view of the FCC's authority over radio licensing matters.

IT IS FURTHER ORDERED that Gresham and their employees are enjoined from removing, destroying, alienating or disposing of any of the physical assets of WPAL FM radio broadcasting stations.

 The Court retains jurisdiction to enter such further orders as are just under the circumstance.


Special Referee

Walterboro, South Carolina

16 February 2007



Federal Communications Commission
Washington, D.C. 20554

March 3, 2009

DA 09-540

In Reply Refer to:

1800B3-KV

Released: March 3, 2009

Charles W. Cherry, II
Receiver for Gresham Communications, Inc.
5200 SW 18th Street
Plantation, FL 33317

Caswell Capital Partners, LLC
c/o Erwin G. Krasnow, Esquire
Garvey Schubert Barer
1000 Potomac Street, NW, 5th Floor
Washington, DC 20007

Gresham Communications, Inc.
c/o Dan J. Alpert, Esquire
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, Virginia 22201

In re: WPAL-FM, Ridgeville, SC
Facility ID No. 25374
File Nos. BALH-20070327AEK and BALH-
20070406ADD
Applications for Assignment of License

Gentleman:

We have before us an application (the "Application") for Commission consent to the assignment of the license of Station WPAL-FM, Ridgeville, South Carolina, (the "Station") from Charles W. Cherry, Receiver for Gresham Communications, Inc. ("Receiver"), to Caswell Capital Partners, LLC ("Caswell").¹ Previously, the staff granted an assignment application from Gresham Communications, Inc. ("Gresham") to the Receiver.² We also have before us a Petition to Deny the Application and a petition for reconsideration of the grant of the Involuntary Assignment Application (collectively, the "Petitions"), both filed by Gresham.³ For the reasons stated below, we grant in part and deny in part the Petitions, and grant the Application.

Background. The Assignment Applications arise out of a South Carolina court-ordered sale to satisfy a judgment against the former licensee, Gresham.⁴ Specifically, in August 2006, after purchasing the debt that was the subject of the judgment, Caswell petitioned the South Carolina Court of Common

¹ File No. BALH-20070406ADD.

² File No. BALH-20070327AEK ("Involuntary Assignment Application").

³ Collectively, unless referring to a specific assignment application, we will refer to the Involuntary Assignment Application and the Application as the "Assignment Applications."

⁴ In 2002, Commission staff granted an assignment application from Gresham to Caswell. That transaction, however, was never consummated. File No. BALH-20020620AAD.

Ex. B

Pleas (the "Court") to collect on the judgment.⁵ At the hearing, William Saunders ("Saunders"), president of Gresham, testified that Gresham's sole asset was the WPAL-FM Station license.⁶ On September 22, 2006, the Court ordered that the Station's license be attached and sold at a judicial sale.⁷

On February 15, 2007, the sheriff auctioned the Station's license to the high bidder, Caswell.⁸ Subsequently, the Court appointed the Receiver to effectuate the assignment of the license to Caswell.⁹ On March 27, 2007, the Receiver then filed the Involuntary Assignment Application. The Commission granted the unopposed application on April 3, 2007.¹⁰ Thereafter, on April 6, 2007, the Receiver filed the Application to assign the Station to Caswell.¹¹ On May 7, 2007, Gresham filed for reconsideration of the grant of the Involuntary Assignment Application,¹² and several days later, on May 11, 2007, Gresham petitioned to deny the pending Application to assign the Station license to Caswell. In response, the Receiver and Caswell jointly filed Oppositions.¹³ Over the next eighteen months each of the parties filed numerous additional pleadings, many of which pertained to matters before the Court.¹⁴

The Petitions raise several arguments in opposition to the assignment of the Station license to the Receiver and to Caswell. First, Gresham contends that the court improperly ordered that the Station's license be attached in violation of the Communications Act of 1934, as amended, (the "Act"). Next, Gresham asserts, the judicial sale of the Station's license further violated the Act by ordering the sale of a "bare license." Lastly, Gresham asserts that the State Court Order cannot be honored because it conflicts with a prior federal court order which enjoins Gresham and Saunders from transferring or disposing of the Station until a judgment for copyright infringement has been satisfied.¹⁵

⁵ Caswell is the assignee of a June 2, 1998, judgment on a promissory note against Gresham obtained by Nancy R. Beach. "Assignment of Judgment Interest," Attachment 4, Petition for Reconsideration.

⁶ September 22, 2006, Order at 2, Attachment 6, Petition for Reconsideration.

⁷ February 21, 2007 Order at 1, Attachment 8, Petition to Deny. ("State Court Order").

⁸ November 27, 2007, Order at 2, Letter Filing by Receiver and Caswell (Mar. 20, 2008).

⁹ *Id.* at 3.

¹⁰ *Public Notice, Broadcast Actions*, Report No. 46459 (Apr. 6, 2007).

¹¹ *Public Notice, Broadcast Applications*, Report No. 26462 (Apr. 11, 2007).

¹² On May 11, 2007, Gresham filed an erratum to its petition for reconsideration.

¹³ The "Opposition to Petition to Deny" and the "Opposition to Petition for Reconsideration" (collectively "the Oppositions") were filed on June 1, 2007.

¹⁴ In particular, the parties filed the following pleadings with the Commission: the Receiver and Caswell filed a "Motion for Leave to file Supplement to 'Opposition to Petition to Deny'" (Jun. 22, 2007) and a "Motion for Leave to file Supplement to 'Opposition to Petition for Reconsideration'" (Jun. 22, 2007); the Receiver and Caswell filed a "Supplement to 'Opposition to Petition to Deny'" (Jun. 22, 2007) and a "Supplement to 'Opposition to Petition for Reconsideration'" (Jun. 22, 2007) (collectively "First Supplement"); Gresham filed several "Motions for Extension of Time to Reply to Oppositions" (Jun. 15, 2007, Jun. 22, 2007, Jul. 6, 2007, Jul. 26, 2007, Aug. 27, 2007, Sep. 10, 2007, and Sep. 18, 2007); Gresham filed a "Reply to Opposition to Petition to Deny" (Sep. 25, 2007) and a "Reply to Opposition to Petition for Reconsideration" (Sep. 25, 2007) (collectively, the "Reply"); the Receiver and Caswell filed a "Second Supplement to Opposition to Petition for Reconsideration" (Dec. 26, 2007) and a "Second Supplement and Request for Expedited Action" (Dec. 26, 2007) (collectively, the "Second Supplement"); the Receiver and Caswell filed a First Letter (Mar. 20, 2008); Gresham filed a "Petition for Dismissal of Assignment Application" (Apr. 7, 2008); the Receiver and Caswell filed an "Opposition to Petition for Dismissal of Assignment Application" (May 2, 2008); the Receiver and Caswell filed a Second Letter (Jun. 5, 2008) and a Third Letter (Jun. 12, 2008); and the Receiver and Caswell filed a "Third Supplement to the Opposition to Petition to Deny and Request for Expedited Action" (Dec. 19, 2008) ("Third Supplement").

¹⁵ *Chi-Boy Music et al v. Gresham Communications and William Saunders*, Order, CA No. 6:0101955-24, (D. S.C. Sep. 16, 2002), Attachment 9, Petition to Deny ("Federal Court Order").

Discussion. Section 310(d) of the Act,¹⁶ requires the Commission to determine whether the proposed transfer or assignment of a broadcast license would be in the public interest. Pursuant to Section 309(d)(1) of the Act,¹⁷ any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁸ This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.¹⁹ If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity. In addition, with respect to petitions for reconsideration, Section 1.106²⁰ of the Commission's Rules (the "Rules") and established case law provides that, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."²¹ We review Gresham's arguments against the Assignment Applications against this standard.

State Court Order. The Commission's long-standing policy is to accommodate the actions of state courts, thereby avoiding conflicts between state and federal authority, unless a public interest determination under the Act would compel a different result.²² Indeed, the U.S. Supreme Court has stated that "the principle of fair accommodation between State and federal authority . . . *should* be observed" if the state's laws "can be effectively respected while at the same time reasonable opportunity is afforded for the protection of that public interest" which underlies licensing decisions.²³ The Commission defers to judicial determinations in many area, including bankruptcy matters, private disputes, and the interpretation and enforcement of contracts for the sale of a broadcast station. The Commission, in contrast, retains exclusive authority to license broadcast stations.²⁴ Thus, the Commission has exclusive authority over a station's license, but it is also charged with the responsibility of accommodating state law, where appropriate. When, however, a state court's decision is contrary to Commission policy, the Commission is neither bound by the state court order nor need recognize it.²⁵

It is well established that a broadcast license does not confer a property right, but rather is a valuable privilege to utilize the airwaves, subject to certain limitations, including restrictions on the right

¹⁶ 47 U.S.C. § 310(d).

¹⁷ 47 U.S.C. § 309(d)(1).

¹⁸ See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

¹⁹ 47 U.S.C. § 309(d)(2).

²⁰ 47 C.F.R. § 1.106(c).

²¹ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686 (1964); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

²² *Radio Station WOW v. Johnson*, 326 US 120, (1945) ("*Radio Station WOW*"); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985) ("*Arecibo Radio*").

²³ *Radio Station WOW*, 326 US at 132.

²⁴ See e.g. *Arecibo Radio*, 101 FCC 2d at 549 (honoring court order requiring licensee to execute assignment application in favor of another party).

²⁵ See, e.g., *Kirk Merkley*, Memorandum Opinion and Order, 94 FCC 2d 829 (1983) ("*Merkley I*"), *recon. denied*, 56 RR 2d 413 (1984) ("*Merkley II*"), *aff'd sub nom.*, *Merkley v. FCC*, 776 F.2d 365 (1985). (declining to recognize court order based on contract with a prohibited reversionary interest that was tantamount to a vested security interest in a license).

to assign licenses.²⁶ As the Commission has stated, “[t]he extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable.”²⁷ Rather the Commission has repeatedly observed that a “license, as distinguished from a station’s physical assets, is not subject to a mortgage, security interest, or lien, pledge, *attachment*, seizure, or similar property right”²⁸

Here, the State Court Order is facially inconsistent with the Commission’s policy prohibiting attachment of a Station license. The Court acknowledged that a licensee does not hold any property rights in the license itself. It also recognized that the Commission permits licensee creditors to have an interest in the proceeds from a sale of the license.²⁹ Nevertheless, the Court held: “the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license . . . be and hereby is attached.”³⁰ In a further order, on February 21, 2007, the Court opined that the Station’s license “was properly subject to attachment and that such License was thereby attached.”³¹ In a recent order, the Court noted that:

The only asset that was identified and levied upon was the FCC license. It was sold . . . at a judicial sale in order to satisfy the judgment. Although the judgment has now expired, the fact that it was “sold” is not affected. The asset was . . . purchased by bid of Caswell, Inc. at the proper judicial sale. *The issue of Federal Communication [sic] Commission approval is a formality and a collateral matter and should not affect the fact that the property was actually sold.*³²

The Receiver and Caswell assert that the Court *intended* to grant a security interest in the proceeds from the sale of the license.³³ We find that the Court’s plain language states otherwise. Moreover, we reject as unsupported the Receiver’s and Caswell’s argument that the Commission’s prohibition against attachment of a broadcast license is only of concern when an automatic right of reversion is involved. The prohibition on treating a broadcast license as a property right is premised on the rationale “that such hypothecation endangers the independence of the licensee who is and who should be at all times responsible for and accountable to the Commission . . .”³⁴ Finally, the Receiver and Caswell contend that we should honor the State Court Order because Caswell would have received the proceeds from the Station’s sale had it not submitted the winning bid and that the State Court Order expressly provides that the sale is subject to Commission approval. We disagree. To give effect to this portion of the State Court Order would require that we ignore our longstanding policy against the attachment of a broadcast license.

In these circumstances, the Commission’s general deference to state court orders is not warranted. We find that the Court’s attachment of the WPAL-FM license exceeded its authority and to this extent its

²⁶ See 47 U.S.C. § 310(d).

²⁷ *Radio KDAN*, Memorandum Opinion and Order, 11 FCC 2d 934, n.1, *recon denied*, 13 RR 2d 100 (1968), *aff’d on procedural grounds sub nom. W.H.Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969) (“*Radio KDAN*”).

²⁸ *Merkley II*, 56 RR 2d at 416. (emphasis added).

²⁹ See September 22, 2006, Order at 2 -3, Attachment 6, Petition for Reconsideration.

³⁰ *Id.* at 3.

³¹ February 21, 2007, Order at 1, Attachment 8, Petition to Deny.

³² December 3, 2008, Order at 3, Attachment A, Third Supplement. (emphasis added).

³³ See Opposition at 7.

³⁴ *Radio KDAN*, 13 RR 2d at 102.

order is void *ab initio* as violative of the Act and Commission policy.³⁵ However, in cases of bankruptcy or receivership, the Commission does permit trustees or receivers to hold licenses on a temporary basis pending disposition of station assets.³⁶ This policy serves the public interest because, as the Commission has acknowledged, "these assets would be of comparatively little value if the Commission did not permit the operating authorization to accompany them pending ultimate passage of all [assets] to a qualified buyer."³⁷ In a further order³⁸ appointing the Receiver, the Court stated that, upon receipt of Commission approval, the Receiver is ordered to take possession of, operate, and manage Gresham's property and station license "to conserve the business and assets of the Station until a sale of the Station's assets is confirmed and a purchaser is found for the station acceptable to the Receiver and the FCC and the FCC has granted its consent for transfer of the FCC license to such purchaser."³⁹ This order is a valid exercise of the Court's authority under state law. Therefore, notwithstanding the invalidity of the State Court Order *vis-à-vis* attachment of the Station's license, we find no reason to overturn the staff's action granting the Involuntary Assignment Application.

Bare License. Gresham next argues that grant of the Application would constitute a sale of a prohibited "bare license." In particular, Gresham notes that the Asset Purchase Agreement submitted with the Application seeks to transfer only the local public inspection file and the Station license. The Commission has historically refused to permit a price to be placed on the transfer of a bare license.⁴⁰ When weighing a bare license allegation, the Commission will review "the entirety of the proposed transaction"⁴¹ and whether the assignee would have the ability to maintain broadcast operations.⁴² The Commission will permit a license assignment, as is the case here, where other rights, commitments, or physical assets exist. First, the Receiver proposes to assign to Caswell the Station's intangible assets, namely, the license and related authorizations as well as some tangible assets, specifically, the local public inspection file and its advertiser lists.⁴³ This list constitutes evidence of sufficient assets to counter Gresham's allegation.⁴⁴ Next, the Asset Purchase Agreement references other tangible Station assets that Caswell has acquired through other transactions, including "the WPAL-FM tower, antenna and most of the station's furniture fixtures and equipment."⁴⁵ In short, Caswell possesses the technical assets required

³⁵ Having found that the court's order is void *ab initio* insofar as it attaches the WPAL-FM license, we dismiss as moot Gresham's arguments that the court improperly enjoined it from appearing before us and raising arguments against grant of the assignment applications.

³⁶ See e.g., *O.D.T. International et. al.*, Memorandum Opinion and Order, 9 FCC Rcd 2575, 2576 (1994) ("*O.D.T. International*"); and *Arecibo Radio*, 101 FCC 2d at 550-551.

³⁷ *O.D.T. International*, 9 FCC Rcd at 2576.

³⁸ Involuntary Assignment Application, Attachment 2, Order Appointing Receiver (March 26, 2007).

³⁹ *Id.* at 2 ¶3. Additionally, "[a]fter a purchaser (or purchasers) is found acceptable to Receiver and the FCC, Receiver is directed to make all necessary application with the FCC in order to effect the proper transfer or assignment of the licenses, together with such further assets as the Receiver should deem appropriate, to such purchaser." *Id.* at ¶4.

⁴⁰ *Donald L. Horton*, Memorandum Opinion and Order, 10 FCC 2d 271, 273 (1967). *Accord*, *Edward B. Mulrooney*, Order, 13 FCC 2d 946 (1968), *Bonanza Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 906 (1967).

⁴¹ *FM Broadcasters of Douglas County*, Memorandum Opinion and Order, 10 FCC Rcd 10429 (1995).

⁴² See *American Music Radio*, Memorandum Opinion and Order, 10 FCC Rcd 8769, 8772-73 (1995). ("*American Music Radio*").

⁴³ Section 1.1, Asset Purchase Agreement, Application.

⁴⁴ See *KPAL Broadcasting Corp.*, Memorandum Opinion and Order, 28 FCC 2d 46, 48 (1970) (presence of rights and commitments along with license outweighs bare license allegation).

⁴⁵ Asset Purchase Agreement, Application, Section 1.2 and i.

to assure continuation of broadcast service.⁴⁶ For this reason also, this transaction does not implicate the prohibition on transfer of a bare license. Thus, we find that transfer of a bare license is not at issue here.

Prior Federal Court Order. Lastly, Gresham argues that grant of the Application is barred by a prior Federal Court Order which enjoins Gresham from “transferring or disposing of the radio station owned by them until the judgment has been satisfied, or by further order of the court.”⁴⁷ Gresham’s claim is without merit. In *Cumulus Licensing, LLC*,⁴⁸ the Bureau stated that a decision to grant an assignment application “is permissive only and does not prejudice the outcome of . . . [any] court proceeding and any relief to which the parties are entitled under the civil suit.”⁴⁹ Similarly, we emphasize that our decision today to grant the Application is permissive only and should not impede private remedies in any future court proceedings.⁵⁰ To the extent that Gresham believes that consummation of the proposed assignment by the Receiver contravenes a court order, he should seek relief from that court.

Conclusions/Actions. We find no error in the staff’s grant of the Involuntary Assignment Application. Moreover, we have examined the Application and we find Caswell to be fully qualified to be the licensee of Station WPAL-FM and that grant of the Application will further the public interest, convenience, and necessity. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny and the Petition for Reconsideration filed by Gresham Communications, Inc., ARE GRANTED IN PART to the extent indicated herein and DENIED in all other respects.

IT IS FURTHER ORDERED, that the Application (File No. BALH-20070406ADD) to for consent to assign the license of Station WPAL-FM, Ridgeville, South Carolina from Charles W. Cherry, II, Receiver for Gresham Communications, Inc., to Caswell Capital Partners, LLC; IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴⁶ See *American Music Radio*, 10 FCC Rcd at 8772. See also *Eileen S. Bailey*, Memorandum Opinion and Order, 14 FCC Rcd 16755 (1999) (acquisition of operational assets from a third party is consistent with Commission policy and does not implicate the “bare license” policy), and *Arecibo Radio*, 101 FCC 2d at 550-551 (physical assets and license assigned from different parties to assignee does not constitute assignment of bare license).

⁴⁷ Federal Court Order at 1-2, Attachment 9, Petition to Deny.

⁴⁸ 21 FCC Rcd 2998 (MB 2006).

⁴⁹ *Id.* at 3007.

⁵⁰ Moreover, according to papers filed by Amos Workman, attorney for *Chi-Boy Music et al.*, this judgment was satisfied in full on December 12, 2008. See Satisfaction of Judgment, Attachment C, Third Supplement.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

RECEIVED

JUN 08 2009

SC Court of Appeals

Nancy R. Beach Respondent,

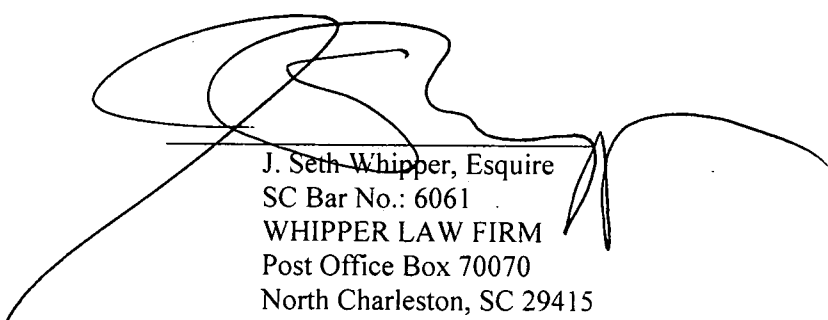
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one copy of the Motion For Leave To File Motion For Relief Pursuant To SCRCP 60(b) on Nancy Beach by depositing a copy of it in the United States mail, postage prepaid, on June 1, 2009, addressed to their attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29413. One copy of the same Motion will be delivered to the Special Referee, Harris L. Beach, Jr., at 115 Benson Street, Walterboro, South Carolina 2948.

June 5, 2009


J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

June 5, 2009

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

RECEIVED

JUN 08 2009

SC Court of Appeals

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Motion For Leave To File Motion For Relief Pursuant To
Filing

CRCP 60(b)- For

Dear Ms. Barber:

Find enclosed one original and eight copies each of the documents for filing and conforming. Also included is the requisite fee of \$25.00 paid by check. Please return two conformed copies to me in a stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Mr. Andrew, Jr., Daniel McQueeney, Jr., Esq., Mr. Charles Cherry, Mr. Lloyd Parker, and Harris L. Beach. If you have any questions or concerns, you may contact the Referee at the

Thank you for your anticipated assistance and cooperation.

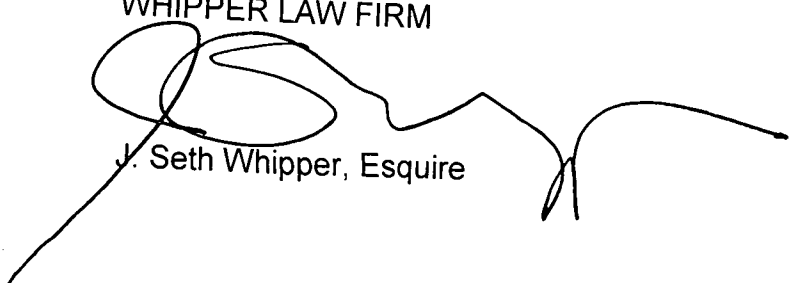
(Signature on Second Page)

Page 2

Re: Gresham Communications of Walterboro, Inc., et. al. v.
Nancy R. Beach
Case No.: 92-CP-15-508
Motion For Leave To File Motion For Relief Pursuant To SCRCP 60(b)- For
Filing

Sincerely,

WHIPPER LAW FIRM



J. Seth Whipper, Esquire

JSW/snkw

Enclosures

xc: William S^s
Dan Alpe

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, Inc., a/k/a
Gresham Communications
Inc., Gresham Broadcasting,
Inc., and Rudi H. Gresham,

Appellants.

**Respondent's Motion for an Extension of the Time in Which to Serve and File
Respondent's Initial Brief and Designation of Matter**

Pursuant to Rule 263(b), SCRCP, Respondent respectfully moves this Court for an extension of the time in which to serve and file its Initial Brief and Designation of Matter. Respondent's initial brief and designation are currently due on June 1, 2009. Simultaneously with this motion, Respondent has moved to strike Appellants' reference to an FCC Opinion in Appellants' Designation of Matter and for an Order requiring the Appellants to file an amended initial brief, omitting any reference to such opinion because the opinion was issued after the appealed orders in this case and was not presented to the lower court prior to the issuance of the appealed orders. Respondent would respectfully request the Court extend the time in which to file and serve its Initial Brief and Designation of Matter to thirty (30) days from the Court's

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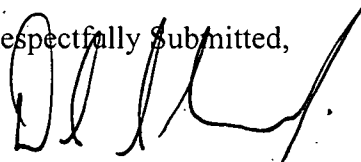
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SC Court of Appeals
66796 \$25

2d EXT
was due Jan 01, 09
HIA

order on Respondent's Motion to Strike or thirty (30) days from the filing of an amended initial brief by Appellants as requested in Respondent's Motion to Strike, whichever occurs later.

Respectfully Submitted,



W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

Charleston, South Carolina
May 20, 2009

RECEIVED

MAY 21 2009

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
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INC., Gresham Broadcasting,
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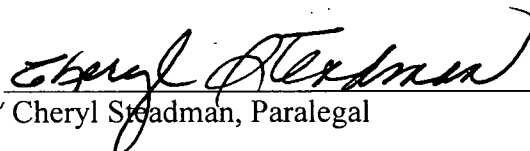
Appellant.

PROOF OF SERVICE

I, Cheryl Steadman an employee of Pratt-Thomas Walker, P.A. hereby certify that on May 20, 2009, I placed a copy of the Respondent's Motion to Extend to J. Seth Whipper, counsel of record for Appellant and to William Saunders by placing the same in the United States mail, first-class postage pre-paid, to:

J. Seth Whipper, Esq.
Whipper Law Firm
4592 Durant Avenue
N. Charleston, SC 29405

Mr. William Saunders
6191 Chisolm Road
Johns Island, SC 29455


Cheryl Steadman, Paralegal

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MAY 21 2009

SC Court of Appeals
00795 \$25

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, Inc., a/k/a
Gresham Communications
Inc., Gresham Broadcasting,
Inc., and Rudi H. Gresham,

Appellants.

Respondent's Motion to Strike

Introduction

Pursuant to Rule 210(c), SCACR, and Rule 209(b), SCACR, Respondent respectfully moves this Court for an order striking Appellants' inclusion of a March 3, 2009 Federal Communications Commission opinion (the "FCC Opinion") in its Designation of Matter in the present appeal of orders entered June 10, 2008 and December 3, 2008. The FCC Opinion was issued after the appealed orders and was therefore not presented to or considered by the Special Referee in issuing either of the appealed orders. For the same reason, Respondent respectfully requests this Court strike references to the FCC Opinion in Appellant's Initial Brief pursuant to Rule 208(b)(4), SCACR, and require Appellant to file an amended initial brief without such references.

Procedural Background

In this supplemental proceeding, the Special Referee entered an order on June 10, 2008, refusing to allow Appellants to “redeem” certain assets sold to Caswell Capital Partners, LP, (“Caswell”) at a judicial sale on February 15, 2007. **Ex. 1, Order filed 06/10/08.** Appellants moved for reconsideration, and the Special Referee entered an order on December 3, 2008, partially amending the June 10, 2008 order. **Ex. 2, Order filed 12/03/08.** On December 31, 2008, Appellants appealed both orders. **Ex. 3, Notice of Appeal.** On March 3, 2009, the Federal Communications Commission (the “FCC”) entered an opinion assigning the above-referenced FCC license from Appellants’ court-appointed receiver to Caswell. **Ex. 4, FCC Opinion.** On April 1, 2009, Appellant filed its initial brief and designation of matter in the present appeal, focusing largely on the FCC Opinion and purporting to designate it to be included in the Record on Appeal. **Ex. 5, Appellants’ Initial Br.; Ex. 6, Designation of Matter.** In fact, several of Appellants’ arguments on appeal rest solely or substantially on the FCC Opinion, making it, in essence, inseparable from the brief as written. **Ex. 5.**

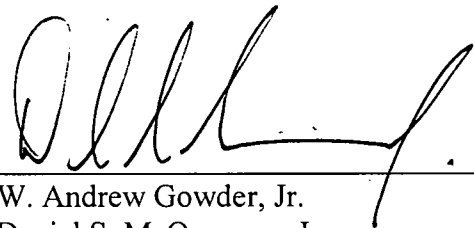
Law/Analysis

Rule 210(c), SCACR, provides, in pertinent part: “The Record [on Appeal] shall not, however, include matter which was not presented to the lower court or tribunal.” Further, “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials *which may be properly included in the Record on Appeal* [see Rule 210(c)].” Rule 209(b), SCACR (brackets included in original) (emphasis added). Finally, a “brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials *which may be properly included in the Record on Appeal* [see Rule 210(c)] to support the salient facts alleged.” Rule 208(b)(4), SCACR; see also State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 618-19 (Ct.

App. 2007) (refusing to consider portions of brief referring to matters not properly included in the Record on Appeal).

As previously explained, Appellants have designated and briefed arguments based on the FCC Opinion, which was issued well after the orders within this Court's scope of review. Accordingly, the FCC Opinion was not presented to the Special Referee for consideration in his previous orders, and the Special Referee therefore had no opportunity to rule on Appellants' arguments. See Aiken v. World Fin. Corp., 373 S.C. 144, 148, 644 S.E.2d 705, 708 (2007) ("In order to be preserved for appellate review, an issue must have been raised to and ruled upon by the trial court.").

Based on the foregoing, Respondent respectfully requests this Court issue an order striking the FCC Opinion from Appellants' Designation of Matter and requiring Appellants to file an amended initial brief, omitting all arguments and references with respect to the FCC Opinion. Otherwise, Respondent will be prejudiced in having to forge an argument on appeal regarding issues which were not previously argued, presented, raised to or ruled upon by the Special Referee.



W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
843-727-2200
Attorneys for Respondent

Charleston, South Carolina
May 20, 2009

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach

Respondent,

v.

Gresham Communications of
Walterboro, INC., a/k/a
Gresham Communications
INC., Gresham Broadcasting,
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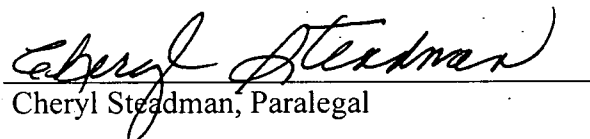
Appellant.

PROOF OF SERVICE

I, Cheryl Steadman an employee of Pratt-Thomas Walker, P.A. hereby certify that on May 20, 2009, I placed a copy of the Respondent's Motion to Strike to J. Seth Whipper, counsel of record for Appellant and to William Saunders by placing the same in the United States mail, first-class postage pre-paid, to:

J. Seth Whipper, Esq.
Whipper Law Firm
4592 Durant Avenue
N. Charleston, SC 29405

Mr. William Saunders
6191 Chisolm Road
Johns Island, SC 29455


Cheryl Steadman, Paralegal

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

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FAX: 843.727.2238

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MAY 21 2009

SC Court of Appeals

May 20, 2009

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

SARA E. DeWOLF

The Honorable Jeanette Barber
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

RE: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
CA No. 1992-CP-15-00508

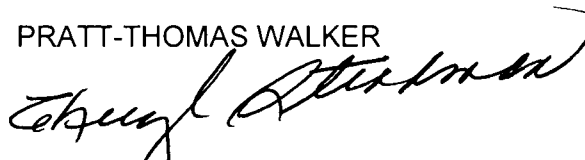
Dear Ms. Barber:

Please find enclosed for filing the original and seven copies of the Respondent's Motion for an Extension of the Time in Which to Serve and File Respondent's Initial Brief and Designation of Matter and Respondent's Motion to Strike and the Proof of Service in the above matter. I have also enclosed two of our firm's check in the amount of Twenty-Five (\$25) Dollars each for the filing. I have enclosed a prepaid envelope for return of the copy of the clocked document.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me.

Sincerely,

PRATT-THOMAS WALKER



Cheryl Steadman

Paralegal to W. Andrew Gowder, Jr.

/cas

Enclosures as stated

c: J. Seth Whipper, Esquire
William Saunders
Judith Aidoo



The South Carolina Court of Appeals

JEANETTE F. BARBER
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

May 18, 2009

Jackson S Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

The following Order has been endorsed on your "Motion for Extension of Time to File and Serve Initial Brief" in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ Jeanette F. Barber
Clerk

May 18, 2009."

Please be advised the Appellant's Initial Brief and Designation of Matter have been received and are accepted as filed. All parties are advised that the Respondent's Initial Brief and Designation of Matter must be served and filed on or before June 1, 2009.

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. Carter".

Elizabeth A. Carter
Docketing Specialist

JFB/ec

cc: W. A. Gowder, Jr., Esquire

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APR 20 2009

SC Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 1992-CP-15-508

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham
Appellant.

v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach.
Respondent.

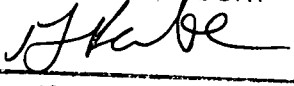
MOTION FOR EXTENSION OF TIME TO FILE AND SERVE INITIAL BRIEF

The Appellants move for an Order extending the time to file and serve their Initial Brief in this matter for a period of one (1) day beginning April 2, 2009. If the Court grants the extension the brief will be due on or before April 2, 2009. Appellant recognized that the first delivery of the Initial Brief was incorrect and through oversight delivery of a corrected copy could not be completed until April 2, 2009. Because this circumstance was not anticipated, Appellant makes this motion post-delivery of the corrected Initial Brief.

WHEREFORE the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

GRANTED

KAYE G. HEARN, C.J.
FOR THE COURT

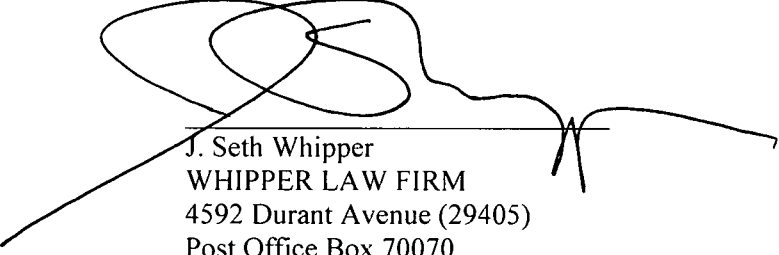
By: 

(Clerk) (Deputy Clerk)

May 18, 2009

FILED

5/18/09


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413

RECEIVED

APR 20 2009

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

SC Court of Appeals

7649 55

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

April 17, 2009

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Initial Brief- For Filing

Dear Ms. Barber:

Find enclosed one original and two copies each of the above-referenced documents for filing and conforming. Also included is the requisite filing fee of \$25.00 paid by check. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeney, Esq. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

Page 2

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Motion for Extension of Time to File and Serve Initial Brief- *For Filing*

JSW/snkw

Enclosures

xc: William Saunders
W. Andy Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of Walterboro,
Inc., a/k/a Gresham Communications, Inc.,
Gresham Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER

For good cause having been shown, the time for serving and filing the Respondent's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until June 1, 2009.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For the Court

BY



CLERK

Columbia, South Carolina

04-21-2009

cc: Jackson S Whipper, Esquire
W. A Gowder, Jr., Esquire

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

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E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH MCCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. MCCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

April 8, 2009

The Honorable Jeanette Barber
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

Re: Nancy Beach v Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham Broadcasting, Inc.,
and Rudi H. Gresham
Case No. 1992-CP-15-00508

Dear Ms. Barber:

Please be advised that this firm represents Respondent in the above-referenced case. Respondent's initial brief and designation of matter are currently due on May 4, 2009. I am writing to request a thirty (30) day extension of time within which to service and file Respondent's initial brief and designation of matter. No previous extension has been requested by or granted to Respondent. I have enclosed our firm's check in the amount of \$25.00 to cover the filing fee for this request.

By copy of this letter to attorneys for Appellants, I am advising Appellants of our request. Your courtesies and consideration of this matter are greatly appreciated.

Sincerely,

PRATT-THOMAS WALKER



Daniel S. McQueeney, Jr.

DSM:cas
c: Seth Whipper, Esquire

RECEIVED

APR 10 2009

SC Court of Appeals
66502 \$25

5-01-09 15/
6-01-09



The South Carolina Court of Appeals

JEANETTE F. BARBER
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

April 10, 2009

Jackson S Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

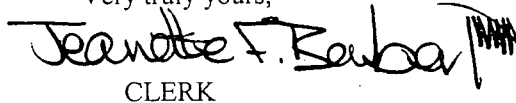
Dear Mr. Whipper:

We are in receipt of your "Initial Brief for Appellant" and "Designation of Matters to be included in the Record on Appeal" in the above mentioned case on appeal as received in our office on April 1, 2009. This will also acknowledge receipt of an initial brief and proof of service for a "corrected and uncorrected" brief served on April 2, 2009.

You are advised that the Appellant's Initial Brief and Designation of Matter should have been served and filed no later than April 1, 2009. As of the date of this letter we have not received a motion requesting that you be allowed to serve and file an amended brief and amended designation; therefore, the brief and designation served and received on April 1, 2009 are accepted by the Court.

You are requested to provide, within ten (10) days of the date of this letter, an original proof of service showing timely service of the Designation of Matter.

Very truly yours,


CLERK

JFB/ec

cc: W. A Gowder, Jr., Esquire

RECEIVED

APR 06 2009

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

SC Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

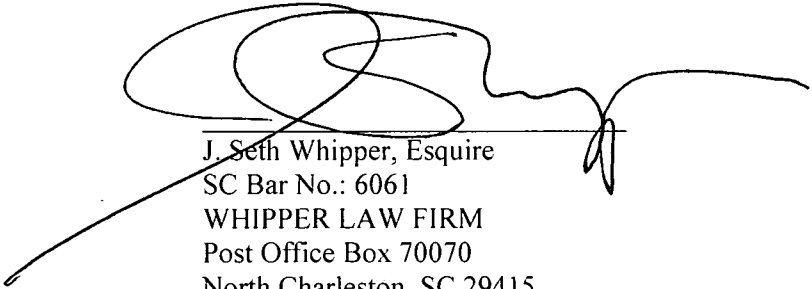
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have served one copy of the corrected and uncorrected Initial Brief for Appellant, Designation of Matter, and Proof of Service on Nancy R. Beach by depositing a copy of it in the United States mail, postage prepaid, on April 2, 2009, addressed to their attorney of record, W. Andrew Gowder, Jr., Esq., and Daniel S. McQueeney, Jr., Esq., Pratt-Thomas Walker, 16 Charlotte Street, Charleston, South Carolina 29403.

April 2, 2009


J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

APR 06 2009

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

SC Court of Appeals

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

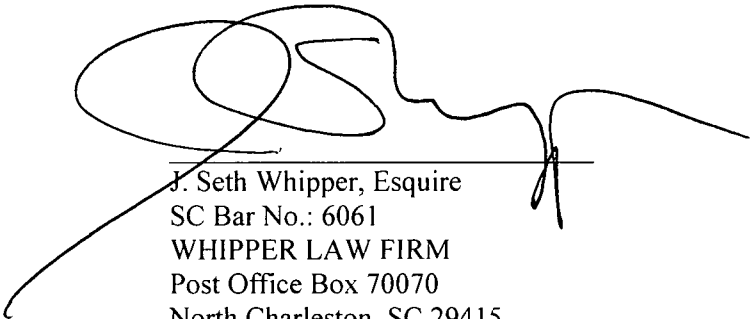
v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

I certify that I have delivered one (1) copy of the corrected Initial Brief for Appellant on the South Carolina Court of Appeals by depositing a copy of it in the United States mail, postage prepaid, on April 2, 2009, addressed to the Clerk of Court, Jeanette Barber, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211.

April 2, 2009



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

April 2, 2009

RECEIVED

APR 06 2009

SC Court of Appeals

Jeanette Barber, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Corrected Initial Brief for Appellant - For Filing
Proofs of Service - For Filing

Dear Ms. Barber:

Find enclosed one original and two copies each of the above-referenced documents for filing and conforming. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter we are serving the same on, Messrs. Gowder and McQueeny. If you have any questions or concerns, you may contact me at the above.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

Page 2

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Corrected Initial Brief for Appellant –For Filing
Proofs of Service - For Filing

JSW/snkw

Enclosures

xc: W. Andy Gowder, Jr., Esq.
Daniel S. McQueeney, Jr., Esq.

RECEIVED

APR 01 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

DESIGNATION OF MATTERS TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondent proposed the following be included in the Record on Appeal:

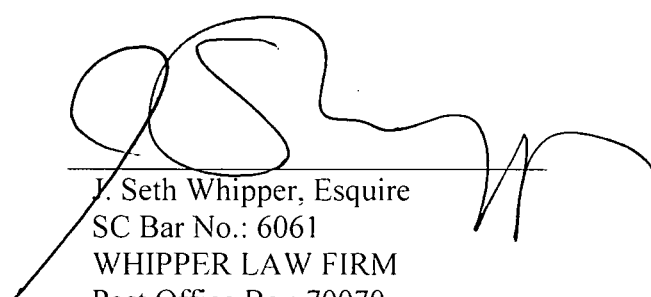
1. Promissory Notes to Nancy R. Beach January 2, 1988;
2. Complaint (Non-Jury) Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et.al. w/attachments (92-CP-15-508;
3. Assignment of Judgment Interest: Beach v. Gresham Communications of Walterboro, Inc., et. al.; to Caswell Capital Partners, LLC (92-cp-15-508
4. Petition for Supplemental Hearing: Beach v. Gresham Communications of Walterboro, Inc., et. al.; (92-CP-15-508;
5. Order (09/22/06): Beach v. Gresham Communications of Walterboro, Inc., et. al.; (92-CP-15-508) w/attachments: Radio Broadcast Station License (08/16/00 to 12/01/03) and Revised License Authorization – WPAL-FM.

6. Order (10/02/06): Beach v. Gresham Communications of Walterboro, Inc., et.al.: (92-CP-15-508; Setting Sale of FCC License;
7. Amended Order (10/04/06) Beach v. Gresham Communications of Walterboro, Inc., et. al.: (92-CP-15-508; Resetting sale of FCC License;
8. Notice of Sale (10/04/06): Beach v. Gresham Communications of Walterboro, Inc., et. al.: (92-CP-15-508;
9. Order (02/21/007): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Dismissing Motion to Stay/Ordering Judicial Sale;
10. Order (03/26/07); Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Appointing Receiver;
11. Order (1/19/96): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Order of Reference w/Recusals;
12. Judgment In a Civil Case: (6/4/98) Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); (\$61,903.10);
13. Decree (6/2/98): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Setting Judgment Amount and Attorney Fees;
14. Order (11/27/07): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Contempt Order;
15. Order (6/10/080): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Denial to Tender;
16. Order (12/3/08): Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508); Order of Reconsideration;
17. 2nd Sup. to Mem.in Support of Def. Motion to Reconsider: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508)
18. Proposed Order Granting Def. Motion to Reconsider 6/6/08 Order: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
19. Transcript (6/23/08) Motion to Reconsider 6/6/08 Order: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
20. Transcript (5/16/08) Tender of Payment of 6/4/98 Judgment: Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
21. Letter Decision, 3/3/08 Media Bureau FCC; Ref. # 1800B3-KV: In Re: WPAL-FM

22. Def. reply to Plnt.'s Mem. Op. to Redemption.; Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-508);
23. Def. Motion to Consider: 06/11/08; Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15-08);
24. Def Motion to Stay Execution of Order: 06/08 Beach v. Gresham Communications of Walterboro, Inc., et.al. (92-CP-15- 08);

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

April 1 2009



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Honorable Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach Respondent,

v.

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham Appellant.

PROOF OF SERVICE

The undersigned, being an employee of the Whipper Law Firm, certifies that on April 1, 2009, three (3) copies of the foregoing Initial Brief of Appellant were served on all concerned parties by the undersigned depositing or causing the deposit of three (3) copies of said Brief on that date in the United States mail with sufficient postage affixed thereto and addressed as follows:

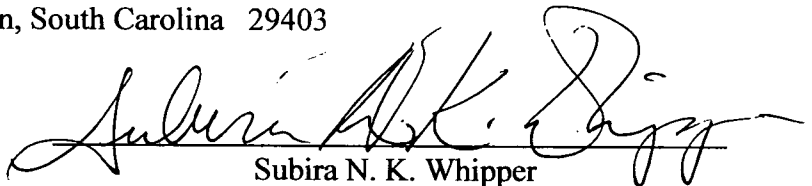
W. Andrew Gowder, Jr., Esq.
PRATT, THOMAS & WALKER
166 Charlotte Street
Charleston, South Carolina 29403

Chip McQueeney, Esq.
PRATT, THOMAS & WALKER
166 Charlotte Street
Charleston, South Carolina 29403

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APR 01 2009

SC Court of Appeals


Subira N. K. Whipper

Charleston, South Carolina

April 1, 2009.



The South Carolina Court of Appeals

JEANETTE F. BARBER
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

March 5, 2009

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications
Case Tracking #: 2009112326

Dear Mr. Whipper:

The following Order has been endorsed on your Motion for Extension of Time to File Initial Brief in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ Jeanette F. Barber
Clerk

March 05, 2009."

Please be advised the Appellant's Initial Brief and Designation of Matter must be served and filed on or before April 1, 2009.

Very truly yours,


Elizabeth A. Carter
Docketing Specialist

 JFB/ec

cc: W. Andrew Gowder, Jr., Esquire

RECEIVED

FEB 25 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Harris Beach, Special Referee

Case No. 1992-CP-15-508

Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham
Appellant.

v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach.
Respondent.

MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF

The Appellants move for an Order extending the time to file their Initial Brief in this matter for a period of thirty (30) days beginning March 2, 2009. If the Court grants the extension the brief will be due on or before April 1, 2009. Counsel for the Appellants has conferred with counsel for the Respondent and is informed that the Respondent consents to the extension.

WHEREFORE the Appellants pray for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

GRANTED

KAYE G. HEARN, C.J.
FOR THE COURT

By: Jeanette F. Barber 104
(Clerk) (Deputy Clerk)

March 5, 2009

J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

FILED

3/5/09

3-2-09
4-1-09
202

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413

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FEB 25 2009

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

SC Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

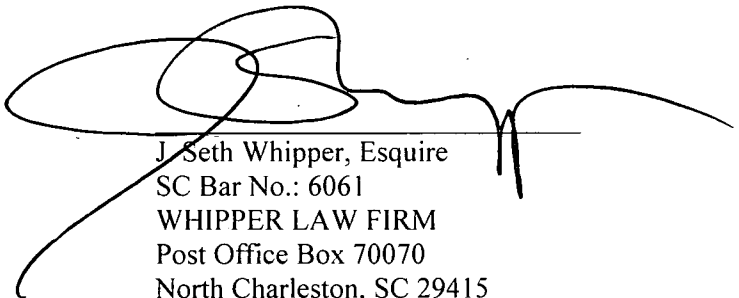
Gresham Communications of Walterboro, Inc.,
a/k/a Gresham Communications, Inc.; Gresham
Broadcasting, Inc., and Rudi H. Gresham
Appellant.

v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach.
Respondent

PROOF OF SERVICE

I certify that I have served the **Motion for Extension of Time to File Initial Brief** on the Respondent, by via first class U.S. mail, addressed to counsel of record as set forth below.



J. Seth Whipper, Esquire
SC Bar No.: 6061
WHIPPER LAW FIRM
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 Fax
Attorney for Appellant

February 24, 2009
North Charleston, South Carolina

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413

Page 2

Re: *Nancy R. Beach v. Gresham Communications of Walterboro, Inc., et. al.*

Case No.: 92-CP-15-508

Request for Extension to Petition the Court for a Rehearing

Enclosures

xc: W. Andy Gowder, Jr.

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

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FEB 25 2009

SC Court of Appeals
7588 25

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

February 24, 2009

Kenneth A. Richstad, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach

Case No.: 92-CP-15-508

Motion for Extension of Time To File Initial Brief

Dear Sir:

Enclosed for filing, please find an original and eight (8) copies each of a Motion for Extension of Time to File Initial Brief and a Proof of Service accompanied by a check in the amount of \$25.00 for the requisite filing fee. Please return a clocked copy of the motion and proof of service to our office in the enclosed self-addressed stamped envelope.

Your earnest considerations are requested.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/sw

Page 2

Re: *Gresham Communications of Walterboro, Inc., et. al. v.*
Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Case No.: 92-CP-15-508
Motion for Extension of Time To File Initial Brief

Enclosures

xc: W. Andy Gowder, Jr.

The South Carolina Court of Appeals

Nancy R. Beach,

Respondent

v.

Gresham Communications of
Walterboro, Inc., a/k/a Gresham
Communications, Inc., Gresham
Broadcasting, Inc., and Rudy H.
Gresham,

Appellants.

Harris L. Beach, Jr.
Colleton County
Trial Court Case No. 1992-CP-15-00508

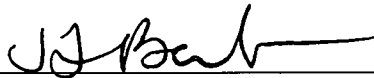
ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until March 2, 2009.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For the Court

BY



CLERK

Columbia, South Carolina

02-05-09

cc: Jackson Seth Whipper, Esquire
W. Andrew Gowder, Jr., Esquire



PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.WISELAW.COM

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

I. KEITH McCARTY (SC, TN)

LINDSAY K. SMITH-YANCEY (SC, NC)

CLAYTON B. McCULLOUGH

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

FRANCIS M. ERVIN II (SC, MA)

DANIEL S. McQUEENEY, JR.

JAMIE A. KHAN

January 22, 2009

William H. Waring, III, Esq.
Richter Law Firm
P.O. Drawer 1089
Mt. Pleasant, SC 29465-1089

RECEIVED

JAN 29 2009

SC Court of Appeals

RE: Beach v. Gresham Communications, et al.
Our File No. 0946-001

Dear Will:

I received your letter of January 20 and have enclosed the executed Consent to Extension. Our thoughts and prayers continue to be with Seth and his family. I will certainly work with him in any way that I can to assist with this matter during this time.

Sincerely,

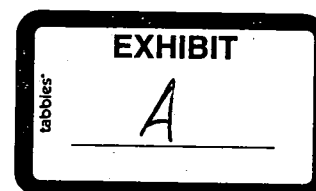
PRATT-THOMAS WALKER, P.A.

W. Andrew Gowder, Jr.

WAG:.

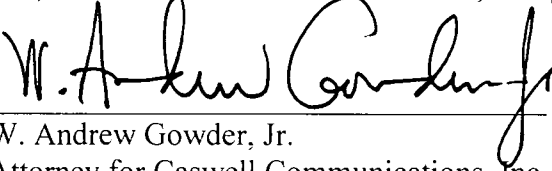
Enclosure as stated

c: J. Seth Whipper, Esq.

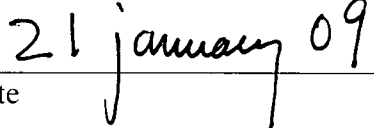


Case No.: 1992-CP-15-508

I hereby consent on behalf of my client, Caswell Communications, Inc., to the extension of the deadline for Appellants' counsel to file their initial brief in the matter of Gresham Communications, Inc., et al v. Caswell Communications, Inc. [1992-CP-15-508] to March 2, 2009.



W. Andrew Gowder, Jr.
Attorney for Caswell Communications, Inc.



Date

JAN 23 2009.

RECEIVED

JAN 29 2009

SC Court of Appeals

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law

622 Johnnie Dodds Boulevard

Post Office Drawer 1089

Mount Pleasant, South Carolina 29465

Lawrence E. Richter, Jr.
William Bee Ravenel Lewis
Alice Anne Richter Lehrman
William H. Waring, III
Aaron E. Edwards

Telephone: (843) 849-6000
Telefax: (843) 881-1400

January 28, 2009

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

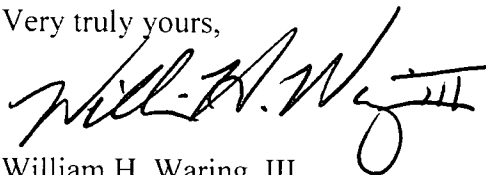
In Re: Gresham Communications of Walterboro, Inc., et al. v. Caswell Communications, Inc.
Trial Case No.: 92-CP-15-508

Dear Mr. Richstad:

Enclosed please find the original and seven (7) copies of the Attachment to Appellants' Motion for Extension of Time to File Initial Brief that was submitted for filing earlier this week. This Attachment was inadvertently left out of the prior mailing. Please file this Attachment with the Motion for Extension of Time to File Initial Brief and return a clocked copy of the Attachment to our office in the enclosed self-addressed stamped envelope.

I sincerely apologize for any inconvenience this may cause. Thanking you for your assistance, I am

Very truly yours,



William H. Waring, III

Enclosures as stated

cc: W. Andrew Gowder, Jr., Esq.
J. Seth Whipper, Esq.

RECEIVED

JAN 27 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris L. Beach, Jr., Special Referee

Case No. 1992-CP-15-508

Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.,
Gresham Broadcasting, Inc., and Rudi H. Gresham.....
Appellants.

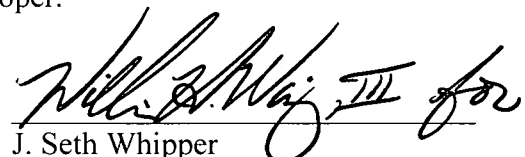
v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Respondent.

MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF

The Appellants move for an Order extending the time to file their Initial Brief in this matter for a period of thirty (30) days. If the Court grants the extension the brief will be due on or before March 2, 2009. Counsel for the Appellants has conferred with counsel for the Respondent and is informed that the Respondent consents to the extension. (See attached letter from Respondent's counsel).

WHEREFORE the Appellants pray for the relief requested herein and for such other relief as the Court deems just, prudent, and proper.


J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)

157
1-30-09
3-2-09

Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413

RECEIVED

JAN 27 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris L. Beach, Jr., Special Referee

Case No. 1992-CP-15-508

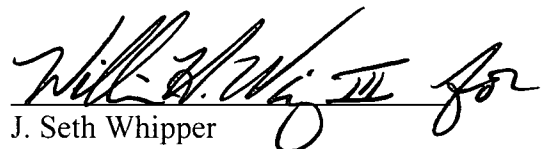
Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.,
Gresham Broadcasting, Inc., and Rudi H. Gresham.....
Appellants.

v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach
Respondent.

PROOF OF SERVICE

I certify that I have served the **Motion for Extension of Time to File Initial Brief** on the Respondent, by via first class U.S. mail, addressed to counsel of record as set forth below.



J. Seth Whipper
WHIPPER LAW FIRM
4592 Durant Avenue (29405)
Post Office Box 70070
N. Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

January 26, 2009
Mount Pleasant, South Carolina

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
P.O. Drawer 22247
Charleston, South Carolina 29413

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
Post Office Drawer 1089
Mount Pleasant, South Carolina 29465

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JAN 27 2009

SC Court of Appeals
2194 \$25

Lawrence E. Richter, Jr.
William Bee Ravenel Lewis
Alice Anne Richter Lehrman
William H. Waring, III
Aaron E. Edwards

Telephone: (843) 849-6000
Telefax: (843) 881-1400

January 26, 2009

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

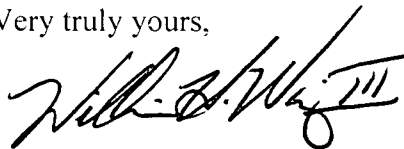
In Re: Gresham Communications of Walterboro, Inc., et al. v. Caswell Communications, Inc.
Trial Case No.: 92-CP-15-508

Dear Mr. Richstad:

Enclosed for filing, please find a an original and seven (7) copies each of a Motion for Extension of Time to File Initial Brief and a Proof of Service accompanied by our firm's check in the amount of \$25.00 for the requisite filing fee. Please return a clocked copy of the motion and proof of service to our office in the enclosed self-addressed stamped envelope.

Thanking you for your assistance, I am

Very truly yours,



William H. Waring, III

Enclosures as stated

cc: W. Andrew Gowder, Jr., Esq.
J. Seth Whipper, Esq.



The South Carolina Court of Appeals

JEANETTE F. BARBER
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

January 9, 2009

Jackson Seth Whipper, Esquire
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

Re: Beach, Nancy v. Gresham Communications Case No. 2009112326

Dear Mr. Whipper:

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 (but not on briefs, records, motions, and the like) relating to this matter.**

I wish to call the attention of the parties to the Supreme Court Order dated August 13, 2007 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,

A handwritten signature in black ink, appearing to read "Jeanette F. Barber", written over a horizontal line.

CLERK

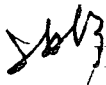
JFB/lb

cc: W. Andrew Gowder, Jr., Esquire

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,
Jeanette F. Barber
CLERK

 FB/lb

cc: W. Andrew Gowder, Jr., Esquire

MS-12/31/08
A-01/02/09

RECEIVED

JAN 05 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris L. Beach, Jr., Special Referee

Case No. 1992-CP-15-508

Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.,
Gresham Broadcasting, Inc., and Rudi H. Gresham..... Appellants.

MA

v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach Respondent.

NOTICE OF APPEAL

Appellants Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc., Gresham Broadcasting, Inc., and Rudi H. Gresham appeal the Orders of the Special Referee dated June 6, 2008 and December 3, 2008. Appellants received written notice of entry of these Orders on or about June 10, 2008 and December 4, 2008.

WHIPPER LAW FIRM

By: J. Seth Whipper by William H. Walker
J Seth Whipper
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

December 31, 2008
Mount Pleasant, South Carolina

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
Post Office Drawer 22247
Charleston, South Carolina 29413

RECEIVED

JAN 05 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris L. Beach, Jr., Special Referee

Case No. 1992-CP-15-508

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Gresham Broadcasting, Inc., and Rudi H. Gresham..... Appellants.

v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach Respondent.

PROOF OF SERVICE

I certify that I have served the **Notice of Appeal, Orders of June 6, 2008 and December 3, 2008**, on the Respondent, by courier hand-delivery, addressed to counsel of record as set forth below.

WHIPPER LAW FIRM

By: J. Seth Whipper
J. Seth Whipper
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

December 31, 2008
Mount Pleasant, South Carolina

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
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Charleston, South Carolina 29403

THE RICHTER FIRM, LLC

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Lawrence E. Richter, Jr.
William Bee Ravenel Lewis
Alice Anne Richter Lehrman
William H. Waring, III
Aaron E. Edwards

Telephone: (843) 849-6000
Telefax: (843) 881-1400

January 2, 2009

VIA U.S. MAIL

The Honorable Patricia C. Grant
Colleton County Clerk of Court
P.O. Box 620
Walterboro, SC 29488

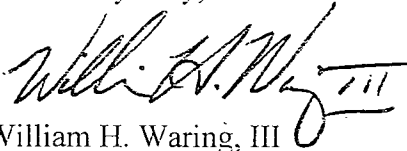
Re: Gresham Communications, et al. v. Caswell Communications, Inc.
Trial Case No. 92-CP-15-508

Dear Ms. Grant:

Please find enclosed for filing two (2) copies of a Notice of Appeal in connection with the above matter. After filing, the return of the extra filed stamped copy in the envelope provided will be greatly appreciated. The original has been forwarded to the South Carolina Court of Appeals of filing.

With kind regards, I remain

Yours very truly,


William H. Waring, III

Enclosures

cc: The Hon. Kenneth A. Richstad
J. Seth Whipper, Esq.
W. Andrew Gowder, Jr., Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris L. Beach, Jr., Special Referee

Case No. 1992-CP-15-508

Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc.,
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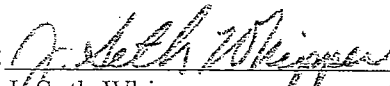
v.

Caswell Communications, Inc., as assignee of the judgment creditor
Nancy R. Beach Respondent.

NOTICE OF APPEAL

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WHIPPER LAW FIRM

By: 
J. Seth Whipper
4592 Durant Avenue (29405)
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North Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

December 31, 2008
Mount Pleasant, South Carolina

COUNSEL FOR THE RESPONDENT:

W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
Post Office Drawer 22247
Charleston, South Carolina 29413

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harris L. Beach, Jr., Special Referee

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NOTICE OF APPEAL

Appellants Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc., Gresham Broadcasting, Inc., and Rudi H. Gresham appeal the Orders of the Special Referee dated June 6, 2008 and December 3, 2008. Appellants received written notice of entry of these Orders on or about June 10, 2008 and December 4, 2008.

WHIPPER LAW FIRM

By: *J. Seth Whipper*
J. Seth Whipper
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
ATTORNEYS FOR APPELLANTS

December 31, 2008
Mount Pleasant, South Carolina

COUNSEL FOR THE RESPONDENT: W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER
Post Office Drawer 22247
Charleston, South Carolina 29413

RECEIVED

JAN 05 2009

SC Court of Appeals

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Alice Anne Richter Lehrman
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Aaron E. Edwards

Telephone: (843) 849-6000
Telefax: (843) 881-1400

January 2, 2009

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

In Re: Gresham Communications of Walterboro, Inc., et al. v. Caswell Communications, Inc.
Trial Case No.: 92-CP-15-508

Dear Mr. Richstad:

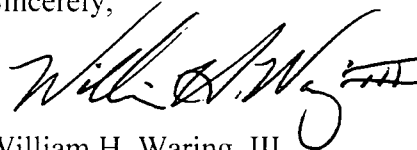
Enclosed for filing are the following:

1. Notice of Appeal;
2. Proof of service of the notice of appeal;
3. A copy of the orders which are to be challenged on appeal;
4. A filing fee of \$100.00.

Please return a clocked copy of the notice of appeal and proof of service to our office in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely,



William H. Waring, III

Enclosures as stated

cc: Counsel of Record

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
C.A. NO. 92-CP-15-508

NANCY R. BEACH,)

Plaintiff,)

- v-)

ORDER

GRESHAM COMMUNICATIONS OF)
WALTERBORO, INC., a/k/a)
GRESHAM COMMUNICATIONS, INC.,)
GRESHAM BROADCASTING, INC.,)
And RUDI R. GRESHAM)

Defendants.)

PATRICIA S. GRANT
CLERK OF COURT
COLLETON COUNTY
COMMON PLEAS
2008 JUN 10 PM 12:25

Introduction

In this supplemental proceeding, Defendant Gresham Communications, Inc. (Gresham) tendered \$106,268.78 to the Clerk of Court for Colleton County, purporting to exercise a privilege to "redeem" its assets sold in satisfaction of judgment pursuant to this Court's order filed on February 21, 2007. Caswell Communications, Inc. (Caswell), the party that purchased Gresham's assets, objected to the tender on several grounds, petitioned this Court for a rule to show cause why Gresham and its principal, William Saunders, should not be held in contempt for their continued violations of prior Court orders, and requested the Court issue an order instructing the Clerk to release the \$106,268.78 to satisfy prior contempt orders.

Initially, I interpret this Court's order of February 21, 2007 to convey to Gresham a privilege to tender the payment of the underlying judgment, including attorneys' fees, costs, and interest incident thereto, conditioned upon Gresham's compliance with other provisions in the order. Gresham failed to comply with these conditions, and, accordingly, failed to properly exercise this

privilege. Second, I interpret my orders subsequent to the February 21, 2007 order as revocations of this privilege, pursuant to my reservation of jurisdiction in that order. Third, and as an alternative to the foregoing, I find the doctrine of unclean hands precludes Gresham's exercise of this privilege, to the extent it survived. Fourth, as an additional sustaining ground, I recognize my order of March 26, 2007 transferred all rights, privileges, and assets of Gresham to a receiver. To the extent the privilege survived this order, it belongs exclusively to the Receiver.

Furthermore, I find Gresham and its principal, William Saunders, willfully disobeyed this Court's orders of February 21, 2007; March 26, 2007; April 25, 2007; and November 27, 2007 as further provided herein. As a consequence, I hold that Gresham and Saunders remain in contempt of these orders, as detailed in my prior order of November 27, 2007.

Finally, Gresham and Saunders have tendered \$106,268.78 in monies on behalf of Gresham. These monies are assets of Gresham and shall be used to satisfy the foregoing contempt sanctions. Accordingly, I order the Clerk of Court for Colleton County to issue a check for \$106,268.78 plus accrued interest payable to the Receiver to be distributed by him in accordance with this order. The Clerk shall issue this check within three (3) days hereof or as soon thereafter as possible, and the foregoing shall not be stayed upon the filing of a motion to reconsider by any party.

Factual and Procedural Background

On June 2, 1998, Nancy R. Beach obtained a judgment on a promissory note against, inter alios, Gresham Communications, Inc. (June 2, 1998 Judgment). The judgment was for \$56,276.10 and interest ran at a simple interest rate of 8% per annum. (June 2, 1998 Judgment). The judgment also included attorneys' fees and costs of \$5,627.00, which carry interest at the legal and simple interest rate of 14% per annum. (June 2, 1998 Judgment).

12/12/02

On August 24, 2006, Plaintiff, as the assignee of the judgment creditor, petitioned the court for supplemental proceedings to collect on the judgment. (Pet. for Suppl. Hr'g). The Special Referee held a supplemental hearing on September 20, 2006, at which Gresham's principal, William Saunders, testified Gresham's only asset was its FCC license. (Hr'g Tr. pp.28:20-29:1). Based on this testimony, the Special Referee issued an order finding proceeds from the FCC license subject to attachment and directing the license be sold and the proceeds be paid to Plaintiff in satisfaction of the judgment. (Sept. 22, 2006 Order). The Special Referee entered a notice of sale of the license on October 24, 2006. (Oct. 24, 2006 Notice of Sale). However, Gresham appealed the order of attachment, and, on November 20, 2006, filed a motion to stay the sale. (Notice of Appeal; Mot. to Stay). The Court of Appeals ultimately dismissed and remitted the appeal. (Remittitur).

On February 21, 2007, the Special Referee denied Gresham's motion to stay as moot and ordered the judicial sale to go forward. (Feb. 21, 2007 Order). Upon sale, the successful bidder was required to apply for FCC approval of the transfer of the license. (Feb. 21, 2007 Order). Further, the Special Referee granted Gresham the option to satisfy "the full amount of the underlying judgment . . . together with all interest, fees and costs due under the judgment before the FCC grant of assignment of License" (Feb. 21, 2007 Order p.2). This order additionally required Gresham to "fully and timely cooperate with the preparation and filing of the application for FCC approval of the assignment of the license to the successful bidder." (Feb. 21, 2007 Order p.3). This requirement was supported by the Special Referee's contempt power and the condition that a receiver would be appointed if Gresham failed to comply within five (5) days of the order. (Feb. 21, 2007 Order p.3). Gresham did not appeal this order.

HLP
#3

In March 2007, Caswell Communications, Inc., the successful bidder at the sale of the license, began the costly process of seeking FCC approval. Gresham failed to cooperate in the license transfer and, in fact, filed objections to the FCC application. (May 11, 2007 Declaration). As a result, Caswell was forced to retain FCC counsel to facilitate the transfer. In addition, on March 26, 2007, the Special Referee filed an order recognizing Gresham's lack of cooperation in the FCC application. (March 26, 2007 Order). As a result, the Special Referee appointed Charles Cherry, II as receiver to facilitate the transfer of the FCC license to Caswell. (March 26, 2007 Order). At this time, the Special Referee believed Gresham's only asset to be the FCC license, based on Saunders's sworn September 20, 2006 testimony. (Hr'g Tr. pp.28:20-29:1).

In his March 26, 2007 order, the Special Referee directed the Receiver to apply immediately to the FCC for transfer of the FCC license to himself. (March 26, 2007 Order §1). Upon completion of this initial transfer, the Special Referee required the Receiver to "immediately take possession of all of Gresham's business and property. . . ." (March 26, 2007 Order §2). "After taking possession of Gresham's business and property, the Receiver shall operate and manage Gresham's business and property, as he deems appropriate, with all the powers necessary to do so . . ." (March 26, 2006 Order §3). The Special Referee also required the Receiver to obtain the FCC's approval of the transfer of the license and any other appurtenant property to Caswell. (March 3, 2006 Order ¶4). This order does not provide any option for Gresham to pay the underlying judgment or contemplate any remaining interest of Gresham in the license or other assets.

On April 3, 2007, the FCC consented to the transfer of the license from Gresham to the Receiver. (FCC License Approval). On April 25, 2007, upon Gresham's continued failure to cooperate in the ultimate transfer to Caswell, the Special Referee issued an order reiterating Gresham's duty to cooperate and threatening sanctions upon Gresham's refusal. (April 25, 2007

Order). Despite this order, Gresham continued to oppose the transfer before the FCC. In furtherance of this opposition, Saunders submitted a sworn declaration, under penalty of perjury, that Gresham continued to control property other than the FCC license, which he had previously testified was Gresham's sole asset. (May 11, 2007 Declaration). Based on the foregoing, the Special Referee issued a Rule to Show Cause and, on November 27, 2007, held Gresham and Saunders in willful contempt for failure to give sworn, truthful testimony in the supplemental proceeding. (Nov. 27, 2007 Order). This order confirmed that all of Gresham's assets were sold at the preceding judicial sale. (Nov. 27, 2007 Order).

Further, the Special Referee ordered Saunders and Gresham to "turn over, immediately, any and all assets in Saunders or Gresham's possession to the receiver appointed by this court, Mr. Charles Cherry, II, for his disposition according to his appointment and this court's order related to the judicial sale." (Nov. 27, 2007 Order p.8). Saunders and Gresham were ordered to turn over these assets within three days of the order. (Nov. 27, 2007 Order p.9). They did not turn over these assets within three days of the order.

In addition, Saunders and Gresham were ordered to pay all of Caswell's costs and attorneys' fees incurred since the date of contempt on September 20, 2006, as well as the Receiver's fees and costs since his appointment. (Nov. 27, 2007 Order p.10). Moreover, Gresham and Saunders were "enjoined from taking any further action to oppose, delay and frustrate, in any way, the license application process to the extent it is based on the false testimony of Saunders." (Nov. 27, 2007 Order pp.10-11). The Court of Appeals dismissed and remitted Gresham's appeal of this order. (Remittitur).

4/28/08

On April 7, 2008, Gresham deposited \$106,268.78 with the Clerk of Court of Colleton County. (Not. of Redemption). Further, Gresham filed a notice with the FCC, requesting the

assignment application be dismissed. (FCC Pet.). The FCC stayed the application pending a decision on the tender issue. Caswell filed an opposition to the notice of redemption, and a hearing ensued on May 16, 2008. (Opp. to Tender). At the hearing, Gresham admitted liability for attorneys' fees and costs awarded by the Special Referee's November 27, 2007 as a necessary precondition to tender. Accordingly, I find Gresham conceded its tender was insufficient.

Law/Analysis

I. Gresham failed to comply with preconditions to its privilege to tender in the February 21, 2007 order

Gresham contends this Court's order of February 21, 2007 provided an unconditional right to tender payment of the underlying judgment, as well as attorneys' fees and costs incident thereto, until the FCC license was transferred to the successful bidder at the judicial sale. Gresham additionally asserts this Court's subsequent orders did not expressly repeal this right, and, therefore, the right survived these orders. On the other hand, Caswell argues the February 21, 2007 order should be read as a whole and in connection with the underlying proceeding to require Gresham's compliance with its remaining terms as a precondition to the exercise of the tender of payment of the judgment. Caswell also emphasizes that this Court's subsequent orders are inconsistent with the continuation of the privilege and, accordingly, implicitly repeal the privilege. I interpret the February 21, 2007 order to provide Gresham with a privilege to tender payment of the underlying judgment in the event it fully cooperates in the FCC license transfer process. I also construe my subsequent orders as a revocation of this privilege.¹

11/23/06

¹ While Gresham argues the law of the case doctrine prohibits a court order inconsistent with the February 21, 2007 right to tender, I note my ruling involves an *interpretation* of the February 21, 2007 and not an amendment, modification or vacation of the order.

“As a general rule, judgments are to be construed like other written instruments.” Petition of White, 299 S.C. 406, 412, 385 S.E.2d 211, 215 (Ct. App. 1989). “In construing a judgment, the determinative factor is the intent of the judge who wrote it, as gathered not from an isolated part of the judgment, but from all parts thereof.” O’Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 29, 459 S.E.2d 324, 327 (Ct. App. 1995). “The judgment must be read in its entirety, and it must be construed as a whole so as to bring all of its parts into harmony as far as this can be done by fair and reasonable interpretation and so as to give effect to every word and part, if possible, and to effectuate the obvious intention and purpose of the court, consistent with the provisions of the organic law.” 50 C.J.S. Judgments §534 (Supp. 2008). “A judgment must be construed in light of the situation of the court, what was before it, and the accompanying circumstance at the time of its rendition or entry.” Id. As a matter of law, a court may interpret its own orders. See Henderson v. Puckett, 316 S.C. 171, 174, 447 S.E.2d 871, 873 (Ct. App. 1994) (“Here the judge properly ruled as a matter of law the family court could interpret its own orders.”); see also Auer v. Scott, 494 N.W.2d 54, 58 (Minn. Ct. App. 1992) (“Generally, a trial court’s construction of its own decree is accorded great weight on appeal.”).

As an initial matter, I note the organic law provides no right to “redeem” assets after an execution sale. See 33 C.J.S. Executions §265 (“The right of redemption is a substantive right; and there is no right of redemption following execution sales in general.”); 30 Am.Jur.2d Executions §359 (“In general, there is no right of redemption following execution sales.”). Further, Gresham concedes that South Carolina does not statutorily provide a right of redemption in a supplemental proceeding. (Def.’ Return in Support of Tender p.3). Thus, I interpret the February 21, 2007 order in light of this rule of law.

This Court originally ordered a judicial sale of the FCC license by order dated September 22, 2006 based on Saunders's sworn testimony that the license was the sole asset of Gresham. (Sept. 22, 2006 Order ¶4). This order provides no mention of a right or privilege to tender payment of the judgment and effectively negate the judicial sale. (Sept. 22, 2006 Order). The order was appealed, and the appeal dismissed. (Remittitur). In February 2007, the parties appeared before me once more for a ruling on Gresham's motion to stay the sale of the license. (Feb. 21, 2007 Order p.1). Because the appeal of the September 22, 2006 order was dismissed, I recognized the stay issue was moot. (Feb. 21, 2007 Order). Thus, the September 22, 2006 order essentially became a final judgment as to Gresham. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 175-76, 525 S.E.2d 869, 872 (2000) (recognizing an unappealed ruling becomes the law of the case upon remand or remittitur).

Caswell also requested the appointment of a receiver to facilitate the transfer of the FCC license. (Feb. 21, 2007 Order). In ruling on this motion, I ordered Gresham to "fully and timely cooperate with the preparation and filing of the application for FCC approval of the assignment of the license to the successful bidder." (Feb. 21 2007 Order p.3). I also explained that, should Gresham fail or refuse to cooperate in the assignment of the license to the successful bidder, I would revisit Caswell's request for the appointment of a receiver. (Feb. 21, 2007 Order p.3). In addition, I retained jurisdiction "to enter such further orders as are just under the circumstance."

 The February 21, 2007 order prescribing Gresham the option to tender payment of the underlying judgment provides, in pertinent part:

The sale will be final upon the FCC consent to the assignment. If the judgment debtor satisfies the full amount of the underlying judgment in this matter, together with all interest, fees and costs due under the judgment before the FCC grant of assignment of License, then the FCC assignment application will be withdrawn.

(Feb. 21, 2007 Order p.2, §2). The plain language of this single provision does not exhibit intent for the privilege to be unconditional or irrevocable, and the provision is tempered by the other terms in the order, such as the one requiring Gresham to cooperate in the transfer of the license. Moreover, the language in the order cited above, that the Court retains jurisdiction to enter further orders, militates against Gresham's interpretation that the privilege is unconditional or irrevocable.

Gresham and Saunders failed to comply with the order, and, pursuant to my reservation of jurisdiction in that order, I appointed a receiver to facilitate the license transfer on March 26, 2007. (March 26, 2007 Order). Unlike the language in the February 21, 2007 order, the language in the March 26, 2007 order is unconditional. The order unconditionally requires the appointed receiver "to complete the application necessary to obtain FCC approval of the transfer." (March 26, 2007 Order p.1). Moreover, the order requires the receiver to take possession of all of Gresham's property and assets, which effectively destroyed the ability of Gresham to exercise a tender. (March 26, 2007 Order ¶2). I also directed Gresham, as well as its officers and agents, to cooperate with the transfer of the FCC license and enjoined them from "interfering in any way with said assignment." This order plainly revoked any purported privilege Gresham still retained in the license, and I so hold.

II. To the extent the privilege to satisfy the judgment survives the March 26, 2007 order, the doctrine of unclean hands prevents Gresham's exercise of this privilege

As an alternative sustaining ground, I find the doctrine of unclean hands prevents Gresham or Saunders from exercising any privilege to tender the judgment in lieu of transfer, to the extent the privilege survived my March 26, 2007 order.

"The review of a judicial sale is equitable in nature and within the discretion of the trial court." Eastern Savings Bank, FSB v. Sanders, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (Ct. App.

2007); see also Johnson v. Arbabi, 355 S.C. 64, 72, 584 S.E.2d 113, 117 (2003) (applying equitable concepts to an attempt to redeem after a judicial sale). “[I]f a party has unclean hands, the party is precluded from recovering in equity.” Anderson v. Buonforte, 365 S.C. 482, 493, 617 S.E.2d 750, 756 (Ct. App. 2005). “The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” First Un. Nat. Bank v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998).

Here, Gresham and Saunders have sought, from the beginning of this supplementary proceeding, to delay the judicial sale and FCC transfer of the license and other assets of Gresham. The earliest evidence of such actions is Saunders’s perjured testimony at the supplemental hearing on September 20, 2006. (Hr’g Tr. pp.28:20-29:1). Since that time, Caswell and the Receiver have expended sums in excess of \$200,000.00 on attorneys’ fees and costs associated with prosecuting this action and continuing the operation of the radio station. Moreover, after expending significant resources on the radio station, Caswell has found a willing buyer, with whom it has contracted to assign its rights in the station upon the transfer of the FCC license. Under these circumstances, Caswell would suffer overwhelming prejudice and gross injustice if Gresham and Saunders were able to reap the benefits of Caswell’s hard work, effort, money, and time. Consequently, I find Saunders and Gresham should be barred by the doctrine of unclean hands from exercising any option to pay the judgment in lieu of transfer of the license. See Ingram v. Kasey’s Assocs., 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 291-92 n.2 (2000) (applying the doctrines of unclean hands and estoppel to bar equitable relief to party attempting to exercise option).

III. In the event the privilege to “redeem” the license survived the March 26, 2007 order, the Receiver is the only person or entity able to exercise this privilege

Section 15-39-430 of the South Carolina Code (Supp. 2008) provides a judge the discretion to appoint a receiver of property of the judgment debtor in a supplemental proceeding. See also S.C. Code Ann. § 15-65-10(2) and (3) (recognizing the court's authority to appoint a receiver after judgment). The appointment of a receiver may be made even if the judgment debtor has sufficient property to pay the judgment, and, when the receiver is appointed, he should be the receiver of all of the debtor's property. Dilling Baker & Co. v. Foster, 21 S.C. 334 (1884). "Under statutes providing for the appointment of a receiver in proceedings supplementary to execution, the general rule is that such receiver is not the mere agent or representative of the debtor, but occupies the relation of a trustee for the creditors, and may institute actions in his own name to set aside fraudulent conveyances made by the debtor with a view to defeating his creditors." Gardner v. Kirven, 173 S.C. 302, ___, 175 S.E. 637, 639 (1934) (emphasis added). "The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution and any interference therewith." S.C. Code Ann. § 15-39-440 (Supp. 2008).

On March 26, 2007, the Special Referee appointed the Receiver to take possession of all of Gresham's business and assets upon the FCC's transfer of Gresham's license to the Receiver. (March 26, 2007 order). The FCC transferred this license to the Receiver on April 3, 2007. (License Transfer Approval). On November 27, 2007, the Special Referee reconfirmed the Receiver's authority to take possession of all of Gresham's assets and ordered Gresham, Saunders, and all of their agents to cooperate in this transfer. (Nov. 27, 2007 Order). Accordingly, the Receiver is the only entity with standing to tender or otherwise dispose of any assets held by Gresham, and, to the extent any other person or entity purports to tender property belonging to Gresham, such tender is void and of no effect.

IV. Gresham and Saunders willfully disobeyed this Court's prior orders and are ordered to pay restitution to Caswell

"If any person, party or witness disobeys an order of the judge or master, duly served, such person, party or witness may be punished by the judge or master as for a contempt." S.C. Code Ann. §15-39-490 (Supp. 2008).

This Court's orders of February 21, 2007; March 26, 2007; and April 25, 2007 compel Gresham and its officers to fully and timely cooperate in the ultimate transfer of Gresham's FCC license to Caswell. (Feb. 21, 2007 Order p.3; March 26, 2007 Order p.3; April 25, 2007 Order ¶3). This Court's orders of March 26, 2007 and November 27, 2007 compel Gresham and its officer to deliver all of Gresham's assets and property to the Receiver. (March 26, 2007 Order p.4; Nov. 27, 2007 Order pp.8-9). This Court's orders of February 21, 2007; March 26, 2007; and November 27, 2007 enjoin Gresham and its officers from interfering with the Receiver or the FCC license transfer application. (Feb. 21, 2007 Order p.3; March 26, 2007 order p.3; Nov. 27, 2007 Order pp.10-11). Finally, this Court's order of November 27, 2007 specifically required Gresham and Saunders to communicate to the Receiver a location where the Receiver may pick up all of Gresham's assets within three (3) days of the order (pp.8-9); pay Caswell all attorneys' fees and costs incurred from September 20, 2006 to November 27, 2007 (p.10); pay all of the Receiver's fees and costs incurred since his appointment (p.10); and provide the Court, within three days of the order, all relevant information related to Saunders' and Gresham's real estate holdings (p.11).

I find Gresham and Saunders willfully disobeyed the foregoing mandates by the following actions:

1. Gresham and Saunders failed to fully and timely cooperate in the transfer of the FCC license by filing numerous pleadings and motions with the FCC delaying the transfer of the

license to Caswell, including the most recent filing, which was made with admittedly insufficient tender;

2. Gresham and Saunders failed to fully and timely cooperate in the transfer of the FCC license by refusing to execute documents sufficient to convey the license;

3. Gresham and Saunders failed to deliver all of Gresham's assets and property to the Receiver, including a radio sounding board, which the Receiver has explained Saunders wrongfully withheld, as well as other radio station equipment, which Saunders failed to timely deliver to the Receiver pursuant to the orders;

4. Gresham and Saunders failed to deliver at least \$106,268.78 of Gresham's assets to the Receiver until April 7, 2008, and Gresham and Saunders failed to adequately explain where or from whom this money derived at the hearing on this motion;

5. Gresham and Saunders violated this Court's injunction prohibiting them from interfering with the license transfer by continuing to submit several pleadings and motions to the FCC and delaying the FCC application process;

6. Saunders physically threatened and intimidated the Receiver, as described by the Receiver at the hearing on this motion, in an attempt to delay the FCC license transfer and inhibit the Receiver from collecting all of Gresham's property and assets;

7. Gresham and Saunders failed to communicate to the Receiver a location where the Receiver could pick up Gresham's remaining property and assets within three (3) days of this Court's November 27, 2007 order;

8. Gresham and Saunders failed to pay to Caswell all of its attorneys' fees and costs incurred from September 20, 2006 to November 27, 2007 upon receipt of the schedule of these fees despite their ability to pay at least \$106,268.78 of these fees and costs;

9. Gresham and Saunders failed to pay to the Receiver all of his fees and costs incurred since his appointment on March 26, 2007 despite their ability to pay at least \$106,268.78 of these fees and costs;

10. Gresham and Saunders failed to provide the Court, within three days of the November 27, 2007 order, all relevant information related to Saunders' and Gresham's real estate holdings.

Based on the foregoing and as a direct result of their contempt of this Court, Gresham and Saunders are hereby ordered to pay Caswell's attorneys' fees and costs incurred in this action from November 27, 2007 to the date of entry of this order; Caswell's attorneys' fees and costs incurred in the related FCC proceeding from September 20, 2006 to the date of entry of this order; the Receiver's fees and costs from November 27, 2007 to the present; and the costs of operating the radio station from March 26, 2007 to the present. Gresham and Saunders shall be jointly and severally liable on this judgment, and shall pay this judgment within five (5) days of receipt of a written schedule of these items from Caswell, the Receiver, or any of them. Failure to do so will result in further proceedings of the Court to enforce this penalty for contempt.

V. The Clerk of Court shall transfer the monies deposited to the Receiver to dispose of pursuant to this order.

I find the \$106,268.78 deposited with the Clerk of Court, plus any accrued interest, to be the property of Gresham exclusively. Alternatively, I find the money has been tendered on behalf of Gresham and Saunders and, as monies properly belonging to Gresham and Saunders, should be delivered to the Receiver in satisfaction of the contempt sanctions provided for within this order. Upon his receipt of these monies, the Receiver shall dispose of them first, to reimburse his own expenses from his appointment to the date of entry of this Order; second, to satisfy or partially

satisfy Caswell's attorneys' fees and costs pursuant to the November 27, 2007 order; third, to the extent funds remain, to satisfy or partially satisfy Caswell's attorneys' fees and costs pursuant to the present order; and fourth, to the extent any funds remain, to satisfy or partially satisfy the costs of operating the radio station from March 26, 2007 to the present.

I reiterate my prior directives that Gresham and Saunders fully cooperate with the transfer of the FCC license and prohibit any filings by Gresham, Saunders, or any person on their behalf, interfering with the current application. Gresham and Saunders must deliver any and all of Gresham's property or assets to the Receiver or the Court within five (5) days of the entry of this order. Gresham and Saunders must deliver a schedule of their collective and separate property and assets to the Receiver or this Court within five (5) days of the entry of this order to facilitate the satisfaction of the judgments against them.

The Court retains jurisdiction to enter such further orders as are just under the circumstance.

IT IS SO ORDERED.


Harris L. Beach, Jr.
Special Referee

Walterboro, South Carolina

This 6th day of June, 2008

HLB
#16

THE STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

COURT OF COMMON PLEAS
CASE NO.: 92-CP-15-508

NANCY R. BEACH,)
PLAINTIFF,)

ORDER OF RECONSIDERATION

VS.)

GRESHAM COMMUNICATIONS OF)
WALTERBORO, INC., a/k/a)
GRESHAM COMMUNICATIONS, INC.,)
GRESHAM BROADCASTING, INC.,)
and RUDI H. GRESHAM,)
DEFENDANTS.)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2008 DEC -3 PM 4:23

THIS MATTER COMES BEFORE ME pursuant to the Defendants' motion to reconsider my Order dated June 6, 2008, with regard to an attempted satisfaction of this judgment in this case and the distribution of certain funds deposited with the Clerk of Court.

A hearing was held before me at the Colleton County Courthouse on June 23, 2008. Present at that hearing were W. Andrew Gowder, Jr., Esquire, and Chip McQueeney, Esquire, representing the Plaintiff and William H. Waring, III, Esquire, and J. Seth Whipper, Esquire, representing the Defendants. The evidence was submitted, arguments made and a transcript prepared and submitted to the Court by a licensed court reporter.

I. ISSUES:

Should the Order of June 6, 2008, being reconsidered hereunder be modified in any way.

II. DISCUSSION:

I have reviewed the earlier Order of the Court as well as the Defendants' Motion for Reconsideration, the transcript of the hearing on reconsideration which I have just recently received, the briefs of all of the parties and the authorities cited hereunder as well as the report of the receiver which I have just received. I held off any decision until the report of

the receiver was received at the request of Mr. Whipper as set forth in the transcript.

It appears from the record that I became involved as Special Referee for the purposes of a supplemental proceeding in 2006. A hearing was held which resulted in the finding that Gresham Communication, Inc., the Defendant, had no assets other than the FCC license. It was determined that the license was an asset of the corporation and could be sold at a judicial sale. A sale was held and the license was sold to Caswell, Inc., which bid the amount of the judgment due and owing at that time. Some months later the Defendants' submitted to the Clerk of Court for Colleton County, South Carolina, funds in the amount of One Hundred Eight Thousand Dollars (\$08,000.00) in order to "settle" the judgment and retrieve the license that had been judicially sold. The plaintiff declined to settle on these terms and the action came forward for a hearing and resulted in the order being reconsidered here.

The Defendants' argued that they should have a right to be allowed to satisfy the judgment and retrieve the asset by virtue of the tendering of the One Hundred Eight Thousand Dollars (\$108,000.00). They argue that the One Hundred Eight Thousand Dollars (\$108,000.00) being the amount of the original judgment at the time of the judicial sale, should be the amount acceptable as payment. I find that argument is incorrect in this case. The figure set forth is the figure due at a certain point in time and is merely a snapshot of the amount due on that date. Since then there has accrued substantial interest and costs and fees for receivers which need to be added to any amount to satisfy the judgment.

However, that entire situation in question is now moot because of the fact as pointed out by the Defendants' that the ten year limitation on judgments has expired and the judgment is now null and void. It would now be improper to proceed against any other collateral of the judgment debtor not already executed against. As was set forth in Wells, Special Receiver vs. Sutton, 299 SC.19, 382 SE 2nd 14 (1989) judgments in South Carolina expire at the end of ten years from the date of their filing and any execution must be issued within the ten years in order to be valid. In this case only one asset was levied upon and identified as part of the execution process. That asset was the FCC license for a radio station. No other properties were identified or if identified were levied upon prior to the expiration of the ten year period. It would appear therefore, that there is no more judgment to be satisfied.

The tender of the monies by the Defendants' to the Clerk of Court did not equal the true amount due for interest and fees under the judgment as was obvious to both the

Defendants and the Plaintiff and was therefore an offer to settle the dispute between the parties. When the Plaintiff declined to accept the amount tendered there was no agreement and the Defendants should be able to recover their funds. Also, it appears from the testimony or at least from the arguments of counsel that the funds presented were not assets of the debtors estate but were posted by a third party or law firm on behalf of the judgment debtor. As such, I cannot find that they are an identified asset of the estate subject to execution even if such issues were not moot at this time.

The only asset that was identified and levied upon was the FCC license. It was sold pursuant to statute and pursuant to the Rules of Civil Procedure at a judicial sale in order to satisfy the judgment. Although the judgment has now expired, the fact that it was "sold" is not affected. The asset was sold pursuant to the rules and statutes and was purchased by bid of Caswell, Inc., at the proper judicial sale. The issue of Federal Communication Commission approval is a formality and a collateral matter and should not affect the fact that the property was actually sold.

It would appear at this point in time that the judgment has expired and that there can be no further attempts to identify assets in order to satisfy that judgment. The only asset levied upon remains the FCC license which now as far as the execution process is concerned belongs to Caswell, Inc. The parties can negotiate and resell the license but there is no right to repurchase.

With regard to the value of the license, it has been submitted to the court that people have offered to purchase the license for sums ranging from 1.5 to 2 million dollars. We do not have a new figure and it is unclear what affect this present economic downturn would have. Nonetheless, it appears that the value of the asset is in excess of the judgment therefore any additional costs or expenses can be absorbed in the increased valuation.

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I have concluded as a matter of law that this court has in rem jurisdiction to reconsider its own order and has done so as a result of the Defendants' motion. Based upon the preceding Findings of Fact, Issues and Discussion; it is,

ORDERED, that the ten year limitation on judgments has expired and the judgment in this action is now null and void; and it is,

FURTHERED ORDERED that the Plaintiff may not pursue any other asset of the corporation not already identified and liquidated by judicial sale; and it is,

FURTHER ORDERED that the only such item liquidated by judicial sale is the Federal Communication Commissions license for operation of a radio station; and it is,

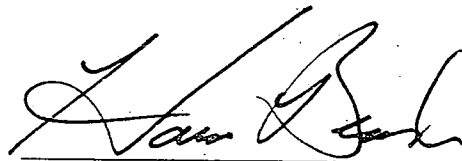
FURTHER ORDERED that the license was sold in the usual course of judicial sale and purchased by Caswell, Inc., for valuable consideration; and it is,

FURTHER ORDERED that the tender by the Defendants' to the Plaintiff by depositing monies with the Clerk of Court is now null and void having been rejected by the Plaintiff as being insufficient; and it is,

FURTHER ORDERED that the funds tendered to the Clerk of Court are to be returned by the Clerk to the third party owner of the funds or to the party so tendering those funds after thirty (30) days of the date of this Order; and it is,

FURTHER ORDERED that any finding or Order not inconsistent herein are affirmed as the findings and order of the court as part of its Order of June 6, 2008.

AND IT IS SO ORDERED.



Harris L. Beach, Jr.
Special Referee

Walterboro, South Carolina
December 3 2008

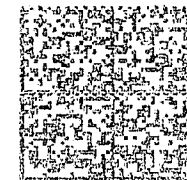


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The Honorable Kenneth A. Richstad
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