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civil-misc

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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.

RECORD ON APPEAL

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

W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Pratt-Thomàs Walker
16 Charlotte Street
Charleston, SC 29403
843/ 727-2229
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

NANCY R. BEACH,
Plaintiff,

versus

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

Defendants.

O R D E R

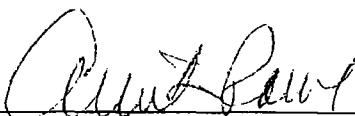
JW
This matter is a lawsuit involving the collection of a Note that was filed in Colleton County. The presiding judges of the Fourteenth Judicial Circuit have all recused themselves from this matter and an Order was signed on September 30, 1994, by the Honorable Jackson V. Gregory, Jr., one of the judges of the Fourteenth Judicial Circuit transferring the jurisdiction of this matter to me inasmuch as Judge Gregory and the Honorable Gerald C. Smoak, Sr. felt they could not hold hearings on any matters involved in this lawsuit. I held a hearing on the 6th day of October, 1994, upon motion of the attorneys for the Plaintiff, to place Defendants in default. Rudi H. Gresham appeared on his own behalf and in his capacity as an officer of the Defendant Corporation. After holding a hearing, I signed an Order of Default on the 6th day of October, 1994.

In order that all issues might be resolved and this matter be

brought to a conclusion, it is, upon motion of the attorneys for Plaintiff,

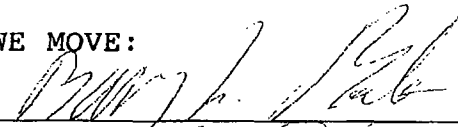
ORDERED, ADJUDGED AND DECREED that the within matter be referred to the Honorable Louis E. Condon, as Special Referee, with authority being vested in the Special Referee to determine all issues in controversy and to issue a Final Decree. Any appeal from the Special Referee shall be directly to the South Carolina Supreme Court.

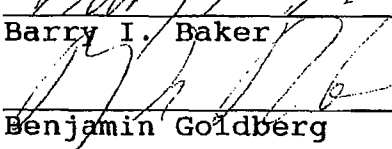
AND IT IS SO ORDERED.


A. VICTOR RAWL, ADMINISTRATIVE JUDGE
NINTH JUDICIAL CIRCUIT

1/19, 1996.

WE MOVE:


Barry I. Baker


Benjamin Goldberg

Attorneys for Plaintiff

92-508

93 FEB 20 AM 11:10

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

NANCY R. BEACH,

Plaintiff,

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

Defendants

IN THE COURT OF COMMON PLEAS

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

ORDER

2006 SEP 22 AM 10:44

CLERK OF COURT
COLLETON COUNTY
SOUTH CAROLINA

This matter came before me pursuant to an Order dated August 24, 2006 to conduct a supplemental proceeding, pursuant to S.C. Code Ann. §§ 15-39-310, *et seq.* Mr. William Saunders appeared on behalf of Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc. and Gresham Broadcasting, Inc.¹

Mr. William Saunders answered questions under oath on behalf of the two corporate defendants. Mr. W. Andrew Gowder, Jr., Pratt-Thomas, Epting & Walker, P.A., appeared on behalf of the successor-in-interest to the judgment creditor, Caswell Capital Partners, LLC.

On reviewing the pleadings filed, hearing the testimony of Mr. Saunders and viewing the Petition of the judgment creditor, I find as follows:

1. The parties are properly before the Court, for supplemental proceedings to aid in the satisfaction of this judgment, which is unpaid, pursuant to S.C. Code Ann. § 15-39-310, *et seq.*

2. The judgment debtors were properly served and received proper notice of

¹ The court was informed prior to the Hearing that Mr. Rudi H. Gresham was no longer a judgment debtor in this matter and his attendance was therefore not required.

this hearing.

3. Mr. William Saunders appeared for Gresham Communications, Inc.

Neither corporate defendant was represented by counsel.

4. 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, utilizing a FM broadcast studio in North Charleston, South Carolina and a broadcasting tower in Ridgeland, South Carolina.

5. Upon conclusion of the testimony, the judgment creditor, Caswell, petitioned this Court to attach the FCC license and order execution and sale of the license to satisfy the judgment indebtedness.

6. The FCC license is properly subject to attachment, execution and sale, as a property right of the debtor, under South Carolina law.

Government licenses, as a general rule, are considered to be "general intangibles" under the Uniform Commercial Code, "i.e., personal property interests in which security interests may be perfected." In re Ridgely, 139 B.R. at 379. As discussed *supra*, In re Ridgely makes it clear that license holders have no property rights in the "actual broadcast frequencies themselves as against the federal government," 139 B.R. at 376, (citing In re Bill Welch, 3 F.C.C.R. 6502 (1988)). However, In re Ridgely and In re Cheskey stand for the proposition that licensees do have a proprietary right in the proceeds from a sale of a license, and may grant a security interest in those proceeds. See also In re Beach Television Partners, 38 F.3d 535, 537 (11th Cir.1994) (holding that a creditor has a valid security interest in the proceeds of an FCC-approved sale of a broadcast license).

1127
#2
MLQ Investors L.P. v. Pacific Quadracasting, Inc., 146 F.3d 746, 749 (9th Cir.1998)

"While this proprietary interest does not allow any party to assert any rights contrary to the FCC's regulatory powers, the holder of a license may receive proceeds from the transfer of the license to a third party." PBR

Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 173 B.R. 132 (Bankr.S.D.Fla.1994). The right to receive the proceeds of an approved sale is a private right that a party can give to its creditors. State St. Bank & Trust Co. v. Arrow Communications, 833 F.Supp. 41 (D.Mass.1993); In re Ridgely, 139 B.R. 374 (Bankr.D.Md. 1992) (debtor's broadcast license is a general intangible; a creditor can perfect security interest in proceeds of its transfer). "This limited interest allows for the enforceability of a security interest in the proceeds of an FCC approved sale." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 172 B.R. 132, 134 (Bankr.S.D.Fla.1994); see also In re Atlantic Business Community Dev. Corp., 994 F.2d 1069 (3rd Cir.1993) (allowing IRS to assert a tax lien against the proceeds of a sale of the debtor's FCC license). "[A] contrary outcome would mean that the distinction between private and public interests in FCC license proceeds.. would have no meaning, and the private interests would be devoid of value." MLQ Investors, L.P., v. Pacific Quadracasting, 146 F.3d 746, 479 (9th Cir.1998.)

In re Media Properties, Inc., 311 B.R 244.

Accordingly, I hold that the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license, copy of which is attached as Exhibit A to this Order, be and hereby is, attached. I further direct that the license be sold in the normal course of sheriffs' sales in this county to satisfy this judgment and that notice of such sale shall follow, as provided by law.

IT IS SO ORDERED.



Harris Beach, Special Referee
Colleton County

September 22, 2006
Walterboro, South Carolina.

11/1/06
#3

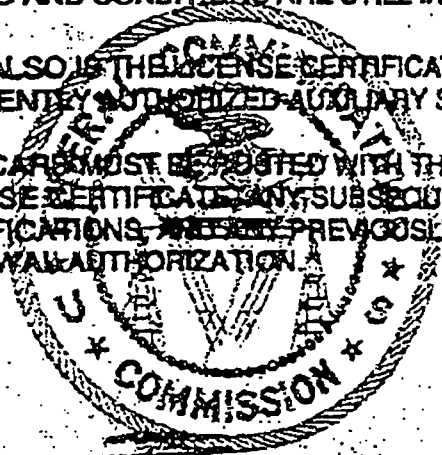
REVISED LICENSE AUTHORIZATION

PURSUANT TO COMMISSION ACTION IN MM DOCKET
No. 96-90 IMPLEMENTING SECTION 203 OF THE
TELECOMMUNICATIONS ACT OF 1996, THIS IS TO
NOTIFY YOU THAT THE LICENSE AUTHORIZATION FOR
STATION: WPAL-FM
LOCATION: WALTERBORO, SC
HAS BEEN REVISED TO A TERM EXPIRING ON 12-01-2003

ONLY THE LICENSE TERM OF YOUR PREVIOUSLY ISSUED
LICENSE AUTHORIZATION IS AFFECTED. ALL PREVIOUS
TERMS AND CONDITIONS ARE STILL IN EFFECT.

THIS ALSO IS THE LICENSE CERTIFICATE FOR YOUR
CURRENTLY AUTHORIZED AUXILIARY SERVICES.

THIS CARD MUST BE POSTED WITH THE STATION'S
LICENSE CERTIFICATE. ANY SUBSEQUENT
MODIFICATIONS, ~~REVISIONS~~ PREVIOUSLY ISSUED
RENEWAL AUTHORIZATION.



22407-7434-45

FEDERAL COMMUNICATIONS
COMMISSION
WASHINGTON, DC 20554

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

FIRST CLASS MAIL
POSTAGE & FEES PAID
FEDERAL
COMMUNICATIONS
COMMISSION
PERMIT NO. 0111

GRESHAM COMMUNICATIONS
WPAL-FM FM STATION
1717 WAPPOO RD.
CHARLESTON, SC 29407

FCC 372-A (1990)



STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

NANCY R. BEACH,

Plaintiff,

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

Defendants

IN THE COURT OF COMMON PLEAS

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

ORDER

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 Carn Street, Walterboro, SC 29488 on October 20, 2006 at 12:00 noon.

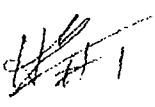
This sale shall be advertised pursuant to South Carolina Code Ann. § 15-39-635 for fifteen (15) days prior to sale. Conduct of the sale will be in accordance with South Carolina law.

IT IS SO ORDERED.



Harris Beach, Special Referee
Colleton County

October 2, 2006
Walterboro, South Carolina.



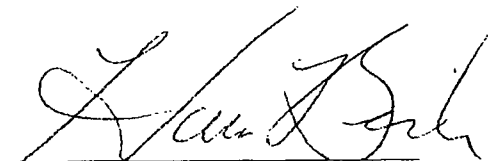
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	C.A NO. 92-CP-15-508
NANCY R. BEACH,	)	AMENDED ORDER
	)	
Plaintiff,	)	
	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants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

06 OCT -4 PM 3:56
 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.

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 Rudi H.
Gresham,

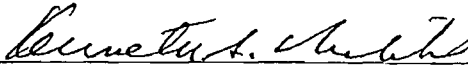
Appellants.

The Honorable Harris Beach
Colleton County
Trial Court Case No. 1992-CP-15-00508

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellants to file and serve a Designation of Matter in the above matter, as provided for in Rule 209 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Colleton County after fifteen (15) days, exclusive of the date of filing this Order.

 CLERK
For the Court

Columbia, South Carolina
12/29/2006

cc: Mathias Genard Chaplin, Esquire
W. Andrew Gowder, Jr., Esquire
The Honorable Patricia C. Grant

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

NANCY R. BEACH,)

Plaintiff,)

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

Defendants)

IN THE COURT OF COMMON PLEAS

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

ORDER

07 FEB 21 PM 2:23

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 Ridgeville, 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,

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.

 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.

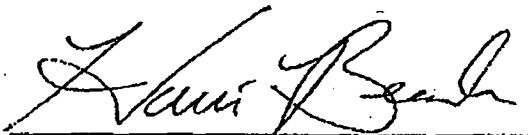
IT IS FURTHER ORDERED that, should the judgment debtor fail or refuse to sign any forms, provide any information necessary to complete or file the application for FCC consent to assignment of the License, or take any action necessary to complete the application for FCC consent to the assignment WITHIN 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.

11/18/13
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.

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

NANCY R. BEACH,

Plaintiff,

v-

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

Defendants.

IN THE COURT OF COMMON PLEAS

CA NO. 92-CP-15-508

ORDER APPOINTING RECEIVER

07 MAR 26 PM 4:17

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

As provided by this Court's prior order dated February 21, 2007, the Defendant Gresham Communications having failed to cooperate in the completion of an application to obtain FCC approval for the transfer of FCC license for WPAL, FM to the successful bidder at a judicial sale held by this court, this Court finds that the plaintiff and successful bidder, CASWELL CAPITAL PARTNERS, LP, is entitled to the appointment of a receiver to complete the application necessary to obtain FCC approval of the transfer.

IT IS THEREFORE ORDERED THAT Charles Cherry II is appointed receiver subject to issuance by the FCC of consent of the involuntary assignment of the Gresham licenses to the Receiver to keep, preserve and protect Gresham's business and property to the extent and in the manner set forth below:

1. The Receiver shall immediately take all steps necessary to request and obtain the FCC Consent. Specifically, the Receiver shall file FCC form 316 within 48 hours of his appointment. The Receiver is entitled to utilize the services of the successful bidder's FCC counsel, GARVEY SCHUBERT BARER to assist him with the completion of the submissions to the FCC.
2. Upon obtaining any required FCC Consent, the Receiver shall immediately take possession of all of Gresham's business and property including, without limiting

ATTEST: A TRUE COPY
PATRICIA C. GRANT
CLERK OF PA. COURT

By 3/26/07

the foregoing, all of Gresham's machinery, equipment, furnishings, fixtures, inventory, contract rights and general intangibles, present and future accounts, accounts receivable and all books and records relating thereto, all documents and instruments, all of Gresham's rights in, to and under all FCC license, and all of Gresham's other property, real, personal or mixed.

3. 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 including, without limiting the foregoing, the power to enter into or terminate employment and other contracts, the power to hire and fire employees not employed pursuant to written contracts, the power to collect, settle or compromise Gresham's accounts receivable, the power to make expenditures from the income and receipts of Gresham's business for labor, insurance and supplies currently required, the power to Gresham's bank accounts in his own name and the power to change the locks to Gresham's offices. The Receiver may pay the agents and employees whom he hires or continues to employ such compensation for their services as he deems proper, in his sole discretion. To realize the most from Gresham's assets, the Receiver is directed, upon receipt of requisite authority from the FCC, to operate the stations or take such other action as he in his discretion shall deem appropriate to conserve the business and assets of the station as is consistent with the FCC's rules and policies until a sale of the stations 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 licenses to such purchaser. This power shall include the right to terminate Gresham's operations, if the Receiver deems such termination necessary and appropriate.
4. After a purchaser (or purchasers) is found that is 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.

5. Notwithstanding anything herein to the contrary, and without further Court Order or pursuant to such order in aid of the Receiver and the Court deems appropriate, the Receiver may immediately take possession of Gresham's business and property, and may exercise the authority granted herein over Gresham's business and property consistent with applicable law, to the extent necessary to prevent waste, destruction, alienation or other disposition of Gresham's assets contrary to this Order.

11/17/13

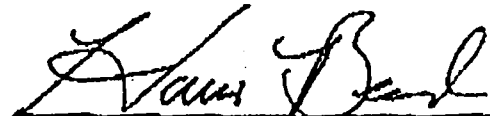
IT IS FURTHER ORDERED that Gresham, its officers, agents, servants, employees, and anyone in active concert or participation with it who receive actual notice of this Order, by personal service or otherwise, cooperate with the Receiver in order to facilitate the assignment of Gresham's FCC licenses to the Receiver, and it enjoined from interfering in any way with said assignment. 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 Receiver of the licenses, permits and other authorizations issued to Gresham by the FCC. Gresham shall promptly provide Receiver 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, COBS 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, its officers, agents, servants, employees and anyone in active concert or participation with it cooperate with the Receiver in order to facilitate his taking possession of Gresham's business and property, and that Gresham is enjoined from interfering any way with the Receiver's possession of Gresham's business and property and the Receiver's management of Gresham's business and property.

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 circumstances.


Special Referee

Charles Cherry II

I, Charles W. Cherry II, hereby offer my services as trustee or receiver, or any such agent, for the South Carolina state court in Walterboro, SC with respect to the case involving Nancy Beach of Walterboro, SC, and her assigns, Caswell Communications, Inc., vs. Gresham Communications, Inc., with immediate effect and on terms to be approved by the court.

I am an experienced broadcaster as well as a media owner, with stock interests in affiliated companies that own a total of 11 radio stations, including WCSZ-AM, licensed to San Souci/Greenville, SC. I am a graduate of Morehouse College, Atlanta, GA, and earned both a Master of Business Administration degree and a Juris Doctor degree from the University of Florida. I served as General Counsel for Tama Broadcasting, Inc. for more than six years. Currently, I am Publisher of the Florida Courier newspaper headquartered in Tampa, FL.

KLD

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CA NO. 92-CP-15-508
	)	
NANCY R. BEACH,	)	
	)	
	)	
Plaintiff,	)	
	)	
v-	)	<u>ORDER</u>
	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC.; GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
	)	
Defendants.	)	
	)	

This matter came before me on April 16, 2007, on a Motion to Compel filed by Caswell Capital Partners, LLC, (Caswell) the successor-in-interest to Nancy Beach. After considering the documents filed by Caswell, and the arguments of counsel, I find as follows:

1. This Court has jurisdiction to enforce its prior orders. The Notice of Appeal filed by William Saunders to the Court's March 23, 2007 Order, does not stay these proceedings.¹
2. The Receiver appointed by this Court, Charles Cherry II, has been appointed by this Court to take the steps necessary to effect the transfer of the FCC License to the purchaser at the judicial sale of this License, Caswell.
3. The Defendants, GRESHAM COMMUNICATIONS OF WALTERBORO, INC., a/k/a GRESHAM COMMUNICATIONS, INC. and GRESHAM BROADCASTING, INC. (collectively, Gresham), are ordered to cooperate fully with Mr. Cherry in his pursuit of his

¹ § 18-9-150. Deposit or surety when judgment requires delivery of documents or personalty.

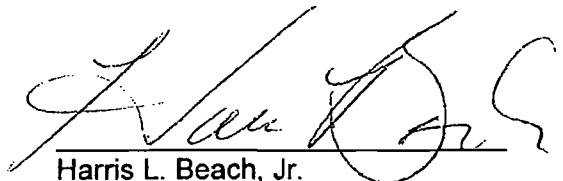
"If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal."

See, Harman v. Wagner, 33 S.C. 487, 12 S.E. 98 (S.C. 1890) (Where an appeal without bond is taken by an executor from an order appointing a receiver of the personal property of the estate, it does not operate to stay the execution of the order, under this section [Code 1962 § 7-415]).

duties. Specifically, Gresham is ORDERED to grant Cherry access to WPAL FM's studio facilities to allow Cherry to access the FCC public file, post notices on the premises and in the public file, and otherwise to carry out his duties fully as the FCC License holder, as described in the FCC checklist which is attached to and made part of this Order.

4. Should Gresham fail to render any and all assistance necessary to allow Cherry to fulfill his duties as described herein do so, Mr. Cherry is instructed to notify the court by affidavit of Gresham's non-compliance with this Order. Upon receipt of such an affidavit, the Court will immediately issue a Rule to Show Cause on Gresham, to consider a finding of civil contempt against Gresham and its principals, agents, and employees, which will result in the imposing any and all penalties that are just and proper under the circumstances, including imprisonment, fines and reimbursement of the Receiver's costs and expenses.

IT IS SO ORDERED.



Harris L. Beach, Jr.
Special Referee

April 18, 2007
Walterboro, South Carolina

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H3

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

NANCY R. BEACH,

Plaintiff,

v-

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

Defendants.

IN THE COURT OF COMMON PLEAS

CA NO. 92-CP-15-508

RULE TO SHOW CAUSE ORDER

Pursuant to the Petition for a Rule to Show Cause filed by the Plaintiff in this matter on June 22, 2007, and it appearing that this Court has jurisdiction over the parties hereto,

NOW, THEREFORE, it is hereby ORDERED that William Saunders, Gresham Communications of Walterboro, Inc. and Gresham Broadcasting Inc., appear before the Special Referee at 202 Cam Street, Walterboro, South Carolina, on the 13th day of July, 2007 at 11 am to show cause, if any you can, why you should not be held in willful contempt of this Honorable Court, and for other and further relief that this Court may deem just and proper.

AND IT IS SO ORDERED.


Harris L. Beach, Jr.
Special Referee

June 25, 2007
Walterboro, South Carolina

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
07 JUN 25 PM 11:14

NLB
#1

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 4:03

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).

11/12/07
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.

HLS
(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.

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

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"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

11/13/07

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.

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

11/25/10

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

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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;

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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.



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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 11, 2008

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

Re: Beach, Nancy v. Gresham Comm. (3)

Dear Counsel:

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

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ Kenneth A. Richstad
Clerk

March 11, 2008."

The remittitur will be sent to the Clerk of Court for Colleton County in accordance with the South Carolina Appellate Court Rules.

Very truly yours,

Kenneth A. Richstad
CLERK

KAR/ma

cc: Jackson Seth Whipper, Esquire
The Honorable Patricia C. Grant

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
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).

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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.

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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).

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

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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. (Defs.' 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

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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

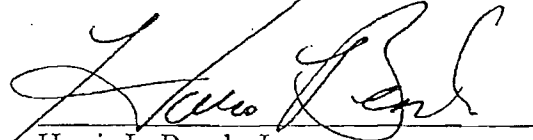
I find the \$106,268.78 deposited with the Clerk of Court, plus any accrued interest, to be the property of Gresham exclusively. Alternatively, I find the money has been tendered on behalf of Gresham and Saunders and, as monies properly belonging to Gresham and Saunders, should be delivered to the Receiver 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

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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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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,

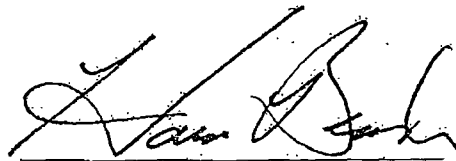
FURTHER ORDERED that the license was sold in the usual course of judicial sale and purchased by Caswell, Inc., for valuable consideration; and it is,

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

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, SCRCP, 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, SCRCF 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. Hearn

Columbia, South Carolina

Sept 10, 2009

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

FILED

9/10/09 NR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	
	)	CASE NO.: 92-CP-15-508
Nancy R. Beach.	)	
	)	
Plaintiff.	)	(P R O P O S E D)
	)	
v.	)	ORDER GRANTING DEFENDANTS'
	)	MOTION TO RECONSIDER ORDER
Gresham Communications of Walterboro.	)	OF JUNE 6, 2008
Inc.. a/k/a Gresham Communications, Inc..	)	
Gresham Broadcasting, Inc.. and Rudi H.	)	
Gresham,	)	
	)	
Defendants.	)	
	)	

This matter comes before me upon the Defendants' motion, pursuant to Rule 59(e), SCRCF, for this Court to reconsider or otherwise alter/amend its Order, dated June 6, 2008. A hearing on the matter was held on June 23, 2008 at the Colleton County Courthouse, Walterboro, South Carolina. Present at the hearing were: W. Andrew Gowder, Jr. and Daniel S. McQueency, Jr., attorneys for the Plaintiff; and J. Seth Whipper and William H. Waring, III, attorneys for the Defendants. By their motion, Defendants request this Court to reconsider or otherwise alter/amend the June 6th Order to reflect the following: (1) that the June 2, 1998 judgment against the Defendants is extinguished as a matter of law; (2) that even if said judgment is not extinguished, the Defendants have properly exercised their right to redeem said judgment pursuant to this Court's February 21, 2007 order; (3) that the \$106,268.78 tendered to the Clerk of Court of Colleton County is not an asset of Gresham but rather an asset of a third party; and (4) that a separate hearing be held regarding any allegations of contempt on behalf of Defendants after November 27, 2007 and to determine the amounts due under any outstanding contempt order.

Based upon the respective briefs and arguments submitted by the parties' counsel, I hereby grant the Defendants' Motion to Reconsider and alter and amend this Court's June 6, 2008 Order for the reasons stated below.

I. THE JUDGMENT ISSUED AGAINST THE DEFENDANTS BY COURT ORDER DATED JUNE 2, 1998 IS EXTINGUISHED AS A MATTER OF LAW.

Pursuant to S.C. Code Ann. § 15-39-30,

Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return many or may not have been made during such period on such executions.

In interpreting this statutory provision, our courts have recognized that despite delays in execution that may be caused by legal proceedings instituted by either the judgment creditor or judgment debtor, public policy considerations preclude the life of judgments to exceed ten (10) years. Wells v. Sutton, 299 S.C. 19, 22, 382 S.E.2d 14, 16 (Ct. App. 1989). As such, "[a] judgment creditor should recognized this policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period." Id. The institution of proceedings to enforce a monetary judgment within ten years of the entry of the judgment does not toll the statute of limitations. See Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 597 S.E.2d 810 (Ct. App. 2004) (a judgment is 'utterly extinguished . . . after the expiration of ten years from the date of entry.'") (citing cases).

On June 2, 1998 a judgment was entered against the Defendants for \$56,276.10, along with a simple interest rate of eight percent (8%) per annum, plus attorneys' fee and costs of \$5,627.00. The current Plaintiff, who has been assigned rights as the judgment creditor in this matter, first petitioned this Court for supplemental proceedings to collect on the judgment over eight (8) years after the judgment was issued. Subsequently, this Court held a judicial sale of

Defendant Gresham's FCC license on February 15, 2007; however, pursuant to the Court's order, the sale would only be final upon the FCC's grant of consent to the assignment. To date that consent has not been granted by the FCC. Accordingly, I find that the underlying judgment has not been satisfied. Therefore, as a matter of law, the judgment issued by the Court on June 2, 1998 is no longer enforceable.

II. EVEN IF THE COURT DETERMINED THAT THE JUNE 2, 1998 JUDGMENT HAS NOT BEEN EXTINGUISHED, THE DEFENDANTS HAVE PROPERLY EXERCISED THEIR RIGHT TO REDEEM THE JUDGMENT PURSUANT TO THIS COURT'S FEBRUARY 21, 2007 ORDER.

Even if the Court were to find that the underlying judgment has not been extinguished, this Court agrees that the Defendants have properly exercised their right to redeem the judgment. As a general rule, judgments are to be construed like other written instruments. Hailey v. Hailey, 357 S.C. 18, 590 S.E.2d 495 (Ct. App. 2003). As stated in Stanaland v. Jamison, "[w]here the terms of a writing are plain and unambiguous, there is no room for construction, since the only office of judicial construction is to remove doubt and uncertainty." 275 S.C. 50, 268 S.E.2d 578 (1980). The plain language of this Court's February 21, 2007 Order states, "[i]f 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." Although this Court issued three (3) subsequent orders, none of these orders specifically or implicitly revoked, modified, referenced, or otherwise disposed of the plain language of the February 21st Order affording Gresham Communications, Inc. the opportunity to satisfy the underlying judgment before FCC approval of the transfer of the license. Had the Court intended to extinguish this right, it would have stated so explicitly in a subsequent order, and in fact, as an exercise of basic equitable fairness to Gresham Communications, would have been required to do so if such a result was intended.

In light of the plain, unambiguous language of the June 2, 1998 and February 21, 2007 Orders, I find that the \$106,268.78 tendered to the Colleton County Clerk of Court on behalf of Gresham Communications, Inc. on April 7, 2008 satisfied the full amount of the underlying judgment in this matter, together with all interest, fees, and costs due under the June 2nd judgment, and as such, even if the Court determined that the June 6, 1998 judgment has not been extinguished, I hereby order the Receiver to immediately take steps to withdraw the FCC assignment application, to refrain from taking any further measures or actions to conclude or consummate any conveyance of the Gresham license, property, or equipment; to take the necessary measures in cooperation with Gresham Communications, Inc. to restore control of the station to Gresham Communications, Inc.; and that he return ownership, possession and/or title to all property, specifically including the FCC license to operate as well as all real estate, leases, tower, transmission and studio equipment to Gresham.

III. THE MONEY TENDERED ON GRESHAM'S BEHALF TO REDEEM THE UNDERLYING JUDGMENT WAS NOT AN ASSET OF GRESHAM.

By definition, an "asset" is an item that is owned and has value. See Black's Law Dictionary. On April 7, 2008, \$106,268.78 was deposited with the Colleton County Clerk of Court on behalf of Gresham Communications, Inc. for the specific and sole purpose of satisfaction of the underlying judgment. Gresham did not tender this money, but rather a third party tendered its own money on Gresham's behalf and for Gresham's benefit. Accordingly, this Court finds that since Gresham does not own the money tendered, the money is an asset of said third party rather than an asset of Gresham.

IV. A SEPARATE HEARING MUST BE HELD REGARDING ANY ALLEGED CONTEMPT ON BEHALF OF DEFENDANTS SINCE THE COURT'S NOVEMBER 27, 2007 ORDER AND THE PROPER AMOUNT OWED BY DEFENDANTS PURSUANT TO THE NOVEMBER 27, 2007 ORDER.

All courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. Buckley v. Shealy 370 S.C. 317, 635 S.E. 2d 76 (Ct. App. 2006) citing Ex Parte Dibble, 279 S.C. 592, 595-96, 310 S.E. 2d 440, 442 (Ct. App. 1983). He who seeks equity must do equity. Johnson v. Arbabi, 355 S.C. 64, 584 S.E. 2d 113 (2003) citing Ingram v. Kasey's Assocs., 340 S.C. 98, 107, 531 S.E. 2d 287, 291 (2000) (quoting Norton v. Matthews, 249 S.C. 71, 152 S.E. 2d 680 (1967)). Seeking an order for contempt is an action for equitable relief. Johnson v. Johnson, 194 S.C. 115, 8 S.E. 2d 351 (1940). On April 14, 2008, the Plaintiff submitted to the Court a Petition for a Rule to Show raising the issue of contempt as to Gresham and arguing that Defendants are estopped from exercising an ordered option to pay the underlying judgment in lieu of transfer of the license under the doctrine of unclean hands. This Court has heard complaints and issued orders enjoining the Defendants' conduct and has done so in response to properly pled allegations and hearings held in due order. Those matters are substantially concluded. Nevertheless, Plaintiff appears to position herself for a windfall knowing that her desired outcome would be unjust and unseemly in light of the huge disparity in the value of the judgment and the true value of the license. Plaintiff appears to be motivated solely by Defendants' efforts to satisfy the judgment, since no complaints of contempt have been heard after November 2007. Additionally, the parties dispute the amount of contempt fees the Defendants are obligated to pay pursuant to this Court's November 27, 2007 Order.

As the issues currently before the Court are solely based upon Defendants' April 7, 2008 Notice of Redemption and Tender of Payment, and no opportunity has been provided for Gresham to respond substantively (through the presentation of testimony and/or documentary evidence) to whatever claims will be raised, it would not be appropriate for the Court to consider the other issues involving contempt/fines at this time. See Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) (When service is challenged, the record must affirmatively show that service of process was correctly made). Accordingly, I hereby order that a hearing be scheduled

regarding Plaintiff's April 14, 2008 Petition for a Rule to Show Cause and the amount of contempt fees the Defendants are obligated to pay pursuant to this Court's November 27, 2007 Order within ten (10) days of written entry of this Order through due and proper service of said Petition upon Defendants.

NOW, THEREFORE, BE IT HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Reconsider is **GRANTED**, and the Court's June 6, 2008 Order is hereby **ALTERED** and/or **AMENDED** as follows:

(1) The judgment issued against the Defendants by Court Order dated June 2, 1998 is extinguished as a matter of law, and I hereby order the Receiver to immediately take steps to withdraw the FCC assignment application, to refrain from taking any further measures or actions to conclude or consummate any conveyance of the Gresham license, property, or equipment; to take the necessary measures in cooperation with Gresham Communications, Inc. to restore control of the station to Gresham Communications, Inc.; that he return ownership, possession and/or title to all property, specifically including the FCC license to operate as well as all real estate, leases, tower, transmission and studio equipment to Gresham; and that the \$106,268.78 deposited to the Colleton County Clerk of Court on behalf of Gresham Communications, Inc. for the specific and sole purpose of satisfaction of the underlying judgment be return to the third party who tendered it;

(2) Alternatively, even if the June 2, 1998 judgment has not been extinguished, this Court would rule that the Defendants have properly exercised their right to redeem the underlying judgment pursuant to this Court's February 21, 2007 Order. As such, I would hereby order the Receiver to immediately take steps to withdraw the FCC assignment application, to refrain from taking any further measures or actions to conclude or consummate any conveyance

of the Gresham license, property, or equipment; to take the necessary measures in cooperation with Gresham Communications, Inc. to restore control of the station to Gresham Communications, Inc.; and that he return ownership, possession and/or title to all property, specifically including the FCC license to operate as well as all real estate, leases, tower, transmission and studio equipment to Gresham;

(3) The \$106,268.78 tendered to the Colleton County Clerk of Court on Gresham's behalf to redeem the underlying judgment was not and is not an asset of Gresham but rather the asset of a third party who made said tender;

(4) A hearing must be scheduled regarding Plaintiff's April 14, 2008 Petition for a Rule to Show Cause and the amount of contempt fees the Defendants are obligated to pay pursuant to this Court's November 27, 2007 Order within ten (10) days of written entry of this Order through due and proper of said Petition upon Defendants; and

(5) To the extent the findings and/or rulings of this Court's June 6, 2008 Order contradict or are otherwise inconsistent with the findings and/or rulings of this Order, said prior findings and/or rulings are hereby vacated.

Harris L. Beach, Jr.
Special Referee

This ____ day of _____, 2008
Walterboro, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

JUDGEMENT IN A CIVIL CASE

Common Pleas COURT

CASE NO. 92-CP-15-508

Nancy R. Beach VS

Gresham Communications
of W. hero, Inc. aka Gresham
Communications Inc. et al

PLAINTIFF(S)

DEFENDANT(S)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED. ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Settled; ☐ Other

Explain: _____

- ☐ ACTION STRICKEN. ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other - Explain: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Judgment in the amount of \$61,903.10

Dated at Charleston, South Carolina, this 2nd day of June, 19 98.

S/ Louis E. Condon
PRESIDING JUDGE Special Referee

This judgment was entered on the 4th day of June, 19 98, and a copy mailed first class this 5th day of June, 19 98 to attorneys of record or to parties (when appearing pro se) as follows:

Barry L. Baker
Benjamin L. Goldberg
Attorneys at Law

ATTORNEY(S) FOR THE PLAINTIFF(S)

Rudi H. Gresham
1003 Blue Springs Rd
Orange City FL 32763

ATTORNEY(S) FOR THE DEFENDANT(S)

Eric C. Beck
CLERK OF COURT

FILED
JUN 11 1998

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
CASE NO. 92-CF-15-508

NANCY R. BEACH,
Plaintiff,

versus

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

Defendants.

F 6.4.98

D E C R E E

This is an action on a Promissory Note executed by the corporate defendants and guaranteed by the Defendant Rudi H. Gresham.

Due and proper service was made upon the defendants who failed to appear and were thereafter adjudged to be in default by the Order of The Honorable A. Victor Rawl dated October 6, 1994.

Thereafter, the matter was referred to me as Special Referee by The Honorable A. Victor Rawl by Order dated January 19, 1996. Pursuant to the Order of Judge Rawl, a hearing was scheduled before me on the 21st day of March, 1997, notice of which was given to the Defendants despite their default.

I thereafter held a hearing on March 21, 1997, at which time Barry I. Baker, Esquire, and Benjamin Goldberg, Esquire, appeared for the Plaintiff. The defendants did not appear. The testimony presented by the witness, Klein Beach, husband of the Plaintiff who handled the transaction involved, and after due consideration, it is hereby

6/9036/10

ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment against the Defendants for the sum of \$56,276.10, together with interest at the rate of eight (8%) percent per annum from June 1, 1998, together with an attorneys' fee of \$5,627.00, and the costs of this action.


LOUIS E. CONDON, SPECIAL REFEREE

Charleston, SC

June 2, 1998

20
1998
JUN 11 AM 11:14

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 Rudi H.
Gresham,

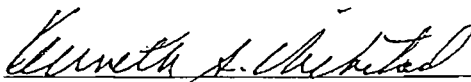
Appellants.

The Honorable Harris Beach
Colleton County
Trial Court Case No. 1992-CP-15-00508

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this
Court's Order dated December 29, 2006,

IT IS SO ORDERED that the above appeal be and hereby is remitted.

 CLERK
For the Court

Columbia, South Carolina
1/17/2007

Original to: The Honorable Patricia C. Grant
cc: Mathias Genard Chaplin, Esquire
W. Andrew Gowder, Jr., Esquire



UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

(FOR CHIEF, AUDIO DIVISION, MEDIA BUREAU)

DATE: 04/03/2007

☒ CONSENT TO ASSIGNMENT:	FROM: GRESHAM COMMUNICATIONS, INC.
☐ CONSENT TO TRANSFER:	TO: CHARLES W. CHERRY, RECEIVER FOR GRESHAM COMMUNICATIONS, INC.
Licensee/Permittee: (for transfer only)	

CALL CLASS	SIGN	FACILITY ID	FILE#	STATION LOCATION	AUXILIARY STATIONS
FM	WPAL-FM	25374	BALH-20070327AEK	RIDGEVILLE, SC	ALL CURRENTLY AUTHORIZED AUXILIARY STATIONS

Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above.

The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith.

The actual consummation of voluntary transactions shall be completed within 90 days from the date hereof, and notice in letter form thereof shall promptly be furnished to the Commission by the seller or buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).

FCC Form 323, Ownership Report, must be filed within 30 days after consummation, by the licensee/permittee or assignee.

ADDITIONAL REQUIREMENTS FOR ASSIGNMENTS ONLY:

Upon consummation the assignor must deliver the permit/license, including any modifications thereof to the assignee.

It is hereby directed that, upon consummation, a copy of this consent be posted with the station authorization(s) as required by the Commission's Rules and Regulations.

The assignee is not authorized to construct nor operate said station(s) unless and until notification of consummation in letter form has been forwarded to the Commission.

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 Rudi H.
Gresham,

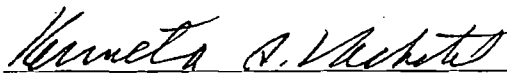
Appellant

Honorable Harris Beach
Colleton County
Trial Court Case No. 1992-CP-15-00508

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this
Court's Order dated March 11, 2008,

IT IS SO ORDERED that the above appeal be and hereby is remitted.

 CLERK
For the Court

Columbia, South Carolina
3/27/2008

Original to: The Honorable Patricia C. Grant

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

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 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, 348 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 Envtl. 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.

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

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

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.



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 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.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CA NO: 92-CP-
	)	
NANCY R. BEACH	)	
	)	
PLAINTIFF	)	
	)	
V.	)	C O M P L A I N T
	)	(NON-JURY)
GRESHAM COMMUNICATIONS	)	
OF WALTERBORO, INC.,	)	
AKA GRESHAM COMMUNI-	)	
CATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND	)	
RUDI H. GRESHAM,	)	
	)	
DEFENDANTS	)	
	)	

Plaintiff, complaining of Defendants, alleges:

ONE: Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc., is a corporation organized and existing under the laws of the State of South Carolina and doing business in the County of Colleton.

TWO: That Gresham Broadcasting, Inc. was a corporation organized and existing under the laws of the State of South Carolina whose charter was dissolved on November 15, 1989.

THREE: That Rudi H. Gresham is a resident of Colleton County.

FOR A FIRST CAUSE OF ACTION

FOUR: That on or about the 2nd day of January, 1988, the Defendant, Gresham Broadcasting, Inc., for valuable consideration, executed and delivered to the Plaintiff its promissory note in the sum of \$165,072 with interest at the rate of 8% per annum as shown by the note, copy of which is attached hereto as Exhibit A.

FIVE: That the note was guaranteed by the Defendant, Rudi H. Gresham.

SIX: That the note is in default in that payment has not been made as required.

SEVEN: That the said note provides for the payment of a reasonable attorneys' fee in the event the note is placed in the hands of an attorney for collection.

EIGHT: That the note has been placed in the hands of attorneys for collection.

NINE: That there is now due the sum of \$146,807.28, together with interest at the rate of 8% per annum from September 1, 1991, together with a reasonable attorneys' fee.

FOR A SECOND CAUSE OF ACTION

TEN: That on or about the 2nd day of January, 1988 the Defendant, Gresham Communications of Walterboro, Inc., also known as Gresham Communications, Inc., for valuable consideration executed and delivered to the Plaintiff its promissory note in the original principal amount of \$41,268, with interest at the rate of 8% per annum as shown by the said note, copy of which is attached hereto as Exhibit B.

ELEVEN: That the note was guaranteed by the Defendant, Rudi H. Gresham.

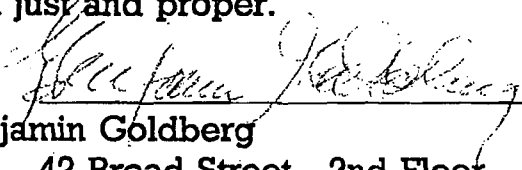
TWELVE: That the note is in default in that payment has not been made as required.

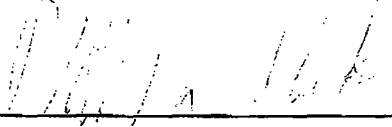
THIRTEEN: That the said note also provides for the payment of reasonable attorneys' fees in the event the note is placed in the hands of an attorney for collection.

FOURTEEN: That the note has been placed in the hands of an attorney for collection.

FIFTEEN: That there is now due the sum of \$36,701.82, together with interest at the rate of 8% per annum from September 1, 1991, together with a reasonable attorneys' fee.

WHEREFORE, Plaintiff prays as to the First Cause of Action for the sum of ONE HUNDRED FORTY SIX THOUSAND EIGHT HUNDRED SEVEN DOLLARS and Twenty-Eight Cents (\$146,807.28), together with interest at the rate of eight (8%) percent per annum from September 1, 1991, together with a reasonable attorneys' fee; as to the Second Cause of Action, for the sum of THIRTY SIX THOUSAND SEVEN HUNDRED ONE DOLLARS and Eighty-Two Cents (\$36,701.82), together with interest at the rate of eight (8%) percent per annum from September 1, 1991, together with a reasonable attorneys' fee; and, for such other and further relief as this Court may deem just and proper.


Benjamin Goldberg
42 Broad Street - 2nd Floor
P. O. Box 1054
Charleston, SC 29402
(803) 577-3353


Barry I. Baker
122 King Street
Charleston, SC 29401
(803) 577-2111

Attorneys for Plaintiff

Charleston, SC

August 18, 1992.

PROMISSORY NOTE

\$ 165,072.00

January 2, 1988

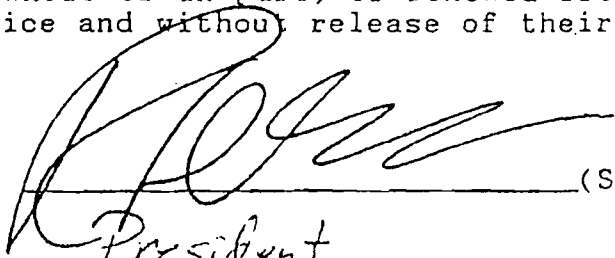
Nancy R. Beach **FOR VALUE RECEIVED**, the undersigned, jointly and severally promise to pay to the order of the principal sum of

with the interest after date at the rate of 8% per annum, payable in the following manner:

Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

The makers may pay any part or all of the unpaid principal at any time without penalty and without payment of premium therefore.

Each maker, surety, and endorser waives demand, protest, notice of maturity, non-payment or protest and all requirements of law necessary to hold each of them liable as maker, surety, or endorser and agrees that this note may be extended in whole or in part, or renewed from time to time without notice and without release of their liability thereunder.


_____(SEAL)
President
_____(SEAL)

PROMISSORY NOTE

\$ 41,263.00

January 2, 1968

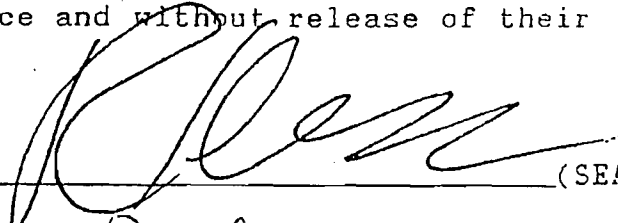
Nancy R. Beach FOR VALUE RECEIVED, the undersigned, jointly and severally promise to pay to the order of the principal sum of

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Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

The makers may pay any part or all of the unpaid principal at any time without penalty and without payment of premium therefore.

Each maker, surety, and endorser waives demand, protest, notice of maturity, non-payment or protest and all requirements of law necessary to hold each of them liable as maker, surety, or endorser and agrees that this note may be extended in whole or in part, or renewed from time to time without notice and without release of their liability thereunder.



President

(SEAL)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	CA NO. 92-CP-15-508
NANCY R. BEACH,	)	
	)	
Plaintiff,	)	
v-	)	
	)	<u>PETITION FOR</u>
	)	<u>SUPPLEMENTAL HEARING</u>
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC.; GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants.	)	

2006 AUG 24 PM 3:56
 OFFICE OF THE CLERK
 COUNTY OF COLLETON
 COMMON PLEAS

Caswell Communications, as assignee of the judgment creditor Nancy R. Beach in the above captioned matter, through its attorneys, Pratt-Thomas, Epting & Walker, petitions this Honorable Court as follows:

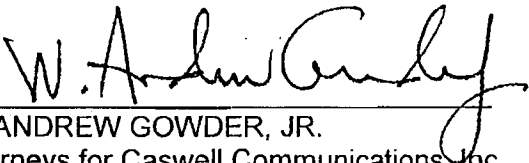
1. The Plaintiff filed this action seeking a judgment against the Defendants as a result of lack of payment for services rendered.
2. The Plaintiff has obtained a judgment against the Defendants as evidenced by the attached Decree dated June 2, 1998. Exhibit "A".
3. The Defendants were unable to satisfy the Decree.
4. Caswell Communications, Inc. has obtained an assignment of the judgment from Nancy R. Beach and is now the owner of the judgment.
5. The Judgment is, at this time, unsatisfied.
6. Caswell Communications is informed and believes that the Defendant has property and assets in the County not exempt from levy, which the Defendant unjustly refuses to apply towards satisfaction of the Judgment.
7. Caswell Communications, therefore, respectfully requests that an Order be issued by this Court requiring the Defendant to appear before this Court at some time and place so designated by the Court and then and there to answer on oath concerning the property of the Defendant, and to produce any and all books and records concerning the same, including current bankbooks, checkbooks, savings account books, tax returns for the preceding three (3) years for the United States and the State of South Carolina, and all other current records pertaining to the financial status of the Defendant, including any interest in lands, trusts, deeds, mortgages, current leases, stock subscription agreements, receipts and contracts of sale and

partnership interest agreements.

8. Caswell Communications is further informed and believes that an Order should be issued enjoining the Defendant from changing, altering, destroying or defacing any of the instruments set forth herein and from making transfer or other disposition of property not exempt by law from execution.

WHEREFORE, the Plaintiff prays that this Court inquire into these matters and that it issue such order or orders granting the relief to which the Plaintiff believes it is entitled, for all expended and statutory costs allowable for this proceeding and for such other and further relief and remedies as may be allowable and the Court may deem proper, and further, the Plaintiff requests that this matter be referred to the Special Referee pursuant to S.C.R.Civ.P. 53 with authority to enter a final order.

PRATT-THOMAS, EPTING & WALKER

BY: 
W. ANDREW GOWDER, JR.
Attorneys for Caswell Communications, Inc.,
assignee of Nancy Beach, the judgment creditor
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
(843) 727-2229

August 23, 2006
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

NANCY R. BEACH,
Plaintiff,

versus

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

Defendants.

F 6.4.98

D E C R E E

This is an action on a Promissory Note executed by the corporate defendants and guaranteed by the Defendant Rudi H. Gresham.

Due and proper service was made upon the defendants who failed to appear and were thereafter adjudged to be in default by the Order of The Honorable A. Victor Rawl dated October 6, 1994.

Thereafter, the matter was referred to me as Special Referee by The Honorable A. Victor Rawl by Order dated January 19, 1996. Pursuant to the Order of Judge Rawl, a hearing was scheduled before me on the 21st day of March, 1997, notice of which was given to the Defendants despite their default.

I thereafter held a hearing on March 21, 1997, at which time Barry I. Baker, Esquire, and Benjamin Goldberg, Esquire, appeared for the Plaintiff. The defendants did not appear. The testimony presented by the witness, Klein Beach, husband of the Plaintiff who handled the transaction involved, and after due consideration, it is hereby

6/903,10



ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment against the Defendants for the sum of \$56,276.10, together with interest at the rate of eight (8%) percent per annum from June 1, 1998, together with an attorneys' fee of \$5,627.00, And the costs of this action.


LOUIS E. CONDON, SPECIAL REFEREE

Charleston, SC

June 2, 1998

207-141-02
141-02

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

NANCY BEACH

PLAINTIFF,

v.

GRESHAM COMMUNICATIONS OF
WALTERBORO, INC., A/K/A GRESHAM
COMMUNICATION, INC., GRESHAM
BROADCASTING, INC., AND RUDI H.
GRESHAM,
DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NUMBER 92-CP-15-508

Motion

Notice of Motion and
Motion to Stay

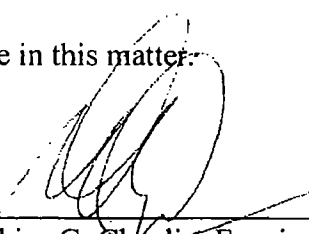
2005 NOV 28 AM 11:30

TO: Plaintiffs by and through their Counsel, W. Andrew Gowder, Jr.:

PLEASE TAKE NOTICE that the Defendants, by and through the undersigned attorney, will move before the Court for an order staying the sale of any assets or licensure of the Defendants for the following reasons:

1. The United States Court of Appeals has determined that FCC Licenses of this nature cannot be sold or transferred; publicly or personally (United States Court of Appeals for the District of Columbia Case number 04-1274; Kidd Communications v. Paradise Broadcasting, 2005).
2. It appears from the transcript this honorable court was not certain whether this sale could take place and therefore left the matter open (see attached copy of transcript page 13 lines 1-14).
3. The sale or transfer of the above referenced license would create irreparable harm and would be extremely prejudicial to the Defendant.

Wherefore the Defense moves the Honorable Court to timely hear this compelling motion and rule prior to any sale or transfer of the license in this matter.



Mathias G. Chaplin, Esquire
4511 North Main Street
Columbia, SC 29203
Attorney for the Defendants

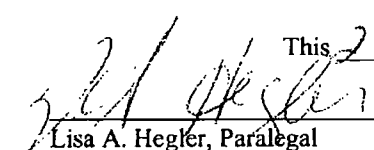
November 27, 2006
Columbia, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing motion was served on Plaintiffs by US Mail in the manner prescribed by the applicable Rule of Civil Procedure to counsel of record:

W. Andrew Gowder, Jr.
P.O. Box 22247
Charleston, SC 29455

This 27 day of November, 2006



Lisa A. Hegler, Paralegal

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 16, 2005

Decided October 25, 2005

No. 04-1274

KIDD COMMUNICATIONS,
APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION,
APPELLEE

PARADISE BROADCASTING, INC.,
INTERVENOR

Appeal of an Order of the
Federal Communications Commission

Dan J. Alpert argued the cause and filed the briefs for appellant.

Pamela L. Smith, Counsel, Federal Communications Commission, argued the cause for appellee. With her on the brief were *Austin C. Schlick*, Acting General Counsel at the time the brief was filed, and *Daniel M. Armstrong*, Associate General Counsel.

Erwin G. Krasnow was on the brief for intervenor.

Before: GARLAND, *Circuit Judge*, and SILBERMAN and WILLIAMS, *Senior Circuit Judges*.

Opinion for the Court filed by *Senior Circuit Judge* SILBERMAN.

SILBERMAN, *Senior Circuit Judge*:

Kidd Communications appeals an FCC decision approving a transfer of Kidd's radio station license to Paradise Broadcasting, Inc., from whom Kidd originally purchased the station. The transfer was effected in two steps pursuant to a California state court order: first an involuntary assignment from Kidd to a trustee, and then the trustee's voluntary assignment to Paradise. Kidd challenges the Commission's decision as inconsistent with both an FCC regulation prohibiting a seller from retaining a reversionary interest in a station license and the Commission's general policy prohibiting a license holder from granting a security interest in a broadcast license, as opposed to in a station's physical assets. We think the FCC has inadequately explained why these related policies do not apply and failed to reconcile them with its competing policy of accommodating state court decisions. We therefore vacate and remand.

In 1995, Kidd acquired radio station KTHO(AM) in South Lake Tahoe, California from Paradise, with Commission approval. In connection with the transaction, Kidd executed a promissory note providing for monthly payments to Paradise and pledging to Paradise "all of the station assets, including but not limited to broadcasting and office equipment, goodwill, and receivables," but specifically excluding "any FCC licenses."

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Soon thereafter, Kidd defaulted on the note, and Paradise sued Kidd in Orange County, California Superior Court. Kidd and Paradise settled the litigation by drafting a new promissory note, which was executed on July 15, 1997 and “supercede[d], replace[d], and [was] in lieu of the promissory note” executed in November 1995. The new note provided that “[i]n the event of a default which is not cured, both parties agree to act reasonably and in good faith to effect an orderly turnover of the *station* to Paradise.” (Emphasis added).

Kidd again defaulted on its obligations to Paradise, who then initiated foreclosure proceedings under the July 1997 note. Following extensive litigation, a public auction of the station’s real property was held, and Paradise was the successful bidder. Even though Paradise thereby acquired legal title to the station’s land, transmission facilities, and towers, Kidd refused to surrender the property. Paradise then initiated an unlawful detainer action against Kidd in El Dorado County, California Superior Court.

While the unlawful detainer suit was pending, Paradise brought another action against Kidd in Orange County, California Superior Court, this time for breach of contract and specific performance under the new note. Paradise sought to recover the station’s personal property, such as station equipment and furnishings, and to enforce Kidd’s obligation under the new note “to act reasonably and in good faith to effect an orderly turnover of the station.”

Paradise ultimately succeeded in both suits. Upon winning in the unlawful detainer action on October 16, 2000, Paradise took possession of the station’s real property, and shortly thereafter the station went silent. Three months later, Paradise received a tentative decision in its favor in the Orange County

contract suit. The court found Kidd in default on the note and awarded possession of the station's personal property to Paradise. The court refused, however, to order Kidd to execute an application requesting that the FCC assign the station's license to Paradise because the note made no specific mention of the radio license. Paradise moved the court to reopen the proceedings on that issue, and the Orange County court issued a second decision, this time ordering Kidd to execute an application seeking transfer of the station's license to Paradise. The court noted that there had been conflicting testimony regarding the parties' intent under both the first and second notes, but concluded that the term "station" in the second note was at all times understood by the parties to "mean[] a going concern *including the FCC license*." (Emphasis added). When Kidd refused to execute the assignment application, the court appointed its clerk to act as trustee and execute the application on Kidd's behalf.

Kidd objected to the application to transfer the license to Paradise and argued that the assignment was predicated upon an impermissible reversionary interest in the station's license, in violation of 47 C.F.R. § 73.1150. In relevant part, that section provides:

(a) In transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.

(b) No license, renewal of license, assignment of license or transfer of control of a corporate licensee will be granted or authorized if there is a contract, arrangement or understanding, express or implied, pursuant to which, as consideration or partial consideration for the assignment or transfer, such

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rights, as stated in paragraph (a) of this section, are retained.

47 C.F.R. § 73.1150.

The Commission's Mass Media Bureau rejected Kidd's argument and granted the trustee's application. Observing that the Commission "must reach a fair accommodation between [its] licensing jurisdiction [and] the power of state and local courts to adjudicate contract disputes," the Bureau concluded that the language in the second promissory note neither created "a mortgage or vested interest for [Paradise] in the KTHO(AM) license," nor "provide[d] for an automatic or irrevocable reversion in the event of default."

Kidd then sought full Commission review of the Bureau's decision, continuing to maintain principally that the assignment gave effect to an impermissible reversionary interest under 47 C.F.R. § 73.1150. Kidd claimed that the interest created by the second note was indistinguishable from those invalidated under § 73.1150 (or its predecessor) in *In re Application of Radio KDAN, Inc.*, 11 F.C.C.2d 934, *recon. denied*, 13 R.R.2d 100 (1968), *aff'd on procedural grounds sub nom. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969), and *In re Applications of Kirk Merkley, Receiver*, 94 F.C.C.2d 829 (1983), *recon. denied*, 56 R.R.2d 413 (1984), *aff'd sub nom. Merkely v. FCC*, 776 F.2d 365 (D.C. Cir. 1985), and Kidd objected to the Bureau's decision ostensibly limiting § 73.1150 to situations where a right of reversion was "automatic" or "irrevocable."

The Commission denied Kidd's application for review, though its reasoning differed from that of the Bureau. *See In re Applications of Kidd Communications*, 19 F.C.C.R. 13,584 (2004). The Commission began its discussion by observing that § 73.1150, on its face, "applies exclusively to contracts executed

in conjunction with the transfer of a station," and not to contracts executed in conjunction with the settlement of litigation two years after such a transfer. *See id.* at 13,586–87. It noted that the predecessors to § 73.1150 were adopted as a response to sellers' reserving programming time on transferred stations as part of the consideration for the stations' sale — a practice clearly not at issue here. *See id.* at 13,587. The Commission then explained that the past applications of § 73.1150 were factually distinguishable from Kidd's case, as *Radio KDAN* and *Merkley* both "involved contracts executed in connection with the assignment of license or transfer of control of a station." *Id.* at 13,588. Finally, the Commission stressed that allowing transfer of the station to Paradise was consistent with the Commission's policies of accommodating state court decisions on matters of contract law and serving the public interest by returning the station to broadcast operations. The FCC observed that it had a "long-standing policy to accommodate [state] court decrees unless a public interest determination under the [Communications] Act compel[led] a different result," *id.* at 13,589, and that in this case, accommodation was in the public's best interest because "Kidd never indicated to the Commission that it would have been able to return the station to the air prior to forfeiture of the license," *id.* at 13,590.¹

¹According to the Commission, had the station not resumed operations by October 18, 2001, twelve months after going silent, its license would have expired by operation of law. *Kidd*, 19 F.C.C.R. at 13,590 & n.45; *see also* 47 U.S.C. § 312(g); 47 C.F.R. § 73.1740(c). At oral argument, however, the FCC conceded that Kidd could have applied for a waiver of this provision. *See* 47 U.S.C. § 312(g).

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Kidd argues on appeal that the Commission's opinion "was arbitrary and capricious, and contrary to Commission precedent and its policy against allowing the issuance of either security interests or reversionary interests." As below, Kidd asserts that the plain language, history, and prior applications of § 73.1150 support reversal of the Commission's actions.²

II

The Commission argues that it is entitled to deference in interpreting its regulation, which is certainly reasonably read as referring to a prohibition of the retention of reversionary interests *at the time of transfer*. Under governing law, the Commission is entitled to significant deference in interpreting its own regulation — perhaps even more than an agency gets in interpreting a statute under *Chevron*. See *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579, 584 (D.C. Cir. 1997); *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945); but see generally John F. Manning, *Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 Colum. L. Rev. 612 (1996). So if that were all there was to this case, the FCC would easily prevail. But there is more.

The Commission did not dispute the California court's determination that the second promissory note created a security interest in both the station's physical assets *and* in the FCC license itself. This is problematic for the Commission, because

²Paradise, as intervenor, urges the court to affirm the Commission's decision because transfer of the station license to Kidd would amount to the assignment of a "bare license" — that is, a broadcast license divorced from any physical assets — against FCC policy.

in discussing § 73.1150, and in applying that regulation in prior cases, the Commission has consistently described the underlying policies behind the regulation in terms applicable to *any* security interest in a broadcast license.

Indeed, the Commission explained in this case that the predecessors to § 73.1150 were promulgated to ensure that “a station licensee is fully responsible for the conduct of the station and its operation in the public interest, and that such responsibility cannot be delegated by contract or otherwise.” *Kidd*, 19 F.C.C.R. at 13,587. The Commission’s control-based rationale is not uniquely applicable to reversionary interests acquired at the time of a station’s transfer; logically it applies to the prohibition of a subsequently acquired reversionary interest or any type of security interest in a broadcast license.³

³The Commission attempted to draw a distinction between reversionary interests acquired at the time of transfer and later-acquired interests — reversionary or otherwise — by observing that, “under current Commission rules, a former licensee would not be prohibited from entering into various contractual arrangements subsequent to the sale of the station, such as an option to purchase the station at a future time, or a time brokerage agreement.” *Kidd*, 19 F.C.C.R. at 13,587 n.27. Neither an option agreement, nor a time brokerage agreement, is a security interest, and, in any event, the Commission went on to undermine its distinction by confirming that control-related considerations are present even in the context of these lesser agreements. *See id.* (“In the event such arrangements could vest control in a party other than the current licensee, a petitioner or complainant may raise these concerns in the context of, *inter alia*, the assignment application, the station’s license renewal application, or a formal complaint to the Commission’s Enforcement Bureau.”).

The FCC's prior decisions seem to acknowledge this point. In *Radio KDAN*, which did involve the Commission's disapproval of a seller's effort to retain a reversionary interest in a broadcast license, the Commission stated broadly that "[t]he extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable." *Radio KDAN*, 11 F.C.C.2d at 934 n.1. Then in *Merkley*, the Commission, rejecting a Utah state court's effort to enforce a reversionary provision in a buyer's contract, said that the reversionary interest was unenforceable because "no right of reversion can attach to a broadcast station license, and the license, as distinguished from a station's physical assets, is not subject to a mortgage, security interest, or lien." *Merkley*, 56 R.R.2d at 416. The Commission added that:

a Commission license is not an owned asset or property right. A security interest in the assets of the broadcast station does not effect a transfer or assignment of the broadcast license. Further, creditors must not equate the license with the buildings and the equipment to which the licensee has acquired title. Credit cannot be extended in reliance upon the license as an asset from which the licensee's obligations may be satisfied.

Id. (citations omitted).

An administrative agency can, of course, make legal-policy through rulemaking or by adjudication. See *SEC v. Chenery Corp.*, 332 U.S. 194, 202-03 (1947). When an agency does so by adjudication, because it is a policymaking institution unlike a court, its dicta can represent an articulation of its policy, to which it must adhere or adequately explain deviations. Thus, even were the Commission's discussions of the nonmortgageable nature of a broadcast license dicta, they still presumably would reflect Commission policy. Cf. *Goodman v.*

FCC, 182 F.3d 987, 994 (D.C. Cir. 1999) (“[T]he nature of adjudication is that similarly situated non-parties may be affected by the policy or precedent applied, or even merely announced in dicta, to those before the tribunal.”). In these instances, however, the Commission’s discussions of its policy were more than dicta because they actually articulated reasons for the rule.⁴

The Commission suggested that its deviation from its policy was in order to accommodate the California court. We note that in *Merkley*, it did not defer to the Utah court, but in any event the Commission is not obliged to accommodate a state court’s decision that is contrary to Commission policy. See *Kidd*, 19 F.C.C.R. at 13,589; see also *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 132 (1945). The FCC relied on a case involving two Puerto Rico radio stations, in which it accommodated a local court order directing a transfer of the station licenses based on “equity,” see *In re: Applications of Arecibo Radio Corp.*, 101 F.C.C.2d 545, 546–47 (1985); but that case did not involve any security interest in the licenses and thus did not implicate the policies at issue here. The Commission also stated that accommodation of the California court’s decision was appropriate because that court, like the court in *Arecibo*, addressed only the contractual issues and left the public interest determinations to the Commission. *Kidd*, 19 F.C.C.R. at 13,589–90. This seems to beg the question, since the FCC’s

⁴That is not to say that the Commission’s discussions of its policy that underlies the rule constitute an authoritative interpretation of § 73.1150 that would prevent the Commission from giving it another interpretation without notice and comment. See *Paralyzed Veterans*, 117 F.3d at 587–88.

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articulation of the public interest includes its policy against security interests in station licenses.

Finally, the Commission contended that the assignment to Paradise served the public interest by allowing the station to resume operations in a timely fashion and by reuniting the station's license with its broadcast facilities. *See id.* at 13,590. This explanation is similarly inadequate. The FCC has never indicated that this consideration could override its policy against security interests, and if it did, it would create quite a loophole. Commission approval of a license transfer would automatically follow state-court foreclosure on a station's physical assets, and a station license and its physical assets would become inseparable.

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 Commission's insistence that a broadcast license be treated distinctly — its transfer depends on the Commission's determination of the public interest. Indeed, the Communications Act supports this distinction. The Act allows for the licensing of radio frequencies merely "to provide for the use of such channels, but not the ownership thereof." 47 U.S.C. § 301. Station licenses vest limited rights in licensees, *see id.* §§ 304, 309(h)(1), and assignment rights are limited, *see id.* §§ 309(h)(2), 310(d). Under § 310(d), "[n]o . . . station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, . . . to any person except upon application to the Commission."

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We recognize that the Commission may see itself in an awkward position, but that does not excuse its failure to explain adequately how it will reconcile state commercial and contract interests with its federal policies.

* * *

Accordingly, we vacate the Commission's decision and remand to the Commission for further proceedings.

• Supplemental Proceeding - 9/20/06 •

the motion for continuance. I believe we can go forward. And if it is necessary we can keep the hearing open if there's other information that needs to come in or if there's something we need clarification on.

MR. GOWDER: All right, sir.

THE COURT: So we'll do that to accommodate you on that.

As to the forum, this is a Colleton County case and Colleton County would be the proper venue for this particular action to be held.

So I'm going to deny the motion for continuance, but I will -- if we do need to we can hold it open for any other information that might need to come in.

MR. GOWDER: All right. And just to be clear, I met Mr. Mack coming in. I take it Mr. Mack is not appearing as counsel for Gresham; is that correct?

WITNESS: He's not an attorney. No.

MR. GOWDER: All right, sir.

THE COURT: Please continue.

MR. GOWDER: Thank you very much.

BY MR. GOWDER:

Q. We were talking about Gresham Communications and

Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0031 (April 2009)	FOR FCC USE ONLY
FCC 314		
APPLICATION FOR CONSENT TO ASSIGNMENT OF BROADCAST STATION CONSTRUCTION PERMIT OR LICENSE		FOR COMMISSION USE ONLY FILE NO. BALH - 20070406ADD
Read INSTRUCTIONS Before Filling Out Form		

Section I - General Information

1.	Legal Name of the Licensee/Permittee CHARLES W. CHERRY, RECEIVER FOR GRESHAM COMMUNICATIONS, INC.		
	Mailing Address 5200 SW 18TH STREET		
	City PLANTATION	State or Country (if foreign address) FL	Zip Code 33317 -
	Telephone Number (include area code) 8132677342		E-Mail Address (if available) CCHERRY2@AOL.COM
	FCC Registration Number: 0016283079	Call Sign WPAL-FM	Facility ID Number 25374
2.	Contact Representative (if other than licensee/permittee) CHARLES W. CHERRY, RECEIVER FOR GRESHAM COMMUNICATIONS, INC.		Firm or Company Name
	Mailing Address 5200 SW 18TH STREET		
	City PLANTATION	State or Country (if foreign address) FL	ZIP Code 33317 -
	Telephone Number (include area code) 8132677342		E-Mail Address (if available) CCHERRY2@AOL.COM
3.	Legal Name of the Assignee CASWELL CAPITAL PARTNERS, LLC		
	Mailing Address 1674 BROADWAY, 7TH FLOOR		
	City NEW YORK	State or Country (if foreign address) NY	ZIP Code 10019 -
	Telephone Number (include area code) 6466960025		E-Mail Address (if available)
4.	Contact Representative (if other than assignee) ERWIN G. KRASNOW, ESQ		Firm or Company Name GARVEY SCHUBERT BARER
	Mailing Address 1000 POTOMAC STREET, NW FIFTH FLOOR		
	City WASHINGTON	State or Country (if foreign address) DC	Zip Code 20007 -
	Telephone Number (include area code) 2029657880		E-Mail Address (if available) EKRASNOW@GSBLAW.COM
5.	If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114): ☐ Governmental Entity ☐ Noncommercial Educational Licensee/Permittee ☐ Other ☐ N/A (Fee Required)		
6.	Purpose of Application: ☒ Assignment of license ☐ Assignment of construction permit ☐ Amendment to pending application		

Section II - Assignor

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8.	Auction Authorization. Licensee/permittee certifies that more than five years have passed since the issuance of the construction permit for the station being assigned, where that permit was acquired in an auction through the use of a bidding credit or other special measure.	☐ Yes ☐ No ☒ N/A See Explanation in [Exhibit 8]
9.	Anti-Drug Abuse Act Certification. Licensee/permittee certifies that neither licensee/permittee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.	☒ Yes ☐ No
10.	Anti-Discrimination Certification. Licensee/permittee certifies that neither licensee/permittee nor any party to the application have violated the Commission's prohibition against discrimination on the basis of race, color, religion, national origin or sex in the sale of commercially operated AM, FM, TV, Class A TV or international broadcast stations.	☐ Yes ☐ No ☒ N/A See Explanation in [Exhibit 9]

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

Typed or Printed Name of Person Signing CHARLES W. CHERRY, II	Typed or Printed Title of Person Signing RECEIVER FOR GRESHAM COMMUNICATIONS, INC.
Signature	Date 04/06/2007

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Section III - Assignee

1.	Certification. Assignee certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Assignee further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.	☒ Yes ☐ No
2.	Assignee is: ☐ an individual ☐ a general partnership ☐ a for-profit corporation ☐ a limited partnership ☐ a not-for-profit corporation ☒ a limited liability company (LLC/LC) ☐ other a. If "other", describe nature of applicant in an Exhibit.	[Exhibit 10]
3.	Agreements for Sale of Station. Assignee certifies that: a. the written agreements in the licensee/permittee's public inspection file and submitted to the Commission embody the complete and final agreement for the sale of the station(s) which are to be assigned; and b. these agreements comply fully with the Commission's rules and policies.	☒ Yes ☐ No See Explanation in [Exhibit 11]
4.	Parties to the Application. a. List the assignee, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the assignee, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity. Attach additional pages if necessary. (1) Name and address of the assignee and each party to the application holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the assignee first, officers (2) Citizenship. (3) Positional Interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's equity/debt plus standard., etc. (4) Percentage of votes.	

next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.

(5) Percentage of total assets (debt plus equity).

[Enter Parties/Owners Information]

4a. Parties to the Application

List the assignee, and, if other than a natural person, its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. If a corporation or partnership holds an attributable interest in the assignee, list separately its officers, directors, stockholders with attributable interests, non-insulated partners and/or members. Create a separate row for each individual or entity.

(1) Name and address of the assignee and each party to the application holding an attributable interest (if other than individual also show name, address and citizenship of natural person authorized to vote the stock or holding the attributable interest). List the assignee first, officers next, then directors and, thereafter, remaining stockholders and other entities with attributable interests, and partners.

(2) Citizenship.

(3) Positional Interest: Officer, director, general partner, limited partner, LLC member, investor/creditor attributable under the Commission's equity/debt plus standard., etc.

(4) Percentage of votes.

(5) Percentage of total assets(debt plus equity).

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets(debt plus equity)
JUDITH AIDOO, 1674 BROADWAY, 7TH FLOOR, NEW YORK, NY 10019	US	PRESIDENT AND SOLE MEMBER	100	100

or [Exhibit 12]

b. Assignee certifies that equity interests not set forth above are non-attributable.

☐ Yes ☐ No
☒ N/A

See Explanation in
[Exhibit 13]

5. **Other Authorizations.** List call signs, locations and facility identifiers of all other broadcast stations in which licensee/permittee or any party to the application has an attributable interest.

☒ N/A
[Exhibit 14]

6. **Multiple Ownership.**

a. Is the assignee or any party to the application the holder of an attributable radio joint sales agreement or an attributable radio or television time brokerage agreement with the station(s) subject to this application or with any other station in the same market as the station(s) subject to this application?

☐ Yes ☒ No

If "Yes," radio applicants must submit as an Exhibit a copy of each such agreement for radio stations.

[Exhibit 15]

b. Assignee certifies that the proposed assignment complies with the Commission's multiple ownership rules and cross-ownership rules.

☒ Yes ☐ No

AM and/or FM Radio applicants only: If "Yes," submit an Exhibit providing information regarding the market, broadcast station(s), and other information necessary to demonstrate compliance with 47 C.F.R. § 73.3555(a).

[Exhibit 16]

All applicants: If "No," submit as an Exhibit a detailed explanation in support of an exemption from, or waiver of, 47 C.F.R. § 73.3555.

c. Assignee certifies that the proposed assignment:

1. does not present an issue under the Commission's policies relating to media interests of immediate family members;
2. complies with the Commission's policies relating to future ownership interests; and
3. complies with the Commission's restrictions relating to the insulation and nonparticipation of non-party investors and creditors.

☒ Yes ☐ No
See Explanation in
[Exhibit 17]

d. Does the Assignee claim status as an "eligible entity," that is, an entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping (as set forth in 13 C.F.R. § 121-201), and holds (1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (3) more than 50 percent of the voting power of the corporation that

☐ Yes ☐ No
See Explanation in
[Exhibit 18]

will own the media outlet (if such corporation is a publicly traded company)?		
All applicants: If "Yes," submit as an Exhibit a detailed showing demonstrating proof of status as an eligible entity.		
e. Does this assignment include a grand-fathered cluster of stations?		☐ Yes ☐ No
All applicants: If "Yes", applicant certifies that it will come in compliance by divesting the necessary station(s) within 12 months of the consummation of this transaction to:		
A. An Eligible Entity (as defined in Item 6d, above).		☐ Yes ☐ No
B. An Irrevocable Trust that will assign the station(s) to an Eligible Entity.		☐ Yes ☐ No
All applicants: If "Yes" to Item 6e A or B: Submit as an Exhibit a copy of the form of irrevocable trust agreement providing for the assignment of the station(s) to an Eligible Entity.		See Explanation in [Exhibit 19]
7. Character Issues. Assignee certifies that neither assignee nor any party to the application has or has had any interest in, or connection with:		☒ Yes ☐ No
a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or any party to the application; or		See Explanation in [Exhibit 20]
b. any pending broadcast application in which character issues have been raised.		
8. Adverse Findings. Assignee certifies that, with respect to the assignee and each party to the application, no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to any of the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.		☒ Yes ☐ No See Explanation in [Exhibit 21]
9. Alien Ownership and Control. Assignee certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.		☒ Yes ☐ No See Explanation in [Exhibit 22]
10. Financial Qualifications. Assignee certifies that sufficient net liquid assets are on hand or are available from committed sources to consummate the transaction and operate the station(s) for three months.		☒ Yes ☐ No See Explanation in [Exhibit 23]
11. Program Service Certification. Assignee certifies that it is cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and service area.		☒ Yes ☐ No
12. Auction Authorization. Assignee certifies that where less than five years have passed since the issuance of the construction permit and the permit had been acquired in an auction through the use of a bidding credit or other special measure, it would qualify for such credit or other special measure.		☐ Yes ☐ No ☒ N/A See Explanation in [Exhibit 24]
13. Anti-Drug Abuse Act Certification. Assignee certifies that neither assignee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.		☒ Yes ☐ No
14. Equal Employment Opportunity (EEO). If the applicant proposes to employ five or more full-time employees, applicant certifies that it is filing simultaneously with this application a Model EEO Program Report on FCC Form 396-A.		☐ Yes ☐ No ☒ N/A

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing JUDITH AIDOO	Typed or Printed Title of Person Signing PRESIDENT AND SOLE MEMBER
Signature	Date 04/06/2007

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION

312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Exhibits

Attachment 4

Description
Agreement

Exhibit 11

Description: AGREEMENT

SEE ASSIGNOR SECTION II, EXHIBIT 4.

Attachment 11

Exhibit 16

Description: MULTIPLE OWNERSHIP.

APPLICANT HAS NO OTHER BROADCAST OR MEDIA INTERESTS.

Attachment 16

AGREEMENT

THIS AGREEMENT ("Agreement") is dated as of April 6, 2007, by and between Charles W. Cherry II, Court-Appointed Receiver for Gresham Communications, Inc. ("Seller"), and Caswell Capital Partners, LLC ("Buyer").

RECITALS

WHEREAS, Charles W. Cherry II, acting as a Court-Appointed Receiver, is the Federal Communications Commission ("FCC") licensee of FM radio broadcast station WPAL-FM, Ridgeville, South Carolina ("Station");

WHEREAS, on April 3, 2007, the FCC granted its consent to the assignment of the FCC license of the Station to Charles W. Cherry II, on the basis of a court order appointing Mr. Cherry as the Receiver in Nancy R. Beach v. Gresham Communications of Walterboro, Inc., aka Gresham Communications, Inc.; Gresham Broadcasting, Inc. and Rudi H. Gresham, CA No. 92-CP-15-508 Order Appointing Receiver, Court of Common Pleas, County of Colleton, South Carolina ("Receivership Order");

WHEREAS, consistent with the Receivership Order, Seller desires to sell and Buyer desires to purchase the assets, as defined below ("Assets"); and

WHEREAS, such purchase and sale, as contemplated by this Agreement, is subject to and conditioned upon the consent of the FCC to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Seller and Buyer agree as follows:

ARTICLE I ASSETS TO BE CONVEYED

1.1 Transfer of Assets. On the Closing Date (defined below), Seller shall sell, transfer, convey and assign to Buyer, and Buyer shall acquire by purchase certain assets of the Station, which shall include the licenses and authorizations relating thereto, the local public inspection files of the Station and the advertiser lists maintained by the Station.

1.2 Assets Held By Buyer. Seller acknowledges that Buyer holds various assets which are used or useful in the operation of the Station, which are not the subject of this Agreement.

ARTICLE II PURCHASE PRICE AND PAYMENT

2.1 Purchase Price. The consideration to be paid by Buyer to Seller for the Assets is the amount of the Buyer's judgment plus interest, credited to Buyer at the Judicial Sale of these Assets

[Handwritten signature]
cash

in the amount of One Hundred Four Thousand Nine Hundred Twenty-Three Dollars (\$104,923.00) (the "Purchase Price").

ARTICLE III THE CLOSING

3.1 **Time and Place of Closing.** The closing (the "Closing") of the sale and purchase of the Assets shall be held in the offices of Buyer, on a mutually agreed upon date which shall be the later of five (5) business days after the FCC has granted, without any conditions materially adverse to either party, (i) the FCC Application as defined below (the "FCC Consent"), and the Consent shall have become a Final Action, or such other time and place as shall be mutually agreed upon by the parties (the "Closing Date"). "Final Action" is an action of the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended; with respect to which no timely petition for reconsideration or administrative or judicial appeal or sua sponte action of the FCC with comparable effect is pending and as to which the time for filing any such petition or appeal (administrative or judicial) or for the taking of any sua sponte action of the FCC has expired.

3.2 **Deliveries by Seller.** At the Closing, Seller will deliver to Buyer the following, each of which shall be in form and substance reasonably satisfactory to Buyer:

(a) An instrument assigning to Buyer all right, title and interest of Seller in the FCC authorizations, the public inspection file of the Station and the list of advertisers of the Station; and

(b) Any other documents reasonably requested by Buyer in order to effectuate the purposes of this Agreement.

3.3 **Deliveries by Buyer.** At the Closing, Buyer will deliver to Seller the following, each of which shall be in form and substance reasonably satisfactory to Seller:

(a) Any other documents reasonably requested by Seller in order to effectuate the purposes of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer, all of which shall be true and correct at Closing.

4.1 **Authorization.** Seller has the full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar law affecting the rights of creditors generally, and equitable principles.


Alex H.

4.2 **Licenses and Authorizations.** Seller holds all licenses and other permits and authorizations necessary for or used in connection with the operation of the Station and such FCC authorizations are in full force and effect.

4.3 **No Brokers.** There is no broker or finder or other person who would have any valid claim against Buyers for a commission or brokerage fee in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Seller.

4.4 **No Other Representations or Warranties by Seller.** Other than the representation and warranties contained in Section 4.1, 4.2 and 4.3 hereof, Buyer acknowledges and agrees that Seller has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Assets.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties to Seller, all of which shall be true and correct at Closing:

5.1 **Authorization.** Buyer has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally, and equitable principles.

5.2 **No Defaults.** The execution, delivery and performance of this Agreement by Buyer will not (a) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any material agreement, contract, instrument or agreement to which Buyer is a party or by which Buyer may be bound, or (b) in any material respect violate any law, statute, rule, regulation, order, injunction decree of any federal, state or local governmental authority or agency applicable to Buyer.

5.3 **No Brokers.** There is no broker or finder or other person who would have any valid claim against Sellers for a commission or brokerage fee in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Buyer.

ARTICLE VI FCC APPLICATION

6.1 **FCC Application.** The sale of the Assets from Seller to Buyer is contingent on the consent and approval of the FCC. Within five (5) calendar days from the date of this Agreement, Seller and Buyer will join together to file an application with the FCC requesting its consent to the

assignment of the authorizations held by Seller to Buyer (the "FCC Application"). Seller and Buyer will diligently take, or cooperate in the taking of, all steps that are necessary or desirable to expedite the preparation, filing and prosecution of the FCC Application.

ARTICLE VII CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or at Closing:

7.1 **Representations and Warranties.** The representations and warranties of Buyer contained in this Agreement shall, without material exception, be true and correct at and as of the Closing Date as though such representations and warranties were made at and as of such time.

7.2 **FCC Consent.** The FCC shall have given the FCC Consent without any conditions materially adverse to Seller.

ARTICLE VIII CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or at Closing:

8.1 **Representations and Warranties.** The representations and warranties of Seller contained in this Agreement shall, without material exception, be true and correct at and as of the Closing Date as though such representations and warranties were made at and as of such time.

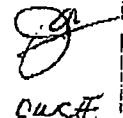
8.2 **Covenants and Agreements.** Seller shall have performed all of its covenants and agreements required by this Agreement to be performed or complied with on or prior to the Closing Date.

8.3 **FCC Consent.** The FCC shall have given the FCC Consent without any conditions materially adverse to Buyer.

ARTICLE IX

9.1 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given when delivered by hand or by facsimile transmission or mailed by registered or certified mail (return receipt requested), postage prepaid, or by a reputable overnight delivery service to the parties at the following addresses (or at such other address for a party as shall be specified by like notice);

If to Buyer, to:

Handwritten signature and initials, possibly "JG" and "DUCF", in the bottom right corner.

Judith Aidoo
Caswell Capital Partners, LLC
c/o Upton Media Network
1674 Broadway, 7th Floor
New York, NY 10019

If to Seller to:

Charles W. Cherry II, Esq.
5200 SW 18th Street
Plantation, FL 33317

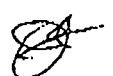
ARTICLE X MISCELLANEOUS

10.1 **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of South Carolina (and not the laws pertaining to conflicts or choice of law).

10.2 **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one and the same instrument, notwithstanding that each party may execute a different counterpart. This Agreement shall be effective and legally binding upon delivery of facsimile signatures.

10.3 **Entire Agreement; Amendments.** This Agreement, including the schedules hereto, embody the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between the parties. This Agreement may not be amended except in writing signed by each party.

[This space intentionally left blank. Signature page follows]

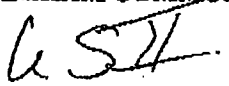

Curt

[Signature page]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be signed as of the date first above written.

SELLER:

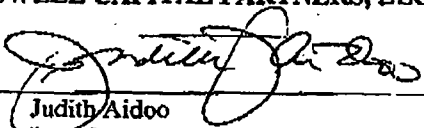
**CHARLES W. CHERRY II, COURT-APPOINTED RECEIVER
FOR GRESHAM COMMUNICATIONS, INC.**

By: 

Charles W. Cherry II

BUYER:

CASWELL CAPITAL PARTNERS, LLC

By: 

Judith Aidoo
President

Before the
Federal Communications Commission
Washington, DC

In re Application of	)	
	)	
CHARLES W. CHERRY, II	)	File No. BALH-20070406ADD
Receiver for Gresham Communications,	)	Facility No. 25374
Inc.	)	
	)	
<i>Assignor</i>	)	
	)	
CASWELL CAPITAL PARTNERS, LLC	)	
	)	
<i>Proposed Assignee</i>	)	

*For Assignment of License of
Station WPAL-FM, Ridgeville, South Carolina*

Filed With: **Office of the Secretary**

To: **Chief, Media Bureau**

PETITION TO DENY

Gresham Communications, Inc. ("Gresham Communications"), by its attorney, hereby petitions for denial of the application of Charles W. Cherry, II, Receiver for Gresham Communications, Inc. ("Cherry") for assignment of the license of Station WPAL-FM, Ridgeville, South Carolina to Caswell Capital Partners, LLC.¹ With respect thereto, the following is stated:

Standing

Gresham Communications is the former licensee of Station WPAL-FM, and was the designated involuntary "assignor" of Station WPAL-FM in File No. BALH-20070327AEK.

¹ This assignment application was placed on *Public Notice* on April 11, 2007. Report No. 46462. Therefore, this Petition is timely filed.

Reconsideration of the grant of that involuntary assignment application is pending. For many of the same reasons as stated therein, it is the position of Gresham Communications that the Special Referee attached an FCC License, contrary to Commission law and precedent; the parties are attempting to assign as bare License contrary to Commission policy; and the enforcement of the Decree would violate a prior-issued federal Court Order prohibiting the sale of Station WPAL-FM; and that consequently, the Commission's grant of the involuntary assignment of Station WPAL-FM to Cherry must be reversed, and under Commission precedent, Gresham Communications must be reinstated as licensee of the Station WPAL-FM and allowed to freely hypothecate the WPAL-FM license to a new owner of its own choosing.

Under Section 309(d)(1) of the Communications Act of 1934, as amended, a "party in interest" may file a petition to deny an application. To have standing to petition to deny an application under Section 309(d), a petitioner must show that it is a "party in interest" within the meaning of Section 309(d)(1), *i.e.*, that he is a "person aggrieved" or is a person whose interests are "adversely affected" as provided for under the rehearing provisions of Section 405 of the Communications Act. *Standards for Determining the Standing of a Petition to Deny a Broadcast Application*, 48 R.R.2d 517, 522 ¶ 19 (1980); *John W. Mowbray*, 35 R.R.2d 418, 420 (1975). In this case, in the event this assignment application is granted, Gresham Communications' rights to reacquire the license will be adversely affected. Therefore, Gresham Communications will suffer a direct and immediate injury from grant of this application. For this reason alone, Gresham Communications has standing under 309(d) of the Communications Act of 1934, as amended. 47 C.F.R. §309(d).

Moreover, as reflected by Attachment 1, the owner of Gresham Communications is a

local area resident. This fact also conveys "standing." *Metromedia, Inc.*, 43 R.R.2d 583, 587 ¶ 12 (1978).

Consequently, for both of these reasons, Gresham Communications is an "interested party," and has standing to file this Petition to Deny.

Background

Gresham Communications has been licensee of Station WPAL-FM for over 30 years. Promissory Notes were signed on behalf of Gresham Communications on January 2, 1988, in the total amount of \$165,072 at an interest rate of 8% per annum in favor of Nancy R. Beach. Attachment 2. On August 18, 1992, a Complaint was filed in the North Carolina Court of Common Pleas to collect the sums due from Gresham Communications. Nancy R. Beach v. Gresham Communications of Walterboro, Inc. aka Gresham Communications, Inc., CA No. 92-CP-15-508. Attachment 3. Despite the claim that over the course of time a debt in the amount of "\$299,429.49" was due as of March 20, 1997 (Attachment 4), on June 2, 1998, a Decree in the total amount of only \$56,276.10 was issued by the State of South Carolina Court of Common Pleas. In 2006, Nancy Breach assigned her interest in the judgment to "Caswell Capital Partners, LLC." Attachment 5. Caswell Capital is the proposed assignee in the application in controversy here.

An action for collection under the Judgement was initiated on August 23, 2006 (Attachment 6), resulting in an Order issued on September 22, 2006, stating in relevant part:

The FCC license is properly subject to attachment, execution and sale, as a property right of the debtor, under South Carolina law.

Government licenses, as a general rule, are considered to be "general intangibles" under the Uniform Commercial Code, "i.e., personal property interests in which security interests may be

perfected." In re Ridgely, 139 B.R. at 379. As discussed *supra*, In re Ridgely makes it clear that license holders have no property rights in the "actual broadcast frequencies themselves as against the federal government," 139 B.R. at 376, (citing In re Bill Welch, 3 F.C.C.R. 6502 (1988)). However, In re Ridgely and In re Cheskey stand for the proposition that licensees do have a proprietary right in the proceeds from a sale of a license, and may grant a security interest in those proceeds. See also In re Beach Television Partners, 38 F.3d 535, 537 (11th Cir.1994) (holding that a creditor has a valid security interest in the proceeds of an FCC-approved sale of a broadcast license).

MLQ Investors L.P. v. Pacific Quadracasting, Inc., 146 F.3d 746, 749 (9th Cir.1998).

"While this proprietary interest does not allow any party to assert any rights contrary to the FCC's regulatory powers, the holder of a license may receive proceeds from the transfer of the license to a third party." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 173 B.R. 132 (Bankr.S.D.Fla.1994). The right to receive the proceeds of an approved sale is a private right that a party can give to its creditors. State St. Bank & Trust Co. v. Arrow Communications, 833 F.Supp. 41 (D.Mass.1993); In re Ridgely, 139 B.R. 374 (Bankr.D.Md. 1992) (debtor's broadcast license is a general intangible; a creditor can perfect security interest in proceeds of its transfer). "This limited interest allows for the enforceability of a security interest in the proceeds of an FCC approved sale." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 172 B.R. 132, 134 (Bankr.S.D.Fla.1994); see also In re Atlantic Business Community Dev. Corp., 994 F.2d 1069 (3rd Cir.1993) (allowing IRS to assert a tax lien against the proceeds of a sale of the debtor's FCC license). "[A] contrary outcome would mean that the distinction between private and public interests in FCC license proceeds... would have no meaning, and the private interests would be devoid of value." MLQ Investors, L.P., v. Pacific Quadracasting, 146 F.3d 746, 479 (9th Cir.1998.)

In re Media Properties, Inc., 311 B.R. 244.

Accordingly, I hold that the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license, copy of which is attached as Exhibit A to this Order, be and hereby is, attached. I further direct that the license be sold in the normal course of sheriffs' sales in this county to satisfy this judgment and that notice of such

sale shall follow, as provided by law.

Attachment 7. The Special Referee then ordered the "sale of such License (Attachment 8 at 2), and ordered that upon such sale that Gresham Communication "promptly and without delay apply for FCC approval of the assignment of that License," and directed:

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...

Attachment 8 at 3 (emphasis in original); ordered that

should the judgment debtor fail or refuse to sign any forms, provide any information necessary to complete the application for FCC consent to assignment of the License, or take any other action necessary to complete the application for FCC consent to the assignment...this Court will immediately appoint a receiver to take those actions on behalf of the judgment debtor...

Attachment 8 at 3; and

enjoined [Gresham Communications] from interfering with said assignment application, or application for FCC consent thereto.

Attachment 8 at 3.

For the reasons stated below, the Decree and supplemental Orders of the Special Referee are contrary to law and unenforceable, and consequently, the application for assignment of Station WPAL-FM must be denied.

I. The Special Referee's Attempt to Enjoin Gresham Communications from Protesting this Attempted Assignment of the WPAL-FM License is Blatantly Illegal and Beyond His Jurisdiction

As noted above, in conjunction with his Decree in this proceeding, the Special Referee ordered that Gresham Communications was:

enjoined from interfering in any way with [the] assignment , or application for FCC thereto.

Attachment 8 at 3. This directive interferes with the jurisdiction of the Commission, and itself violates precedent.

It is well established that a federal agency may preempt state laws when it acts within its scope of authority. *City of New York v. FCC*, 486 U.S. 57, 63-64 (1988); *Metro Broadcasting, Inc. v. FCC*, U.S. , 110 S. Ct. 2997, (1990). Congress granted the FCC "broad authority" to regulate radio transmissions when it passed the *Communications Act*, *FCC v. Midwest Video Corp.*, 440 U.S. 689, 696 (1979), and when it gave the Commission exclusive authority over licensing, *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 127-8, 130-31 (1945); see also *ON/TV of Chicago v. Julien*, 763 F.2d 839, 842 (7th Cir. 1985). As the Commission stated in *Arecibo Radio Corp.*, 101 F.C.C.2d 545 (1985):

We understand the Supreme Court to have held that, in taking steps to place a matter before the Commission, a court can neither prohibit interested parties from making arguments to the Commission concerning the merits of the matter nor infringe in any way the Commission's exclusive, jurisdiction over licensing matters. See *Radio Station WOW v. Johnson*, *supra* at 130-31.

Id. at ¶10.

In this case, the *Order* of the Special Referee specifically attempts to not only discourage, but also to affirmatively "prohibit," Gresham Communications from filing pleadings with the FCC to protect its rights before the FCC (*i.e.*, from "interfering in any way with such assignment"). In actuality, this provision should affirmatively be declared by the Bureau and the Commission to be illegal and beyond the jurisdiction of the South Carolina Court of Common Pleas.

This represents only the *first* of *several* infirmities in the Special Referee's orders in this proceeding, each of which provide a basis for denial of the underlying application.

II. The Special Referee Wrongly Held that the Station's FCC License was Subject to "Attachment"

The Commission has consistently held that a broadcast license, as distinguished from a 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 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 also, *Radio KDAN, Inc.*, 11 F.C.C.2d 934, recon. denied 13 R.R.2d 100 (1968), *affirmed on procedural grounds sub nom., W. H. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969). Thus, while a court is permitted to grant an interest with respect to a broadcast station's physical property, its receivables, or even future proceeds from any future sale of the such station (*In re Cheskey*, 9 FCC Rcd 986, 987 (1994) (holding that licensee may give security interest in the proceeds of sale of license, but not in the license itself)), the court may *not* treat a broadcast license in a similar manner, and a lien, mortgage, security interest, or reversionary interest in a broadcast license is not permitted.

In other words, although the cases and propositions cited by the Special Referee were entirely correct (*i.e.*, "licensees do have a proprietary right in the proceeds from a sale of a license"; "the holder of a license may receive proceeds from the transfer of the license to a third party," etc.), the Court then totally *misuses* the precedent to rule, incorrect, "that the license held by Gresham Communications, Inc. is properly subject to attachment." Attachment 7 at 2 (emphasis added). Commission precedent is clear. A license is not subject to attachment! In

Radio KDAN, Inc., 11 F.C.C.2d 934 (1968), recon. denied, 13 R.R.2d 100 (1968), aff'd, *W.H.*

Hansen v. FCC, 413 F.2d 374 (D.C. Cir. 1969), a seller of a station foreclosed on the personal and real property of the station and then sought to have the license transferred back to it after the buyer's default. When the buyer refused to sign an application for assignment of the license, the seller argued that the purchaser's signature was not required because the mortgage document gave the seller a mortgage on the license itself, with the right to act as the purchaser's attorney-in-fact and to execute an assignment application in the event of the purchaser's default. *Id.* at 934 n.1. Although the Commission did not have to address whether the seller's mortgage on the license was valid because the current licensee already had forfeited the license by allowing the station to go silent, the Commission stated that the mortgage clause granting the seller the right to act as the purchaser's attorney in fact upon default was:

void ab initio since it attempts to retain for Hansen a reversionary interest in the KDAN license, and as such is expressly forbidden by sec. 73.139 of our rules. The extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable.

Id. at n.1 (emphasis added). In ruling upon a motion for reconsideration, the Commission stated again that the seller could not retain an interest in the license. *Radio KDAN, Inc.*, 13 R.R.2d 100 (1968) (Radio KDAN II). The Commission stated that:

a broadcast license (as distinguished from a station's plant or physical assets) may not be hypothecated by way of mortgage, lien, pledge, lease, etc. This principle, deriving ultimately from Section 301 of the Communications Act, is firmly rooted in Commission practice, its rationale being that such a 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. If this rider [had] been submitted to the Commission as required by our rule at the time of its origin, it would have been rejected for two vital defects: (1) it purported to mortgage the KDAN license; (2) and it reserved to Hansen a reversionary interest in the KDAN license.

Id. at 102. The petition for reconsideration was denied.

In a case similar to the one at hand, in *In re Merkley*, 94 F.C.C.2d 829 ("*Merkley I*"), recon. denied, 56 R.R.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. A district court had appointed the receiver to file the application after the court found that the buyer of the license had defaulted on its contractual duties to the seller. *Merkley I*, 94 FCC 2d at 831.

Before determining whether to grant the involuntary assignment, the Commission set forth the relevant principles:

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 Communications Act, as amended, and Section 73.1150 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.

Merkley I, 94 F.C.C.2d at 830-31.

After setting forth these basic principles, the FCC denied the receiver's application for involuntary transfer of the license despite the state court's ruling that the buyer had forfeited its rights in the license. Acknowledging that local courts had the expertise and jurisdiction to resolve contractual disputes, the Commission explained that the licensee's contract was subject to the Commission's rules and policies (in that case, its rule against reversionary interests). *Id.* at 839; 47 C.F.R. § 73.1150. The Commission found that the contractual provision contradicted FCC policy

primarily because it "treated the broadcast license as the property of the former licensee . . . ,"
allowing the former licensee to repossess the license. *Id.* at 839 n.10. On reconsideration of its
decision in *Merkley*, the Commission again denied the receiver's application for an involuntary
transfer of the license again. *In re Merkley*, 56 R.R.2d 413 (1984) ("*Merkley IP*"). The Commission
again made clear:

a Commission license is not an owned asset or property right. [citation omitted]. A
security interest in the assets of the broadcast station does not effect a transfer or
assignment of the broadcast license. *Holden v. Sanders*, 33 RR 2d 700 (1975).
**Further, creditors must not equate the license with buildings and the equipment
to which the licensee has acquired title.** Credit cannot be extended in reliance upon
the license as an asset from which the licensee's obligations may be satisfied. *Twelve
Seventy, Inc.*, 6 RR 2d 301, 304 (1965).

Id. (emphasis added). As the Court of Appeals articulately stated in *Kidd Communications v. FCC*,
427 F.3d 1 (D.C. Cir. 2005):

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 Commission's
insistence that a broadcast license be treated distinctly....

Id. at 6.

Despite the citation of absolutely no authority that would allow a judicial "attachment" on
an FCC license, that is exactly what the Special Referee did in this case, and despite the long line
of cases specifically *disallowing* parties from treating a license as traditional "property," whether of
a creditor (*Radio KDAN, Inc.*, 11 FCC Rcd 934 (1968)) or a bankruptcy estate (*Tak
Communications, Inc.*, 138 BR 568, 70 R.R.2d 810 (Bankr D Wi 1992)), the Special Referee went
beyond his judicial authority and the limits of the law in a manner that violates FCC policy. As
seen below, the FCC has no choice but analyze the reasoning and rationale contained in the four

corners of the decree, and determine whether the Decree is in accord with FCC policy. *Kirk Merkley*, 94 F.C.C.2d 829 (1983). In this case, it clearly is not, and cannot be enforced.

III. The Special Referee's Decree Cannot Be Enforced, Since it Conflicts With an Earlier-Issued Federal Court Order

It is well-established that the Commission will accommodate court decrees unless a public interest determination under the Communications Act compels a different result. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 131-32 (1945). As the Commission has stated:

Our policy is to accommodate state and local court decrees adjudicating disputes over contract and property rights, unless a public interest determination under the Communications Act, such as the determination in *Merkley*, compels a different result.

In re Merkley, 56 R.R.2d 413, 417 (1984). The court of appeals has also stated that the Commission, in making its own public interest determinations, should consider other federal policies, to the extent possible. See *LaRose v. FCC*, 494 F.2d 1145, 1146-47 n.2 (D.C. Cir. 1974). Finally, where there is evidence of "an injunction or a stay issued by any court against the proposed sale," the Commission will withhold action on the assignment application. *Mark S. Hitton*, 22 FCC Rcd 641, 647 (MB 2007); *Gulf Coast Broadcasting, Inc.*, 84 FCC-273 (1984); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, ¶ 12 (MB 1992).

As seen in Attachment 9, Gresham Communications and Caswell Capital Partners, LLC each have been served recently with a copy of the Order of United States District Judge Margaret B. Seymour which enjoins "the transfer or other disposition of the ... radio station [WPAL]" without further court order. Attachment 9 at 1 and 3. No such further court order has issued, and the injunction remains outstanding.

It is the obligation of the FCC to honor that Order, and accordingly, Cherry's and Caswell Capital's attempt to circumvent the order of the United States District Court simply cannot be accommodated. As stated above, it is Commission policy to accommodate local court rulings, and no reason has been presented for Commission policy to be ignored or avoided in this instance, simply to accommodate the private pecuniary desire of Cherry and Caswell Capital to seize control of a valuable radio property service the Charleston area. Under Commission policy, for this reason, as well, the order of the Special Referee cannot be honored, and the assignment application must be denied.

**IV. The Special Referee's Decree Cannot Be Enforced,
Since it Would Result in Approval of an Assignment
of a Bare License, in Violation of FCC Policy**

If this Commission were to grant the assignment application at issue in this proceeding, the grant of such an application would violate the Commission's longstanding policy of not permitting the sale of a "bare license."

As discussed more fully below, the rationale for the Commission's "bare license" policy is to prevent speculation and to encourage prompt initiation or resumption of broadcast operations. The assignment of a "bare license" to Gresham Communications would be in clear contravention of the public policy reasons underlying the Commission's policy. In *Radio KDAN, Inc.*, the Commission, on its own motion, dismissed an application to assign the license of Station KDAN, Eureka, California, because the proposed assignment "contemplates little more than the sale of a naked license" and "Commission policy bars such a sale." In *KDAN*, as here, the only asset of the Station to be conveyed to Gresham Communications would be the FCC license. In *Bonanza Broadcasting Corp.*, 10 F.C.C.2d 906, 11 RR 2d 1072 (1967), cited in *KDAN Radio*, the Commission

dismissed an assignment application because the licensee owned none of the station's assets and was seeking to assign a "bare license." The Commission in that case refused to permit the parties to place a price on the transfer of a "bare license." See *Donald L. Horton (KHIP)*, 11 R.R.2d 417 (1967). Similarly, in *Two if By Sea Broadcasting Corporation*, 12 FCC Rcd 2254 (1997), the Commission refused to grant an assignment application where evidence was presented that "at the time it filed" its assignment application it held rights to nothing more than a "bare license." The Commission held that:

Under Section 309 of the Communications Act, 47 USC §309(d)(2)-(e), if a substantial and material question of fact is presented to the Commission, the application shall be designated for hearing. In this instance, we believe that the numerous allegations against the parties involved in this assignment raise substantial and material questions of fact which cannot be resolved in acting on the assignment without a hearing, as requested by TIBS.

Id. at 2257. Accord, *Omega Cellular Partners*, 5 FCC Rcd 7624 (Mobile Services Div. 1990):

where a licensee has defaulted to its creditors, where it has no physical plant with which to offer service, and where it has allowed its station to remain dark, the Commission will not permit transfer of the bare license. *Radio KDAN, Inc.*, 11 FCC 2d at 935; *Bonanza Broadcasting Corp.*, 11 Rad. Reg. 2d (P&F) at 1073.

Id. at ¶ 7. See also, *Edward B. Mulrooney*, 13 F.C.C.2d 946 (1968). In *Mulrooney*, the Commission held that a bare license could not be assigned to a bankruptcy trustee when the trustee could not have use of the physical assets used in the operation of the station, and therefore would be unable to operate the station.

That is the exact situation present in this case. On September 22, 2006, it was ordered by the Special Referee that the "FCC license" held by Gresham Communications is subject to "attachment"; that "such FCC license" is "attached"; and that "the license" be sold "in the normal course" to satisfy the judgment. Attachment 7. No other property was ordered sold. By *Order* dated October 2, 2006,

and *Amended Order* issued on October 4, 2006, it was ordered that “sale of this license” will be held at the offices of the Special Referee. Attachments 10 and 11. By *Notice of Sale* dated October 2, 2006, the following Notice was issued:

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 offices of Harris Beach, authority for selling as special referee, at 202 Cam Street, Walterboro, SC 29488 at October 27, 2006, at 12:00 noon.

Attachment 12. In a subsequent *Notice of Sale*, the Special Referee stated:

Upon authority of a Decree dated the 2nd day of October, 2006, I will offer sale to the highest bidder for cash, at public auction, the FCC License in the name of the judgment debtor....

The license will be sold for cash to the highest bidder....

Attachment 13. It also is noted that due to the fact that there are no assets legitimately under the control of the Receiver, the Station currently is “dark.” File No. BLSTA-20070509AEH.

In short, nothing has been put up for auction other than the “FCC License.” This shortcoming also is reflected in the Asset Purchase Agreement on file with the FCC for this transaction. Other than the local public inspection file (to which the Receiver has no actual ownership title), the *only* asset Cherry *even seeks* to transfer pursuant to the signed “Agreement” is the license to WPAL-FM. See “Attachment 4” to FCC Form 314 Assignment Application File No. BALH-20070406ADD. As reflected in Attachment 1, the 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.

The *only* asset the Receiver has been awarded by the Special Referee to the proposed assignee is a bare license, and as in *Edward B. Mulrooney*, a *bare* license is not properly assignable, *even* to a

Receiver, under Commission policies. For this reason, as well, the order of the Special Referee cannot be accommodated, and the proposed assignment must be denied.

V. **The Parties' Tactics Violate Commission Policy**

The Commission has held that control over disposition of a license constitutes one of the "fundamental rights" of an owner. As the Commission has stated:

In 1952 Congress amended the Communications Act to prohibit the Commission from considering any potential assignee except the one proposed by the current licensee. By this act, Congress approved a system whereby licensees were permitted to exercise their own discretion in conveying licenses, and the Commission's role was limited to considering those proposals. Within this limiting language, however, it is our responsibility to implement the broad purposes of the Communications Act so as to promote the best utilization of the broadcast frequencies. It seems clear to us that the public interest is served by such licensees being able to exercise free choice over as wide a range of potential assignees as possible. It was Congress's express intention that it is through competition in broadcasting that the public would best be served, and a "free market" selection process provides the best means for that plan to succeed. Therefore, one who seeks to limit the choices available to that licensee through cornering the market on essential station assets and using control of these assets to discourage other potential purchasers puts private gain ahead of the public interest. Since the broadcast spectrum is extremely limited, we must of necessity express our deepest concern regarding practices which amount to the acquisition of a broadcast facility through coercive or otherwise unfair methods.

Turner Communications Corp., 42 R.R.2d 1315 (1978) (emphasis added; footnotes omitted). See also, *Albert J. Feyl*, 15 F.C.C. 823, 826 (1951).

The Special Referee's Orders in this proceeding impermissibly resulted in requiring the licensee to give up his fundamental right of control over the disposition of the license. As stated previously, there would be no difficulty in Caswell Capital or the Receiver placing a lien upon the *proceeds* of any *future sale* of Station WPAL-FM. In that way, the creditor would have been fully protected in its ability to eventually be paid, and the FCC's License would have remained unencumbered. However, by literally placing an "attachment" on the WPAL-FM FCC License itself,

the Special Referee has placed a restriction on the License in a manner that is beyond his jurisdiction, and also has interfered with one of the basic freedom's afforded a licensee – the right of freedom of alienation of the License.

For this reason, as well, the Decree of the Special Referee cannot be given deference, and the underlying assignment must be denied.

VI. The Special Referee's Decree Cannot Be Given Deference by the FCC

As seen above, in this case, there are a series of legal infirmities which prevent grant of the application. In this situation, Commission precedent is clear – no credit can be given to the Court's ruling requiring the WPAL-FM license to be transferred to Cherry, or later, to Caswell, since the Special Referee's order violates FCC policies.

In this crucial respect, this case bears little difference to the seminal *Merkley* case. *Kirk Merkley*, 94 F.C.C.2d 829 (1983). In that case, acknowledging that the courts have the expertise and jurisdiction to resolve contractual disputes, the Commission explained that a court's rulings nevertheless are subject to the Commission's own licensing policies and interests. *Id.* at 839. As the Commission stated:

we have established procedures which acknowledge bifurcated authority in certain licensing areas. For example, where a licensee is accused of breaching a contract to assign its license, the determination of whether a breach occurred is left to a local state court. *Carnegie Broadcasting Co.*, 5 FCC 2d 882 (1966). The Commission does not possess the resources, the expertise or the jurisdiction to adjudicate such claims fully. *See Regents v. Carroll*, 338 U.S. 586 (1950). On the other hand, we have determined that limits on the ability of licensees to hold certain types of interests and engage in certain types of contracts are required under the Communications Act. Thus, we have adopted policies and procedures which have effectively limited the ability of licensees in these areas. One example of this is our treatment of reversions, discussed earlier. Another example is in the area of media ownership and the Commission rules limiting the interests which can be held in conjunction with broadcast properties. See Section 73.35; 73.240; 73.636; and 76.501 of the Rules. Thus, the Commission would not

approve the assignment of a license which would cause a violation of its multiple or cross-ownership rules, regardless of the contractual power of a licensee to acquire such an interest under state law. Similarly, **if an assignment application's related contract of sale violated existing rules or policies, we would withhold our approval until the problem was corrected. In this way, while the interpretation and enforcement of contracts are within the jurisdiction of state courts, the Commission has established certain public interest limitations on a licensee's contractual authority and imposes these limits by withholding its approval of a pending assignment application.** Moreover, through this procedure, conflicts between Commission policy and state laws can be avoided.

Id. at 838 ¶ 18 (emphasis added). Consequently, the Commission refused to honor the Court's ruling or the litigant's contract, finding that the contractual provision contradicted FCC policy primarily because it "treated the broadcast license as the property of the former licensee . . .," allowing the former licensee to repossess the license. *Id.* at 839 n.10. Accord, *In re Twelve Seventy, Inc.*, 6 R.R.2d 301 (1965) (license in bankruptcy proceeding could not be renewed if the current licensee failed to meet FCC qualifications, even if it protects innocent creditors).

In this case, the Decree of the Special Referee violates FCC policies in at least four respects. First, the Decree attempts Gresham Communications' access to the FCC and its ability to petition the FCC with respect to this assignment application. Moreover, as discussed above, the very fact that the Decree imposes an "attachment" on the FCC license, and attempts to treat the license as mere mortgagable/lienable "property," itself violates a long line of Commission cases, and rather than simply placing a lien on the *proper* items (*i.e.*, to those items referred to in the cases researched and cited by the Special Referee, such as simply proceeds from any future sale of the station), the Special Referee specifically attached the *FCC License*, in blatant violation of FCC policy. Additionally, the only asset Caswell Capital has pursued and the only asset the Special Referee ordered sold in an auction is the "FCC License." The fact of the matter is that any attempt to assign a bare license itself also violates decades of Commission precedent. The Decree also blatantly restricts Gresham

Communications' ability to itself sell or assign all or part of the Station's assets in satisfaction of the debt owed, contrary to Commission policy. Finally, honoring (and giving, essentially, favoritism) to the Special Referee's Decree would itself violate a prior-issued Court Order issued by the United States District Court. This also would be contrary to Commission policy.

Caswell Capital and the Court of Common Pleas are attempting to use and abuse the Commission processes in conjunction with the adjudication of a *private* civil matter – one that was initiated simply to obtain payment of a debt. Caswell Capital is attempting to manipulate the Commission processes to obtain outright ownership of a Commission license simply as a result of non-payment of a minor debt. In so doing, they are attempting to cause the FCC to cast a blind eye toward enforcement of its own policies, and to attempt to cause the FCC, at least temporarily, to ignore its primary duty, namely enforcement of the *public* interest and protection of its authorized licensees.

As was the case in the recent case of *Kidd Communications v. FCC*, 427 F.3d 1 (D.C. Cir. 2006), which involved similar machinations and abuse of the legal system to order to wrest ownership of a broadcast license from a licensee, the Orders of the Special Referee represent a fundamental misunderstanding of Commission law and precedent that cannot be honored. No valid reason exists that the FCC to give credence to the attempts of Caswell Capital to steal away the WPAL-FM license. For these reasons, the application for assignment of the license for WPAL-FM must be denied.

Conclusion

It is legal to obtain a security interest in the tangible personal assets of a station. It now is legal even to obtain a security interest in the proceeds of an authorized assignment or transfer of a license.² However, what Cherry, Caswell Capital, and the Court has done is cross that clear line established by the Commission, and is now interfering with the operation and disposition of a broadcast license.

WHEREFORE, it is respectfully requested that this "Petition to Deny" filed by Gresham Communications, Inc., be granted, and that the grant of the application of "Charles W. Cherry, II, Receiver for Gresham Communications, Inc." and Caswell Capital Partners, LLC, for assignment of Station WPAL-FM, Ridgeville, South Carolina, be denied.

Respectfully submitted,

GRESHAM COMMUNICATIONS, INC.

By: _____
Dan J. Alpert

Its Attorney

The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
(703) 243-8690

May 11, 2007

² See, e.g., *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Proceeding*, 6 C.R. 362, ¶ 12 (1997).

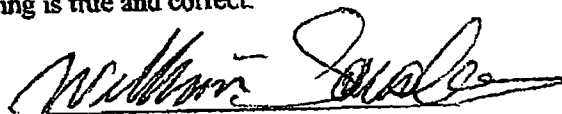
ATTACHMENT 1

DECLARATION

I, William Saunders, hereby state as follows:

1. I am President of Gresham Communications, Inc., former licensee of WPAL-FM, Ridgeville, South Carolina. The application for involuntary assignment of the station was granted on April 3, 2007. A Petition for Reconsideration of that action currently is pending before the FCC.
2. I am a local area resident of the Ridgeville, South Carolina area, within the service area of WPAL-FM.
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.
4. The facts and arguments contained in the forgoing "Petition to Deny" are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.


William Saunders

Signed and dated this 11th day of May, 2007.

ATTACHMENT 2

72-508

PROMISSORY NOTE

\$ 165,072.00

January 2, 1988

Nancy R. Beach **FOR VALUE RECEIVED**, the undersigned, jointly and severally promise to pay to the order of the principal sum of

with the interest after date at the rate of 8% per annum, payable in the following manner:

8%

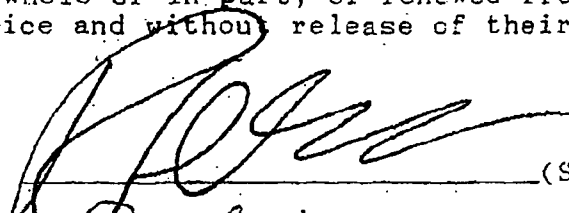
per

COLLETON COUNTY
COMMON PLEAS
JAN 24 AM 11:29

Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

The makers may pay any part or all of the unpaid principal at any time without penalty and without payment of premium therefore.

Each maker, surety, and endorser waives demand, protest, notice of maturity, non-payment or protest and all requirements of law necessary to hold each of them liable as maker, surety, or endorser and agrees that this note may be extended in whole or in part, or renewed from time to time without notice and without release of their liability thereunder.



President

(SEAL)
(SEAL)

PROMISSORY NOTE

\$ 41,268.00

January 29 1988

Nancy R. Beach **FOR VALUE RECEIVED**, the undersigned, jointly and severally promise to pay to the order of the principal sum of

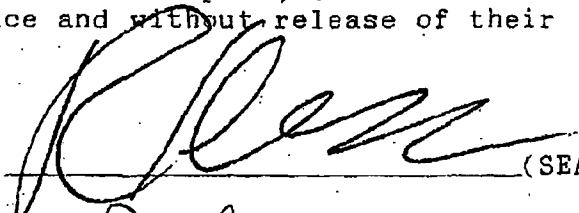
with the interest after date at the rate of 8% per annum, payable in the following manner:

FILED IN COURT
CONFIRMED
PLEAS
27 MAR 24 AM 11:29

Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

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President

(SEAL)

ATTACHMENT 3

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CA NO: 92-CP-
	)	
NANCY R. BEACH	)	
	)	
PLAINTIFF	)	
	)	
V.	)	COMPLAINT
	)	(NON-JURY)
GRESHAM COMMUNICATIONS	)	
OF WALTERBORO, INC.,	)	
AKA GRESHAM COMMUNI-	)	
CATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND	)	
RUDI H. GRESHAM,	)	
	)	
DEFENDANTS	)	

Plaintiff, complaining of Defendants, alleges:

ONE: Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc., is a corporation organized and existing under the laws of the State of South Carolina and doing business in the County of Colleton.

TWO: That Gresham Broadcasting, Inc. was a corporation organized and existing under the laws of the State of South Carolina whose charter was dissolved on November 15, 1989.

THREE: That Rudi H. Gresham is a resident of Colleton County.

FOR A FIRST CAUSE OF ACTION

FOUR: That on or about the 2nd day of January, 1988, the Defendant, Gresham Broadcasting, Inc., for valuable consideration, executed and delivered to the Plaintiff its promissory note in the sum of \$165,072 with interest at the rate of 8% per annum as shown by the note, copy of which is attached hereto as Exhibit A.

FIVE: That the note was guaranteed by the Defendant, Rudi H. Gresham.

SIX: That the note is in default in that payment has not been made as required.

SEVEN: That the said note provides for the payment of a reasonable attorneys' fee in the event the note is placed in the hands of an attorney for collection.

EIGHT: That the note has been placed in the hands of attorneys for collection.

NINE: That there is now due the sum of \$146,807.28, together with interest at the rate of 8% per annum from September 1, 1991, together with a reasonable attorneys' fee.

FOR A SECOND CAUSE OF ACTION

TEN: That on or about the 2nd day of January, 1988 the Defendant, Gresham Communications of Walterboro, Inc., also known as Gresham Communications, Inc., for valuable consideration executed and delivered to the Plaintiff its promissory note in the original principal amount of \$41,268, with interest at the rate of 8% per annum as shown by the said note, copy of which is attached hereto as Exhibit B.

ELEVEN: That the note was guaranteed by the Defendant, Rudi H. Gresham.

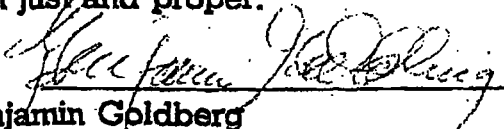
TWELVE: That the note is in default in that payment has not been made as required.

THIRTEEN: That the said note also provides for the payment of reasonable attorneys' fees in the event the note is placed in the hands of an attorney for collection.

FOURTEEN: That the note has been placed in the hands of an attorney for collection.

FIFTEEN: That there is now due the sum of \$36,701.82, together with interest at the rate of 8% per annum from September 1, 1991, together with a reasonable attorneys' fee.

WHEREFORE, Plaintiff prays as to the First Cause of Action for the sum of ONE HUNDRED FORTY SIX THOUSAND EIGHT HUNDRED SEVEN DOLLARS and Twenty-Eight Cents (\$146,807.28), together with interest at the rate of eight (8%) percent per annum from September 1, 1991, together with a reasonable attorneys' fee; as to the Second Cause of Action, for the sum of THIRTY SIX THOUSAND SEVEN HUNDRED ONE DOLLARS and Eighty-Two Cents (\$36,701.82), together with interest at the rate of eight (8%) percent per annum from September 1, 1991, together with a reasonable attorneys' fee; and, for such other and further relief as this Court may deem just and proper.

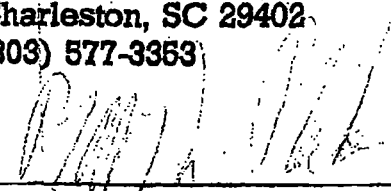

Benjamin Goldberg

42 Broad Street - 2nd Floor

P. O. Box 1054

Charleston, SC 29402

(803) 577-3353


Barry I. Baker

122 King Street

Charleston, SC 29401

(803) 577-2111

Attorneys for Plaintiff

Charleston, SC

August 18, 1992.

PROMISSORY NOTE

\$ 165,072.00

January 2, 1988

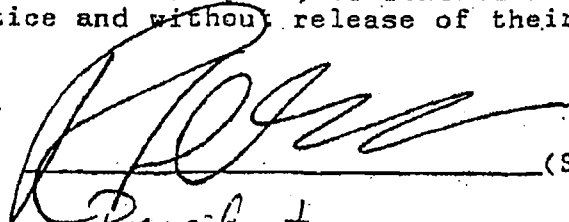
Nancy R. Beach FOR VALUE RECEIVED, the undersigned, jointly and severally promise to pay to the order of the principal sum of

with the interest after date at the rate of 8 7/8 % per annum, payable in the following manner:

Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

The makers may pay any part or all of the unpaid principal at any time without penalty and without payment of premium therefore.

Each maker, surety, and endorser waives demand, protest, notice of maturity, non-payment or protest and all requirements of law necessary to hold each of them liable as maker, surety, or endorser and agrees that this note may be extended in whole or in part, or renewed from time to time without notice and without release of their liability thereunder.



President

(SEAL)

(SEAL)

PROMISSORY NOTE

\$ 41,268.00

January 2, 1968

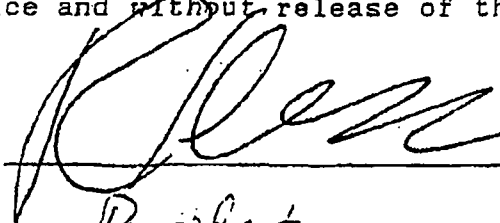
Nancy R. Beach FOR VALUE RECEIVED, the undersigned, jointly and severally promise to pay to the order of the principal sum of

with the interest after date at the rate of 8% per annum, payable in the following manner:

Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

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President (SEAL)

Exhibit B

ATTACHMENT 4

Amounts owed to Klein B. Beach, Jr by Rudi Gresham from the sale of
Radio Stations WALD-FM and WALD-AM

Note #1- \$165,072.00

Principal Due	146,256.81
1991 Interest (3 mo)	2,925.00
1992-1996 Interest	58,500.00
1997 Interest to date(3/20)	12,579.00

210,260.81

210,260.81

Note #2- \$41,268.00

Principal Due	36,701.82
1991 Interest (3 mo)	734.00
1992-1996 Interest	14,680.00
1997 Interest to date(3/20)	652.32

52,768.14

52,768.14

Note #3- \$22,150.46 (No payments made)

Principal Due	22,150.00
1988 Interest (6 mo)	922.91
1989-1996 Interest	12,920.81
1997 Interest to date(3/20)	406.82

36,400.54

36,400.54

Total due on all three notes, with
interest as of March 20, 1997

299,429.49

COLLETON COUNTY
COMMON PLEAS
97 MAR 24 AM 11:29

ATTACHMENT 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF
COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 92-CP-15-508

NANCY BEACH,

Plaintiff,

VS.

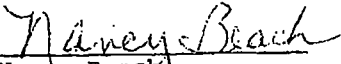
ASSIGNMENT OF
JUDGMENT INTEREST

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

Defendants..

For valid and adequate consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned judgment holder, Nancy Beach, hereby assigns her interest in the judgment referenced herein to Caswell Capital Partners, LLC, c/o 1674 Broadway, 7th Floor, New York, NY, 10019.

This assignment shall be binding upon the parties' heirs, successors and assigns.


Nancy Beach

_____, 2006
Charleston, South Carolina

ATTACHMENT 6

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON)

CA NO. 92-CP-15-508

NANCY R. BEACH,)

Plaintiff,)

v-)

**PETITION FOR
SUPPLEMENTAL HEARING**

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

Defendants.)

2006 AUG 24 PM 3:56
PATRICIA C. GRANT
CLERK OF COURT
COUNTY OF COLLETON
COMMON PLEAS

Caswell Communications, as assignee of the judgment creditor Nancy R. Beach in the above captioned matter, through its attorneys, Pratt-Thomas, Epting & Walker, petitions this Honorable Court as follows:

1. The Plaintiff filed this action seeking a judgment against the Defendants as a result of lack of payment for services rendered.

2. The Plaintiff has obtained a judgment against the Defendants as evidenced by the attached Decree dated June 2, 1998. Exhibit "A".

3. The Defendants were unable to satisfy the Decree.

4. Caswell Communications, Inc. has obtained an assignment of the judgment from Nancy R. Beach and is now the owner of the judgment.

5. The Judgment is, at this time, unsatisfied.

6. Caswell Communications is informed and believes that the Defendant has property and assets in the County not exempt from levy, which the Defendant unjustly refuses to apply towards satisfaction of the Judgment.

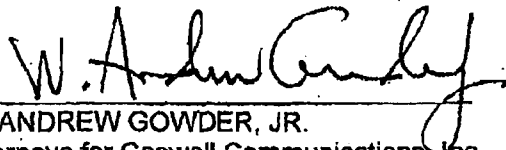
7. Caswell Communications, therefore, respectfully requests that an Order be issued by this Court requiring the Defendant to appear before this Court at some time and place so designated by the Court and then and there to answer on oath concerning the property of the Defendant, and to produce any and all books and records concerning the same, including current bankbooks, checkbooks, savings account books, tax returns for the preceding three (3) years for the United States and the State of South Carolina, and all other current records pertaining to the financial status of the Defendant, including any interest in lands, trusts, deeds, mortgages, current leases, stock subscription agreements, receipts and contracts of sale and

partnership interest agreements.

8. Caswell Communications is further informed and believes that an Order should be issued enjoining the Defendant from changing, altering, destroying or defacing any of the instruments set forth herein and from making transfer or other disposition of property not exempt by law from execution.

WHEREFORE, the Plaintiff prays that this Court inquire into these matters and that it issue such order or orders granting the relief to which the Plaintiff believes it is entitled, for all expended and statutory costs allowable for this proceeding and for such other and further relief and remedies as may be allowable and the Court may deem proper, and further, the Plaintiff requests that this matter be referred to the Special Referee pursuant to S.C.R.Civ.P. 53 with authority to enter a final order.

PRATT-THOMAS, EPTING & WALKER

BY: 
W. ANDREW GOWDER, JR.
Attorneys for Caswell Communications, Inc.,
assignee of Nancy Beach, the judgment creditor
16 Charlotte Street
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
(843) 727-2229

August 23, 2006
Charleston, South Carolina

ATTACHMENT 7

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	)	

2006 SEP 22 AM 10:44
CLERK OF COURT
COLLETON COUNTY
SOUTH CAROLINA

This matter came before me pursuant to an Order dated August 24, 2006 to conduct a supplemental proceeding, pursuant to S.C. Code Ann. §§ 15-39-310, *et seq.* Mr. William Saunders appeared on behalf of Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc. and Gresham Broadcasting, Inc.¹

Mr. William Saunders answered questions under oath on behalf of the two corporate defendants. Mr. W. Andrew Gowder, Jr., Pratt-Thomas, Epting & Walker, P.A., appeared on behalf of the successor-in-interest to the judgment creditor, Caswell Capital Partners, LLC.

On reviewing the pleadings filed, hearing the testimony of Mr. Saunders and viewing the Petition of the judgment creditor, I find as follows:

1. The parties are properly before the Court, for supplemental proceedings to aid in the satisfaction of this judgment, which is unpaid, pursuant to S.C. Code Ann. § 15-39-310, *et seq.*
2. The judgment debtors were properly served and received proper notice of

¹ The court was informed prior to the Hearing that Mr. Rudi H. Gresham was no longer a judgment debtor in this matter and his attendance was therefore not required.

[Handwritten signature]

this hearing.

3. Mr. William Saunders appeared for Gresham Communications, Inc. Neither corporate defendant was represented by counsel.

4. 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, utilizing a FM broadcast studio in North Charleston, South Carolina and a broadcasting tower in Ridgeland, South Carolina.

5. Upon conclusion of the testimony, the judgment creditor, Caswell, petitioned this Court to attach the FCC license and order execution and sale of the license to satisfy the judgment indebtedness.

6. The FCC license is properly subject to attachment, execution and sale, as a property right of the debtor, under South Carolina law.

Government licenses, as a general rule, are considered to be "general intangibles" under the Uniform Commercial Code, "i.e., personal property interests in which security interests may be perfected." In re Ridgely, 139 B.R. at 379. As discussed *supra*, In re Ridgely makes it clear that license holders have no property rights in the "actual broadcast frequencies themselves as against the federal government," 139 B.R. at 376, (citing In re Bill Welch, 3 F.C.C.R. 6502 (1988)). However, In re Ridgely and In re Cheskey stand for the proposition that licensees do have a proprietary right in the proceeds from a sale of a license, and may grant a security interest in those proceeds. See also In re Beach Television Partners, 38 F.3d 535, 537 (11th Cir.1994) (holding that a creditor has a valid security interest in the proceeds of an FCC-approved sale of a broadcast license).

112F
#2
MLQ Investors L.P. v. Pacific Quadracasting, Inc., 146 F.3d 746, 749 (9th Cir.1998)

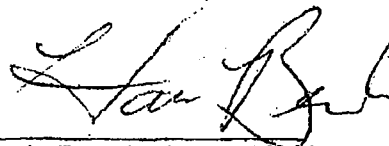
"While this proprietary interest does not allow any party to assert any rights contrary to the FCC's regulatory powers, the holder of a license may receive proceeds from the transfer of the license to a third party." PBR

Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 173 B.R. 132 (Bankr.S.D.Fla.1994). The right to receive the proceeds of an approved sale is a private right that a party can give to its creditors. State St. Bank & Trust Co. v. Arrow Communications, 833 F.Supp. 41 (D.Mass.1993); In re Ridgely, 139 B.R. 374 (Bankr.D.Md. 1992) (debtor's broadcast license is a general intangible; a creditor can perfect security interest in proceeds of its transfer). "This limited interest allows for the enforceability of a security interest in the proceeds of an FCC approved sale." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 172 B.R. 132, 134 (Bankr.S.D.Fla.1994); see also In re Atlantic Business Community Dev. Corp., 994 F.2d 1069 (3rd Cir.1993) (allowing IRS to assert a tax lien against the proceeds of a sale of the debtor's FCC license). "[A] contrary outcome would mean that the distinction between private and public interests in FCC license proceeds.. would have no meaning, and the private interests would be devoid of value." MLQ Investors, L.P., v. Pacific Quadracasting, 146 F.3d 746, 479 (9th Cir.1998.)

In re Media Properties, Inc., 311 B.R 244.

Accordingly, I hold that the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license, copy of which is attached as Exhibit A to this Order, be and hereby is, attached. I further direct that the license be sold in the normal course of sheriffs' sales in this county to satisfy this judgment and that notice of such sale shall follow, as provided by law.

IT IS SO ORDERED.



Harris Beach, Special Referee
Colleton County

September 22, 2006
Walterboro, South Carolina.

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

RADIO BROADCAST STATION LICENSE

Licensee Name: GRESHAM COMMUNICATIONS INC

Radio Service: RP AUXILIARY REMOTE PICKUP

License Effective Date: 08/16/2000

Call Sign: KB7087

File Number: 911416

License Expiration Date: 12/31/2003

Associated Broadcast Station: WPAL FK

200008165 25 1 12

GRESHAM COMMUNICATIONS INC

1717 WAPPOO RD

CHARLESTON

SC

29407

Station Technical Specifications

FCC ID	Frequency MHz	Station Class	Power (Watt)	Designator	Channel	Height	Ground Elev.	Ant. Ht. to Tip	Antenna Latitude	Antenna Longitude
G:	170.15000	MO	1	60K0F3E	30.000					
AREA OF OPERATION SITE G: SC CITIES: CHARLESTON SPECIAL COND: PAC ID 25374 ADMIN NOTE: SUP: THIS LICENSE SUPERSEDES AND REPLACES PREVIOUS AUTHORIZATION OF SAME DATE AND FILE NUMBER TO UPDATE ADMINISTRATIVE LICENSE INFORMATION AND MAKE LICENSE TERM AGREE WITH PARENT CALL SIGN. JBL 08/16/00 The latitude/longitude are authorized in North American Datum 1927 (NAD27). Additionally, the antenna height to tip, ground elevation, MAF and area of operation units are authorized in metric.										
EMISSION DESIGNATOR(S) CONVERTED TO CONFORM TO DESIGNATOR(S) SET OUT IN PART 2 OF THE COMMISSION'S RULES.										

PAGE 1 OF 1



FEDERAL COMMUNICATIONS COMMISSION
GETTYSBURG, PENNSYLVANIA

FCC 3158
April 1993

EXHIBIT

A

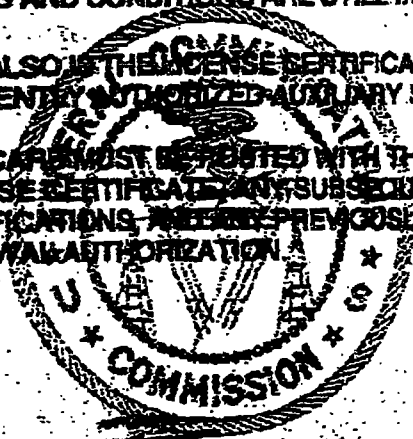
REVISED LICENSE AUTHORIZATION

PURSUANT TO COMMISSION ACTION IN MM DOCKET
No. 96-90 IMPLEMENTING SECTION 203 OF THE
TELECOMMUNICATIONS ACT OF 1996, THIS IS TO
NOTIFY YOU THAT THE LICENSE AUTHORIZATION FOR
STATION: WPAL-FM
LOCATION: WALTERBORO, SC
HAS BEEN REVISED TO A TERM EXPIRING ON 12-01-2003.

ONLY THE LICENSE TERM OF YOUR PREVIOUSLY ISSUED
LICENSE AUTHORIZATION IS AFFECTED. ALL PREVIOUS
TERMS AND CONDITIONS ARE STILL IN EFFECT.

THIS ALSO IS THE LICENSE CERTIFICATE FOR YOUR
CURRENTLY AUTHORIZED AUXILIARY SERVICES.

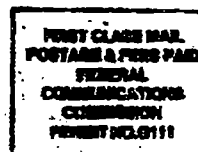
THIS CARD MUST BE RETAINED WITH THE STATION'S
LICENSE CERTIFICATE AND ANY SUBSEQUENT
MODIFICATIONS, AND BEING PREVIOUSLY ISSUED
RENEWAL AUTHORIZATION.



23407-7434 48

FEDERAL COMMUNICATIONS
COMMISSION
WASHINGTON, DC 20554

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300



GRESHAM COMMUNICATIONS
WPAL-FM FM STATION
1717 WAPPOO RD.
CHARLESTON, SC 29407

FCC 372-A (10/99)



ATTACHMENT 8

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	)	

07 FEB 21 PM 2:23

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 Ridgeville, 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,

HLD
1/27

2008, 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.

11/12/07
1/18/08

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.

 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

ATTACHMENT 9

W Y C H E

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Attorneys at Law

April 13, 2007

VIA FEDERAL EXPRESS

Mr. Charles W. Cherry
Gresham Communications, Inc.
5200 SW 18th Street
Plantation, Florida 33317

VIA FEDERAL EXPRESS

Ms. Judith Aidoo
Caswell Capital Partners, LLC
1674 Broadway, 7th Floor
New York, New York 10019

Re: *Chi-Boy Music, et. al. v. Gresham Communications and William Saunders*
C/A Number: 6:01 -1955-24;
Beach v. Gresham Communications 92-CP-15-508
WPAL, CHARLESTON, SOUTH CAROLINA

07 APR 16 PM 1:40
CLERK OF COURT
COMMON PLEAS

Dear Mr. Cherry and Ms. Aidoo:

Enclosed please find a copy of the Order of United States District Court Judge Margaret B. Seymour, which Order enjoins the transfer or other disposition of the Defendant's radio station, without further court order, or satisfaction of judgement. Ms. Aidoo is already most familiar with this Order, as she was involved in the arguments before the Court on this issue in the summer of 2002.

If we can reach agreement on the full and immediate payment of the ASCAP judgement we are prepared to ask the court to lift the injunction on any sale.

Please let me know if you have any questions or need anything else.

Yours sincerely,



Amos A. Workman
(864) 242-8310
aworkman@wyche.com
Attorney for American Society of Composers,
Authors and Publishers

A.A.W:bbw

PO Box 728 Greenville SC 29602-0728

44 East Comperdown Way Greenville SC 29501-3591

p 864.242.8200 f 864.235-8900 www.wyche.com

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Cc: Mr. Ervin G. Krasnow (Via Federal Express)
1000 Potomac Street, NW
Fifth Floor
Washington, D.C. 20007

Clerk of Court for Colleton County (Via U.S. Mail)

Mr. Andrew Schaeffer (Via U.S. Mail)

Enclosures

FILED

SEP 16 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

LARRY W. PROPPS, CLERK
U. S. DISTRICT COURT

GREENVILLE DIVISION

ENTERED

SEP 17 2002

Chi-Boy Music; EMI April Music, Inc.;)
Flyte Tyme Tunes, Inc.; Minneapolis)
Guys Music; JJ Branda Music Works;)
Famous Music Corp.; Montell Jordan)
Music; Shep-n-Shep Music; Hudson)
Jordan Music; and the 1992 Dianne)
Warren Trust d/b/a/ Realsongs,)

C/A No.: 6:01-1955-24

Plaintiffs,)

ORDER

v.)

Gresham Communications, Inc.;)
and William Saunders,)

Defendants.)

On August 1, 2002, Plaintiffs filed a motion and supporting memorandum asking the court to issue an injunction prohibiting the sale of Defendants' radio station, WPAL, located near Charleston, South Carolina—the same radio station through which Defendants committed their acts of copyright infringement which led to the judgment against them in this action.

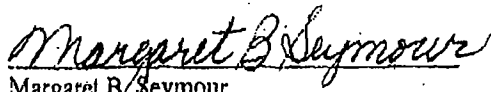
A hearing was held on August 28, 2002. At such time the parties agreed and the court ordered the parties to enter into negotiations to resolve this matter. If the matter was not resolved by September 13, 2002, the court would issue an order. The parties informed the court on September 11, 2002, that they were unable to resolve the matter.

The court grants Plaintiffs' motion to enjoin the Defendants from transferring or disposing of the radio station owned by them until the judgment against them has been satisfied, or by further

MASS
p.1
04072A
(Rev. 8/82)

order of the court.

IT IS SO ORDERED.


Margaret B. Seymour
United States District Judge

September 12, 2002

Spartanburg, South Carolina

ATTACHMENT 10

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)

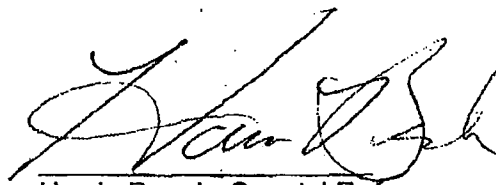
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PAUL J. GRANT
COLLETON COUNTY
COMMON PLEAS

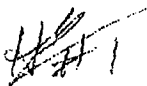
Pursuant to this Court's prior Order, dated September 22, 2006, providing for the sale of the FCC License in the name of the judgment debtor, sale of this license will be held in the office of Harris Beach, authority for selling as special referee, at 202 Carn Street, Walterboro, SC 29488 on October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



ATTACHMENT 11

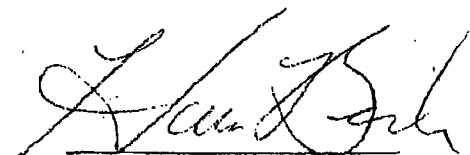
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	C.A NO. 92-CP-15-508
NANCY R. BEACH,	)	AMENDED ORDER
Plaintiff,	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
Defendants	)	

06 OCT -4 PM 3:56
 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.

ATTACHMENT 12

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)

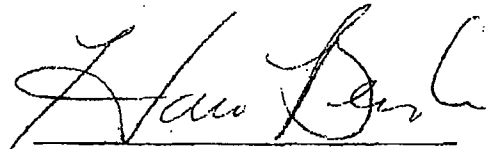
06 OCT -4 PM 3:56

PAUL J. 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 Carn 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

ATTACHMENT 13

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

NANCY R. BEACH,

Plaintiff,

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

Defendants

IN THE COURT OF COMMON PLEAS

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

NOTICE OF SALE

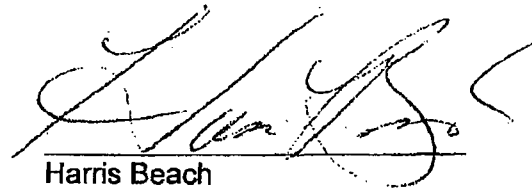
06 OCT 23 PM 2:03

WALTERBORO, SOUTH CAROLINA
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

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that a copy of the foregoing Petition to Deny has been provided by First Class Mail to the following parties:

Erwin G. Krasnow, Esq
Garvey Schubert Barer
1000 Potomac St., N.W.
5th Floor, Flour Mill Building
Washington, DC 20007

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

Dan J. Alpert

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
CA 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.

**PETITION FOR
RULE TO SHOW CAUSE**

PETITION FOR RULE TO SHOW CAUSE

The Plaintiff, Caswell Partners LLC, as successor in interest to judgment creditor Nancy R. Beach, moves the court for a Rule to Show Cause why the Defendant Gresham Communications of Walterboro, Gresham Broadcasting, Inc. and its principal William Saunders should not be held in contempt of this Honorable Court and its various Orders issued in this Supplemental Proceeding, beginning with its Order entered on September 22, 2006. In support of this motion, the Plaintiff shows the following to the court:

1. Caswell Partners, LLC ("Caswell"), the assignee of Plaintiff Nancy R. Beach, acquired a judgment against Defendant Gresham Communications of Walterboro, also known as Gresham Communications, Inc. and Gresham

Broadcasting, Inc. ("Gresham").

2. On September 22, 2006, after hearing sworn testimony from William Saunders, the principal of the Gresham defendants, this Court issued an Order attaching the FCC license for WPAL-FM, the sole Gresham asset identified by Saunders, together with "associated documents and records (including, the stations' local public file and advertiser lists)," and ordering its sale, subject to FCC approval, with the proceeds to be used to pay the outstanding judgment acquired by Caswell. (Attachment 1).
3. The Court issued the above order based on the testimony of Mr. William Saunders ("Saunders"), acting on behalf of Gresham, who testified under oath at a Court hearing held on September 20, 2006, that the FCC license for WPAL-FM was the ONLY ASSET belonging to Gresham. (Attachment 2).
4. Subsequent to the eventual judicial sale of this asset, and in opposition to an application to obtain FCC approval of the assignment of the license to complete the judicial sale, William Saunders submitted a sworn Declaration to the FCC. (Attachment 3). In that sworn Declaration dated May 11, 2007 attached to Gresham's Petition to Deny the Application to assign the license filed with the FCC, Saunders declares, under penalty of perjury, that the WPAL-FM tower, transmission 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. ***In fact, Gresham's main and only substantive argument against the validity of the assignment is that the judicial sale only affected the license, when Gresham owned other assets***

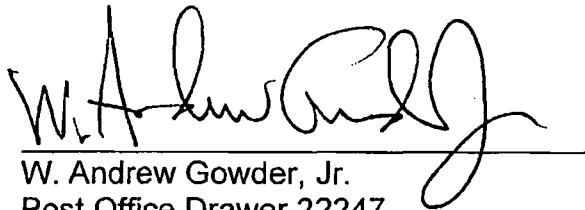
necessary to operate the station. THIS IS DIRECTLY AT ODDS WITH HIS SWORN TESTIMONY TO THIS COURT, ON WHICH THE COURT RELIED TO ISSUE THE ORDER TO SELL THE ASSET THAT IT DID.

5. The statements made under oath at the supplemental proceeding on September 22 before this Court, and those made under "penalty of perjury" in the Declaration filed with the FCC plainly contradict one another. ONLY ONE CAN BE TRUE; ONE MUST BE FALSE. Thus, the Defendant has willfully and intentionally committed perjury within S.C. Code Ann. § 16-9-10 (2006).
6. The Defendant's willful perjury, wherever it lies, has unnecessarily prolonged and burdened this Supplemental Proceeding. It has enabled Gresham to avoid and delay complying with the assignment of the WPAL-FM FCC license required by this Court's Orders.
7. Because of Saunders' perjury and his chronic failure to comply with the numerous Orders of this Court, the Plaintiff is entitled to a further opportunity to examine Saunders under oath to attempt to determine the truth between these inconsistent sworn statements and seeks the Court's assistance to attach any and all additional property Gresham may own, to satisfy this judgment and, further, to receive an award of all damages, attorneys' fees and costs necessitated by Saunders' perjury, obstruction and contempt.

WHEREFORE, the Plaintiff moves the court to enter an Order requiring William Saunders and the Gresham defendants to appear and show cause as to why they should not be held in contempt of court and for such other and further relief,

including compensatory relief and attorney fees in favor of the Plaintiff as the court deems just and appropriate.

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.
Post Office Drawer 22247
16 Charlotte Street
Charleston, S.C. 29413-2247

June 22, 2007
Charleston, 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,	)	ORDER
	)	
Plaintiff,	)	
	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants	)	

2006 SEP 22 AM 10:44
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before me pursuant to an Order dated August 24, 2006 to conduct a supplemental proceeding, pursuant to S.C. Code Ann. §§ 15-39-310, *et seq.* Mr. William Saunders appeared on behalf of Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc. and Gresham Broadcasting, Inc.¹

Mr. William Saunders answered questions under oath on behalf of the two corporate defendants. Mr. W. Andrew Gowder, Jr., Pratt-Thomas, Epting & Walker, P.A., appeared on behalf of the successor-in-interest to the judgment creditor, Caswell Capital Partners, LLC.

On reviewing the pleadings filed, hearing the testimony of Mr. Saunders and viewing the Petition of the judgment creditor, I find as follows:

1. The parties are properly before the Court, for supplemental proceedings to aid in the satisfaction of this judgment, which is unpaid, pursuant to S.C. Code Ann. § 15-39-310, *et seq.*
2. The judgment debtors were properly served and received proper notice of

¹ The court was informed prior to the Hearing that Mr. Rudi H. Gresham was no longer a judgment debtor in this matter and his attendance was therefore not required.



this hearing.

3. Mr. William Saunders appeared for Gresham Communications, Inc. Neither corporate defendant was represented by counsel.

4. 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, utilizing a FM broadcast studio in North Charleston, South Carolina and a broadcasting tower in Ridgeland, South Carolina.

5. Upon conclusion of the testimony, the judgment creditor, Caswell, petitioned this Court to attach the FCC license and order execution and sale of the license to satisfy the judgment indebtedness.

6. The FCC license is properly subject to attachment, execution and sale, as a property right of the debtor, under South Carolina law.

Government licenses, as a general rule, are considered to be "general intangibles" under the Uniform Commercial Code, "i.e., personal property interests in which security interests may be perfected." In re Ridgely, 139 B.R. at 379. As discussed *supra*, In re Ridgely makes it clear that license holders have no property rights in the "actual broadcast frequencies themselves as against the federal government," 139 B.R. at 376, (citing In re Bill Welch, 3 F.C.C.R. 6502 (1988)). However, In re Ridgely and In re Cheskey stand for the proposition that licensees do have a proprietary right in the proceeds from a sale of a license, and may grant a security interest in those proceeds. See also In re Beach Television Partners, 38 F.3d 535, 537 (11th Cir.1994) (holding that a creditor has a valid security interest in the proceeds of an FCC-approved sale of a broadcast license).

MLQ Investors L.P. v. Pacific Quadracasting, Inc., 146 F.3d 746, 749 (9th Cir.1998)

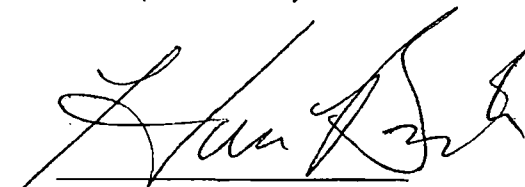
 "While this proprietary interest does not allow any party to assert any rights contrary to the FCC's regulatory powers, the holder of a license may receive proceeds from the transfer of the license to a third party." PBR

Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 173 B.R. 132 (Bankr.S.D.Fla.1994). The right to receive the proceeds of an approved sale is a private right that a party can give to its creditors. State St. Bank & Trust Co. v. Arrow Communications, 833 F.Supp. 41 (D.Mass.1993); In re Ridgely, 139 B.R. 374 (Bankr.D.Md. 1992) (debtor's broadcast license is a general intangible; a creditor can perfect security interest in proceeds of its transfer). "This limited interest allows for the enforceability of a security interest in the proceeds of an FCC approved sale." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 172 B.R. 132, 134 (Bankr.S.D.Fla.1994); see also In re Atlantic Business Community Dev. Corp., 994 F.2d 1069 (3rd Cir.1993) (allowing IRS to assert a tax lien against the proceeds of a sale of the debtor's FCC license). "[A] contrary outcome would mean that the distinction between private and public interests in FCC license proceeds.. would have no meaning, and the private interests would be devoid of value." MLQ Investors, L.P., v. Pacific Quadracasting, 146 F.3d 746, 479 (9th Cir.1998.)

In re Media Properties, Inc., 311 B.R 244.

Accordingly, I hold that the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license, copy of which is attached as Exhibit A to this Order, be and hereby is, attached. I further direct that the license be sold in the normal course of sheriffs' sales in this county to satisfy this judgment and that notice of such sale shall follow, as provided by law.

IT IS SO ORDERED.


Harris Beach, Special Referee
Colleton County

September 22, 2006
Walterboro, South Carolina.



UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

RADIO BROADCAST STATION LICENSE

License Name: GRESHAM COMMUNICATIONS INC

Radio Service: RP AUXILIARY REMOTE PICKUP

License Effective Date: 08/16/2000

Call Sign: KS7087

File Number: 911416

License Expiration Date: 12/01/2003

Associated Broadcast Station: WPAL FM

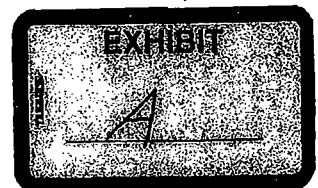
200008155 25 1 12

GRESHAM COMMUNICATIONS INC
1717 WAPPOO RD
CHARLESTON SC 29407

Station Technical Specifications

FCC ID	Frequency MHz	Station Class	Signal Units	Call Sign Designator	Output Power (Watt)	Grass Height	Ground Elev.	Ant. Ht. to Tip	Antenna Latitude	Antenna Longitude
G:	170.15000	MO	1	60K0F3E	30.000					
AREA OF OPERATION SITE G: SC CITIES: CHARLESTON SPECIAL COND: FAC ID 25374 ADMIN NOTE: SUP: THIS LICENSE SUPERSEDES AND REPLACES PREVIOUS AUTHORIZATION OF SAME DATE AND FILE NUMBER TO UPDATE ADMINISTRATIVE LICENSE INFORMATION AND MAKE LICENSE TERM AGREE WITH PARENT CALL SIGN. JBL 08/16/00 The latitude/longitude are authorized in North American Datum 1927 (NAD27). Additionally, the antenna height to tip, ground elevation, AAT and area of operation units are authorized in metric.										
EMISSION DESIGNATOR(S) CONVERTED TO CONFORM TO DESIGNATOR(S) SET OUT IN PART 2 OF THE COMMISSION'S RULES.										

PAGE 1 OF 1

FEDERAL COMMUNICATIONS COMMISSION
GETTYSBURG, PENNSYLVANIAFCC 315B
April 1993

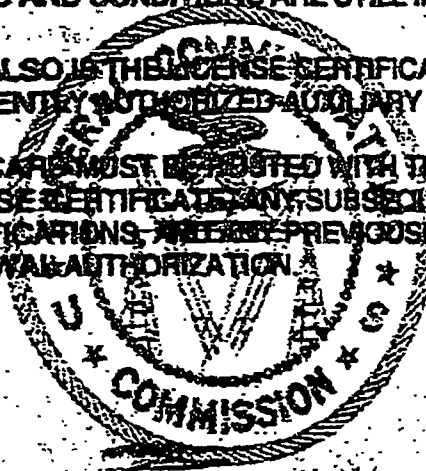
REVISED LICENSE AUTHORIZATION

PURSUANT TO COMMISSION ACTION IN MM DOCKET
No. 96-80 IMPLEMENTING SECTION 203 OF THE
TELECOMMUNICATIONS ACT OF 1996, THIS IS TO
NOTIFY YOU THAT THE LICENSE AUTHORIZATION FOR
STATION: WPAL-FM
LOCATION: WALTERBORO, SC
HAS BEEN REVISED TO A TERM EXPIRING ON 12-01-2003.

ONLY THE LICENSE TERM OF YOUR PREVIOUSLY ISSUED
LICENSE AUTHORIZATION IS AFFECTED. ALL PREVIOUS
TERMS AND CONDITIONS ARE STILL IN EFFECT.

THIS ALSO IS THE LICENSE CERTIFICATE FOR YOUR
CURRENTLY AUTHORIZED AUXILIARY SERVICES.

THIS CARD MUST BE POSTED WITH THE STATION'S
LICENSE CERTIFICATE. ANY SUBSEQUENT
MODIFICATIONS, ~~AND~~ PREVIOUSLY ISSUED
RENEWAL AUTHORIZATION.



23407-7434 48

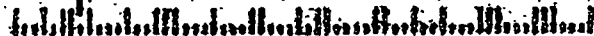
FEDERAL COMMUNICATIONS
COMMISSION
WASHINGTON, DC 20554

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

FIRST CLASS MAIL
POSTAGE & FEES PAID
FEDERAL
COMMUNICATIONS
COMMISSION
PERMIT NO. 111

GRESHAM COMMUNICATIONS
WPAL-FM FM STATION
1717 WAPPOO RD.
CHARLESTON, SC 29407

FCC 372-A (1996)



STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON)

NANCY R. BEACH,)
)
Plaintiff,)

-versus-

Civil Action No:
92-CP-15-508

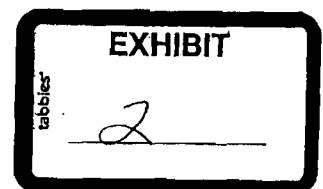
GRESHAM COMMUNICATIONS OF)
WALTERBORO, INC., a/k/a)
GRESHAM COMMUNICATIONS, INC.,)
GRESHAM BROADCASTING, INC.,)
and RUDI R. GRESHAM,)
)
Defendant.)

COPY

Supplemental Proceeding held before the
Honorable Harris L. Beach, Jr., Special Referee,
on the 20th day of September 2006, at the law
offices of Kinard & Beach, 202 Carn Street,
Walterboro, South Carolina, commencing at
approximately 11:30 a.m.

Bettye Anderson & Associates

Professional Court Reporters
6020 Dowlingwood Drive
Beaufort, South Carolina 29902
(843)525-0791 or (800)543-5506



APPEARANCES

For the Plaintiff: W. Andrew Gowder, Jr., Esquire
PRATT-THOMAS EPTING WALKER, P.A.
16 Charlotte Street
P.O. Drawer 22247
Charleston, S.C. 29413-2247

For the Defendant: Pro Se

Also Present: Judith Aidoo
David Mack III

Reported by: Debbie Criscitiello
Professional Verbatim Reporter

o0o

Bettye Anderson & Associates

Beaufort, South Carolina

Appearances & Index

(843)525-0791 (800)543-5506

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INDEX TO EXHIBITS

(None Offered)

oOo

1 THE COURT: This is a hearing in the case --
2 are you sure this is the right one?

3 MR. GOWDER: Yes, sir. And I can -- I
4 believe so. Nancy Beach versus Gresham
5 Communications?

6 THE COURT: Okay.

7 MR. GOWDER: Yes, sir. That's it.

8 THE COURT: Okay. Nancy R. Beach versus
9 Gresham Communications. And I'm Harris Beach. I'm
10 Special Referee in this case.

11 And let me make it known to you that I
12 represented Nancy Beach at one time.

13 MR. GOWDER: All right.

14 THE COURT: I want that on the record. I
15 don't represent her now. I have not represented her
16 in awhile. It was not involving this case. It was
17 involving the death of her -- or what we alleged was
18 the death of her former husband.

19 MR. GOWDER: Okay.

20 THE COURT: It had nothing to do with this
21 litigation whatsoever and I have not seen her in over
22 a year.

23 MR. GOWDER: Yes, sir.

24 THE COURT: But I did want to put that on
25 record in case anybody objects to any appearance of

1 impropriety.

2 MR. GOWDER: We certainly have no objection,
3 Mr. Beach.

4 THE COURT: Hearing none, I will go forward.
5 Mr. Gowder?

6 MR. GOWDER: We're here for a Supplemental
7 Proceeding. Ms. Aidoo's company has become the
8 Successor in Interest for this judgment, having
9 acquired the judgment from Ms. Beach. So we're here
10 to ask representatives of Gresham Communications
11 questions about what assets they may have. And if we
12 are able to locate some assets that have value, to ask
13 the Court to assist in taking further action to
14 collect the judgment.

15 THE COURT: Call your first witness.

16 MR. GOWDER: Thank you.

17 All right. I guess I should ask who is here
18 for Gresham Communications.

19 MR. SAUNDERS: I am. William Saunders.

20 MR. GOWDER: Mr. Saunders. All right, sir.

21 -----o0o-----

22 Whereupon, the witness was duly sworn by the
23 Court.

24 -----o0o-----

25 THE COURT: Go ahead.

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Beaufort, South Carolina

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1 MR. GOWDER: Thank you, sir.

2 DIRECT EXAMINATION

3 BY MR. GOWDER:

4 Q. Mr. Saunders, what is your address, sir?

5 A. 6191 Chisolm Road, Johns Island.

6 Q. All right, sir. And how long have you -- is that
7 your home address?

8 A. Yes.

9 Q. And how long have you been at that address?

10 A. I've really not -- I've been on Johns Island all
11 my life, it's just another number.

12 Q. All right, sir.

13 A. I've been there at least 30 years.

14 Q. What is your relationship to Gresham
15 Communications?

16 A. I am the president of Gresham Communications.

17 Q. How long have you been president of Gresham
18 Communications?

19 A. Probably since 1996. Probably about 10 years.

20 Q. Okay. And before that were you associated with
21 Gresham Communications?

22 A. Yes.

23 Q. All right. What was your capacity with them
24 before that?

25 A. I was vice-president of Gresham I think from 1993

1 or '94.

2 Q. And prior to 1993 did you have some involvement
3 with Gresham Communications?

4 A. No.

5 Q. All right, sir. That was your first involvement,
6 in 1993?

7 A. Yes.

8 Q. In the caption there are actually -- there appear
9 to be two entities, one called Gresham Communications of
10 Walterboro, also known as Gresham Communications, Inc., and
11 then a separate one called Gresham Broadcasting, Inc. Do
12 you -- are those, in fact, two separate --

13 A. Yes.

14 Q. -- companies?

15 A. Yes.

16 Q. All right, sir. What is the legal status of
17 those two companies presently?

18 A. I don't know. One of them is the one that you're
19 concerned about. That's -- I guess it's in good standing.
20 I don't know.

21 Q. And which one is that?

22 A. That would be the Gresham Communications, which
23 is licensed in Florida.

24 Q. All right.

25 A. A Florida corporation.

1 Q. Would that be Gresham Communications of
2 Walterboro, Inc.?

3 A. No.

4 Q. Or is that Gresham Broadcasting, Inc.?

5 A. Gresham Broadcasting.

6 Q. All right. What's the -- is Gresham
7 Communications of Walterboro, Inc. operating?

8 A. I've got no idea. I never had anything to do
9 with it.

10 Q. All right. So you have not been involved in that
11 company at all, only in Gresham Broadcasting?

12 A. Yes.

13 Q. All right, sir. And you say that's a Florida
14 company?

15 WITNESS: I'm going to ask, Mr. Beach,
16 because I'm not represented by counsel and I'm very,
17 very uncomfortable going through what I'm going
18 through at this particular point. I don't know -- I
19 don't know where this is heading -- headed. And I'm
20 very, very uncomfortable. I feel out just with Ms.
21 Aidoo, who is a Harvard lawyer, who's a brilliant
22 person, and this is one of the prestigious law firms
23 in the City of Charleston. I just feel really that
24 I'm not -- I'm not even capable of knowing the
25 direction of how this thing's going to go.

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1 And the reason that I'm raising that with
2 you, sir, Your Honor, is because I've made mistakes
3 four times in this particular vein without being
4 represented by counsel.

5 And my problem is that this document that I
6 have was served on me August 24th. Normally, under my
7 limited knowledge, normally you have at least 30 days
8 to prepare for this kind of a situation, which is kind
9 of complex. My -- it took me two days to try to
10 figure out how this was, because Nancy Beach was paid,
11 so I don't know. I couldn't figure out what this
12 judgment about Nancy Beach comes back after six or
13 seven years.

14 And it took me a couple of days before I got
15 to send it to my FCC attorney in Rockington, and he
16 called me back and said this is something that I
17 needed local counsel for. And, of course, at that
18 point it had been about two weeks almost had passed at
19 that point and I began to try to get local counsel for
20 this. None of them would really accept it because
21 they said they don't have enough time to get prepared
22 for this case.

23 So I am here today without an attorney. Not
24 because I didn't try to get an attorney or have an
25 attorney, but I just couldn't. And to me and some of

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1 the folks that I've talked about it, especially to me,
2 this is about the radio station. This is not about
3 the Nancy Beach judgment. To me it's a backdoor way
4 to get back to the asset.

5 I mean, most people, including Ms. Aidoo,
6 know that I don't have \$65,000. So the question would
7 be, well, I own the radio station so why not -- that's
8 where it's going to end up.

9 So my request to you today, that I need to
10 be represented by counsel. I need to be given a
11 chance to be represented by counsel. That this -- I
12 would ask for a continuance of this particular case
13 until I can get counsel.

14 And also that this case itself needs to be
15 in another forum, as far as I'm concerned. Probably
16 in the City of Charleston where it's going to be about
17 the radio station and Ms. Aidoo's and our arrangement.
18 Because it's about a lot more money than \$65,000.

19 And I have not ever said to Ms. Aidoo that
20 she doesn't have money coming. It's just how we were
21 going to go about making this thing work. And it's
22 not been an easy transition for me in reference to Ms.
23 Aidoo. Like I say, Ms. Aidoo is a very, very smart
24 person and she consider negotiation is when she tell
25 you what to do. And that has been our conversation

1 back and forth.

2 So I am really asking that this be continued
3 and that the chance be given for the accounting of
4 whatever is going to happen with this that Ms. Aidoo
5 would be able to get whatever money she got coming
6 within a three to six month period, whatever that is.
7 Somebody would probably have to referee that. Because
8 I am, like I said at the beginning, I'll say it again,
9 I am not -- I'm not capable of having a discussion
10 with Ms. Aidoo. She can tell me what to do and how
11 I'm supposed to do things.

12 And even with trying to put the station up
13 for sale she just called me and said I am selling the
14 station and I'm giving you a courtesy call. Well, you
15 know, the license is in my name. And then if I've got
16 a \$2 million sale for it, you get \$450,000 out of it
17 and she gets 1.5-something out of it. That would not
18 -- I owe \$400,000 to members of my community.

19 THE COURT: Well, let me address the issue.
20 First of all, I think under the rule that is an
21 adequate period of time based on the service. The
22 rule I think was 10 days?

23 MR. GOWDER: 10 days. Yes, sir.

24 THE COURT: 10 days on service for
25 Supplemental Proceedings, so we're within the period.

1 of time. And I do realize that you're not -- do not
2 have counsel 'cause I did talk with one fellow who was
3 talking about representing you, and I am aware of
4 that.

5 How do you feel about a continuance of this
6 hearing?

7 MR. GOWDER: We would oppose it, Mr. Beach.
8 I mean, ordinarily I'm for giving people as much time
9 as they need. This matter, however, is one in which
10 not all -- you know, in many Supplemental Proceedings
11 folks appear without counsel because it really is a
12 matter of answering questions about their assets and
13 liabilities. We're beyond a hearing on the merits,
14 and so I'd like to be able to do that.

15 I will -- depending on what the answers may
16 be and what assets may be identified, I'm going to ask
17 you to take certain action, and perhaps, Mr. Saunders
18 can, you know, pending that action, obtain counsel to
19 take whatever relief they think is warranted.

20 But certainly we tried to give him adequate
21 time to make whatever arrangements he needed to have
22 counsel here if he wanted. And Ms. Aidoo has come
23 here from New York at, you know, great expense, and
24 we'd like to go forward, if we could.

25 THE COURT: All right. I'm going to deny

1 the motion for continuance. I believe we can go
2 forward. And if it is necessary we can keep the
3 hearing open if there's other information that needs
4 to come in or if there's something we need
5 clarification on.

6 MR. GOWDER: All right, sir.

7 THE COURT: So we'll do that to accommodate
8 you on that.

9 As to the forum, this is a Colleton County
10 case and Colleton County would be the proper venue for
11 this particular action to be held.

12 So I'm going to deny the motion for
13 continuance, but I will -- if we do need to we can
14 hold it open for any other information that might need
15 to come in.

16 MR. GOWDER: All right. And just to be
17 clear, I met Mr. Mack coming in. I take it Mr. Mack
18 is not appearing as counsel for Gresham; is that
19 correct?

20 WITNESS: He's not an attorney. No.

21 MR. GOWDER: All right, sir.

22 THE COURT: Please continue.

23 MR. GOWDER: Thank you very much.

24 BY MR. GOWDER:

25 Q. We were talking about Gresham Communications and

1 Gresham Broadcasting, Mr. Saunders, and so your testimony,
2 just so that I'm clear, is that Gresham Broadcasting, Inc..
3 is the company with which you're affiliated?

4 A. Yes.

5 Q. And you're appearing for that company today?

6 A. Yes.

7 Q. All right. And what is Gresham Communications,
8 Inc.?

9 A. I don't understand the question.

10 Q. I mean, is Gresham Communications, Inc., a
11 company with which you are familiar?

12 A. Yes.

13 Q. All right. And what does it do?

14 A. Well, it owns a radio station or the license to a
15 radio station.

16 Q. All right. And who are the owners of Gresham
17 Communications, Inc.?

18 A. I am, with some investors. But I am the
19 principal.

20 Q. All right, sir. And is that company, Gresham
21 Communications, Inc., a viable, ongoing company?

22 A. I think so. But again, you've probably got some
23 other proof.

24 Q. And you are -- no, sir. I mean, I'm just asking
25 the questions I'm asking.

1 A. I'm afraid of lawyers with those questions, sir.

2 Q. You are the president of that company?

3 A. Yes.

4 Q. And the majority stockholder?

5 A. Yes.

6 Q. How many other stockholders are there?

7 A. There's about maybe 14 or so investors.

8 Q. What share of the company do you own?

9 A. Probably about 85 percent of it.

10 Q. So you have about 14 or so stockholders that own
11 roughly 15 percent of the company?

12 A. Yes.

13 Q. All right, sir. Is there a -- are there a set of
14 bylaws or is there some sort of operating agreement that
15 governs that company?

16 A. Yes, there would be.

17 Q. All right. Do you know who would have a copy of
18 that? Do you have a copy of it?

19 A. No.

20 Q. Was this corporation formed by a lawyer?

21 A. I've got no idea, sir.

22 Q. All right. Who formed this company?

23 A. Gresham. Rudi Gresham.

24 Q. Rudi Gresham. All right, sir. And did you
25 acquire your 85 percent from Mr. Gresham?

1 A. No, sir. I was involved -- Rudi Gresham and I
2 were -- he came to me with an idea and we went into
3 business together. I ended up with, I think, about 49
4 percent of it in the beginning, about 1994.

5 And Rudi ended up with a lot of problems in this
6 community. And Enterprise Bank was foreclosing on him with
7 a lot of stock. So what I did is that I took over the debt
8 at Enterprise Bank.

9 And one of the other things that I did was that
10 Rudi Gresham had owed Nancy Beach some money. And I knew
11 the problem that Kline Beach and Ms. Beach had had with
12 Rudi, 'cause they lost a lot of stuff, two radio stations
13 in that deal. And so I took on the debt of Nancy Beach to
14 be fair. I had nothing to do with it and I didn't even
15 know when it occurred.

16 Q. Uh-huh.

17 A. But there was a debt that was owed to them. So
18 when I took on the debt at the bank, I also took on the
19 debt for Nancy Beach.

20 Q. Uh-huh.

21 A. And that's how come Nancy Beach ended up as a
22 part of what I am.

23 Q. Okay. And at what point did you obtain the 85
24 percent of stock ownership?

25 A. You looking for a date?

1 Q. Yes, sir. When?

2 A. I don't know. I think it was about 1996, I
3 think.

4 Q. Okay. And who conveyed that to you? Who was the
5 prior owner?

6 A. Rudi Gresham.

7 Q. Rudi Gresham. All right.

8 A. Well, Rudi and Faye Gresham was, I think. It was
9 in Faye Gresham's name.

10 Q. And is there some documentation of the transfer
11 of that ownership to you?

12 A. Yes, sir. I don't know where it's at.
13 Enterprise Bank or some other place has got those
14 documents. The other person that was supposed to send
15 those documents to me recently and I never got it was Bubba
16 Unger, here in Walterboro.

17 Q. Yes, sir.

18 A. But he was the attorney. He had all of the
19 documents.

20 Q. The attorney for whom?

21 A. He was the attorney for the bank.

22 Q. For Enterprise Bank?

23 A. Yes.

24 Q. All right. And was Enterprise Bank involved in
25 the transaction that got stock ownership from Gresham to

1 you?

2 A. Yes.

3 Q. So you believe that the bank or Mr. Unger may
4 actually have some of those documents?

5 A. Yeah. What I'm saying to you, somebody, I think
6 Mr. Unger, was supposed to be closing down his office or
7 something about two months ago and one of his secretaries
8 called me asking should they send those stuff to me, and I
9 said yes and I have never gotten them.

10 Q. You haven't gotten them yet?

11 A. No.

12 Q. All right. Do you think you will be getting
13 them, you just --

14 A. I have no idea.

15 Q. All right. Were you represented by counsel at
16 the time of this transfer of the ownership?

17 A. I don't think I was. I'm not sure.

18 Q. Okay. Since the time when you became majority
19 stockholder, who keeps -- who has been keeping the books
20 and records of Gresham Communications?

21 A. Anything that has been being kept would have been
22 kept with an attorney in Charleston that I've been working
23 with. You have some of the background of that. But are
24 you talking about day-to-day operations?

25 Q. Yes, sir.

1 A. Because there's no really day-to-day really
2 operation of Gresham Communications.

3 Q. Well, let's go at it this way then. When was the
4 last time that Gresham Communications filed a federal tax
5 return?

6 A. I don't know. It's probably been two or three
7 years ago.

8 Q. All right. Who prepared that return?

9 A. It would have been Jerry Gambrell, CPA.

10 Q. All right, sir. And had Mr. Gambrell prepared
11 prior year tax returns for Gresham Communications?

12 A. Well, it's been sort of interchangeable with WPAL
13 radio and Gresham Communications. He did those things for
14 me going back into 1980.

15 Q. Okay. So for some time Mr. Gambrell's been
16 handling the -- filing the tax returns for the companies
17 with which you were involved?

18 A. Yes.

19 Q. All right, sir. And as far as you know would Mr.
20 Gambrell still have those records?

21 A. I don't know. I would assume that he has them.

22 Q. All right. How about the just ongoing financial
23 statements and general ledger and different financial
24 reports of Gresham Communications, who keeps those?

25 A. There are not -- there really have not been any

1 financial involvement with Gresham with anything, God, for
2 a very long time. I went into bankruptcy I think in about
3 2000, 2001, somewhere back in that area. And most of the
4 bills and stuff stopped then with me with dealing with the
5 radio station.

6 Q. Okay.

7 A. So right now IRS takes all of my income coming
8 in from the position that I hold at the agency in
9 Charleston because of debt from the radio station. I just
10 got a tax -- a state tax in for \$47,000 from the state tax
11 for that.

12 Q. Is the IRS taking money for liens or levies
13 against you personally or against Gresham?

14 A. No, it's against Gresham.

15 Q. Okay. And what --

16 A. It's been about 60-something thousand dollars.

17 Q. What's the amount of that levy?

18 A. The levy was 100-and-something thousand dollars.

19 Q. So are they continuing to take money to satisfy
20 that levy?

21 A. Yes. And it's a very confusing thing to me.
22 I've not been able to get any help with that because out of
23 that levy, as chairman of Gresham Communications, they said
24 that I was due to pay -- since I had no involvement in it
25 with no income that I've gotten out of it, that I needed to

1 pay a fourth of that and they sent me a judgment, I think,
2 for \$29,000. But they are still continuing. I've given
3 them about \$60,000 but they continue to take --

4 Q. The IRS has filed a personal judgment against you
5 for \$29,000; is that right?

6 A. For Gresham Communications.

7 Q. For Gresham Communications, as president or
8 controlling person of Gresham Communications?

9 A. Yes.

10 Q. All right. Did the IRS levy have to do with WPAL
11 or for Gresham?

12 A. Well, those are the things that I -- and again,
13 sir, that I've got a problem with because those two things
14 have been interchangeable. WPAL is the entity of Gresham
15 Communications. So whether they were using it as WPAL or
16 as Gresham, I think it's Gresham.

17 Q. Okay.

18 A. But I don't know. I can get those.

19 Q. Yeah. I mean, "I don't know" is an okay answer
20 if you don't know.

21 A. I don't know.

22 Q. Okay. What does Gresham Communications, Inc.,
23 do? What are its activities?

24 A. The only activity it would have would have some
25 interaction with the radio station WPAL.

1 Q. And that's an FM station?

2 A. Yes, sir.

3 Q. All right. And is it currently broadcasting?

4 A. Yes.

5 Q. And what is the frequency?

6 A. 100.9.

7 Q. All right. And what's the reach or area that it
8 reaches?

9 A. It probably will reach into most of the low
10 county, up to Williamsburg and Orangeburg.

11 Q. And what's the location out of which this radio
12 station operates?

13 A. The tower is in Ridgeville.

14 Q. And where is the broadcast studio?

15 A. That's in the city of North Charleston.

16 Q. What's the address there?

17 A. I don't know.

18 Q. Do you know the street?

19 A. Spaulding Drive.

20 Q. Okay. And who operates the radio station?

21 A. At this particular point, I am.

22 Q. Okay. And when I say -- I've never been involved
23 in radio, so when I say "operate the station," when you say
24 you operate it, what does that mean? What do you
25 physically do?

1 A. I testified before FCC once with that same
2 question. They asked me what I do --

3 Q. Oh, okay.

4 A. -- at that particular time.

5 Q. I'm surprised they asked you. They ought to know
6 what radio station people do.

7 A. No, they want to know what I do, the same thing
8 that you're trying to find out.

9 Q. Oh, okay.

10 A. You know, I told them that I check the commode
11 when it overflows; when employees got complaints, I do that
12 if these other people have got problems at the station; I
13 pay the bills.

14 Q. All right.

15 A. But most of the time -- right now I just paid
16 \$1,800 for the renewal fees for the FCC.

17 Q. How does the programming get on the air, I guess
18 is the question I'm asking you?

19 A. It gets on the air through staff that are there
20 that are producing the programming.

21 Q. So there are disc jockeys and people like that
22 that are radio personalities that talk on the air and they
23 play music?

24 A. Yeah. Mr. Mack has a talk show every day that
25 comes on.

1 Q. Okay.

2 A. There's some church programs that now come on.

3 Q. Okay. How many people are involved in the
4 programming on a daily basis?

5 A. Probably three.

6 Q. Okay.

7 A. Three or four.

8 Q. And are those folks paid?

9 A. Not all of them. Two of them are being paid.

10 Q. Okay.

11 A. Mr. Mack is not paid and another person working
12 is not being paid.

13 Q. Okay. The broadcast studio, who owns that?

14 A. It belongs to -- I can't even think of the guy's
15 name. It's an old time broadcaster that owns the building
16 there.

17 Q. Okay. And what's the -- is there a lease or
18 what's the arrangement between Gresham and the owner?

19 A. Ms. Aidoo would have that answer. I don't have
20 that. I don't have an agreement between --

21 THE COURT: Will y'all excuse me just a
22 moment? Go off the record for just a minute?

23 MR. GOWDER: Yes, sir.

24 (Off the record momentarily for a phone call.)

25 THE COURT: We can go back on the record

1 again.

2 MR. GOWDER: All right, sir.

3 BY MR. GOWDER:

4 Q. I think we were talking about the lease when we
5 went off, Mr. Saunders, and I think you said that Gresham
6 itself does not -- is not on the lease but some other
7 entity leases the space; is that right?

8 A. Yeah. Caswell Broadcasting.

9 WITNESS: Your Honor, I'm going to --
10 whatever you're going to need to do to me, you can go
11 ahead and do it. I'm going to just stop answering his
12 questions.

13 THE COURT: Well, sir, I mean, I --

14 WITNESS: The questions are setting me up
15 for a problem to create at FCC and I am not going to
16 -- no matter how I answer them I'm going to lose. So
17 if you need to jail me or contempt or whatever you
18 need to do. I cannot do this by myself without
19 counsel and I refuse to do it.

20 MR. GOWDER: We're just seeking information.

21 THE COURT: Yes. I understand that. And I
22 do understand the witness's reluctance with regard to
23 these things, if there are some FCC implications. You
24 know, I don't want to jail anybody or hold anybody in
25 contempt, but I am a little reluctant since you have

1 A. No, that's all it owns.

2 Q. Does Gresham Communications, Inc., hold the
3 license, the FCC license for the station?

4 A. Yes.

5 Q. All right, sir.

6 MR. GOWDER: That's really what the
7 testimony -- you know, primarily the testimony I
8 needed and that's the relief that we're seeking.

9 THE COURT: Do you have any other questions
10 of this witness?

11 MR. GOWDER: If you would indulge me, I
12 would like to step outside with my client and make
13 sure, but that's essentially what we're here for.

14 THE COURT: We'll just a break.

15 MR. GOWDER: That'll be great.

16 THE COURT: Y'all take your time.

17 (A brief break was taken.)

18 MR. GOWDER: Mr. Beach, what we would like
19 to do is to -- you know, we have identified an asset
20 that should be used to satisfy the outstanding debt.
21 We're going to ask -- and we'll proceed any way you'd
22 like, but what I would be happy to do is to prepare a
23 proposed order with citations.

24 THE COURT: I would appreciate that. I
25 would like to see the citations on whether or not the

1 State Court can order the sale of an FCC license.

2 MR. GOWDER: Yes, sir. And I will do that
3 and I will attach those cases, and obviously make
4 copies available to Mr. Saunders.

5 THE COURT: Okay.

6 MR. GOWDER: And the only thing -- and I
7 think I can do that within the week. The only thing
8 that I would ask is that the Court keep in place the
9 injunction against any sale or disposition of assets
10 of this company --

11 THE COURT: And that's already filed?

12 MR. GOWDER: -- while all this is pending.
13 Yes, sir, it is.

14 THE COURT: Okay. We'll keep that in place.

15 MR. GOWDER: All right, sir. And with that
16 I think I can have something to you within the week
17 for your consideration and I'll make a copy available
18 to Mr. Saunders.

19 THE COURT: I am going to be at the Public
20 Defenders Conference the first part of next week.

21 MR. GOWDER: Yes, sir.

22 THE COURT: So later in the week would be
23 fine.

24 MR. GOWDER: Yes, sir. All right, sir. And
25 do I just mail it to this address?

1 THE COURT: You can mail it to this address.
2 That'll be fine.

3 MR. GOWDER: Mr. Saunders, what's the best
4 way for me to communicate with you so that I can send
5 this to you in the mail?

6 WITNESS: Same way that you sent me this
7 summons.

8 MR. GOWDER: All right. The same place.
9 All right, sir.

10 WITNESS: Eight o'clock at night would be
11 fine.

12 MR. GOWDER: No, sir. I'd like to send it
13 to you in the mail so I don't bother you at eight
14 o'clock at night. But at that address would be
15 acceptable?

16 WITNESS: Yes, sir.

17 THE COURT: Let me give you another street
18 address for me.

19 MR. GOWDER: Yes, sir.

20 THE COURT: 504 Thompson Street, Walterboro.
21 That will get to me quicker because this office
22 technically isn't open and I sometimes don't check the
23 mail that quickly.

24 MR. GOWDER: Understood. All right, sir.
25 Thank you for your time.

1 THE COURT: Thank you.

2 (WHEREUPON, the proceeding was concluded at
3 approximately 12:15 p.m.)
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF BEAUFORT
3
4

5 CERTIFICATE OF COURT REPORTER
6

7 I, Debbie Criscitiello, Court Reporter and Notary
8 Public in and for the State of South Carolina, do hereby
9 certify that the foregoing thirty-two (32) pages of
10 typewritten testimony were taken down and then transcribed
11 by me; that the same is a true, correct and complete
12 transcript of the proceedings as stated in the caption.

13 I further certify that I am not of kin nor counsel to
14 any of the parties hereto, and, further, that I have no
15 interest whatsoever in the outcome of said proceedings.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal this the 3rd day of October 2006.
18

19 Debbie Criscitiello

20 NOTARY PUBLIC FOR SOUTH CAROLINA

21 My Commission Expires

22 September 25, 2010
23
24
25

Bettye Anderson & Associates
Beaufort, South Carolina
(843)525-0791 (800)543-5506

Certificate of Reporter

Page 33 of 33

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
Nancy R. Beach,)
)
Plaintiff,)
)
v.)
)
Gresham Communications of)
Walterboro, Inc., a/k/a Gresham)
Communications, Inc., Gresham)
Broadcasting, Inc., and Rudi H.)
Gresham)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 92-CP-15-508

**DEFENDANTS' MOTION TO STAY
EXECUTION OF ORDER**

Expedited Hearing Requested

PATRICIA O. GRANT
COLLETON COUNTY
COMMON PLEAS
2008 JUN 11 AM 9:21

TO: W. ANDREW GOWDER, JR. AND DANIEL S. MCQUEENEY, JR., ATTORNEY'S
FOR PLAINTIFF.

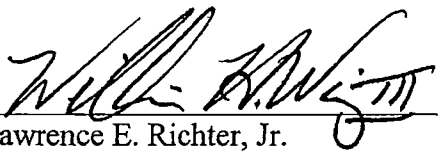
YOU WILL PLEASE TAKE NOTICE THAT as soon as the undersigned counsel for the Defendants can be heard, the Defendants will hereby move, pursuant to Rule 62(b), SCRCPP, for a stay of the execution of the Court's Order signed June 6, 2008, in the above-referenced matter. An executed Order, not yet filed, was received by Defendants' counsel via U.S. mail on June 10, 2008. The Defendants have filed a Motion to Reconsider pursuant to Rule 59(e), SCRCPP seeking to alter or amend the above Order. According to Rule 62(b), a Court is authorized to stay the execution of its judgment pending the disposition of a Motion made pursuant to Rule 59.

Accordingly, the Defendants move that the execution of the above Order be stayed pending a hearing on their Motion to Reconsider filed on June 11, 2008. Please be present if so minded.

Respectfully submitted,

THE RICHTER FIRM, LLC

By:



Lawrence E. Richter, Jr.

William H. Waring, III

P.O. Box 1089

Mt. Pleasant, SC 29465

(843) 849-6000

ATTORNEYS FOR DEFENDANTS

June 11, 2008

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
Nancy R. Beach,)
)
Plaintiff,)
)
v.)
)
Gresham Communications of)
)
Walterboro, Inc., a/k/a Gresham)
Communications, Inc., Gresham)
Broadcasting, Inc., and Rudi H.)
Gresham)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 92-CP-15-508

**DEFENDANTS' MOTION TO
RECONSIDER**

Expedited Hearing Requested

PATRICIA C. SMITH
COLLETON COUNTY
COMMON PLEAS
2008 JUN 11 AM 9:23

TO: W. ANDREW GOWDER, JR. AND DANIEL S. MCQUEENEY, JR., ATTORNEYS
FOR PLAINTIFF.

YOU WILL PLEASE TAKE NOTICE that the Defendants (hereinafter "Gresham") respectfully request the Court to reconsider or otherwise alter/amend its Order, dated June 6, 2008, that was received by Defendants' counsel, not yet filed, on June 10, 2008. This motion is brought pursuant to Rule 59(e), SCRCPP. Specifically, Defendants' requests that the Court reconsider:

1. Whether the Court's Order dated June 6, 2008 amends, modifies, and/or vacates its February 21, 2007 Order, which explicitly gives Gresham the right of redemption, in violation of SCRCPP Rule 60 and the law of the case doctrine.
2. Whether the failure by Plaintiff to appeal or otherwise challenge the February 21, 2007 Order granting Gresham the right of redemption waives and/or estops Plaintiff from now asserting its invalidity.

3. Whether the failure by Plaintiff to appeal or otherwise challenge the Court's February 21, 2007 Order constituted abandonment by Plaintiff of the issue of redemption.
4. Whether the plain language of the Court's Orders subsequent to the February 21, 2007 Order revoked, modified, or otherwise disposed of Gresham's right of redemption.
5. Whether the plain language of the Court's February 21, 2007 Order attached any pre-conditions to Gresham's right of redemption.
6. Whether the Court properly considered unilateral communications and proposed orders submitted by Plaintiff's counsel in its determination of the issues
7. Whether the tendered monies placed with the Clerk of Court was an amount sufficient to satisfy the amount of the underlying judgment.
8. It's finding that the \$106,268.78 tendered on Gresham's behalf to redeem the underlying judgment was an asset of Gresham.
9. Whether the doctrine of unclean hands is a proper consideration since Gresham was not seeking an equitable remedy.
10. The language of the Order stating that the right of redemption, which was given to Gresham alone, belonged exclusively to the Receiver.
11. The Court's finding that Gresham admitted liability for attorneys' fees and costs awarded by the November 27, 2007 Order as a necessary precondition to tender. Gresham admitted the existence of a contempt order, but objected to the calculation of costs and fees by Plaintiff, the time frame with which the amount

was calculated, and the necessity of paying the contempt fines prior to redeeming the underlying judgment.

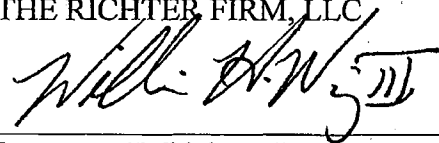
12. The time periods enumerated in its Order allowing Gresham unreasonably short amounts of time with which to act.
13. The Court's order requiring Gresham to pay restitution.
14. The Court's order requiring the Clerk of Court to transfer the monies deposited to the Receiver.
15. The language of the Order stating "the foregoing shall not be stayed upon the filing of a motion to reconsider by any party."

Defendant Gresham's Brief in Support of this Motion to Reconsider is to follow.

WHEREFORE, Gresham respectfully requests that the Court grant the relief requested herein and alter and/or amend its June 6, 2008 Order to allow the funds deposited with the Court to satisfy the underlying judgment, to alter or amend its finding that Gresham willfully violated any of its orders, to hold a separate hearing on the issue of the amount of damages pursuant to any contempt order, and to grant an expedited hearing on this matter as time is of the essence.

THE RICHTER FIRM, LLC

By:



Lawrence E. Richter, Jr.,
William H. Waring, III
Post Office Drawer 1089
Mt. Pleasant, South Carolina 29465
(843) 849-6000

June 11, 2008
Mount Pleasant, South Carolina

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 1992-CP-15-508

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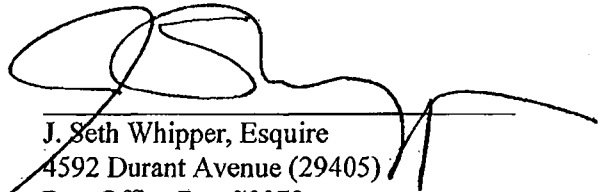
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)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

225

October 30, 2008



J. Seth Whipper, Esquire
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
843/ 740-7777
843/ 740-9108 FAX
jsw@whipperlaw.com

FILED

SEP 16 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

LARRY W. PROPES, CLERK
U. S. DISTRICT COURT

GREENVILLE DIVISION

ENTERED

SEP 16 2002

Chi-Boy Music; EMI April Music, Inc.;)
Flyte Tyme Tunes, Inc.; Minneapolis)
Grys Music; JI Branda Music Works;)
Famous Music Corp.; Montell Jordan)
Music; Shep-n-Shep Music; Hudson)
Jordan Music; and the 1992 Dianne)
Warren Trust d/b/a/ Realsongs,)

Plaintiffs,)

v.)

Gresham Communications, Inc.;)
and William Saunders,)

Defendants.)

C/A No.: 6:01-1955-24

ORDER

On August 1, 2002, Plaintiffs filed a motion and supporting memorandum asking the court to issue an injunction prohibiting the sale of Defendants' radio station, WPAL, located near Charleston, South Carolina—the same radio station through which Defendants committed their acts of copyright infringement which led to the judgment against them in this action.

A hearing was held on August 28, 2002. At such time the parties agreed and the court ordered the parties to enter into negotiations to resolve this matter. If the matter was not resolved by September 13, 2002, the court would issue an order. The parties informed the court on September 11, 2002, that they were unable to resolve the matter.

The court grants Plaintiffs' motion to enjoin the Defendants from transferring or disposing of the radio station owned by them until the judgment against them has been satisfied, or by further

7/23/02
p.1
SAO 72A
(Rev. 8-82)

EXHIBIT

A

order of the court.

IT IS SO ORDERED.


Margaret B. Seymour
United States District Judge

September 12, 2002

Spartanburg, South Carolina

AO 72A

(Rev. 8/82)

FILED/ACCEPTED

APR - 2 2009

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC

In re Applications of

CHARLES W. CHERRY, II
Receiver for Gresham Communications,
Inc.

)
)
) **File No. BALH-20070327AEK**
) **Facility No. 25374**
)
)

For Involuntary Assignment of License of
Station WPAL-FM, Ridgeville, South Carolina

CHARLES W. CHERRY, II
Receiver for Gresham Communications,
Inc.

) **File No. BALH-20070406ADD**
) **Facility No. 25374**
)
)
)

Assignor

CASWELL CAPITAL PARTNERS, LLC

Proposed Assignee

For Assignment of License of
Station WPAL-FM, Ridgeville, South Carolina

Filed With: **Office of the Secretary**
To: **The Commission**

APPLICATION FOR REVIEW

Summary

This is an Application for Review of the Letter Decision of the Media Bureau granting the application for consent to the involuntary assignment of Station WPAL-FM from Gresham Communications, Inc. to Charles W. Cherry, II, as Receiver, and then, to Caswell Capital Partners, LLC.

As seen from the record of this case, this proceeding involves the involuntary assignment of Station WPAL-FM from long-time broadcaster Gresham Communications, Inc. ("Gresham") to Caswell Capital Partners, LLC ("Caswell"). This involuntary assignment occurred as the result of a Court Order declaring Gresham liable for a judgment in the original amount of \$56,276.10 (plus attorneys' fees and costs) issued against it in 1992. Caswell, a disgruntled party which was unable to complete a purchase of Station WPAL-FM in 2006, purchased the judgment, and initiated this proceeding before the South Carolina Court of Common Pleas to obtain indirectly that which it could not acquire directly – the WPAL-FM license. In so doing, it requested and received an Order from the South Carolina Court of Common Pleas whereby the Court declared that the WPAL-FM license is "subject to attachment" as is "hereby attached." and thereafter selling the bare license in a court sale, and Caswell, the judgment-holder, became the sole "bidder" for the license. Insofar as Gresham would not voluntarily become a party to the illegal "attachment" and sale conducted pursuant thereto, a receiver (Cherry) was appointed by the Court, who then signed the requisite FCC application seeking FCC consent for the assignment of Station WPAL-FM to Caswell.

A Petition to Deny was filed opposing the assignment by Gresham, and that petition was granted in part by the Media Bureau in its Letter Decision in this proceeding. Despite finding that the Court illegally "attached" the FCC license (contrary to Commission precedent) and despite its quotation of language demonstrating that only a "bare license" was being assigned in this case (contrary to Commission policy), the Media Bureau nevertheless approved the assignment application. This was also despite the existence of binding FCC precedent which dictates that state court orders that run afoul of FCC policy are not to be honored, and despite FCC policy forbidding the transfer of a bare license. Moreover, the Bureau ignored evidence demonstrating that the

proposed assignee, Caswell, engaged actively in purposeful misrepresentations before the FCC which should affirmatively disqualify it from being approved to become an FCC licensee.

In short, the Bureau's decision is arbitrary and capricious, and contrary to Commission precedent and policy, and must be reversed.

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Before the
Federal Communications Commission
Washington, DC

In re Applications of

CHARLES W. CHERRY, II
Receiver for Gresham Communications,
Inc.

File No. BALH-20070327AEK
Facility No. 25374

For Involuntary Assignment of License of
Station WPAL-FM, Ridgeville, South Carolina

CHARLES W. CHERRY, II
Receiver for Gresham Communications,
Inc.

File No. BALH-20070406ADD
Facility No. 25374

Assignor

CASWELL CAPITAL PARTNERS, LLC

Proposed Assignee

For Assignment of License of
Station WPAL-FM, Ridgeville, South Carolina

Filed With: **Office of the Secretary**
To: **The Commission**

APPLICATION FOR REVIEW

Gresham Communications, Inc. ("Gresham Communications"), by its attorney, pursuant to Section 1.115 of the Commission's Rules, hereby submits its Application for Review of the decision of the Media Bureau (the "Bureau"), DA 09-540 (March 3, 2009) ("*Letter Decision*") in this proceeding with regard to the above referenced applications for Commission consent to the involuntary assignment of WPAL-FM from Gresham Communications, Inc. to Charles W. Cherry, II, as Receiver for Gresham Communications, Inc. ("Receiver"), and for assignment of WPAL-FM from the Receiver to Caswell Capital Partners, LLC ("Caswell"). With respect thereto, the following is stated:

Background

Gresham Communications had been licensee of Station WPAL-FM for over 35 years. Promissory Notes were signed by Gresham Communications on 1988 which were not paid. On August 18, 1992, a Complaint was filed to collect the sums due from "Gresham Communications of Walterboro, Inc. a/k/a Gresham Communications, Inc, Gresham Broadcasting, Inc.. and Rudi H. Gresham." On June 2, 1998, a Decree requiring payment in the amount of only \$56,276.10 was issued by the State of South Carolina Court of Common Pleas.

Judith Aidoo, President and 100% owner of Caswell, entered the picture in 2001. At that time, Judith Aidoo, was interested in getting involved in running the Station, and eventually expressed an interest in purchasing the Station. Station WPAL-FM for a time thereafter was run by Ms. Aidoo under a Time Brokerage Agreement that was entered into in February 2002. Thereafter, an Asset Purchase Agreement for the sale of Station WPAL-FM was entered into in April 2002, whereby WPAL-FM was to be purchased by Caswell for the sum of \$1.3 Million. An assignment application was filed with the FCC. File No. BALH-20020620AAD. Caswell was unable, however, to consummate the transaction, and in July 2006, abandoned the TBA.

Caswell then pursued the acquisition of WPAL-FM in a different way. Caswell purchased the outstanding 1998 Judgment, and an action for collection under the Judgment was initiated by Caswell on August 23, 2006, before the South Carolina Court of Common Pleas, resulting in an Order issued on September 22, 2006, stating in relevant part:

The FCC license is properly subject to attachment, execution and sale, as a property right of the debtor, under South Carolina law.

* * * *

Accordingly, I hold that the FCC license held by Gresham Communications, Inc. is properly subject to attachment. I hereby direct that such FCC license, copy of which is attached as Exhibit A to this Order, be and hereby is, attached. I further direct that the license be sold in the normal course of sheriffs' sales in this county to satisfy this judgment and that notice of such sale shall follow, as provided by

law.

At the time Order was issued, the amount owed under the Decree was approximately \$98,639.00.

However, only the Station WPAL-FM license itself was ordered sold by the Court. A court auction for the bare license was held on November 10, 2006. The Receiver in this proceeding was not yet appointed at that time, and did not participate in the Court's sale of the Station. Caswell Capital Partners, LLC was the sole bidder, for the amount of the debt. Gresham argued before the South Carolina Court of Common Pleas that the attachment was illegal, and as a result, Gresham refused to cooperate voluntarily in seeking FCC consent to the assignment to Caswell. On March 26, 2007, the Receiver in this proceeding was appointed to "take the steps necessary to effectuate and obtain the FCC Consent"; "upon receiving FCC Consent...take possession of all of Gresham's business and property..."; "operate and manage Gresham's business and property..."; and to "make all necessary application with the FCC in order to effect the proper transfer or assignment of the licenses..." to Caswell as the successful bidder. The *pro forma* application for transfer of control of Gresham Communications, Inc. to Mr. Charles W. Cherry, II, as the Court's appointed Receiver, was filed with the Commission on March 27, 2007 and approved on April 3, 2007. File No. BALH-20070327AEK. The application for assignment of Station WPAL-FM from Gresham Communications (Charles Cherry, Receiver) to Caswell was then filed on April 6, 2007. File No. BALH-20070406ADD.

In appointing the Receiver, the South Carolina Court 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." On April 7, 2008, Gresham

tendered to the South Carolina Court, pursuant to that 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. Rather than embracing and accepting the payment, Caswell *objected* to the tender, insisting that the transfer of the WPAL-FM Station license to it proceed.

As is plain from the facts and chronology of this case, the Plaintiff (Caswell) in the South Carolina proceeding initiated and is prosecuting its case *not* with the proper motive of simply seeking to receive payment on the Note, but rather, Caswell filed with an overall goal (with the South Carolina Court's unwitting assistance) to *seize*, through manipulation of Court processes, ownership of Radio Station WPAL-FM. By seeking "attachment" and arranging for a sale of the license (to itself) and then orchestrating the appointment of a "receiver" to facilitate the filing of the necessary paperwork before the FCC, Caswell also is now continuing its crusade by manipulating the FCC's processes to complete its overall endeavor.

Overall, the Caswell strategy was as follows: despite that fact that it was Caswell itself that was the **defaulting** party on an Asset Purchase Agreement to purchase WPAL-FM, Caswell commenced a strategy of using the South Carolina Court's processes to obtain ownership of WPAL-FM indirectly in a back-door fashion, by first purchasing the old June 2, 1998, judgment from Nancy Beach, and then using that judgment as a mechanism to force a judicial sale (at a reduced price, to itself), thereby allowing it to obtain for less than \$100,000 that which it originally was contractually obligated to pay in excess of \$1.3 Million. Despite the fact that it only is the payment of the June 2, 1998 judgment that was at issue in the South Carolina proceeding, as can be seen by Caswell's filings and behavior before the Court, Caswell did not simply "want to be paid" on the 1998 judgment. It solely wanted to obtain ownership of the

Station so it can **sell** it; and then **keep** *all* the funds for itself. This belief goes far beyond mere speculation. In fact, as is evident from Commission records, before the ink has even dried on the Bureau's transfer of WPAL-FM from Gresham to Caswell, Caswell *already* has filed an application with the FCC for approval of a pre-existing agreement with WAY-FM, Inc., for the sale of Station WPAL-FM for \$1.65 Million. File No. BALH-20090306ACK. The Asset Purchase Agreement with WAY-FM is dated January 25, 2008 -- *over one year* before the decision in this case. See FCC Form 314, File No. BALH-20090306ACK at Attachment 4.

The basis for Gresham's Petition for Reconsideration of the Bureau's approval of the FCC Form 316 appointing the Receiver and the Petition to Deny of the FCC Form 314 seeking FCC approval of the assignment from the Receiver to Caswell, from the outset, contained multiple elements. First and foremost, it has been Gresham's position the South Carolina that Court's original Order, which ostensibly "attached" the FCC license, was illegal from the outset and contrary to Commission precedent, and under Commission precedent and policy, is not appropriately enforced by the FCC. It also has been Gresham's position that the *only* asset of Gresham's sold by the South Carolina Court clearly and plainly was the WPAL-FM license, and since no other assets ever transferred or were attached through any other means, Cherry therefore had only a *bare license* to transfer to Caswell, which also violated Commission precedent. Finally, it has been established in exhaustive fashion that Caswell has repeatedly and maliciously engaged in systematic and repeated misrepresentations to the Commission concerning the ownership of assets, which obviously was designed to purposefully mislead the Commission in its overall evaluation of this matter. For each of these reasons, approval of the assignment was not warranted or appropriate.

The Bureau agreed with Gresham's arguments in significant respects, and granted the

Gresham Petition to Deny and Petition for Reconsideration to the extent indicated therein. The Bureau defended its approval of the appointment of a Receiver, noting that the appointment of a Receiver pending assignment of a station license is a "valid exercise of the Court's authority under State law." *Letter Decision* at 5. It thereby denied reconsideration of its earlier decision to approve the Involuntary Assignment Application. However, with respect to the Court's literal "attachment" of the WPAL-FM license, the Bureau *agreed* with Gresham, *granted* Gresham's Petition to Deny, and found the initial attachment of the WPAL-FM license to be, in fact, *illegal*. Specifically, after stating relevant law, the Bureau 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.

Letter Decision at 4-5 (emphasis added; footnotes omitted). However, even after quoting and

referencing a recent Court Order that has at last confirmed that “the only asset that was identified and levied upon was the FCC license,”¹ the Bureau inexplicably found:

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. This list constitutes evidence of sufficient assets to counter Gresham's allegation. 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.”

Letter Decision at 5 (footnotes omitted). As the South Carolina Court recently established, however, no assets other than the WPAL-FM license ever were levied upon, and as had been established in pleadings filed before the Bureau previously, at no time have any other WPAL-FM assets ever been transferred to Caswell.² Nevertheless, the Bureau inexplicably concluded, improperly, that “this transaction does not implicate the prohibition on transfer of a bare license [and] [t]hus, we find that transfer of a bare license is not at issue here.” *Letter Decision* at 5-6. The Bureau approved the assignment.

Thus, The Bureau's decision was arbitrary and capricious; contrary to the facts; and contrary to Commission precedent and applicable law. For all these reasons, the *Letter Decision* must be reversed.

QUESTIONS PRESENTED FOR REVIEW

1. In a case, as here, where a “State Court Order is facially inconsistent with the Commission's policy prohibiting attachment of a Station license,” whether it was appropriate and in keeping with Commission policy for the Bureau nevertheless to approve a *pro forma* transfer of control of a license to a Receiver appointed solely to effectuate that illegal attachment.
2. In a case, as here, where a “State Court Order is facially inconsistent with the Commission's policy prohibiting attachment of a Station license,” whether it was appropriate and in keeping with Commission policy and precedent for the Bureau

¹ *Letter Decision* at 4, quoting December 3, 2008, Order at 3 (emphasis added).

² *Reply to Opposition to Petition to Deny*, September 25, 2008 at 5-11.

to nevertheless approve the underlying and resultant application for consent to assignment.

3. In a case, as here, where a Court of competent jurisdiction has, after appropriate inquiry and knowledge, already determined that the only asset being transferred is the FCC license at issue in this case, whether it was reasonable for the Bureau to nevertheless conclude that the transaction does not, on its face, violate the FCC's prohibition against the transfer of a "bare license."
4. Whether, as here, where a Court of competent jurisdiction has, after appropriate inquiry and knowledge, already determined that the only asset being transferred is the FCC license at issue in this case, whether it was reasonable for the Bureau to have failed to consider whether the proposed assignee has engaged in misrepresentations to the Commission, thereby disqualifying it from even becoming a licensee of Station WPAL-FM.
5. Whether the *Letter Decision* of the Media Bureau overall violated Commission policy and must be reversed.

Argument

I. Under Commission Precedent, Approval of the Assignment Application from Charles Cherry II to Caswell Capital Partners, LLC Was Not Warranted

As stated previously, and as correctly recognized by the Bureau, the Commission has consistently held that a broadcast license, as distinguished from a 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 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 also, *Radio KDAN, Inc.*, 11 F.C.C.2d 934, recon. denied 13 R.R.2d 100 (1968), *affirmed on procedural grounds sub nom.. W. H. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969). Thus, while a court is permitted to grant an interest with respect to a broadcast station's physical property, its receivables, or even future proceeds from any future sale of the such station (*In re Cheskey*, 9 FCC Rcd 986, 987 (1994) (holding that licensee may give security interest in the proceeds of sale of license, but not in the

license itself)), the court may *not* treat a broadcast license in a similar manner, and a lien, mortgage, security interest, or reversionary interest in a broadcast license is not permitted. For example, in *Radio KDAN, Inc.*, 11 F.C.C.2d 934 (1968), recon. denied, 13 R.R.2d 100 (1968), aff'd, *W.H. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969), the Commission stated that the mortgage clause granting the seller the right to act as the purchaser's attorney in fact upon default was:

void ab initio since it attempts to retain for Hansen a reversionary interest in the KDAN license, and as such is expressly forbidden by sec. 73.139 of our rules. The extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable.

Id. at n.1 (emphasis added). As the Commission made clear in a later decision in that same case:

a broadcast license (as distinguished from a station's plant or physical assets) may not be hypothecated by way of mortgage, lien, pledge, lease, etc. This principle, deriving ultimately from Section 301 of the Communications Act, is firmly rooted in Commission practice, its rationale being that such a 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. If this rider [had] been submitted to the Commission as required by our rule at the time of its origin, it would have been rejected for two vital defects: (1) it purported to mortgage the KDAN license; (2) and it reserved to Hansen a reversionary interest in the KDAN license.

Radio KDAN, Inc., 13 R.R.2d 100, 102 (1968) (Radio KDAN II). Despite the citation of absolutely no authority that would allow a judicial "attachment" on an FCC license, that is exactly what the South Carolina Court of Common Pleas Special Referee did in this case.

The Bureau correctly applied Commission precedent in ruling that the Court's *Order* was illegal. Specifically, after stating relevant law, the Bureau 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.

Letter Decision at 4-5 (footnotes omitted).

The Bureau, however, inexplicably and without explanation then failed to apply to its ruling the remainder of prevailing Commission policy. Under Commission precedent, a state court Order that is contrary to and violates Commission policy is not honored. The seminal case in this area is *Kirk Merkley*, 94 F.C.C.2d 829 (1983), *recon. denied*, 56 R.R.2d 413 (1984), *aff'd sub nom. Merkley v. FCC*, 776 F.2d 365 (D.C. Cir. 1985). In that case, acknowledging that the courts have the expertise and jurisdiction to resolve mere contractual disputes, the Commission explained that a court's rulings nevertheless are subject to the Commission's own licensing policies and interests. *Id.* at 839. As the Commission stated:

we have established procedures which acknowledge bifurcated authority in certain licensing areas. For example, where a licensee is accused of breaching a contract to assign its license, the determination of whether a breach occurred is left to a local state court. *Carnegie Broadcasting Co.*, 5 FCC 2d 882 (1966). The Commission does not possess the resources, the expertise or the jurisdiction to adjudicate such claims fully. See *Regents v. Carroll*, 338 U.S. 586 (1950). On the other hand, we have determined that limits on the ability of licensees to hold certain types of interests and engage in certain types of contracts are required under the Communications Act. Thus, we have adopted policies and procedures which have effectively limited the ability of licensees in these areas. One example of this is our treatment of reversions, discussed earlier. Another

example is in the area of media ownership and the Commission rules limiting the interests which can be held in conjunction with broadcast properties. See Section 73.35; 73.240; 73.636; and 76.501 of the Rules. Thus, the Commission would not approve the assignment of a license which would cause a violation of its multiple or cross-ownership rules, regardless of the contractual power of a licensee to acquire such an interest under state law. Similarly, if an assignment application's related contract of sale violated existing rules or policies, we would withhold our approval until the problem was corrected. In this way, while the interpretation and enforcement of contracts are within the jurisdiction of state courts, the Commission has established certain public interest limitations on a licensee's contractual authority and imposes these limits by withholding its approval of a pending assignment application. Moreover, through this procedure, conflicts between Commission policy and state laws can be avoided.

Id. at 838 ¶ 18 (emphasis added). Consequently, in *Merkley*, the Commission *refused to honor* the Court's ruling or the litigant's contract, finding that the contractual provision contradicted FCC policy primarily because it "treated the broadcast license as the property of the former licensee . . .," allowing the former licensee to repossess the license. *Id.* at 839 n.10. *That is* the procedure clearly applicable to the facts of this case.

In this situation, Commission precedent is clear – no credit should be given to the South Carolina Court's ruling requiring the WPAL-FM license to be transferred to Cherry, or later, to Caswell, since the South Carolina Special Referee's order violates FCC policies. As the Commission has explained in times past, in the broadcast arena courts and the FCC share jurisdiction. While, when possible, a court's ruling of course should be accommodated, that policy is not without its limits. Here, that limit surely has been breached, and by its plain language, a local South Carolina Court is attempting to apply remedies not available to it in a case involving an FCC authorization. Rather than focusing exclusively on the assets over which it could exercise proper and exclusive jurisdiction (*i.e.*, the physical assets of the station, or proceeds for future sales of the station), the Court instead sought to exercise control and dominion over the WPAL-FM FCC license, in a manner that exceeded established and proper legal limitations.

It already has been determined correctly in this case that the Order was, in fact, "void *ab initio*." *Letter Decision* at 4-5. As in *Merkley, KDAN*, and a long line of related Commission cases, the assignment application should not have nevertheless been approved and granted, and for the Bureau to rule otherwise violated longstanding Commission policy, and gave undeserved credence to the Court's *Order*. For this reason, alone, the Bureau's decision must be reversed.

II. The Bureau Erred in Approving the Appointment of a Receiver

The chronology of events in case are clear and uncontested. In October 2006, the State Court of South Carolina issued an order attempting to levy an attachment upon an FCC license. As noted above, that was an illegal order that was "void *ab initio*, and rightfully challenged. Gresham in fact, did challenge it, and correctly and rightfully rejected all attempts to simply acquiesce in the illegal order and to file a "voluntary" assignment application. The South Carolina Court's response? It did an end-run around Gresham's righteous efforts, and appointed a "receiver" (Charles W. Cherry, II) which was then approved as an "involuntary" assignment by the Bureau. It was then the Receiver that executed the long-form assignment application at issue in this proceeding.

As noted above, in rendering its *Letter Decision* and affirming on reconsideration its earlier grant of consent for the *pro forma* assignment to the receiver appointed by the South Carolina Court, the Bureau stated the standard Commission policy pertaining to accommodating the appointment of receivers, noting:

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. 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." In a further order 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." 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.

Letter Decision at 5 (footnotes omitted). Nevertheless, in the course of the same *Letter Decision*, it acknowledged that the *Order* that preceded that appointment of the Receiver (and which led to the appointment of the Receiver) was "void *ab initio*." *Letter Decision* at 4-5.

While the Commission approval of an appointment of a receiver is ordinarily, by definition, a *pro forma* matter, this is far from an ordinary case. Gresham was faced with a unique challenge. Acquiescing in the filing of an assignment application to Caswell, as the Court wanted, would have eliminated both its right to challenge the assignment application³ and also its ability to bring to the Commission's attention the illegality of the Court's initiating Order which included an illegal attachment. In that instance, since the Bureau no longer scrutinizes assignment documents,⁴ the only way the illegal South Carolina Order would have been brought to the Commission's attention would have been if some outside third party, by happenstance, would have brought the matter to the Commission's attention. For the Commission to expect or require Gresham to engage in that questionable strategy would have served neither Gresham's interests nor more importantly would it have served the *public* interest.

In contrast, opposing the Order before the Court and then, if the Court could not be persuaded, forcing the Court to appoint a receiver, preserved both Gresham's right to continue to oppose the assignment, and its right to bring to the Commission's attention the violation of its policies.

³ See, e.g., *Westchester Mobilphone Services, Inc.*, 44 R.R.2d 734 (1978); *Tipton County Broadcasters*, 2 R.R.2d 279 (1964).

⁴ *Streamlining of Mass Media Applications*, 13 FCC Rcd 23056, ¶ 42 (1998).

A Receiver was appointed as a *pro forma* matter by the Court to create a mechanism for its sale to proceed; insofar as a Receiver for Gresham Communications, Inc., Cherry was acting essentially as an officer of Gresham (the licensee), much like the situation presented in *Arecibo Radio Corp.*, 101 F.C.C.2d 545 (1985), where a Court officer was designated by a Judge in a proceeding to sign an FCC application in order to accommodate FCC procedures.

The Receiver was not at all involved in the Court sale of the license. He was not even appointed until after the Court sale occurred. Moreover, while there was in essence a "transfer of control" of the license which passed to the Receiver, title to the FCC license at no time passed to the Receiver.

The South Carolina Court of Common Pleas engaged in an illegal "attachment" of a license and then, as a part of that illegal attachment, performed a judicial sale for which it now seeks final approval. As is clear from the Bureau's Decision and the *Merkley* policy, had a Receiver not been involved at all, and the Order was (through some means) brought to the Commission's attention, the assignment application *would not ever* have been approved. Just because there is a *pro forma* Receiver appointed in this case, no logical reason exists for a different result to occur. Stated otherwise, just as it was illegal for a license to be "attached" and assigned to Caswell directly, it is equally illegal for a license to be "attached," placed under the control of a Receiver, and *then* assigned to Caswell. One is as equally illegal and contrary to Commission policy as the other.

For this reason, as well, the *Letter Decision* must be reversed.

III. The Assignment of a Bare License Violates Long-Standing Commission Policy

Under Commission policy, the assignment of a "bare license" to Gresham Communications would be in clear contravention of the public policy reasons underlying the

Commission's policy. In *Radio KDAN, Inc.*, the Commission, on its own motion, dismissed an application to assign the license of Station KDAN, Eureka, California, because the proposed assignment "contemplates little more than the sale of a naked license" and "Commission policy bars such a sale." In *Bonanza Broadcasting Corp.*, 10 F.C.C.2d 906 (1967), cited in *KDAN Radio*, the Commission dismissed an assignment application because the licensee owned none of the station's assets and was seeking to assign a "bare license." The Commission in that case refused to permit the parties to place a price on the transfer of a "bare license." See *Donald L. Horton (KHIP)*, 11 R.R.2d 417 (1967). Similarly, in *Two if By Sea Broadcasting Corp.*, 12 FCC Rcd 2254 (1997), the Commission refused to grant an assignment application where evidence was presented that "at the time it filed" its assignment application, the assignor held rights to nothing more than a "bare license." The Commission held that:

Under Section 309 of the Communications Act, 47 USC §309(d)(2)-(e), if a substantial and material question of fact is presented to the Commission, the application shall be designated for hearing. In this instance, we believe that the numerous allegations against the parties involved in this assignment raise substantial and material questions of fact which cannot be resolved in acting on the assignment without a hearing, as requested by TIBS.

Id. at 2257. Accord, *Omega Cellular Partners*, 5 FCC Rcd 7624 (Mobile Services Div. 1990):

where a licensee has defaulted to its creditors, where it has no physical plant with which to offer service, and where it has allowed its station to remain dark, the Commission will not permit transfer of the bare license. *Radio KDAN, Inc.*, 11 FCC 2d at 935; *Bonanza Broadcasting Corp.*, 11 Rad. Reg. 2d (P&F) at 1073.

Id. at ¶ 7. See also, *Edward B. Mulrooney*, 13 F.C.C.2d 946 (1968). In *Mulrooney*, the Commission held that a bare license could not be assigned to a bankruptcy trustee when the trustee could not have use of the physical assets used in the operation of the station, and therefore would be unable to operate the station.

The question of whether assets other than a license have been transferred was subject to intense controversy and diligent scrutiny by the South Carolina Court. In a recent South

Carolina Court Order in this case that was filed with the FCC as a part of this proceeding, it has at last been *confirmed* by the South Carolina Court that “the only asset that was identified and levied upon was the FCC license.”⁵ *Caswell did not appeal that determination* and it is now the “law of the case.” That ruling of the South Carolina Special Referee was filed with the Bureau on December 19, 2008.⁶

The Bureau clearly was aware of the South Carolina Court’s ruling, insofar as the ruling was quoted in another context as a part of the *Letter Decision*.⁷ Nevertheless, the Bureau inexplicably and without explanation found:

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. This list constitutes evidence of sufficient assets to counter Gresham’s allegation. 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.”

Letter Decision at 5. In so ruling, the Bureau improperly relied on unsupported (and false) allegations of fact submitted by Caswell that already have been definitively rejected by the South Carolina Court.

Specifically, as the South Carolina Court recently established, no such assets were levied upon, and has been established in pleadings filed before the Commission, at no time have any other WPAL-FM assets ever been transferred to Caswell. Nevertheless, the Bureau inexplicably concluded, improperly, that “this transaction does not implicate the prohibition on transfer of a bare license [and] [t]hus, we find that transfer of a bare license is not at issue here.” *Letter Decision* at 5-6.

⁵ December 3, 2008, “Order of Reconsideration” at 3.

⁶ The Receiver and Caswell filed the “Third Supplement to the Opposition to Petition to Deny and Request for Expedited Action” on December 19, 2008.

⁷ See *Letter Decision* at 4.

Only a bare license is, in fact, being transferred in this case. No other Gresham assets were transferred in the Court case, and insofar as no closing occurred *vis a vis* the earlier aborted 2002 proposed assignment between Gresham and Caswell, and Caswell did not receive assets through any other means.⁸ The Bureau's ruling in this regard is contrary to fact and reason, and the approval of the assignment application must be reversed for this reason, as well.

IV. Caswell Has Engaged in Misrepresentations to the Commission

In a related vein, Caswell and Cherry made repeated claims that "Caswell (or entity controlled by Judith Aidoo, Caswell's sole Member) currently owns the WPAL-FM tower and antenna, the tower building and leases, and most of the station's furniture fixtures and broadcast equipment." As reflected by the South Carolina Special Referee's "Order of Reconsideration," those claims were demonstrably and obviously *false*! In making those claims, Caswell engaged in overt misrepresentation to the FCC in a desperate attempt to acquire an FCC license through fraudulent means. An issue and inquiry on that matter was requested. The Bureau's *Letter Decision* nevertheless remained silent on this matter. That also was legal error.

The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000). "Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1210-11 ¶ 60 (1986)). A misrepresentation is a false statement of fact made with an intent to deceive the Commission. Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the

⁸ See *Reply to Opposition to Petition to Deny* dated September 25, 2007 at 5-11.

Commission. A necessary and essential element of both misrepresentation and lack of candor is intent to deceive. Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity." *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D. C. Cir. 1980)). Intent also can be found from motive. *Joseph Bahr*, 10 FCC Rcd 32, 33 (Rev. Bd. 1994). The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency. *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000).

Cherry and Caswell argued, vaguely that "Caswell has acquired the rights to a significant number of assets that are used and usable in the operation of Station WPAL-FM" and concluded "[t]hese assets are sufficient to enable WPAL-FM to resume on-air operations."⁹ In this proceeding, as was shown in Gresham's Reply to Petition to Deny, there was not even one single document or declaration backing up these questionable, false statements. Moreover, Caswell even went so far as to falsify Commission records to buttress its case. On February 23, 1999, Gresham Communications properly and accurately registered to WPAL-FM tower, and it was in that name that the ownership of the tower remained – until recently. Without authority, an application was filed with the FCC, designating **Caswell Capital Partners, LLC** as the owner of the tower, as of "April 5, 2007." The party who electronically "signed" the document – Erwin G. Krasnow – is counsel to Caswell Capital Partners, LLC!¹⁰ It must be presumed that the application was filed at the *direction* of Caswell Capital Partners, LLC. Almost needless to say, ownership of the tower did not change hands in "April 2007," and it certainly did not transfer to

⁹ Caswell *Opposition to Petition to Deny* dated June 1, 2007 at 7.

¹⁰ See Gresham *Reply to Opposition to Petition to Deny* dated on September 25, 2007 at 10 and Exhibit 6A.

"Caswell Capital Partners, LLC" -- an entity that had not even been yet approved by the FCC to become licensee of WPAL-FM. This represents yet another misrepresentation on the part of Caswell Capital Partners.

If Cherry or Caswell had proof of "ownership" of the equipment claimed by them, they had the power and ability to produce such evidence, and in each and every instance it had the opportunity to do so, they failed utterly to do so. Absent presentation of such proof, not only should its allegations have been disregarded totally as patently untrue, an inquiry should have occurred as to whether intentional misrepresentations have been made by Caswell in the course of its presentation which now affect its qualification to *ever* become a Commission licensee.

This matter was raised in the course of Gresham's Petition to Deny.¹¹ Under Commission standards, Section 310(d) of the Act¹² 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,¹³ 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.¹⁴ 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

¹¹ See *Gresham Reply to Opposition to Petition to Deny* dated September 25, 2007 at 9-14.

¹² 47 U.S.C. § 310(d).

¹³ 47 U.S.C. § 309(d)(1).

¹⁴ See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

and requiring resolution in a hearing.¹⁵ 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.

The information provided by Gresham easily met that standard. Caswell's statements to the Bureau and the Commission in this regard were made in reckless and blatant disregard of the truth, and plainly constituted actionable misrepresentations that should have been investigated and/or acted upon by the Bureau. The Bureau's failure to take action constituted yet another basis for finding that the Bureau's decision is fatally flawed and must be reversed.

V. Caswell's Tactics Violated Commission Policy

The Commission has held that control over disposition of a license constitutes one of the "fundamental rights" of an owner. As the Commission has stated:

In 1952 Congress amended the Communications Act to prohibit the Commission from considering any potential assignee except the one proposed by the current licensee. By this act, Congress approved a system whereby licensees were permitted to exercise their own discretion in conveying licenses, and the Commission's role was limited to considering those proposals. Within this limiting language, however, it is our responsibility to implement the broad purposes of the Communications Act so as to promote the best utilization of the broadcast frequencies. It seems clear to us that the public interest is served by such licensees being able to exercise free choice over as wide a range of potential assignees as possible. It was Congress's express intention that it is through competition in broadcasting that the public would best be served, and a "free market" selection process provides the best means for that plan to succeed. Therefore, one who seeks to limit the choices available to that licensee through cornering the market on essential station assets and using control of these assets to discourage other potential purchasers puts private gain ahead of the public interest. Since the broadcast spectrum is extremely limited, we must of necessity express our deepest concern regarding practices which amount to the acquisition of a broadcast facility through coercive or otherwise unfair methods.

Turner Communications Corp., 42 R.R.2d 1315 (1978) (emphasis added; footnotes omitted).

See also, *Albert J. Feyl*, 15 F.C.C. 823, 826 (1951).

¹⁵ 47 U.S.C. § 309(d)(2).

The Special Referee's Orders in this proceeding impermissibly resulted in requiring the licensee to give up its fundamental right of control over the disposition of the WPAL-FM license. As stated previously, there would be no difficulty in Caswell Capital or the Receiver placing a lien upon the *proceeds* of any *future sale* of Station WPAL-FM. In that way, the creditor (Caswell) would have been fully protected in its ability to eventually be paid, and the FCC's License itself would have remained unencumbered. However, by literally placing an "attachment" on the WPAL-FM FCC License itself, the Special Referee has placed a restriction on the License in a manner that was beyond the jurisdiction of the South Carolina Court, and also has interfered with one of the basic freedoms afforded a licensee – the right of freedom of alienation of the License.

For this reason, as well, the Decree of the Special Referee cannot be given deference, and the underlying assignment must be denied.

VI. The Commission is Required To Follow its Own Rules and Policies

It is clear from a long line of decisions of the United States Court of Appeals that the FCC must follow its own rules and decisions. See *Teleprompter Cable Communications Corp. v. FCC*, 565 F.2d 736, 741-42 (D.C. Cir.1977); see also *Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356, 1359 (D.C. Cir. 1979); *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1358 (D.C. Cir. 1993); *National Cable Television Association v. FCC*, 747 F.2d 1503 (1984). Moreover, "[i]t is a "well-settled rule that an agency's failure to follow its own regulations is fatal to the deviant action." *Florida Institute of Technology v. FCC*, 952 F.2d 549, 553 (D.C. Cir. 1992) (quoting *Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356, 1359 (D.C. Cir. 1979) (quoting *Union of Concerned Scientists v. Atomic Energy Comm'n*, 499 F.2d, 1069, 1082

(D.C. Cir 1974)). See, e.g., *Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986). *Bachow Communications, Inc. v. FCC*, 237 F.3d 683 (D.C. Cir. 2001).

In this case, well-established policy dictates that state court orders which intrude upon FCC jurisdiction and which are not in accord with Commission policy are not to be given deference by the Commission. The Commission has not ever signaled a change in this policy, and the Bureau of course is not itself empowered with the right or ability to ignore or change that policy. As even the United States Court of Appeals recently noted: "in any event the Commission is not obliged to accommodate a state court's decision that is contrary to Commission policy." *Kidd Communications v. FCC*, 427 F.3d 1, 6 (D.C. Cir. 2005). No reason has been presented why the policy should not be followed in this case, nor is it believed that any justification exists. For this reason, as well, the Bureau's decision must be reversed.

Conclusion

In this case, the Order of the Special Referee of the South Carolina Court of Special Please violated FCC policies in at least three major respects. As discussed above, the very fact that the Order imposes an "attachment" on the FCC license, and attempts to treat the license as mere mortgagable/lienable "property" itself violates a long line a Commission cases, and rather than simply placing a lien on the *proper* items (*i.e.*, to those items referred to in the cases researched and cited by the Special Referee, such as simply proceeds from any future sale of the station), the Special Referee specifically attached the *FCC License*, in blatant violation of FCC policy. Additionally, the only asset Caswell Capital has pursued and the only asset the Special Referee ordered sold in auction in the "FCC License." The fact that an attempt was made to assign a bare license itself also violates decades of Commission precedent. Finally, in light of the finding contained in the "Order of Reconsideration" issued by the Special Referee of the

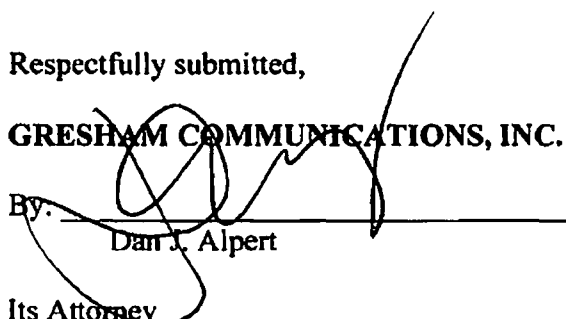
South Carolina Court of Common Pleas that has not been appealed by Caswell, Caswell's representations concerning the ownership of property should now be seen for what they were -- deliberate falsehoods -- and its conduct in this proceeding and its ability to become a Commission licensee should be judged accordingly.

To allow a party to use and abuse the Commission's processes in this manner, *i.e.*, to use the Commission as a "collection agency" to seize ownership rights to a broadcast license from a long-time minority broadcaster in lieu of accepting payment of the purchased debt (through an illegal "attachment" (in this case, for a sum far less than the value of a facility), in violation of longstanding Commission precedent both with regard to the limitations of State authority over Commission licenses as well as the Commission's prohibition against the assignment of bare licenses) to an assignee that has actively *encouraged* the South Carolina Court of Common Pleas to issue to illegal orders *and* that has submitted false information to the Commission, would obviously be contrary to Commission policy. To its credit, the Bureau in large measure correctly analyzed the situation and in many respects correctly applied Commission precedent *vis a vis* the interplay between state law and FCC jurisdiction. In that vein, the Bureau's ruling already has been cited and submitted to the South Carolina Court to allow the Court to become aware that its ruling exceeded permissible limits of the federal law. However, regardless of what action the Court chooses to take, one thing absolutely is crystal clear -- under Commission precedent, those illegal portions of the Court's ruling should not any longer be honored, and for the Bureau to have nevertheless approved the Assignment Application gives credence to an Order where none should have been given. The Bureau's *Letter Decision* therefore must be reversed.

WHEREFORE, it is respectfully requested that this "Application for Review" filed by Gresham Communications, Inc., be granted, and that the grant of the application of "Charles W. Cherry, II, Receiver for Gresham Communications, Inc." and Caswell Capital Partners, LLC, for assignment of Station WPAL-FM, Ridgeville, South Carolina, be reversed and denied.

Respectfully submitted,

GRESHAM COMMUNICATIONS, INC.

By. 

Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
(703) 243-8690*

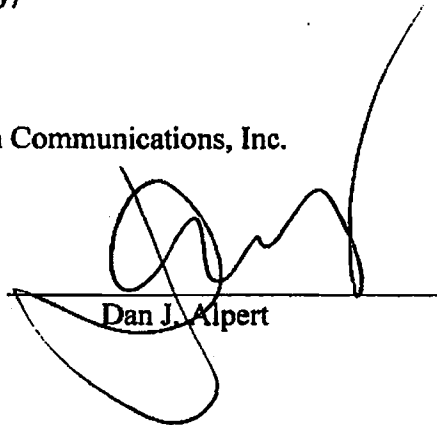
April 2, 2009

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that a copy of the foregoing Application for Review has been provided by First Class Mail to the following parties:

Erwin G. Krasnow, Esq.
Garvey Schubert Barer
1000 Potomac St., N.W.
5th Floor, Flour Mill Building
Washington, DC 20007

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



Dan J. Alpert

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 NANCY R. BEACH,

4 Plaintiff,

5 vs.

CASE NO. 92-CP-15-508

6 GRESHAM COMMUNICATIONS OF WALTERBORO, INC.,

A/K/A GRESHAM COMMUNICATIONS, INC., GRESHAM

7 BROADCASTING, INC., and RUDI H. GRESHAM,

8 Defendants.

9

10

11 MOTION BEFORE: HARRIS L. BEACH, JR.

12 DATE: May 16, 2008

13 TIME: 3:32 p.m.

14 LOCATION: Colleton County Courthouse

101 Hampton Street

15 Walterboro, SC

16

17 REPORTED BY: ANN P. HARRIS,
Registered Merit Reporter

18

19

20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC

(843) 722-8414 (843) 785-3263 (843) 839-3376

23

Columbia, SC Greenville, SC Charlotte, NC

24 (803) 731-5224 (864) 234-7030 (704) 573-3919

25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 CASWELL COMMUNICATIONS, INC.:

4 PRATT-THOMAS WALKER

5 BY: W. ANDREW GOWDER, JR., and
6 DANIEL S. McQUEENY, JR.

7 16 Charlotte Street

8 P. O. Drawer 22247 (29413)

9 Charleston, SC 29403

10 (843) 727-2229

11 ATTORNEYS FOR THE DEFENDANT
12 GRESHAM COMMUNICATIONS:

13 WHIPPER LAW FIRM

14 BY: J. SETH WHIPPER

15 4592 Durant Ave.

16 P. O. Box 700070

17 North Charleston, SC 29415

18 (843) 740-7777

19 THE RICHTER FIRM, LLC

20 BY: WILLIAM H. WARING, III

21 622 Johnnie Dodds Blvd.

22 Mt. Pleasant, SC 29464

23 (843) 849-6000

24 (INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: We will call this hearing to
2 order. I believe we have Mr. Cherry here, who is
3 going to give a brief overview of his duties as the
4 receiver in this case.

5 Mr. Cherry, would you come forward,
6 please.

7 MR. CHERRY: Yes.

8 THE COURT: While he is doing that, will
9 y'all introduce yourselves for the record, please,
10 first for the plaintiff.

11 MR. McQUEENEY: Your Honor, I am Chip
12 McQueeney from the Pratt-Thomas law firm, and I
13 represent Judith Aidoo, the plaintiff, successor in
14 interest here.

15 MR. GOWDER: Your Honor, Andy Gowder,
16 also with the firm representing Caswell, the
17 plaintiff, and Ms. Judith Aidoo, who is also here for
18 the plaintiff.

19 THE COURT: Ms. Aidoo is with us today
20 also?

21 MR. GOWDER: Yes, sir.

22 MS. AIDOO: Good afternoon. My name is
23 Judy Aidoo, CEO of Caswell Communications.

24 THE COURT: For the defendant?

25 MR. WHIPPER: Seth Whipper, J. Seth

1 Whipper, Whipper Law Firm, for Gresham
2 Communications, et al.

3 MR. WARING: I am here for the Richter
4 Firm, LLC. My name is William H. Waring, III, and
5 our firm serves as co-counsel, along with Mr.
6 Whipper, for the defendants, and alongside of me --
7 this is Aaron Edwards. Mr. Edwards has joined our
8 law firm. He has just graduated from law school and
9 will be taking the bar in July of this summer.

10 THE COURT: Good. Thank you, gentlemen,
11 Ms. Aidoo.

12 CHARLES W. CHERRY, II,
13 being called as a witness, testified as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q. Mr. Cherry, would you state your full
17 name and address for record, please?

18 A. Yes, my name is Charles W. Cherry, II.
19 My address is 5200 Southwest 18th Street, Plantation,
20 Florida. The zip is 33317.

21 Q. I believe you are here today in your
22 capacity as the receiver in this case?

23 A. Yes, Judge.

24 Q. And when did you take over as receiver?

25 A. I was appointed on March 26th of 2007.

By the Court
Hearing May 16, 2008

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1 Q. Would you tell the Court what you have
2 done as receiver?

3 A. Sure. First of all, may it please the
4 Court, counsel, madam court reporter, what I did
5 was -- first of all, I have been here -- this is my
6 fourth visit. So I have been here three times. The
7 first visit was after my appointment, was in April of
8 2007, was a way to sort of get the landscape of what
9 was going on and to try to understand what I was
10 supposed to do and to try to get an initial
11 inventory. My second visit came in May 2007. My
12 third was in February of 2008. This is my fourth
13 visit today.

14 Once I sort of took the landscape, I
15 understood this was not going to be probably
16 something that was going to be cut and dry. For one
17 thing, there were no assets for us to begin to do the
18 things that I knew were going to be necessary to try
19 to do what I was ordered to do, which is essentially
20 to make sure that the assets were going to be
21 conveyed to Ms. Aidoo's company, which is Caswell
22 Capital. And so I got here, took the initial
23 inventory -- I am an experienced radio person, so I
24 understand what I am supposed to see -- and made a
25 fairly quick decision that it was probably best that

1 the station go dark, which in radio parlance is
2 essentially you take it off the air.

3 We weren't able to get any traction in
4 terms of where revenue was coming from. All we saw
5 were expenses going out. We find out that the radio
6 station had either left or had been evicted from its
7 authorized facility, which was on Spalding Road,
8 Spalding Road. And so I made a decision that it is
9 best just to stop the bleeding. So what we did was,
10 on -- when we came back, we decided to take the
11 station off the air, and unfortunately, every time
12 that I had come here, the first two times I bumped
13 into Mr. Saunders, and it again made me understand
14 that this was not going to be something that was
15 going to be cut and dried. I had known Mr. Saunders
16 previously, but he was aggressive, he was
17 threatening, which surprised me because I had been in
18 contact with him some years ago as a fellow station
19 owner. And my initial contact was not good. The
20 contact has continued to be not good. He has been
21 consistently uncooperative. He has threatened me.
22 Every time I have had to be in contact with him, I
23 had to call the Charleston police in advance because
24 of the concern that I have that something untoward
25 may happen.

1 So that is sort of the background of what
2 brought me into Charleston, to try to figure out what
3 to do. So on the first visit, I did a landscape. We
4 took our initial inventory. We try to take control
5 of the situation.

6 On the second visit, during the period of
7 time between April and May, we had gotten some
8 inquiries for sales and also for leasing the station
9 as a going concern. So there were some people who
10 had been in contact with me. Some of them were
11 unsolicited. Some of them knew that the station was
12 having problems. Some of them actually had some
13 business relationships with Gresham prior to the
14 receivership, and eventually we got into sort of a
15 relationship with American Media Services, which is a
16 radio broker out of Mount Pleasant, who brought
17 WAY-FM to the table. Now WAY-FM is a Christian
18 noncommercial radio ownership group out of Colorado,
19 I believe.

20 We looked at what was sort of the best
21 thing to do and decided that we would get into an
22 asset purchase agreement and in a local marketing
23 agreement, which again is a lease of a station. So
24 we worked on that, and as a consequence of the back
25 and forth, which took place probably about I will say

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1 about six to eight months from 2007 to 2008, we
2 executed some documents that indicated that we would
3 sell WPAL to them for 1.6 million dollars. Part of
4 that 1.6 million dollars would include -- included a
5 one-year loan up-front payment of about \$125,000,
6 which gave us the capital to continue to do the type
7 of things that we needed to do to keep the
8 receivership moving. Brokerage expenses would be
9 split. There is also to be partial credit for
10 payments that have been made because it is almost a
11 lease to buy.

12 So what happened was, we took a station
13 off the air. We essentially negotiated a rent to own
14 kind of situation. The sale price is 1.6 million.
15 They paid some money up front. Just about all of the
16 money actually is gone because we have already -- we
17 are already into about \$106,000 in attorneys' fees,
18 FCC attorneys' fees, local counsel fees, my
19 receivership fees, and the clock is still ticking.
20 But we had to do that in order to move the
21 receivership forward.

22 So my third visit -- that brings us to
23 our third visit, which was in February of this year.
24 Because we had taken the station off the air in May
25 of '07, the FCC says that you have approximately --

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1 well, you have a year. You have 365 days in which
2 that station can be dark. If it is dark for 365 days
3 consecutively, essentially you lose your license
4 involuntarily. We cut the expenses. We got a
5 buyer. We decided to come in, try to get the station
6 back on the air. So the station came back during my
7 third visit. It took us about six days for me to get
8 the station back on the air, and then that was my
9 last contact with Mr. Saunders. He had been ordered
10 in fact to leave all of the assets at -- there was a
11 French Street broadcast facility that he broadcast
12 from. Let me sort of back up because that is
13 important.

14 WPAL has been operating sort of on the
15 cusp, you know, on the verge of FCC rules and
16 regulations probably for some time. You are supposed
17 to operate out of a main facility. Because of
18 obviously financial issues, what I believe Mr. French
19 did was, he relocated the main facility to the
20 Charleston Chronicle office, which is on French
21 Street in Charleston. He did that because Jim
22 French, who is a longtime friend of his -- and
23 Mr. French did tell me this -- he needed some place
24 to go. He couldn't afford to pay rent. Mr. French
25 gave him the space, and what they did was, they were

1 able to get the broadcast signal from Mr. French's
2 facility to the authorized facility and then out to
3 the transmitter site, which is located in Ridgeville,
4 South Carolina. So he was able to get that done, but
5 it was something I would probably say was against FCC
6 rules and regulations because essentially you have to
7 notify the FCC that you've moved the facility,
8 otherwise you are sort of operating illegally.

9 So it was difficult for me initially to
10 find out where all of the assets were because they
11 were not where the FCC thought they were. So finally
12 I did a little research, did a little running around,
13 found out that assets were at Mr. French's place. I
14 went to Mr. French's place, told him that I was the
15 receiver, presented my documentation. He called
16 Mr. Saunders.

17 MR. GOWDER: Excuse me, your Honor. Do
18 you mean Mr. Saunders?

19 A. No, Mr. French. So Mr. French -- it was
20 Mr. French's facility. So I had a conversation with
21 him, told him the situation, presented documentation
22 that I was receiver and told him what needed to be
23 done. He immediately contacted Mr. Saunders.

24 Mr. Saunders came on the scene. And from
25 that point on, I think Mr. French also thought that

1 something may begin to build up. Mr. Saunders was
2 threatening to me, telling me, "You are going to make
3 me do something that I don't want to do. If you take
4 this away, I have no further reason to live," etc.,
5 etc. So the Charleston police were called. And
6 essentially the bottom line of that particular
7 altercation was that there was a problem with the
8 jurisdiction. And naturally a whole lot of police
9 officers don't want to get involved with civil
10 matters. So it was a civil matter.

11 Mr. Saunders left. I talked to
12 Mr. French. Mr. French thought that he was getting
13 in the middle of something that he didn't want to get
14 involved with, so he refused to give me access to the
15 assets, and so, of course, I went back to Florida.

16 On my next trip, just prior to coming
17 back, I was trying to set up a time to come and take
18 possession of the studio facility because the studio
19 facility once again is in a place that it was not
20 supposed to be. I had asked Mr. French to just
21 secure it. You know, I am not your tenant. He is
22 your tenant, or he is just here because of the
23 goodness of your heart. You don't have an agreement
24 with me, but this is a court proceeding. Could you
25 please at least make sure that the assets stay where

1 they are.

2 He, of course, said, "Well, I am not
3 going to stop this guy from coming in. He has ready
4 access."

5 So when I called Mr. French to ask him
6 whether we could come and make sure those assets
7 could be moved pursuant to a contempt order that this
8 Court had issued against Mr. Saunders, we found out
9 that the assets had been moved. And when we tried to
10 figure out where they were, Mr. French essentially
11 had moved them to his garage. I didn't find that out
12 until my last visit in February.

13 MR. WHIPPER: You mean Mr. Saunders?

14 A. I am sorry, Mr. Saunders. Thank you.

15 So in February, we had done all of the
16 documentation. I go to Mr. Saunders' house. We
17 pretty much get all of the assets that are necessary
18 to broadcast from the studio facility except the main
19 part, which is the control board. The control board
20 is essentially the spine of a radio facility. That
21 is where the dials and whistles and bells and
22 everything that gets you on the air. That brand new
23 is about a six-thousand-dollar piece of equipment. I
24 asked him where he was. He told me he didn't know
25 much about it, anything. All he did was ask people

1 to move it to his garage, and that is essentially
2 where we left it.

3 So, Judge, that is sort of a summary, and
4 it is a preliminary report. I'll finalize the
5 financial estimations and any of the factual
6 incorrections when I do the written report that you
7 have ordered me to do, but I think I can summarize it
8 by saying it has been time-consuming, it has been
9 financially expensive, it has been necessarily
10 emotional, and it just hasn't been a good situation.
11 It could have been done a lot better, I think, had
12 Mr. Saunders cooperated, and I, frankly, made a
13 decision as a receiver that I was not going to --
14 that I was going to minimize my direct contact with
15 him because, frankly, I thought that I may be at some
16 physical risk. So I made a decision that I would try
17 to minimize my contact with him, try to get the job
18 done as quickly as I could, and to try to again do
19 that in a way that satisfies this Court in my
20 requirement to essentially keep these assets in good
21 shape with the understanding that they are to be
22 turned over to the new owner.

23 Q. Do you have any figures on your fees?

24 A. My fees as of today are between 45 and 50
25 thousand dollars.

1 Q. And do you have any figure on any
2 attorneys' fees that you have received bills for?

3 A. Attorneys' fees are right now at about
4 120,000, I think, when we talked about FCC fees and
5 local counsel fees.

6 Q. This was FCC fees for the purpose of
7 transferring the license?

8 A. Yes, and the reason that they are so high
9 is because Mr. Saunders has, of course, FCC counsel,
10 and he has essentially objected to each and every
11 pleading that has been filed. So it has run the cost
12 up, even though -- he hasn't been successful on the
13 merits of any of the pleadings that he has filed at
14 the FCC level, but the FCC lawyers are very
15 expensive, and it is an emotional intensive practice,
16 so the cost -- I mean, it runs up substantially very
17 quickly.

18 Q. What is the status of the license right
19 now?

20 A. I am the licensee.

21 Q. You are the licensee?

22 A. Yes, sir.

23 Q. It was transferred then from Mr. Saunders
24 to you?

25 A. It was involuntarily transferred from

1 Gresham Broadcasting to me as receiver for Gresham
2 Broadcasting.

3 Q. And the next step then would have been to
4 transfer it to Caswell?

5 A. Yes, sir, and what we decided to do
6 was -- there is an asset purchase agreement that is
7 executed between WAY-FM and Caswell, and so what we
8 try to do is try to get them and to try to sort of
9 streamline the pleadings so that we can get this in
10 their hands and move forward.

11 Q. You talked a little bit about
12 Mr. Saunders, and for the purpose of this hearing,
13 there is nothing on record as to who he is. Who is
14 Mr. Saunders?

15 A. Mr. Saunders, as I understand it, is the
16 main shareholder in Gresham Broadcasting. The
17 general manager is the person who has been
18 responsible and basically the owner of the company,
19 general manager, etc.

20 Q. Mr. William Saunders?

21 A. Mr. William Saunders, yes, sir.

22 THE COURT: Any questions from the
23 plaintiff?

24 MR. GOWDER: Just a couple, your Honor,
25 or maybe three.

1 EXAMINATION

2 BY MR. GOWDER:

3 Q. Mr. Cherry, has Mr. Saunders for Gresham
4 cooperated with you in the application process for
5 FCC transfer of the license?

6 A. No.

7 Q. Has Mr. Saunders made the assets of
8 Gresham available to you as required by this Court's
9 orders?

10 A. He did make the assets available to me in
11 my last visit, which was in February of '08, but the
12 complete -- all of the assets were not readily
13 available. They were moved from one facility to
14 another, so again I had to -- with Mr. Whipper's
15 help -- I contacted Mr. Whipper. I would rather have
16 had Mr. Saunders leave them where they were, and it
17 would have been easy for me to just back up a truck
18 and put them in there again, and I would not have had
19 to deal with the Charleston police, etc., but really
20 I was very apprehensive of what I had to do, which is
21 go to his house. When I got there, there was a group
22 of people there. I'm by myself. The police are
23 there with me, and I am really just moving stuff out
24 of his garage into essentially a U-haul van. I think
25 that was unnecessary, and I think that it was done,

1 you know, with the goal of trying to intimidate me.

2 Q. You were appointed originally in March of
3 2007?

4 A. Yes, right.

5 Q. And you first came to Charleston
6 following that appointment when?

7 A. My notes indicate in April of '07.

8 Q. Were the assets collected and ready for
9 you in April?

10 A. No.

11 Q. All right. Did you have to come back?

12 A. Yes.

13 Q. When did you come back?

14 A. I came back in May of 2006.

15 Q. Were the assets collected and ready for
16 you to collect in May?

17 A. No.

18 Q. When were you finally able to collect
19 these assets in part at Mr. Saunders' house?

20 A. February of 2008.

21 Q. All right, sir. Has Mr. Saunders'
22 activity on behalf of Gresham caused you to spend
23 more time and money than necessary to carry out your
24 duties?

25 A. Oh, yes.

1 EXAMINATION

2 BY THE COURT:

3 Q. Have any of these assets been sold?

4 A. No, sir. Well, let me back up. They are
5 part and partial of the asset purchase agreement. In
6 radio, you buy the assets that are used and useful in
7 broadcasting the radio signal.

8 Q. So you need these assets to make your
9 agreement work?

10 A. Yes, sir. What we decided to do -- we
11 had to work around it, and we what we did was, and it
12 cost us some money -- because these guys are
13 experienced radio people, they knew exactly what they
14 needed at a minimum to try to make the situation
15 work. Because we were unable to get the critical
16 piece of equipment, it cost us about \$3,000 from that
17 that we were credited or that was taken, debited from
18 the amount of money that we would have gotten on the
19 sales side, and it got to be not a deal breaker but
20 an irritant. We are trying to facilitate something,
21 but, you know, it has -- Mr. Saunders' behavior has
22 just been problematic with regard to trying to do
23 this on an orderly basis.

24 Q. Has any land been identified as an asset?

25 A. Not to my knowledge.

1 THE COURT: Questions from the
2 defendant?

3 MR. GOWDER: Your Honor, in response to
4 your question, as you may remember, that was part of
5 the contempt order that you entered in November.
6 Gresham and Mr. Saunders were required to reveal
7 what, if any, real estate they owned because in the
8 subsequent hearing they said, "Oh, yeah, we do have
9 real estate." Mr. Whipper did send to me by letter
10 sometime later I think some partial identification
11 numbers. There has been no subsequent supplementary
12 proceedings on that, but of course that would be
13 something that remains to be done.

14 THE COURT: There has been no sale on the
15 land?

16 MR. GOWDER: No, sir, not to my
17 knowledge.

18 THE COURT: No execution sale?

19 MR. GOWDER: No, sir.

20 THE COURT: Questions from the defendant?

21 MR. WHIPPER: Just a few clarifying
22 questions.

23 EXAMINATION

24 BY MR. WHIPPER:

25 Q. You mentioned that you did some stuff in

1 February to get the station up; is that correct?

2 A. No.

3 Q. Was it in April of '08?

4 A. No, in May of '08, we took it off the
5 air. In April of '08, it was still operating.

6 Q. Let me make sure we got it together.
7 This is '08.

8 A. I am sorry, May -- April of '07, it was
9 still operating.

10 Q. And in May of '07, you took it off the
11 air?

12 A. Correct.

13 Q. And then in April of '08, you put it back
14 on?

15 A. In February of '08.

16 Q. Put it back on?

17 A. Put it back on.

18 Q. All right. Now, do you remember that --
19 I think after you came down in May of '07 -- and I
20 know that there was some confusion. I don't
21 recall -- do you recall that you communicated with me
22 about your coming beforehand?

23 A. No, I didn't.

24 Q. Okay. I don't recall that in April when
25 you came down --

1 A. No.

2 Q. Of '07, I don't remember you
3 communicating with me at all.

4 A. No, I didn't.

5 Q. I think you came on a Friday each time.

6 A. I would have to check and see on the
7 calendar, but based on my reading of the court order,
8 I didn't need to coordinate with you because I had
9 the legal right to go in, and part of my concern was
10 this, is that if I told you I was coming, I would
11 have to again bump in to Mr. Saunders as I am trying
12 to get the job done, and that has been a continuous
13 concern.

14 Q. Okay. So then after we kind of got to
15 where we communicate, I think you came in in '08?

16 A. Yes, sir.

17 Q. To get stuff, and I think what we
18 determined was everything was located and moved from
19 the King Street location to Mr. Saunders' location?

20 A. Correct.

21 Q. And we set a time for the materials to be
22 picked up?

23 A. That's right.

24 Q. At that time. But you didn't show up
25 that day?

1 happen?

2 A. No, I knew what I needed and I knew what
3 I was looking for when I was there, so I asked him
4 while I was there, and he told me all that is here is
5 all I know about. So I asked him specifically,
6 "Mr. Saunders, there is a control board that
7 operates the station. Do you know what that is?"

8 "Well, I don't know because that is not
9 what I do."

10 "Well, it is not here. Do you know
11 where it is?"

12 "Mr. Cherry, what you see is what you
13 have."

14 Q. And you don't have any -- I mean, no
15 one -- you don't know if someone else may have taken
16 the stuff from King Street for Mr. Saunders and put
17 it out there?

18 A. That's possible. I would just find it
19 would be strange to me that that would be the only
20 thing that would be missing. There were other
21 important pieces of equipment that were necessary to
22 broadcast, but that was the most costly, and that was
23 the most important one. So of everything else that
24 we needed to broadcast, everything else was there.

25 Q. Well, as far as that particular piece of

1 A. I got lost.

2 Q. As a matter of fact, I don't know if you
3 called me that today that you were lost.

4 A. I called Mr. Gowder's office to try to --
5 he has assisted me in just trying to find my bearings
6 and try to get where I need to go. So I called
7 Mr. Gowder's office, and they essentially, I believe,
8 got in contact with you and said, "Well, we have
9 straightened it out." So we got the job done, but
10 yes, I was late and it was because I got lost.

11 Q. Then we rescheduled for you to go out
12 there to Mr. Saunders?

13 A. Yes.

14 Q. And they met you out there, and
15 everything was transferred.

16 A. Yes.

17 Q. Now, there was one piece of equipment
18 that you mentioned that hasn't been located yet or
19 hasn't been identified.

20 A. It hasn't been given to me as of yet.

21 Q. Well now, I never knew what happened. I
22 didn't get a report from anybody about what happened
23 with that. I know that we were told that you would
24 come for that, and Mr. Saunders was ready to let you
25 go back in the garage and look around. Did that not

1 equipment, do you want to give us the name of it
2 again?

3 A. I can do that in the written report.

4 Q. Would you tell us what it is, whether it
5 is a wrench or a screwdriver?

6 A. No, it's a control -- what is called a
7 console. It is a control console, a mixer that is
8 made essentially for radio applications, and new
9 those consoles were about \$6500. The probably market
10 or reasonable value of one that he had used was
11 probably about 3500 or \$4,000.

12 Q. In replacing that or making one
13 available, what did you have to do?

14 A. Well, what we decided to do with the
15 buyer was to come up with a good-faith estimate of
16 what the replacement value of it was, and it might
17 have been 3500 or \$4,000, and they essentially took
18 that out of the money that would be going to the
19 seller.

20 Q. Sure. But then the station is back on
21 the air?

22 A. Correct.

23 Q. So you don't use one of those consoles
24 now?

25 A. Yes, we use -- we allow them -- here is

1 some money, you go and get your own, but we are not
2 going to allow this to hang up the deal. So that was
3 the decision that was made between me as a receiver
4 and WAY-FM.

5 Q. And your understanding of your role as
6 the receiver was what?

7 A. My understanding is that I have the right
8 and the authority to gather assets, to sell assets if
9 necessary. As I understand it, Ms. Aidoo's company
10 bought this company essentially at the courthouse
11 steps, and that I am supposed to do the work and then
12 essentially turn it over to her within the context of
13 the Court's jurisdiction.

14 Q. But you did receive a copy of each order
15 that referred to what your authority was?

16 A. Well, what I am using as sort of my
17 biblical, in quotation marks, authority is the
18 appointment that gave me fairly broad powers to do
19 what was necessary to get the job done. I was aware
20 of some of the other -- the contempt orders and some
21 of the other orders that have been going back and
22 forth.

23 Q. So what you are calling your, quote,
24 unquote, biblical guide was the order of March 26th,
25 I guess?

1 A. If I can get it there. I have got it
2 right there.

3 Q. Sure.

4 A. The order appointing receiver was dated
5 March 26th of '07.

6 Q. Okay. That is the document you just
7 handed me, the order appointing receiver, right?

8 A. Yes, sir.

9 Q. Dated March of '07, the day of the 26th.

10 A. Yes, sir.

11 Q. My understanding again is that in April
12 of '07, you took it off the air; is that right?

13 A. That's correct.

14 Q. At the time that you did that, you
15 mentioned that there were a lot of expenses. You
16 mentioned that there were a lot of expenses involved
17 with operating the station at that time?

18 A. There were usual and typical operational
19 expenses. You are supposed to have at least one
20 full-time and one part-time person to operate an FCC
21 facility. You have lease payments that are due on
22 the tower site because the tower site is leased
23 separately from the studio. You know, you have
24 electricity. So there is sort of a fixed cost that
25 is associated with operating a radio station if you

1 are going to do it in conjunction with the FCC rules
2 and regulations.

3 Q. And right now you are experiencing -- I
4 mean these costs are running right now?

5 A. Yes.

6 Q. And so how are you paying for that?

7 A. What we have done is, it is sort of a
8 lease-as-you-purchase type of deal. What is
9 happening is, there is a sale price of 1.6 million.
10 They are paying \$10,000 a month to Gresham to run
11 this facility pending the completion of the FCC
12 process and when they can take over the station. So
13 the asset purchase agreement provides essentially the
14 cash flow to operate the station at somebody else's
15 expense.

16 Q. So that money that is being paid to
17 operate right now is not a part of the purchase
18 price?

19 A. Yes, it is. What we did was, we got a
20 year's payment up front so we could take care of the
21 large expenses that were able to get us this far, and
22 so they have not begun operating the station there
23 because we are still doing some of the FCC-required
24 activities before they take over and put on a
25 Christian broadcasting format that they are going to

1 run.

2 Q. Okay. And what we know too at some point
3 after you did that, there were a lot of announcements
4 about I think it is WAY-FM, that they were coming to
5 Charleston?

6 A. I don't know. I don't know.

7 Q. There was some advertisements and
8 different kinds of releases, media releases, and
9 what-have-you?

10 A. I don't know.

11 Q. What is the status of this arrangement
12 right now as far as the purchase of WPAL by WAY-FM?

13 A. It's active. The agreements, I think,
14 were signed in January of this year. It has taken us
15 January, February, March, April, that time period, to
16 do what is necessary to try to get the station back
17 on the air. The station got back on air, as I
18 indicated, I believe in February of this year, so
19 that we could put it back on the air so we wouldn't
20 lose the license.

21 Q. I understand.

22 A. So it has taken some time to do that.
23 They are out in Colorado. The station is here. I am
24 in Florida, so when you have people trying to do
25 something where you have an asset like this in a

1 separate place, it takes a little longer.

2 Q. And so what is their understanding of the
3 litigation that is going on right now?

4 A. Well, they understand that the station is
5 still in receivership. They understand and have
6 done, I would imagine, a certain amount of due
7 diligence to do the research that is necessary to
8 satisfy themselves that this is something that can be
9 done. They have done some due diligence, I know, on
10 the FCC side because they have their own FCC counsel
11 that has sort of looked over this thing. I am sure
12 they have had attorneys who have looked at the court
13 file to see exactly what is going on.

14 Q. Right now their position is it is
15 continuing to move forward?

16 A. Yes.

17 Q. Now, when you make reference to putting
18 it back on the air, what efforts did you make back in
19 '07 to find someone to do this?

20 A. Well, to do what? To put the station
21 back on the air?

22 Q. Yes.

23 A. What we did was, we talked to the broker
24 who brought WAY-FM to the table, who is American
25 Media Services, and what happens is, in the radio

1 industry, when a station is dark, you get a lot of
2 unsolicited phone calls. You get a lot of calls from
3 brokers. It is a highly regulated industry, so a lot
4 of times you don't have to go out and try to sell a
5 station. People will come to you to buy a station.
6 In fact, I got a number of e-mails from people
7 locally, from brokers, etc., who had asked and who
8 were interested in either buying the station or in
9 some instances in leasing the station as a going
10 concern, basically to try to convince me can you put
11 it back on the air, I can pay you X amount of dollars
12 while you find a buyer. My concern was that again
13 given there were no assets by which to operate the
14 facility, that the best thing to do under the
15 circumstances will be to find a buyer, and so I
16 essentially turned down people who were only
17 interested in leasing the facility to broadcast.

18 Q. Now, when you came down in April of '07
19 and May of '07, you went to the location where WPAL
20 was operating. You said you thought it might have
21 been better housed, but you found it operational. As
22 a matter of fact, when you decided to take it off the
23 air, it was operating?

24 A. Yes, sir.

25 Q. When you talked about these brokers sort

1 of floating offers to you, what kinds of offers were
2 made by them in terms of this rent-to-own kind of
3 thing or just let us operate the station?

4 A. Yes, some of them were people -- one or
5 two in particular who had had programs on WPAL before
6 under Mr. Saunders wanted to continue their
7 programming, and they said, "Look, we had a deal with
8 Mr. Saunders. We would like to continue to
9 broadcast. Is that something that you would like to
10 do?" My concern again was to try to operate here as
11 an absentee receiver and to do it legally where you
12 had to have one full-time and one part-time person
13 with no assets, and then now you are trying to run a
14 going concern on an absentee basis in a situation
15 where there is not goodwill between the receivership
16 and the owner. I didn't think that was something
17 that was reasonable under the circumstances.

18 Q. And so WAY-FM made their first approach
19 in '08 or '07?

20 A. In '07.

21 Q. And what was your first offer to them?

22 A. I didn't make an offer.

23 Q. You didn't have a value that you
24 suggested to them at all?

25 A. Well, what we try to do was to, first of

1 all, to see, you know -- have people putting numbers
2 on the table. We believed that, and we did some
3 preliminary due diligence to try to determine a stick
4 value, which in radio jargon is essentially a station
5 that is not cash flow positive. It is really the
6 value of the signal itself exclusive of any land or
7 anything like that. And it came up between 1.5
8 million and probably two million dollars.

9 Q. And so right now the deal that has been
10 accepted is 1.6 million?

11 A. Correct.

12 Q. Now, who are you -- I need some names.
13 Who are you dealing with at WAY-FM?

14 A. Robert Ausburg is the CEO.

15 Q. Where is he located?

16 A. He is in Colorado.

17 Q. And you have a broker in there between
18 Ausburg. Who is that?

19 A. That is American Media Services, Todd
20 Fowler. His office is out of Mount Pleasant,
21 South Carolina.

22 Q. He is in Mount Pleasant, South Carolina?

23 A. Right.

24 Q. All right. Now, your personnel that are
25 involved of keeping this thing alive, who are they?

1 A. You know, I don't have the names
2 available for you. I can supplement that in the
3 written report.

4 Q. Do you have a first name or a nickname?

5 A. No. I can't venture to guess.

6 Q. And these are folks that you brought in?

7 A. These are people that, yes, they are
8 essentially employees of the receivership because
9 that is what the FCC says how it has to be done.

10 Q. That is part of what you will be offering
11 as your cost?

12 A. Yes. So there is an agreement to
13 essentially reimburse those costs from WAY-FM.

14 Q. Now, when you talk about your fees, how
15 is that structured?

16 A. On an hourly basis, \$125 an hour.

17 Q. And you mentioned too that when the
18 signal went up in February of '08, whose tower did
19 you use?

20 A. We used Gresham's -- not Gresham.
21 Caswell owns the tower site. Is that right?

22 Q. Where is that located?

23 A. That is located in Ridgeville,
24 South Carolina.

25 Q. You say Caswell owns it?

1 A. Yes, sir.

2 Q. When did Caswell buy that?

3 A. Ms. Aidoo can tell you that. I don't
4 know exactly.

5 Q. You also have some history with
6 Mr. Saunders before this particular action; is that
7 correct?

8 A. That's correct, some history. He was
9 really a friend of my father, Charles Cherry, Sr.,
10 who died in 2004.

11 Q. You have my condolences in that.

12 Did your father ever make an offer to
13 Mr. Saunders to buy PL?

14 A. No, not to my knowledge. I mean, I don't
15 know.

16 Q. All right. Have you ever made an offer
17 prior to this action yourself and your company to
18 make an offer to buy?

19 A. No.

20 Q. So you are in no way interested in PL?

21 A. You know, my brother -- let me explain
22 sort of where I am. I am an owner of a radio station
23 in Daytona Beach, Florida, under some different
24 corporations. My company is Tama Broadcasting, which
25 owns nine stations in Florida and Georgia, and then

1 we own another station under the name of PSI
2 Communications in Daytona Beach, and another station
3 in Greenville, South Carolina. My brother, Dr. Glenn
4 Cherry, may have had some discussions over the years
5 with Mr. Saunders. I don't know if it is about
6 purchase or whatever, so I can't --

7 Q. You know there has been some interaction?

8 A. There has been some interaction between
9 the two of them over the years, and I can remember
10 just having a couple of conversations with Mr.
11 Saunders, and I think it might have been in relation
12 to another time when he had some problems with WPAL
13 some years back.

14 Q. Now, you all own a total -- your own a
15 station and your brother is involved with the
16 business?

17 A. We are shareholders.

18 Q. Okay. And so right now you are involved
19 with some collection actions that has some cloud on
20 your title of ownership?

21 A. Yes, we are involved in litigation.

22 Q. And it almost is similar to this
23 situation?

24 A. There is some differences. There are
25 allegations of predatory lending, breach of fiduciary

1 responsibilities. There is some class actions
2 involved. So it is like night and day with regard to
3 the level of litigation.

4 Q. Because of the number of stations?

5 A. The number of stations and the creditors
6 involved and Wall Street money involved, and so a lot
7 of different -- a substantial difference between what
8 is happening here and what is happening up there.

9 Q. So your time is really involved with what
10 you are dealing with that, isn't it?

11 A. It is, but it is not going to stop me
12 from doing the things that I have to do because I am
13 required by the Court to do them here.

14 Q. One other thing now. How would you
15 describe your relationship with Ms. Aidoo prior to
16 this action, prior to your being appointed?

17 A. I would describe it as -- we have a
18 business relationship and a friendly relationship.
19 Prior to this, you know, we are all owners, and it is
20 a handful of black owners in the country of radio
21 stations, which we got to know her, and we got to
22 know Mr. Saunders.

23 Q. So when did you get to know Ms. Aidoo?

24 A. I think I met Ms. Aidoo perhaps in 2004.

25 Q. Okay. And at the time you met her, would

1 you say it had to do with having to try to make some
2 arrangements with WPAL?

3 A. At that time?

4 Q. Yes.

5 A. No, no, we have always a lot of times
6 essentially -- and this involves Mr. Saunders too
7 because I can remember some conversations I had with
8 him. The one or two that I had with him some years
9 back is, it is like some folks in the same business
10 getting a group together and talking about what is
11 going on in the business, you know, and the
12 challenges that you face as a black broadcaster. So
13 essentially those are the kind of conversations that
14 we typically have had.

15 Q. And you knew that Ms. Aidoo was pretty
16 much a rookie to this kind of industry?

17 A. I knew she wasn't as experienced as we
18 were.

19 Q. What did you know about her experience?

20 A. Just that she decided that she wanted to
21 invest in WPAL.

22 Q. Did you know that she got involved with
23 the station sometime around 2000?

24 A. No.

25 Q. You knew that she was just there all of a

1 sudden, no range of when she got involved with the
2 broadcasting?

3 A. You know, I don't remember that sticking
4 in my mind when we first met. My brother, I believe,
5 may have introduced us, and my recollection is that
6 she is a fellow broadcaster. She has got a
7 stand-alone station in Charleston.

8 Q. And you weren't bothered at all about
9 getting involved with this in light of the fact that
10 you have got a relationship with Saunders and you had
11 a relationship with Aidoo?

12 A. No. I thought it was going to be
13 something -- for one thing, it was something that I
14 could do and make some money at it and help get the
15 job done.

16 Q. And understanding even when you came into
17 it and you saw there was going to be some emotion
18 involved, you still felt no harm about doing it?

19 A. No.

20 MR. WHIPPER: Nothing else, your Honor, I
21 don't think.

22 THE COURT: Any other questions?

23 MR. GOWDER: No, sir.

24 THE COURT: And you are going to have
25 this report within 60 days?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay, thank you very much.
3 You may step down.

4 (The witness was excused.)

5 THE COURT: All right. We have a motion
6 to redeem the property. Mr. Whipper, is that your
7 motion? Would you like to address that at this
8 time?

9 MR. WHIPPER: I would, your Honor.

10 THE COURT: I have the brief, and I have
11 the replies, and I have all of that, so hopefully I
12 am up to steam on it.

13 MR. WHIPPER: Our initial filing has been
14 amended, and I hope everybody has gotten a copy of
15 the amended notice.

16 THE COURT: I have that.

17 MR. WHIPPER: Because what was changed
18 was the FCC file number. That was the only thing
19 that was changed. We understood, and as a matter of
20 fact, we understand that the Court in February of
21 '07, as part of its rulings, a part of whatever
22 happened -- we don't have a copy of the transcript
23 yet, but as a part of the ruling, it was stipulated
24 that the debtor could satisfy the underlying
25 judgment, and the language goes on.

1 THE COURT: That was in my first order.

2 MR. WHIPPER: Yes. So this is what
3 prompted what we did with the tender of payment.
4 Now, one of the things I kind of wanted to make
5 mention of was we are flinging the term "redemption"
6 around. The Court did not call it redemption, and we
7 understand there may be some issues around whether or
8 not something is statutory or not, which we don't
9 think will be a part of this. We needed the term so
10 we used the term, and we are not taking a position
11 legally as to what it is. We can talk about the
12 practicalities of the fact that the judgment could be
13 paid at a time prior to the time of assignment of the
14 license to the subsequent purchaser, and then the
15 application would be withdrawn. So that is what we
16 are dealing with, and that is what we have offered.

17 Now, it seems like there may be some rub
18 about the amount. We understood and believe that --
19 we recognize from the order of June 1998 that Judge
20 Condon set the interest at eight percent, where it is
21 written that interest is simple interest, and then
22 there was a figure for attorneys' fees. And so based
23 on what we saw in the order, based on how we
24 understood the order, we did the calculations and
25 came up with a figure of \$106,268.78. So we tendered

1 that to the clerk for purposes of terminating the
2 action and satisfying the judgment. And that's
3 fundamentally where we are.

4 Now, what we think should then follow is,
5 of course, that the receiver operating as an arm of
6 the court and operating as a substitute for the
7 debtor, judgment debtor, would then take that money
8 or the Court would take that money and give it to the
9 judgment creditor, and then we make the final
10 arrangements for concluding this matter, and that the
11 Court would then instruct the receiver -- just to
12 make sure that we are all on top of the table about
13 what is going on, instruct the receiver to make
14 efforts to return property to the control of the
15 judgment debtor, to Gresham, to inform the FCC of the
16 status of the judgment, and to file any documents
17 that need to be filed to terminate the application
18 process, and so that is where we are.

19 And along with everything else, we think
20 that there are some -- there may be some question
21 about the status of the attorneys' fees. We are not
22 sure that they haven't already been paid. We have
23 been looking at it and say wait, we don't know that
24 it has already been paid. We haven't gotten any
25 letters from anyone from the attorneys' offices

1 asking for money, so we don't know. I think that
2 might be something that needs to be dealt with.

3 THE COURT: Is it your position then that
4 these additional attorneys' fees and costs are also a
5 part of that redemption, for a better choice of
6 words?

7 MR. WHIPPER: Yes, we understood we
8 should make an amount available for attorneys' fees
9 just in case, because it is there, and it is a part
10 of our calculation because of that, and so we added
11 it in, but we added it in based on what we understood
12 the order to say, which is that interest would go on
13 judgment, amount of the note, and then the attorneys'
14 fees would be paid outside of that, and that no
15 interest is assigned to it.

16 I might add, having read the return of
17 the plaintiff regarding that point, we see that as
18 not being applicable because in fact, unlike what we
19 might have to deal with around collecting the
20 judgment, the collection action and supplemental
21 proceedings and those kind of things, we saw that
22 attorneys' fees here was not a part of the judgment,
23 not involved in any assessment except that it was
24 alleged, it was awarded, and that was it. Here we
25 have to determine what the amounts might be due as a

1 result of, I think, the latest effort since maybe
2 September of '06 to bring this thing to an end. So
3 that is our position.

4 I guess, your Honor, would you like for
5 me to make positions also relative to the memorandum
6 of Mr. Gowder, the plaintiff?

7 THE COURT: Let's hear from the plaintiff
8 first on that issue.

9 MR. GOWDER: Yes, sir.

10 Your Honor, at the outset, I would like
11 to note that it is curious that the Gresham entities
12 find it possible to come up with a sum of money to
13 satisfy what they calculate, mistakenly, to be the
14 amount due on the original judgment with interest,
15 but they don't find it possible to absolve themselves
16 of the contempt that you found them to be in in
17 November of 2007 by not paying those fees that you
18 commanded to be paid within five days of the order.
19 They haven't been paid to this day, and Gresham and
20 those entities and Mr. Saunders personally remained
21 in contempt today, and you would think that a party
22 in contempt of court in this proceeding would be
23 required to remove that contempt before it can seek
24 any relief of the court to begin with.

25 Secondly, I remember Judge Kimberlin

1 instructing us in the bar review course. The
2 equitable maxim that he who seeks equity must do
3 equity. The Gresham entities are in here seeking an
4 equitable remedy, and yet you heard from Mr. Cherry,
5 you yourself have witnessed, you entered an order in
6 November that would indicate that if there is any
7 party that does not deserve equity because they have
8 acted with unclean hands and inequitably, it is these
9 parties. And so for those two reasons above all, we
10 believe you ought to deny this request.

11 But specifically the defendants have no
12 right to tender payment or redeem the FCC license
13 because, one, the receiver owns the license and all
14 Gresham assets. Only the receiver can petition this
15 Court for anything. Gresham has nothing to ask the
16 Court to do. It doesn't own anything. The receiver
17 owns everything. So first of all, only it can act.
18 And if Gresham has \$106,000, they belong to
19 Mr. Cherry. They don't belong to Gresham, and we
20 will get to that in a minute.

21 Secondly, any right that Gresham may have
22 had as a result of your January order was
23 extinguished a long time ago because you have entered
24 several orders, three, I believe, trying to get
25 Mr. Saunders and Gresham to obey your orders and

1 cooperate and do what you commanded him to do in
2 January, which was, first of all, cooperate and not
3 impede the transfer of the license.

4 If you read the paragraph in that January
5 order that they want to talk about and want to say is
6 their ticket to get this relief today -- February --
7 the paragraph begins with your admonition to
8 cooperate with the transfer of the FCC license. They
9 have never done that. In fact, they have done
10 everything they could to slow it down and stop it and
11 delay and delay and delay in the hopes that one of
12 these days perhaps they would be able to turn this
13 thing around. They have never cooperated, and, you
14 know, the Court recognized that by having to appoint
15 Mr. Cherry and by finally finding them in contempt
16 for filing pleadings in the FCC process to further
17 slow that process down that were directly
18 inconsistent with the sworn testimony that was given
19 to you at the beginning of this process. So that
20 right that Mr. Saunders and Gresham may have had as a
21 result of your initial order was long ago was
22 extinguished by your subsequent orders and their own
23 conduct. Certainly their conduct has been
24 inequitable, and by any equitable maxim of unclean
25 hands, they would be prohibited from receiving that

1 remedy.

2 Finally and most simply, they have not
3 tendered a sufficient amount. Even if all of those
4 other things were not so, they have not tendered
5 enough money. First of all, certainly the amounts
6 that would be due under the contempt would have to be
7 paid. And you have affidavits before you that would
8 indicate that the amounts from the Gosnell firm and
9 from my law firm total over a hundred thousand
10 dollars. That is before you get to Mr. Cherry's
11 fees. And so you have got a significant amount of
12 money that would have to be paid before you even get
13 to the amount of the original judgment and the
14 interest, and they have not even calculated that
15 amount right. We have given you our calculation,
16 which puts that number at somewhere around \$114,000.

17 So, your Honor, I have got a lot more
18 argument and a lot more things I would have liked to
19 have pointed out, but given the lateness of the hour,
20 that is our argument.

21 I would say this, that this is what we
22 would ask the Court to do. We would ask the Court to
23 deny their tender. We would ask the Court to rule
24 that the money that is in the clerk's office that
25 Gresham says is its funds are Mr. Cheery's funds, and

1 Mr. Cherry hold those funds to pay to begin to reduce
2 the amount that is owed under the contempt.

3 MR. CHERRY: In his capacity as receiver.

4 THE COURT: Gentlemen, one at a time.

5 MR. GOWDER: And that the Gresham
6 entities be ordered to pay the remainder of the money
7 within a certain period of time or suffer a more
8 severe penalty because it has been since November of
9 2007 they have been ordered to pay this money, and
10 they haven't done it.

11 So, your Honor, at a minimum we think
12 that would be what would be required, and then
13 finally that they be admonished yet again to not
14 interfere in the FCC process and allow the transfer
15 to be ruled on by the FCC. That was the order when
16 you initially entered the judicial sale order. It
17 has been the order every time you have entered an
18 order since then, and it has been ignored every
19 time.

20 Most recently when they made this tender,
21 they made yet another FCC filing that slowed that
22 process. The FCC counsel for Caswell, Mr. Gosnell,
23 indicated to me but for that filing, the FCC would
24 have already agreed but yet we were delayed again
25 because of this filing.

1 THE COURT: The FCC ruling is on the
2 ruling transferring the license from Mr. Cherry to
3 the bidder.

4 MR. GOWDER: To the successful bidder,
5 yes, sir.

6 THE COURT: Now, is it your position that
7 if we were able to agree on the amount of attorneys'
8 fees and the amount of costs, that if that were
9 tendered, that this procedure could be stopped and
10 the license given back to WPAL, or is it your opinion
11 that the license is now gone?

12 MR. GOWDER: It is gone. You didn't have
13 to -- you didn't have to give them the opportunity in
14 your order to allow them to tender this payment and
15 stop the process. You did, and out of fairness, and
16 I respect that fairness, but when you are required to
17 appoint Mr. Cherry in order to overcome the
18 obstruction to that transfer process, that option
19 ended. And certainly it ended when Mr. Cherry
20 received the transfer of the license to himself as
21 receiver. So I would say no, at this point tender is
22 not possible, and the only thing that remains to be
23 done are for the fees that you ordered to be paid are
24 to be paid and the FCC process to end.

25 THE COURT: Have we determined where the

1 funds came from that were tendered?

2 MR. GOWDER: We have not. That is a very
3 good question.

4 THE COURT: I believe it was a check made
5 out to the clerk of court.

6 MR. GOWDER: Yes, sir.

7 THE COURT: Whose account was that on?

8 MR. GOWDER: It was attached to the
9 tender, your Honor. I am not exactly sure.

10 MR. McQUEENEY: Mr. Richter's office.

11 MR. GOWDER: That's all I have.

12 THE COURT: It came from the firm, it
13 didn't come from Gresham Communication?

14 MR. GOWDER: The check came from the
15 firm.

16 THE COURT: Mr. Whipper.

17 MR. WHIPPER: May it please the Court,
18 there are some real issues of law here that I think I
19 need to raise. Number one, your ruling of February
20 21st, '07, was never appealed. It was not appealed.
21 And it is my understanding that under the Rules of
22 Civil Procedure that if the Court wanted to modify
23 the order on its own motion, that that would have to
24 be done within ten days of receipt of entry of the
25 judgment, it is my understanding. And if the

1 plaintiff wanted to modify that order, they would
2 have to do the same thing within a certain time
3 period. None of that happened. And I would like to
4 point out that in that order of February of '07, the
5 Court mentioned that it was an appeal of the order
6 that was issued back in September of '06, and that
7 that appeal somehow was not perfected or was
8 dismissed, and so that that was now the status of the
9 case. In other words, there was nothing else that
10 could be done in terms of modifying that order or
11 changing that order because the time had run. All
12 procedural matters had been concluded. And so that
13 same standard applies to the February 21st, '07,
14 order, that time periods for doing anything about
15 modifying it. Even for asking for relief from
16 judgment under Rule 60, those times have all run.
17 That order, February 21st, '07, is not even beyond
18 the Court to modify, adjust, or anything.

19 Now, we left some language out of our
20 brief, that we talked about whether or not it could
21 be modified, but we needed to have it put in there,
22 and we want to amend it, but I will say to you what
23 we were saying in that order, in our brief, was that
24 if the Court was to even accept the arguments of
25 plaintiff that you ought to modify or that there

1 should have been some modification, we said in our
2 arguments, in our written response, our return, we
3 just said that the Court didn't do that, and each
4 time when you were confronted with making a decision,
5 you ruled that, one, I would appoint a receiver.
6 Then the next time there seemed to be a problem, you
7 ruled that Mr. Saunders was in contempt of court.
8 That was your ruling.

9 Now, when you look at what we are dealing
10 with, November '07 also is where you heard arguments
11 about whether or not there was a full disclosure, and
12 you ruled in November -- I am sorry, we heard that
13 argument in August. We had that hearing in August on
14 whether there was a contempt of court for failing to
15 disclose. That was August of '07. And then you
16 ruled in November of '07 indicating the contempt,
17 indicating what needs to be done, and then you moved
18 on.

19 So now here we are in May of '08, in
20 matters that were applicable even under Rule 60 or
21 beyond the periods that apply. So the order is final
22 law even at this point relative to some of the issues
23 that Mr. Gowder raises for the plaintiff. In other
24 words, matters of Mr. Saunders' behavior and what was
25 decided in August -- decided in November of '07 were

1 decided then, and now we are in April and May of
2 '08. Those matters have been concluded. They were
3 concluded in a second hearing based on the August
4 hearing and the November ruling. So that's done.
5 And so here we are now, and Mr. Gowder, the
6 plaintiff, makes these objections based on matters
7 that have been ruled on, and so what we are saying is
8 that that threshold means that February '07, February
9 21st of '07, order controls how we conclude this
10 matter.

11 Now, I can't recall the exact date, your
12 Honor, but it is my recollection that the plaintiff
13 filed a motion to have attorneys' fees paid at a
14 certain amount and indicated that that amount might
15 need to be adjusted one way or the other, but there
16 was never a request for a hearing on that motion.
17 That motion is outstanding, and we know that. It is
18 the Court's filing, and the defendants are not trying
19 to avoid that, but what we are doing is we are
20 dealing with what we can in light of the orders and
21 the timing of the orders as they were laid out.

22 The first order of business is February
23 21st, '07, because it has to do with how we satisfy
24 that judgment. It is important that we satisfy that
25 judgment because, unlike the plaintiff's argument, we

1 feel that what has happened -- we think the large
2 body of the law is with us on this -- that the
3 receiver stands in the shoes of the judgment debtor.
4 He doesn't take title, his own person, as a
5 receiver. He takes the rights and privileges that
6 are exercisable by the true owner, the judgment
7 debtor. So he is not the owner of the license, but
8 he is again in possession of it on behalf of the
9 judgment debtor.

10 Even if you follow what was the order of
11 March 27th, it tells him to take stuff and manage it
12 for purposes of operating the station. Now, I think,
13 your Honor, when we look at what has been discussed
14 even in the statute, we have to be concerned, and
15 there is probably more to the story than meets the
16 eye at this point, but what we are concerned about is
17 that the station was taken off the air when it was
18 easily put on the air a year later almost, and one of
19 the things that the receiver is supposed to do, the
20 receiver has a duty to make sure that this property
21 remains viable for the Court to use it to satisfy the
22 judgment. That's what this is about, satisfying the
23 judgment.

24 Now comes the receiver and wants to talk,
25 interestingly enough, not as a disinterested party,

1 but somehow representing the judgment creditor. Now,
2 we do not deny that our law in South Carolina will
3 allow him to be responsible to some extent for the
4 judgment creditor, but he also is responsible for the
5 judgment debtor, and his authority was clearly set
6 out in your orders, and that needed to be complied
7 with, but it ends up that the judgment debtor was
8 even put in a more precipitous circumstance because
9 the station was taken off of the air, and there was
10 no effort to sit down and work out whatever
11 differences there were between what he felt between
12 he and Mr. Saunders. And as you can tell, your
13 Honor, I mean, he is supposed to be a businessman,
14 the receiver, but he comes down twice to take care of
15 business and doesn't call anybody to say, "I'll be
16 down there." And he comes down on Friday afternoon,
17 is what you are going to find out, Friday afternoon.
18 Well, I would think that even if I was coming to have
19 fun with you, I would let you know that I am coming
20 to town.

21 So here we are, and we are for some
22 reason wanting to forget about all of the legalities
23 that are involved here and get into an visceral
24 feeling of contempt for one another, and that is not
25 why we are here, and that has all been dealt with.

1 And I think, your Honor, if there is some differences
2 of opinion about the amounts, so well and good.

3 The other thing about this situation too,
4 your Honor, the order says that the judgment debtor
5 can satisfy that debt. It doesn't say that Mr.
6 Saunders in his personal capacity cannot raise money
7 to satisfy the debt. Nothing in the order says that
8 the money has to be a certain serial number. The
9 money has to be paid to pay this debt. So to
10 subscribe to any money that is tendered automatically
11 belongs to Gresham is incorrect. It is an incorrect
12 position to take and one that I would hope that the
13 Court would acknowledge because that is not a part of
14 the order. It is not really a situation that we
15 would want to establish positive-wise, but then we
16 would have a lot of people who wouldn't get paid. A
17 lot of time people need help paying debts. So I
18 would hope the Court would take that into
19 consideration.

20 I think that I also wanted to say that
21 when we look at this position that is being taken
22 regarding the motion to have this money transferred
23 to the receiver and the petition for rule to show
24 cause, which is a request for a rule to show cause, I
25 might add, what that is really saying is the February

1 21st, '07, order is null and void. You can't say
2 that. You can't say your direction as to what should
3 happen is no longer controlling because that is the
4 established law of the case, and our law in South
5 Carolina backs that up unendingly.

6 Now, your Honor, I would like to have my
7 co-counsel take up some points at this point in
8 response to what Mr. Gowder has said.

9 THE COURT: Yes, sir.

10 MR. WARING: Thank you, your Honor. I
11 promise to not take more than about three minutes.

12 Your Honor, if I could briefly respond to
13 Mr. Gowder's points of a few minutes ago. First of
14 all, I would like to state what we believe to be the
15 two issues in this hearing today. One is whether
16 Gresham Communications has been granted the right to
17 redeem the judgment and receive its license back from
18 the Court and whether there is an agreement or a
19 dispute on the amount of money that should be
20 tendered to the Court. And I believe that the theme
21 of this entire matter is what is the law of the
22 case? The law of the case is what has been
23 established by your orders and the preceding order by
24 Judge Condon back in 1998. And in order for us to
25 get to where we need to be, we have to go back to

1 that order because his original order establishing
2 the judgment is the law of the case, and it cannot be
3 modified by any subsequent order of another judge or
4 person in charge of the court, and that degree states
5 that the plaintiff have judgment against the
6 defendants, in this case Gresham, and we have
7 acknowledged that Caswell has become the assignee of
8 this judgment for the sum of \$56,276.10 together with
9 interest at the rate of eight percent per annum from
10 June 1998, June 1st, 1998, together with an
11 attorney's fee of \$5,627 and the cost of this
12 action. That order in no way contemplates that there
13 will be interest tacked onto the 5,627 in attorneys'
14 fees and costs. It completely states on its face
15 that that interest would be eight percent per annum
16 from June 1st, 1998, on top of that \$56,276.10, and
17 that is where the number of \$106,000 was arrived at.
18 So we believe that that tender for the redemption of
19 the license is appropriate. Now, the question is,
20 does Gresham still have that right, and as Mr.
21 Whipper has stated, we believe that that is so. That
22 February 27th order, to our recollection, was never
23 appealed, so it is the law of the case.

24 Your subsequent orders modified or
25 amended the February 27th order in certain respects.

1 For example, I believe one of the subsequent orders
2 in which you appoint the receiver -- I believe that
3 might have been the November order -- March order --
4 I apologize -- you amended to the extent that you
5 would have Gresham turn over other assets. What you
6 didn't do or what the order did not do is it did not
7 amend the February 27th order extinguishing the right
8 to redeem. And what that February order stated -- if
9 you will bear with me, I will pull it up. This is
10 the language of the February 2007 order. If the
11 judgment debtor satisfies the full amount of the
12 underlying judgment in this matter, together with all
13 interests, fees, and costs due under the judgment
14 before the FCC grant of assignment of license, which
15 in this same paragraph the assignment of license was
16 to the successful bidder, then the FCC assignment
17 application will be withdrawn. There has been no
18 subsequent language in any other order extinguishing
19 that right, and you cannot come to court and say that
20 the language of subsequent orders implicitly
21 extinguishes that right. That is not what South
22 Carolina law allows.

23 Mr. Gowder had mentioned a couple of
24 things about the issue of contempt, is that Gresham
25 cannot tender this amount because they come to court.

1 with unclean hands. Our position is that this is an
2 equitable doctrine of unclean hands that only applies
3 to cases where the party seeks equitable remedies.
4 Our client is not seeking an equitable remedy. What
5 our client is seeking to do is to redeem what has
6 been given to be a legal right through the order. So
7 this is not an equitable remedy that is being
8 sought. It is a legal remedy.

9 And with the issue of the contempt, it is
10 not Gresham's intent to avoid its responsibility in
11 terms of paying the moneys for contempt.

12 Another law of the case is that the
13 Gresham defendants were held in contempt of court
14 through your November 2007 order. That is a separate
15 order at issue from the money to be tendered to
16 satisfy the judgment. We would take the position in
17 terms of the amount, however, that needs to be paid
18 to the Court for contempt, that would run from
19 September 2006 to the date of the order, which would
20 be the contempt period this Court has found the
21 Gresham defendants to be in contempt of. Anything
22 subsequent to that order, our clients have not been
23 found in contempt of this Court, and that would be
24 another matter for another day.

25 So in summary, the issue before the

1 Court is, does that right to redeem still exist,
2 and we believe it does, and was that amount of
3 \$106,268.78 -- did that satisfy the underlying
4 judgment? It did. That was tendered to the Court,
5 and we would ask the Court to grant the relief as a
6 result from the February 27th order.

7 THE COURT: Thank you, sir.

8 MR. GOWDER: Your Honor, I will be very
9 quick. First of all -- and you will see this in our
10 brief -- the receiver acts as creditor, not the
11 debtor. Secondly, the interest on the original
12 judgment, the eight percent is obviously on a note.
13 It is a contractual amount. That is why it is
14 different from the statutory amount. The remaining
15 amount of the judgment, according to all case law --
16 and we have cited this in our brief as well -- we
17 accrue interest -- interest accrues on that post-
18 judgment amount at the statutory rate, and that is
19 not calculated in the numbers.

20 Lastly, and most importantly, I think,
21 they want to somehow -- and it is ironic that the
22 only provision in any of your orders that Gresham
23 defendants want to pay any attention to is this one.
24 All of the rest of them, they have routinely not
25 complied with in the order, but on this particular

1 one they want to say that that one is stuck and it is
2 in stone and could not be changed by any subsequent
3 order, and that is just not true. And what you set
4 out very wisely in that order was that the sale would
5 occur, had to be approved by the FCC, the judgment
6 debtor, being the entity that was on the license, had
7 to cooperate in order to get the sale done. That was
8 anticipated to be within a short period of time. You
9 justly and fairly put in that order that assuming all
10 of that would be the case and that there would be
11 that cooperation and that that would go forward if in
12 the meantime that amount was paid, then the process
13 of the transferring the FCC license would stop, and
14 that would be the end of the matter. That wasn't the
15 end of the matter. You had to intervene time and
16 time again to extract the compliance with the
17 defendants. You had to have Mr. Cherry appointed,
18 and then Mr. Cherry actually had to take the license
19 as receiver. Once all of those things occurred, your
20 Honor, that provision in that first order was over.
21 And think about it this way. How else could it be
22 any other way? If you look at the powers that you
23 gave in March, the end of March, to Mr. Cherry, he
24 had, you know, authority to take total possession of
25 these assets and in fact to find a purchaser and to

1 present that purchaser to the FCC for approval.

2 Well, how in the world would he be able to do that if
3 this lingering right to tender still existed? It is
4 inconsistent with the appointment of Mr. Cherry and
5 just doesn't exist.

6 So, your Honor, we ask that you deny this
7 tender and grant the other relief that we requested.

8 THE COURT: Anything further to decide?

9 MR. WHIPPER: This is it. Why are we
10 arguing about the breach of the order? We are here
11 to pay the underlying judgment. We are here to pay
12 the underlying judgment. We are not here to argue
13 about who should have the license. That has already
14 been decided. If the plaintiff is damaged by what
15 transpired between August of -- September of '06 and
16 November of '06, we can deal with that. There is a
17 motion outstanding to deal with that. That can be
18 done. We have appeared under the case, the law of
19 the case under the Rules of Civil Procedure. We have
20 appeared to make payment under the instruction of
21 this judgment to pay the plaintiff what it is due.
22 This is why we are here, plain and simple, and we are
23 here to do that. We have done that so far as it
24 concerns the judgment. It is outstanding what might
25 happen relative to costs involved with collection,

1 and we are prepared to do that. So first things
2 first, is that we should be allowed to satisfy the
3 requirements of this order of February '07, and then
4 if there is something to be taken up later on, we can
5 do that. This matter is concluded.

6 MR. GOWDER: Your Honor, I do have to say
7 this. Seth has said this a couple of times, and I
8 don't agree with it. He says it is something that
9 remains to be done on the November 2007 order. That
10 is absolutely incorrect. That order says that the
11 defendants would have to pay the attorneys' fees
12 within five days of the order. It also required that
13 the plaintiff submit the amount of those fees, which
14 was done the first week of December, and Mr. Whipper
15 received that information. So there isn't anything
16 that remains to be done, and there isn't a motion
17 outstanding. His client is in contempt.

18 THE COURT: Gentlemen, thank you very
19 much. Well argued.

20 (The hearing was concluded at 5:04 p.m.)

21

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CERTIFICATE OF REPORTER

I, Ann P. Harris, Registered Merit Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify the foregoing transcript is
a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my
official seal this 28th day of May 2008 at
Charleston, Charleston County, South Carolina.

Ann P. Harris
Registered Merit Reporter
My Commission expires
July 23, 2008

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Transcript of Colleton County Motions Hearing

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 COLLETON COUNTY

4 TRANSCRIPT OF MOTIONS

5
6 NANCY R. BEACH,

7 Plaintiff,

8 vs.

CASE NO. 92-CP-15-508

9 GRESHAM COMMUNICATIONS OF
10 WALTERBORO, INC., a/k/a
11 GRESHAM COMMUNICATIONS, INC.,
12 GRESHAM BROADCASTING, INC.,
13 and RUDI H. GRESHAM,

14 Defendants.

15 -----
16 BEFORE THE HONORABLE HARRIS BEACH

17 DATE: JUNE 23, 2008

18 TIME: 1:00 P.M.

19 LOCATION: COLLETON COUNTY COURTHOUSE

20 101 Hampton Street

21 Walterboro, South Carolina 29488
22 -----

23 REPORTED BY:

TERI L. HORIHAN

24 NCRA Registered Professional Reporter

25 CLARK & ASSOCIATES, INC.

P.O. Box 73129

North Charleston, SC 29415

(843) 762-6294

WWW.CLARK-ASSOCIATES.COM

Transcript of Colleton County Motions Hearing

1 A P P E A R A N C E S

2

3 ON BEHALF OF THE PLAINTIFF:

4 PRATT-THOMAS WALKER

BY: W. ANDREW GOWDER, JR.

5 BY: CHIP McQUEENEY

16 Charlotte Street

6 Charleston, SC 29403

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8

9 ON BEHALF OF THE DEFENDANTS:

10 THE RICHTER FIRM

BY: WILLIAM H. WARING, III

11 622 Johnnie Dodds Boulevard

Mount Pleasant, SC 29464

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14 WHIPPER LAW FIRM

BY: J. SETH WHIPPER

15 4592 Durant Avenue

North Charleston, SC 29405

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E X H I B I T S

(There were no exhibits marked.)

Page

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1 THE COURT: I call this hearing to order.
2 This is the hearing on reconsideration of my
3 previous ruling, and I'd like everybody to introduce
4 themselves for the record, if they would, starting
5 with the plaintiff.

6 MR. GOWDER: Your Honor, Andy Gowder. I
7 am here with Chip McQueeney for the plaintiff.

8 MR. WHIPPER: May it please the Court.
9 J. Seth Whipper for Gresham Communications.

10 MR. WARING: Will Waring for Gresham
11 Communications. I'm with the Richter Firm, LLC.
12 And I'm sorry, Your Honor. To my left here is Aaron
13 Edwards. Aaron is with the Richter Firm. He will
14 be beginning his position as an associate as soon as
15 he passes the bar this summer.

16 THE COURT: Good. Have you taken the bar
17 yet?

18 MR. EDWARDS: End of July.

19 THE COURT: Well, good luck.

20 MR. EDWARDS: Thank you.

21 THE COURT: This is the defendant's
22 motion. I'll hear from you.

23 MR. WARING: Your Honor, Will Waring again
24 for the defendants. And I'd like to start by
25 thanking you for providing us the opportunity to

Transcript of Colleton County Motions Hearing

1 have this hearing today. We very much appreciate
2 that. We appreciate your willingness to do an
3 expedited hearing in this matter and just wanted to
4 thank you for that.

5 There are a number of points that have
6 been raised on behalf of the defendants in this
7 motion to reconsider your order of June the 6th,
8 2008, and I'm not going to belabor all the points
9 because I believe that those points were brought up
10 in our May hearing.

11 But I'd like to start by pointing out to
12 the Court that it is our belief that the order that
13 was issued on June the 6th well exceeds the scope of
14 the motion that was considered at that hearing,
15 which was basically just a motion on whether or not
16 the defendants could redeem a prior judgment of the
17 Court and what was the appropriate amount for that.

18 Some points that we would like to make
19 against that are as follows -- and I'll start with a
20 matter that we researched over the weekend. We're
21 always working at the Whipper Firm and the Richter
22 Firm, just like I'm sure Mr. Gowder, Mr. McQueeney,
23 and yourself are.

24 But there is a rule of law regarding the
25 execution of a judgment and the time limitations for

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1 that execution. I've handed that up to the Court
2 and to opposing counsel. It is our belief that
3 pursuant to statutory law, specifically South
4 Carolina Code Section 15-39-30, the underlying
5 judgment in this matter has been extinguished.

6 And specifically, the law I've just cited
7 to you states as follows: Executions may issue upon
8 final judgments or decrees at any time within ten
9 years from the date of the original entry thereof
10 and shall have active energy during such period
11 without any renewal or renewals thereof, and this
12 whether any return may or may not have been made
13 during such period on such executions.

14 And it's important to note how our courts
15 have interpreted this law. We've included in the
16 supplemental brief that our courts have recognized
17 that although there may be delays in legal
18 proceedings while a judgment is pending out there
19 that the ten years when it's out, it's out
20 regardless of whether or not the judgment predator
21 has successfully collected on the judgment.

22 We put that before you because, as Your
23 Honor knows, the underlying judgment of this matter
24 was June 2nd, 1998, which granted Nancy Beach
25 judgment against the defendants for an amount of

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1 money that, back then was 56,276.10 plus legal fees
2 cost of 5,627 at a rate of 8 percent per year.

3 Now it's three weeks past the ten-year
4 deadline to execute the judgment, and our courts
5 have stated unequivocally that a judgment is utterly
6 extinguished after the expiration of ten years from
7 the date of entry.

8 And furthermore, public policy
9 considerations preclude the life of judgments to
10 exceed ten years, and the courts actually put the
11 burden on the judgment predator to make sure these
12 proceedings are all concluded and judgment is
13 executed upon within ten years. So that's that
14 issue before the Court.

15 THE COURT: How would that affect the sale
16 of the license?

17 MR. WARING: Our position on the matter,
18 Your Honor, is that the June 2nd, 1998, judgment is
19 dead. So there is no longer a monetary judgment
20 that can be collected on behalf of the current
21 assignee, Ms. Aidoo and Caswell Communication.
22 There can be no judgment collected.

23 So then if that's the case, then if the
24 sale goes forward, Caswell Communications would not
25 be able to benefit from that because there is no

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1 collection to be made under that judgment.

2 THE COURT: But there was on the date of
3 the sale. Are you saying that the running of the
4 ten years then renders anything prior to that null
5 and void?

6 MR. WARING: According to how our courts
7 have interpreted it, if the judgment predator has
8 not actually collected on the judgment, the ten
9 years runs, it's over, no matter what proceedings
10 have been instituted during that ten years. And
11 that's the case that I've given to you of Wells
12 versus Sutton, and then subsequently it was
13 reinforced in Home Rentals, Incorporated, versus
14 Moore.

15 THE COURT: Do you feel that there is any
16 influence there if the defendant has, in effect,
17 forward the collection of assets, such as the
18 efforts to stop the transfer of the title to the
19 license that had already been sold?

20 MR. WARING: There may be some authority
21 out there, Your Honor, that we have not yet
22 researched that may have a proposition or a position
23 regarding some form of a stopple. However, in these
24 cases, the Court was very clear.

25 And I'll read to you a section, I think,

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1 is important in this Wells case, and this is on page
2 three of the case that I handed up to you.

3 It says that this Court, the Court of
4 Appeals of South Carolina, emphasizes that it does
5 not condone efforts by judgment debtors to secrete
6 assets to avoid payment of judgments. But it goes
7 on further to say that the public policy of having
8 the judgment be collected upon within ten years
9 outweighs that.

10 It wasn't condoning any kind of behavior
11 or maneuvers on behalf of the judgment debtor, but
12 the Court pretty much put the burden on the judgment
13 predator to resolve this within the ten years. So
14 that would be our position on that, Your Honor, and
15 we would respectfully request that you take that
16 matter under advisement to consider that.

17 Other points, Your Honor --

18 THE COURT: You-all want to argue these
19 one point at a time and go back and forth?

20 MR. GOWDER: Whatever suits you, Your
21 Honor.

22 MR. McQUEENEY: Whatever suits you, Your
23 Honor.

24 THE COURT: I think I would rather once
25 you're through with a point, let's hear from the

Transcript of Colleton County Motions Hearing

1 other side, and that'll help me keep it easier in my
2 notes.

3 MR. WARING: Yes, Your Honor. No problem.

4 MR. McQUEENEY: Your Honor, we would just
5 simply state the judgment has been executed, I
6 think, as of the judicial sale. If not then, at the
7 very least, as of the appointment of the receiver.
8 The only reason this action is really still pending
9 is because of this notice of tender that they
10 submitted in April of 2008. He brought up actual
11 remedies, and I think unclean hands clearly applies
12 in this case.

13 And third -- and I may be wrong. This is
14 off the top of my head. There was a recent Court of
15 Appeals case that I believe Judge Kittredge authored
16 that says you cannot raise this for the first time
17 on appeal. And I think that would also apply on a
18 motion to reconsider.

19 I don't know of any matter you can sort of
20 raise for the first time in a motion to reconsider
21 after the substantive hearing is concluded, so we
22 would assert that against their claim.

23 THE COURT: Well, the motion to reconsider
24 has a section in there about newly discovered
25 evidence. And if there's a new case that's

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1 issued -- and I think we could look at that also --

2 MR. McQUEENEY: Right.

3 THE COURT: Does the ten-year -- do you
4 agree that ten years is the life of a judgment?

5 MR. McQUEENEY: Ten years is the life of a
6 judgment, but the judgment here has already been
7 executed upon.

8 THE COURT: What about the receiver? Can
9 the receivership outlast the ten-year period?

10 MR. McQUEENEY: I would argue it can.
11 Obviously, I haven't done any research on the
12 matter. But Your Honor, I think in the normal
13 course, a judgment debtor has more property than
14 just one item, as Mr. Saunders testified that he
15 only had one item in this case.

16 And the receiver would normally hold
17 pending the judicial sale. Here, the judicial sale
18 has already occurred. The receiver was actually
19 appointed to facilitate the transfer of the FCC
20 license. The judgment has been executed upon.

21 The only thing we're doing now is
22 effectuating that within the FCC proceeding. And
23 again, the only reason we're still talking about
24 this is because of the actions of the judgment
25 debtor.

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1 I mean, really, we're in the capacity of
2 the person who bought the asset, not necessarily the
3 judgment creditor. There's no right, title, or
4 interest to the judgment debtor left in the asset,
5 especially since March 26th, 2007, when it was
6 transferred to the receiver.

7 THE COURT: As I recall, the initial
8 appointment of the receiver was for the purpose to
9 facilitate the transfer of the license. That's why
10 I was reluctant to grant a receiver until we got the
11 impasse on the license. So it's the defendant's
12 position that the ten years will kill the
13 receivership also; is that correct?

14 MR. WARING: That's correct, Your Honor.
15 As you'll find in the Wells case, there was a
16 receiver in that matter as well, appointed by the
17 Court.

18 THE COURT: I'll read Wells and the
19 subsequent case. Anything in reply?

20 MR. GOWDER: Your Honor, the only thing --
21 and should have stated as well -- I would just say
22 that, again, the sale and the execution has
23 occurred. And the only thing that remains to be
24 done is just the perfection of that right that we
25 provided for in the order that now the receiver is

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1 having to carry out.

2 And so it really is not an execution that
3 we're seeking. It isn't as if we're seeking
4 additional assets. We're just simply trying to
5 perfect the transfer of the sale that occurred back
6 in March of last year.

7 MR. MCQUEENEY: Your Honor, the statute of
8 limitations may be equitable tolled, and we would
9 also, again, assert that position in this case.

10 MR. WARING: The case law is very clear
11 that there is no equitable tolling of that statute.
12 That is in the case. That's not true.

13 THE COURT: It's in Wells?

14 MR. WARING: Yes, sir.

15 THE COURT: I was originally appointed for
16 supplemental proceedings. Does that have an effect
17 on what we're talking about here?

18 MR. WARING: No, sir.. Not according to
19 the case law.

20 MR. GOWDER: We think, again -- the answer
21 is, this whole argument is whether or not you can
22 pursue execution beyond ten years. Execution has
23 occurred.

24 THE COURT: Okay. I think I understand
25 it. Next point?

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1 MR. WARING: Thank you, Your Honor.

2 Moving on to the next point. The Court, in its last
3 order, the order of June 6th, 2008, ruled that the
4 money that has been tendered with the Clerk of Court
5 is an asset of Gresham.

6 We respectfully disagree with that
7 statement and would like to recall the May 16th
8 hearing. That was actually discussed as to whether
9 or not or not -- or where that money came from and
10 whether or not it was an asset of Gresham.

11 The money that was tendered was tendered
12 by a third party. As a matter of fact, the check
13 was written by the Richter Firm, LLC. That money
14 was tendered with the Clerk of Court for the benefit
15 of Gresham Communications.

16 And by definition, it is not an asset of
17 Gresham. Simply stated, an asset is an item that is
18 owned and has value. Well, that money certainly has
19 value, and it is owned, but it was not owned by
20 Gresham Communications.

21 And I'd liken that to a situation where,
22 unfortunately if I were put in jail, and I needed to
23 be bailed out of jail, I'd call my buddy Seth
24 Whipper to come and post bail for me to get out of
25 jail.

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1 That money that Mr. Whipper has posted is
2 posted on my behalf. It's not my money. I don't
3 have a dime to spend. It's posted for my benefit,
4 and I'm going to get out of jail for it.

5 THE COURT: But if you don't show up, it
6 goes to the State, and Mr. Whipper is very upset
7 about that.

8 MR. WARING: But that's just a simple
9 analogy --

10 THE COURT: I understand.

11 MR. WARING: -- to say that this money was
12 not Gresham's. It's currently not Gresham's. And
13 one of the points later on that I can go ahead and
14 attach to this is that we would ask that Your Honor
15 please reconsider your ruling that this was an asset
16 of Gresham.

17 And of course, we're going to continue to
18 argue that we believe that the past order of
19 February 2007 gave Gresham the right of redemption.
20 But if Your Honor does choose to continue to rule
21 that Gresham did not have a right of redemption, if
22 that money could be returned to the owner of that
23 money, we would ask that in the alternative.

24 THE COURT: We identified some other
25 assets when we had, not this last hearing but the

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1 hearing before that, some property. It's my
2 recollection that we did not find any monies or
3 anything; is that correct?

4 MR. GOWDER: That's correct, Your Honor.

5 THE COURT: I think he said he had some
6 land, and he had some broadcasting facility, but no
7 monies. So other than the last proceedings, we
8 haven't identified this as an asset.

9 MR. McQUEENEY: Yes, Your Honor. And I
10 would just say that we were also under the
11 impression that the only asset Gresham had based on
12 Mr. Saunders' testimony was the FCC license for six
13 or eight months.

14 THE COURT: That was the original
15 testimony was that the FCC license was the only
16 thing; that there was no land; that there was no
17 equipment; that there was nothing else. Everything
18 else had either been leased or rented or belonged to
19 somebody else.

20 MR. McQUEENEY: Yes, Your Honor. Then
21 later on, there was more stuff involved that didn't
22 come across in that hearing. But also, Your Honor,
23 there's been no sort of motion to intervene by a
24 third party. There's been no appearance by an
25 attorney for the third party.

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1 The money, the transcript will show, came
2 from the Richter Law Firm, who has appeared on
3 behalf of Gresham. The tender was made by Gresham
4 Communications, and I believe -- let me quote. It
5 says, Gresham Communications, Inc., comes to satisfy
6 the full amount of the underlying judgment in this
7 matter, not Gresham Communications, Inc., with the
8 money of a third party or a third party on behalf of
9 Gresham Communications, Inc.

10 Simply put, Gresham Communications, Inc.,
11 is the only other party of this action. If a third
12 party wants the license, they could have bid on it
13 at the judicial sale. They did not do so. They're
14 not a party to this action, and there's also no
15 evidence that it belongs to the third party.

16 There's testimony from attorneys -- or
17 there's assertions by attorneys, but that's not
18 testimony. All we have is really hearsay at this
19 point.

20 THE COURT: Let me ask this. This is
21 something that I've been thinking about since we had
22 that last hearing. We have sold the license. I
23 sold it. So as far as the Circuit Court of South
24 Carolina is concerned, that asset has been sold.

25 Do we have a value for that asset to see

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1 if it actually covers the amount that's due on the
2 judgment? Did we ever determine that? Because
3 we're talking about other monies going against a
4 judgment, and I don't know if we've ever addressed
5 the issue of what the value of the license is.

6 MR. WHIPPER: Your Honor, and that's
7 another real daunting point in this whole
8 disposition of this particular asset. Ms. Aidoo, in
9 an e-mail to Mr. Saunders back in March, indicated
10 at the time that there was at least -- two offers,
11 one for 1.5 million and another for 1.6 million.
12 And then later on in an e-mail in July of 2006, she
13 indicated that she had a \$2 million offer for WPAL.

14 And I'd be happy to submit a copy of these
15 to counsel and the Court because I think it
16 establishes the real value of the license, which was
17 a real problem for, in fact, paying off any
18 indebtedness and making sure that the equities would
19 flow properly.

20 I might add, Your Honor, that prior to
21 that also, there was a couple of agreements
22 signed -- I think Mr. Gowder -- we know that these
23 people were partners. There was an APA asset
24 purchase agreement. There was a license management
25 agreement, lease management agreement. So what we

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1 had was we had an acknowledgement of all kinds of
2 assets that were already available at the station.

3 The station was operating between two
4 parties, and it's an argument that we've made
5 before, Your Honor, that we think that the issue of
6 what was known and what was not known was, in fact,
7 a bit of -- it was a bit of a leverage point at the
8 time of Mr. Saunders' testimony when he testified
9 pro se to what he may or may not have -- Gresham may
10 or may not have owned.

11 But the value was known to both parties.
12 The amount of equipment was known to both parties.
13 And if we talk about -- I might add that the legal
14 arguments that have been made at the FCC are bona
15 fide legal arguments.

16 And there could be a ruling that, in fact,
17 what is going on at the FCC is more favorable to
18 Gresham. If that's the case, then it's hard to
19 stay -- as a matter of fact, Gresham has a duty to
20 make these arguments, not to delay anything.

21 And since that time, Your Honor, your
22 ruling back in November which was based on a move to
23 show cause, which dealt with an alleged violation on
24 the part of Mr. Saunders, did turn up other
25 properties which have been brought before the Court,

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1 I might add have not been in any way involved with
2 any disposition so that, in fact, any questions
3 about those later properties, I think, are answered
4 by our first objection.

5 But it is Gresham's position -- I might
6 add, Your Honor, there has been no proof at all, if
7 you want my opinion, if we look at it evenly between
8 the two parties, there's been no proof at all
9 relative to -- we've made truthful statements about
10 whose money this \$106,000 is. But on the record, no
11 one brought any proof as to whose money it is, in
12 fact.

13 And there was a conclusion on the part of
14 Caswell and on the part of Nancy Beach's assignees
15 but, in fact, there was no evidence to establish
16 that. So, Your Honor, we would think that the
17 equities are fairly placed in that, when you look at
18 the value of the license and what it sold for, it
19 certainly is objectionable.

20 I'm the second lawyer in this case.
21 Mr. Waring and the Richter Firm are third, and they
22 do appear at this point along with me as co-counsel,
23 but they do have other relationships that involve
24 that money, and their responsibility for
25 custodianship of that money. And so we ask the

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1 Court to take that into consideration.

2 These expenditures do not -- the value of
3 the license is definitely more than it sold for at
4 the judicial sale.

5 THE COURT: That's what I wanted to try to
6 figure out where we were because I really thought
7 this case was over when the license was sold.
8 Obviously, it wasn't. But if the license was sold
9 within a ten-year limitation and assuming it was a
10 valid sale and assuming that the things that went on
11 afterwards are just to effectuate that sale, then if
12 the value of the license is more than the value of
13 the judgment and everything else that was added on
14 to it, are we not talking about a moot issue?

15 MR. WHIPPER: No. Your Honor, we think
16 it's moot based on the fact that the license, in
17 fact, has not been transferred. There has been a
18 sale, but it has not been transferred. The
19 receiver, in fact, represents both parties. We feel
20 that South Carolina acknowledges that the receiver
21 is an agent of the debtor.

22 At times, the receiver may be somehow a
23 fiduciary or an agent for the predator, we don't
24 deny that. But the receiver is, in fact, our agent.
25 It's recognized by law. That's the agent of the

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1 debtor. So with the limitations on the receiver's
2 duties to act for the debtor, then, no, sir, the
3 license has not been transferred, in fact.

4 And although there has been a sale, the
5 fact that there has been no transfer of the
6 property, the fact that there are legal arguments
7 outstanding that indicate the correctness of the
8 sale, with all due respect, may be in question.

9 What happened is that unfortunately the
10 sale of the -- or the attempt to sell or transfer
11 the license expired because now, under our law, the
12 judgment is void.

13 It's sort of like it falls, unfortunately,
14 just like we let the air out of a balloon. And I
15 might add it's been pointed out, Your Honor, in the
16 order, February 21st, 2007, order, it says, if the
17 judgment debtor satisfies the underlying judgment as
18 a matter together with all interests, fees, and
19 costs due under the judgment before the FCC grant of
20 assignment of license, then the FCC assignment
21 application will be withdrawn.

22 And that is consistent with the receiver
23 acting in place of the debtor. Because,
24 unfortunately, there was a lot of bad blood; we
25 don't deny that. We do deny the fact that there was

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1 physical threats and all that kind of things. But
2 the receiver stands in the shoes of the debtor. So
3 in fact, the license has not transferred, and
4 unfortunately, the judgment is void at this point.

5 So you can't toll it. You can't fall
6 across the finish line after making the fourth turn.
7 And it's done. Of course, it does not say -- if
8 this happens, it doesn't, in fact, say that there
9 are no other remedies available for this creditor,
10 if that's what the Court is concerned about.

11 I might add that in light of the lease
12 management agreement, and the asset purchase
13 agreement that had been executed. There's a long
14 history, and I think the Court has heard the history
15 where, in fact, Ms. Aidoo could not come to a
16 closing for some reason after she had offered to
17 purchase the station.

18 Everything about the station was known
19 because that's the standard that you go through when
20 you do an asset purchase agreement, you list
21 everything that you own. Same thing with the lease
22 management agreement, you list everything that you
23 own.

24 So I would say to the Court that we should
25 take note of the fact that the equities are very

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1 interesting here because, again, they come back to a
2 point that we think needs to be made early on, that
3 to say that everybody was in the dark about Mr.
4 Saunders' testimony at that September '06 hearing
5 when he appeared pro se.

6 We think that it might be -- it could be
7 an approach to that because everything about the
8 relationship between these two parties has been on
9 top of the table, in fact. So we think that if
10 there's other remedies -- they are available, and we
11 think they are available. But as to this remedy, we
12 think this remedy is void and has expired.

13 THE COURT: Mr. Gowder?

14 MR. GOWDER: I think I have a simpler
15 answer to your question, and it is that it never
16 came up. The sale occurred, but the only asset that
17 at that time was identified as being known by the
18 Clerk. So we assumed that that's all that there was
19 to do. And really, Your Honor, having then had the
20 sale and having a purchaser at the sale and that
21 being concluded, the only thing being necessary was
22 an order -- to perfect the sale was the transfer of
23 the license. And then you provided for how that
24 would occur in the order. That's it.

25 The only way that value could have come up

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1 again would have been if for some reason the
2 creditor would have determined that the value of
3 that thing that was purchased still did not satisfy
4 the amount of the judgment. They're going to come
5 back to the Court and ask the Court to assist in the
6 location of further assets.

7 And it would -- then there would have been
8 a question raised probably by the defense or the
9 debtor on value, but it never came up. Never will
10 come up. Agree that at this point the Caswell
11 company, as assignee of Beach, cannot go and further
12 identify other assets and ask for further executions
13 at this point.

14 It doesn't mean, though, as you pointed
15 out earlier that you'd reach back and undo a
16 judicial sale that has already occurred simply
17 because an FCC approval has not occurred at an
18 administrative level.

19 So we think that the matter is over, was
20 over as of the time of the judicial sale back in
21 March, and all of this has simply been a matter of
22 trying to effect that sale.

23 The other thing that I would point out is
24 that the reason that the \$106,000 in deposit at the
25 Clerk of Court's office is relevant is that this

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1 debtor has been in contempt since the end of 2007,
2 has never satisfied that contempt order, and the
3 \$106,000 would substantially, though not completely,
4 absolve it of that contempt order. That's why it's
5 an issue, not to satisfy the judgment, but to
6 satisfy the contempt.

7 MR. WARING: I was going to respond, Your
8 Honor. First thing I'd like to say in response to
9 what Mr. McQueeney had stated earlier regarding the
10 third party's ownership of the asset that's been
11 deposited with the court, I represent to the Court
12 as an officer of the Court that Gresham does not own
13 that \$106,000. That money has been deposited by a
14 third party. That's a representation I make to this
15 Court.

16 Furthermore, what Mr. Gowder has just
17 addressed is actually a point that we'd like to
18 address upcoming is whether or not that \$106,000
19 should be even in play with the contempt because we
20 have never stated or never agreed that that \$106,000
21 should be used to satisfy -- in satisfaction of the
22 contempt judgment.

23 Our position is that \$106,000 is only one
24 purpose, for the purpose of redeeming or exercising
25 the right to redeem that this Court has granted to

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1 Gresham Communications.

2 So that's a bone of contention that the
3 parties have among ourselves at this point. But I
4 don't want to go there yet until Your Honor is
5 satisfied that we've provided you enough information
6 for these points.

7 MR. WHIPPER: Your Honor, I think it's
8 critical that if we're going to assign unclean hands
9 and bad faith on the part of the parties, we need to
10 take in consideration what really is going on here.
11 In March of '06, a year before the sale, and
12 Ms. Aidoo was present at that hearing in September
13 where the statements were made about the license,
14 and she wrote and says, I have an offer of 1.5
15 million and 1.6 million from another after two year
16 LMA.

17 Then in July of '06, to Mr. Saunders, the
18 written and verbal notice that I gave you regarding
19 the \$2 million offer for WPAL is one that I intend
20 to pursue.

21 Your Honor, the Court should not be a part
22 of any kind of bad blood between these parties when,
23 in fact, there's a reasonable way to deal with this
24 situation. And I know that -- I know that when we
25 talk about equities, in this situation, we're

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1 looking at what the law says and what might be
2 equitable.

3 When you talk about intentionally delaying
4 and somehow keeping the creditor from obtaining what
5 is rightfully theirs, it would seem to me if the
6 creditor wanted to obtain what was rightfully
7 theirs, whoever these property offering buyers were,
8 they should have been present at the judicial sale,
9 but that didn't happen.

10 Caswell then stood back and says, well,
11 I'll offer the minimum, and then go on because
12 that's the one thing that I can use. And that in
13 light of the fact that they had the LMA and APA.
14 They knew everything about what was going on.

15 Everything else was known, and I think the
16 Court should not be a part, however things have
17 fallen out by Mr. Saunders being pro se, to have a
18 Court be a part of a heist, it would be terrible. I
19 would urge the Court to look at that and to delve in
20 that as well because that is a real concern.

21 Even at this point, I think the Court has
22 jurisdiction right now to abrogate any other orders
23 in light of what we are hearing about these
24 inequities. Because, in fact, the value of a
25 license, even when the station was not functioning,

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1 which was reported by Mr. Cherry. He mentioned that
2 his offer was 1.9.

3 And all that is is a license and a sound
4 wave that he put sometime in the last three or four
5 months, but the value of the license even at that
6 point was 1.9 million, which was basically confirmed
7 by Mr. Cherry in his report.

8 He is supposed to submit his report in
9 another month or so, and I would ask the Court to
10 take a look at this, and in fact, bring that to bear
11 in the situation so that any costs that are
12 outstanding can be properly taken care of.

13 And that's in the alternative, because I
14 do feel that, in fact, the ten-year period has
15 expired and this, in fact, is a dead situation.

16 MR. McQUEENEY: Your Honor, just real
17 quick in responding to Mr. Waring. An attorney --
18 if all it took was an attorney to stand up and give
19 his oath as to evidence, it would maybe make the
20 judicial system a lot easier to deal with and trials
21 a little bit less long.

22 What an attorney can do, though, is bind
23 his client by stating facts, and they've already
24 bound their client by submitting the motion to
25 tender -- saying Gresham Communications, Inc.,

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1 tenders this money. Not a third party, not on
2 behalf of someone else.

3 And again, there's been no appearance by
4 any other third party, and we would object to any
5 third party having an argument in this case.
6 There's no appearance by an attorney, and there's no
7 motion to intervene by a third party.

8 This is really between the judgment debtor
9 and the successful bidder of the judicial sale.
10 That's what this is all about. This really should
11 be over by now but for the April 8th motion.

12 THE COURT: Is it your argument then that
13 any monies that come in by any other person are
14 automatically imputed to the ownership of the
15 defendant in this case?

16 MR. McQUEENEY: Yes, Your Honor. I
17 actually looked up the Black's Law definition that
18 they had cited. I wrote it down somewhere, Your
19 Honor. There's actually two or three definitions of
20 an asset, but number three is all the property of a
21 person available for paying debts or for
22 distribution. This is money that was available for
23 Gresham to pay its debts.

24 And again, we object to the fact that the
25 debt could be paid at the time or was so existing,

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1 but it's clearly an asset of Gresham. It was
2 presented as an asset of Gresham. We would have
3 objected to a third party if we had known a third
4 party was involved.

5 And again, even if it belongs to
6 Gresham -- and we say it belongs to the receiver --
7 it belongs to Gresham, not a third party. They're
8 now trying to represent a third party in purchasing
9 this license.

10 Third parties can buy at the judicial
11 sale. That's when third parties are involved.
12 There's no room for third party involvement at this
13 point, Your Honor. That's my position.

14 MR. WHIPPER: But Your Honor, our position
15 is that you can't have your cake and your ice cream
16 too. They offer no proof at all on that point, and
17 so it's up to the Court to determine that.

18 And we can have a hearing to determine who
19 owns that money if the Court needs to go further.
20 But no one's done more than what we have done here.
21 And in fact -- I hope I'm not -- again, Your Honor,
22 that money is -- certainly if there's a question
23 about it, the Court needs to delve into it. I feel
24 that nothing has been offered by the creditor to
25 establish anything else than that they want this

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1 money. Certainly the money was there, and the
2 money, we admit, was placed there by a third party.

3 MR. WARING: Your Honor, even -- if I
4 might just add quickly. Even if the Court were to
5 determine that that \$106,000 was an asset of
6 Gresham, which we do not believe it is, but even if
7 you were to make that determination, what was the
8 purpose of that money being deposited into the
9 Court? The purpose was to satisfy the underlying
10 judgment and redemption.

11 It wasn't to pay off any outstanding debts
12 that Gresham may have. So at the minimum -- if the
13 Court determines that the right of redemption does
14 not exist, then that \$106,000 has to be taken back
15 by the party the Court determines deposited that
16 money, and then it can be dealt with at that time.

17 But that's why, in the beginning, I said
18 that this order goes way beyond the motion that was
19 before the Court. The motion was very simple. It
20 was, can Gresham redeem or can't it?

21 If it can redeem, was the \$106,000 the
22 appropriate amount to put up with the Court to
23 redeem. And we've gotten so far beyond that to this
24 order that really, it says too much, and that wasn't
25 the issue.

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1 THE COURT: Gentlemen, next point.

2 MR. WARING: Thank you, Your Honor. The
3 next point that I briefly covered but I just to want
4 make sure it's in the record is that the June the
5 6th order indicates that counsel for the defendants
6 admitted liability for attorneys' fees and costs as
7 a necessary precondition to tendering.

8 That's just absolutely not the case. If
9 anything, we suggested or stated to the Court --
10 it's my recollection that there was a contempt
11 hearing held, and a contempt order signed November
12 of 2007 for contempt fines and fees to be paid up to
13 that point.

14 After November 21st of 2007, if there was
15 any other contempt that was to be -- or allegations
16 of contempt, we need to have a hearing on that. We
17 haven't had a hearing on that. That last hearing
18 was a hearing on redemption. There's been a
19 petition filed for a rule to show cause, and it
20 would be appropriate to consider that issue at a
21 later date.

22 But the plaintiff has been allowed to
23 somehow mix this contempt costs, potential contempt,
24 into this issue of right of redemption, and that's
25 just not appropriate. That is not what we're here

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1 for. We're here to make a determination as to the
2 right of the redemption. So we would dispute that
3 we agreed that the payment of attorneys' fees and
4 costs is a necessary precondition to tendering.

5 MR. McQUEENEY: Your Honor, we actually
6 brought up all this contempt and the money due from
7 the November order in our returns. It's not like we
8 got to the hearing, and we argued the hearing, and
9 then all of a sudden, there's an order addressing
10 this contempt issue.

11 You know, I may be misreading it. I was
12 referring to page 41 of the transcript where it
13 says -- Mr. Whipper was talking about what's
14 necessary to, quote, redeem the license, and along
15 with everything else, we think that there's some --
16 there may be some question about the status of the
17 attorneys' fees.

18 We're not sure if they haven't been
19 already paid. We haven't gotten any letters. Then
20 on page 42, I think that might be something that
21 needs to be dealt with. And the Court asks, is it
22 your position then that these additional attorneys'
23 fees and costs are also a part of that redemption,
24 for a better choice of words?

25 And Mr. Whipper goes on, yes. I think he

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1 discusses the attorneys' fees and the judgment. And
2 then, here we have to determine -- this is the
3 bottom of page 42. Here we have to determine what
4 the amounts might be due as a result of, I think,
5 the latest effort, since maybe September of '06, to
6 bring this thing to an end. So that is our
7 position.

8 I took that as saying, yes, we owe this
9 money. We want to pay this money. But I think what
10 they're saying is they want Gresham to control --
11 any money they bring into the Court, they should be
12 able to control where it goes. And that right ended
13 on March 26th, 2007, when the receiver was appointed
14 because of their conduct.

15 They don't have the right to control the
16 assets of Gresham anymore. The receiver does. And
17 I think that's my answer to that question.

18 MR. WARING: Your Honor, in response, I
19 can tell you -- and Mr. Whipper can sit me down on
20 this, but I can tell you what he was discussing on
21 page 41 and 42, and that was the amount of attorney
22 fees that Gresham was obligated to pay as part of
23 redemption of the underlying judgment, which we
24 would aver is \$5,600.

25 They want hundreds of thousands of dollars

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1 in attorneys' fees because they think the order says
2 that it's attorneys' fees plus interest over a
3 ten-year period, and that's not what the order
4 states. So Mr. Whipper was suggesting that, okay.
5 We have a dispute about the attorneys' fees as it
6 relates to the underlying judgment. We probably
7 need to resolve that.

8 But, yeah, obviously the attorneys' fees
9 as part of the underlying judgment are tendered.
10 What they tried to do is they tried to throw in the
11 contempt fines and attorneys' fees to that.

12 And I will say something too with regard
13 to what Mr. McQueeney says since he got on me about
14 evidence being before the Court. I'll remind
15 Mr. McQueeney that a return is not on the record.
16 What is on the record is what is stated in court and
17 what is filed with the Court.

18 So any requests for or position taken with
19 regard to contempt, that would be properly before
20 the Court in a motion and a subsequent hearing on
21 the record, not in a return or brief or memo.

22 MR. MCQUEENEY: Your Honor, I wasn't
23 asking that my return be incorporated as evidence
24 into this case. I was simply saying that certain
25 issues were brought to the Court's attention before

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1 the hearing.

2 With respect to the tendering of the
3 additional fees, our position is not that it's part
4 of the underlying judgment. Our position is it's a
5 precondition to exercising the tender.

6 As a matter of just general equity and
7 just results, they've got these contempt orders, and
8 as I've said before, they want to bring \$106,000
9 into the Court; take out the FCC license; have all
10 these attorneys' fees still due and payable. And I
11 guess the next step would be for us to execute on
12 those, attach the license again, and do the whole
13 process again which I assume would be what would
14 happen if we keep going the way they want us to go.

15 But following the law of this, we've done
16 everything we're supposed to do. They haven't paid
17 any outstanding contempt orders, and they haven't
18 tendered the proper amount of the judgment, and they
19 no longer have control over the assets of Gresham to
20 be able to sort of pick and choose what they're
21 going to pay at which time. They're trying to get
22 the benefits without all the burdens.

23 MR. WHIPPER: Again, Your Honor,
24 Mr. Waring has stated, we paid what we -- we
25 offered, through the tender of the money, what we

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1 thought was appropriate to exercise the redemption.

2 Where there is a disagreement on any
3 amount for any purpose, the Court is here to
4 determine that, we understand that at the
5 appropriate time and at appropriate input of
6 information. But it does not change the fact that
7 redemption occurred; and therefore, we should move
8 forward from that point to arrest any behaviors on
9 the part of the receiver at the FCC because of what
10 has happened.

11 And again, Your Honor, to come in knowing
12 that this license alone is worth almost \$2 million,
13 and then to pick an offer for \$65,000, I think is
14 something that the Court needs to take cognizance
15 of.

16 There ought to be -- whatever happens,
17 there ought to be a just and fair end to this, and I
18 don't see how that could be fair.

19 THE COURT: Is there an agreement between
20 both sides as to the approximate value of the
21 license?

22 MR. GOWDER: No, sir.

23 MR. WHIPPER: No, Your Honor.

24 THE COURT: You-all don't have an
25 appraisal of it; is that correct?

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1 MR. WHIPPER: We have not, Your Honor.

2 THE COURT: You have not had an appraisal
3 of it?

4 MR. GOWDER: No, sir.

5 THE COURT: These offers that Ms. Aidoo
6 had, were they formal offers, or were they just --

7 MR. GOWDER: Your Honor, I know that there
8 had been offers. I know there had been no sale,
9 obviously, because the asset transfer has not been
10 perfected. But I know that -- so I don't know -- I
11 think Mr. Cherry is correct in the amount of the
12 offers. But again, obviously there's been no
13 transaction and a sale is never done till it's done.

14 THE COURT: He had an offer of 1.9?

15 MR. GOWDER: I don't remember the
16 testimony. I know it was more than \$1 million.

17 THE COURT: And he is scheduled to give us
18 a report within -- not too long; isn't that correct?

19 MR. WARING: He said 60 days, I believe,
20 Your Honor.

21 MR. GOWDER: I think that's right. But
22 again, Your Honor, as I said before, the issue of
23 value never came up because the sale occurred, and
24 that was the end of the matter.

25 THE COURT: But for a long time, that was

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1 considered as the only asset.

2 MR. GOWDER: That's right.

3 THE COURT: Next point, gentlemen.

4 MR. WARING: Thank you, Your Honor. There
5 are actually two more points that I'd like to make
6 before the Court, and I'll actually combine them.
7 And that is the issue regarding the construction of
8 the February 21st, 2007, order, and I would like to
9 start by pointing the Court's attention to the June
10 6th, 2008, order, specifically language regarding
11 the Court's construction or interpretation of the
12 February 21st, 2007, order. And if you'll bear with
13 me, please, Your Honor, I'll locate that language.

14 Your Honor, it states on page 6 of the
15 order, I interpret the February 21st, 2007, order to
16 provide Gresham with a privilege to tender payment
17 of the underlying judgment in the event it fully
18 cooperates in the FCC license transfer process.

19 I also construe my subsequent orders as a
20 replication of this privilege with a footnote,
21 number one down at bottom stating, while Gresham
22 argues the law of the case doctrine prohibits a
23 court order inconsistent with the February 21st,
24 2007, right to tender, I note my ruling involves an
25 interpretation of the February 21st, 2007, and not

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1 an amendment modification or vacation of the order.

2 And then on the next page, page 7, there
3 is a list of cases that are cited for the
4 proposition that a judge may interpret an order.

5 And Your Honor, I feel like it's my
6 obligation to point out to you that this case law
7 that's being cited is not cited correctly for the
8 proposition it stands for, and it's actually not the
9 law of construction of orders in the State of South
10 Carolina.

11 And what bothers me the most about this is
12 two-thirds down the paragraph on page 7, there is a
13 quote from Henderson v. Puckett. The statement
14 before the citation says, as a matter of law, a
15 Court may interpret its own orders.

16 And then the citation, see Henderson
17 versus Puckett, and in parentheses, a direct quote
18 from the case, here the judge properly ruled as a
19 matter of law the Family Court could interpret its
20 own orders.

21 Your Honor, we went back and read the
22 Henderson case, as I'm sure Your Honor has probably
23 read that case as well. That is a direct quote from
24 the dissent in that case.

25 In that case, the majority of the Court of

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1 Appeals said the exact opposite. The Court held
2 that the judge abused his discretion in interpreting
3 his own order. That should be stricken from the
4 order.

5 As a matter of fact, the other proposition
6 that is in here regarding the construction of an
7 order is that an order should be construed as a
8 whole, rather than isolated parts. Well, that's a
9 correct proposition, but that's with regard to an
10 order, one order of the Court, and that's what those
11 cases, that line of cases, stands for, the
12 construction of an order.

13 In this case, we're talking about four
14 separate orders of the Court. Four separate orders
15 of the Court that ruled four different ways or gave
16 four different rulings.

17 If you can't go by the plain language of
18 the order, what can you go by? And that's our
19 position. The position is that the February 21st,
20 2007, order stated there was a right to redeem or
21 that redemption was possible before the transfer of
22 the license from the FCC.

23 There was no subsequent order that
24 extinguished that right. There was no order
25 amending, vacating that right, and I'll state to the

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1 Court that the case law that has been included in
2 this order does not stand for the proposition -- or
3 our case law does not stand for the proposition
4 that's put in this order.

5 MR. McQUEENEY: Your Honor, I apologize if
6 I quoted from the dissent. I don't have the order
7 before me. I certainly didn't do that
8 intentionally. I've seen it happen other times by
9 other people, but I'm embarrassed if I did.

10 But in any event, the general rule is that
11 an order is construed like other written
12 instruments, as a whole and in conjunction with the
13 remainder of the case in terms of the law as a
14 whole.

15 And I think if you read that order as a
16 whole and don't just simply underline one sentence
17 from it, you see in interpreting the order that it
18 clearly states that the proposition in that order is
19 conditioned upon the judgment debtor actually
20 cooperating with the transfer of the FCC license.

21 And I believe that two sentences before
22 the line in question that's been repeated many times
23 in this court it says, the judgment debtor and the
24 successful bidder shall cooperate in the transfer of
25 the FCC license, and then I believe it goes on to

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1 say, the judgment debtor may tender the amount, or
2 whatever the language is, the amount of the
3 underlying judgment and what have you.

4 Certainly, you know, you need to read it
5 in context. And also, if you read the March 27th
6 order, again, the right could have been stated in
7 that order if it had still been existing.

8 Reading the two orders, I think the first
9 order really addressed the issue of whether or not
10 to appoint the receiver, not necessarily the
11 judicial sale of the license. The judicial sale of
12 the license was ordered in September. The February
13 order ruled on whether or not to appoint a receiver.

14 And it said, you will do it within five
15 days if there's no cooperation. Then there's an
16 order appointing the receiver. And notably, there's
17 just no sort of right of redemption in that order,
18 and I don't see how that right survived that order
19 under the plain language of the March 26th order and
20 reading as a whole the February 22nd order.

21 And again, if you look at the general law,
22 there is no quote-unquote right of redemption in an
23 execution sale. And I think if you read it in that
24 context, again, I think the March 26th order did
25 away with that right to the extent it existed.

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1 And again, February 21 order had other
2 things in it than just that line, both of which the
3 judgment debtor really didn't comply with other than
4 that line. They want to sort of keep repeating that
5 line as their sort of salvation in this case, but I
6 think we need to revisit the rest of it, so to
7 speak.

8 MR. WARING: Your Honor, in response, in
9 your February 21st, 2007, order, part of your order,
10 stated -- number two on your ruling it says, this
11 Court's previous order dated February 21st, 2007, is
12 hereby amended to include in the judicial sale the
13 proceeds from the sale of WPAL FM and the interest
14 of Gresham, et cetera, et cetera.

15 The point I make with that is that if Your
16 Honor intended to amend a prior order, you stated it
17 unequivocally, specifically, plainly, unambiguously.
18 That's what we have to go by, and that's the proper
19 construction. And that's all I have to say about
20 this issue.

21 MR. McQUEENEY: Again, the appointment of
22 the receiver is completely inconsistent with any
23 continuing right of redemption. It said all
24 property transferred to the receiver. That wasn't
25 done. It could have said, all property including

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1 the right of redemption. It could have included the
2 right of redemption in the order. It did not do
3 that. It's inconsistent with the right of
4 redemption continuing.

5 MR. WARING: Your Honor, respectfully --
6 and once again, I'd like to thank you for spending
7 time with us on Monday to reconsider this motion,
8 and we hope that you do give it a lot of thought,
9 and we're sure you will.

10 We respectfully ask the Court to consider
11 the following, and this is in summary, that the
12 purpose of the May 16th hearing was to determine two
13 things; whether or not the right of redemption
14 existed and still existed and whether or not the
15 amount of money tendered was the appropriate amount
16 to tender. And we ask that you please revisit the
17 June 6th order and address those issues.

18 Next, we ask that you reconsider your
19 order and make the finding and the ruling that the
20 \$106,000 tendered to the Clerk of Court is not an
21 asset of Gresham, never was an asset of Gresham.
22 It's an asset of a third party, and if the Court
23 determines that the right of redemption has been
24 extinguished, to return that money to the third
25 party.

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1 We also ask that the Court reconsider its
2 order regarding the statements made by defense
3 counsel as having agreed to the attorneys' fees and
4 costs being a necessary precondition to tender.

5 That's not the case. We believe that
6 there is an amount certain that's stated in the
7 underlying judgment of attorneys' fees that we're
8 willing to put forth and have put forth as part of
9 the money to be tendered to the Court.

10 And we ask that a separate hearing be held
11 at a later date regarding any other potential
12 contempt that Gresham and Gresham Communications
13 have undertaken.

14 Furthermore, we ask the Court to strike
15 any references to the case law that have been stated
16 in its order as being incorrect citations, and we
17 ask the Court please consider the plain, unambiguous
18 language of its orders.

19 And I think Mr. Whipper touched on this
20 too, the doctrine of unclean hands, which I think we
21 stated at the May hearing that there is no equity
22 being sought in our motion before the Court. It's a
23 legal request, and so unclean hands would not even
24 apply to the situation.

25 But if we're going talk about equities,

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1 let me reiterate what Mr. Whipper had stated, and
2 that is, you know, what is due on the underlying
3 judgment versus the value of the license and where
4 those proceeds need to go. Thank you.

5 THE COURT: Any reply from the plaintiff?

6 MR. McQUEENEY: Yes, Your Honor. Just we
7 believe, obviously, that the Court's June 6th, 2008,
8 order is correct. I don't believe Gresham has at
9 least properly raised any new matter for the Court
10 to decide. And we're happy to correct any miscites
11 in the order. Again, that was unintentional, but if
12 that cite is incorrect, I'll correct it. Thank you.

13 THE COURT: Anything else anyone would
14 like to address?

15 MR. WARING: No, Your Honor. Thank you.

16 MR. GOWDER: Thank you very much.

17 THE COURT: Thank you very much. I think
18 it was very well --

19 MR. WARING: Your Honor, so we don't have
20 a similar problem as next time, could I inquire to
21 the Court as to how you'd like to proceed. Would
22 you like us to submit proposed orders?

23 THE COURT: What I would like to do is I
24 would like to see the transport before I make any
25 ruling on it. And also, I would be very interested.

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1 to see the return from Mr. Cherry. That shouldn't
2 be more than 30 days out.

3 MR. WHIPPER: It shouldn't be, Judge. It
4 should be right about 30 days, maybe a little less.

5 THE COURT: He said he would have it in 60
6 days. And before making any ruling on that. And
7 what I would like to do is, if you wish to submit to
8 me either a brief or a proposed order, say, within
9 the next 30 days, and -- but I will contact both
10 sides prior to making any ruling of any sort so we
11 don't have a mix-up like we had before.

12 MR. WARING: Thank you, Your Honor.

13 And lastly, and since we are going to wait
14 30 days, is it our understanding that the Court will
15 provide for a stay on the release of the funds?

16 THE COURT: I talked to the Clerk of
17 Court. I asked her not to make any -- not pay any
18 money out to anybody until we have this hearing --
19 until we have a decision on the reconsideration. I
20 don't believe that reconsideration is an automatic
21 stay, but at the same time, it's \$106,000, and we
22 don't want to let it get away if it shouldn't be.

23 MR. WHIPPER: Thank you, Your Honor.

24 THE COURT: So I have asked her to hold
25 off on that until such time as we make a final

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1 decision on the reconsideration.

2 MR. WHIPPER: Your Honor, we would ask the
3 same thing relative to Mr. Cherry, that he be
4 instructed not to sign any purchase transfers or
5 anything like that.

6 THE COURT: That would have to be under
7 his authority. I don't think without a motion and a
8 hearing that I could interfere with that. I don't
9 know what his plans are or what he wants to do.

10 MR. WHIPPER: I don't know. I just think
11 that if the Court's considering all of these issues
12 that, in fact, we do not want to have to undo
13 something Mr. Cherry may feel that he can do, when,
14 in fact, he may not be able to.

15 THE COURT: I would think he would have to
16 be joined as a party in a motion in order to do
17 that, and I'll be glad to hear it. But I would
18 think he would have to be joined in order to appear
19 on that.

20 What's status of the license?

21 MR. GOWDER: Unfortunately, they're
22 waiting on this proceeding.

23 THE COURT: Oh, really?

24 MR. GOWDER: Yes, sir.

25 THE COURT: Everyone's waiting on

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1 somebody. There may be some sort of appraisal
2 process.

3 MR. WHIPPER: There is, Your Honor.

4 MR. GOWDER: The problem with the
5 appraisal is the sale has already occurred.

6 MR. WHIPPER: I would say to Your Honor
7 that, in fact, there's still time for an objection,
8 even to the value of that sale because of what's
9 allowed. I mean, the enforcement of any kind of
10 order when it might be inequitable is open to
11 reconsideration.

12 THE COURT: Well, the value has not been
13 determined, so there could be some question as to
14 that. The question is going to be, what is the
15 actual judgment? Does it include all of these other
16 things? Does it include receiver fees? Is all that
17 folded into the judgment when we compare it to the
18 value of the license? .

19 And if we get all that together and it's
20 worth \$900,000, and the license is worth 1.9
21 million, we've got to discuss that then. Thank you
22 again, gentlemen.

23 MR. GOWDER: Thank you very much.

24 (The hearing was concluded at 2:17 p.m.)

25

Transcript of Colleton County Motions Hearing

1 REPORTER'S CERTIFICATE

2

3 I, TERI L. HORIHAN, Registered Professional Reporter and
4 Notary Public in and for the State of South Carolina at
5 Large, do hereby certify that I correctly reported the
6 within-entitled matter and that the foregoing is a full,
7 true and correct transcription of my shorthand notes of the
8 testimony and/or other oral proceedings had in the said
9 matter.

10

11 I further certify that I am neither related to nor counsel
12 for any party to the cause pending or interested in the
13 events thereof.

14

15 Witness my hand, I have hereunto affixed my official seal
16 this 9th day of July, 2008, at Charleston, Charleston
17 County, South Carolina.

18

19

20 Teri L. Horihan

21 NCRA Registered Professional Reporter

22 My Commission Expires January 17, 2017

23

24

25

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,

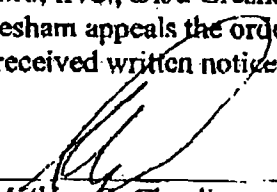
v.

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

Appellant.

NOTICE OF APPEAL

Gresham Communications of Walterboro, INC., a/k/a Gresham Communications, INC., Gresham Broadcasting, INC., and Rudi H. Gresham appeals the order of the Honorable Harris Beach dated September 22, 2006. Appellant received written notice of entry of this order on September 26, 2006.


Mathias G. Chaplin
4511 N. Main Street
Columbia, South Carolina 29203
(803)786-7102
Attorney for Appellant

Other Counsel of Record:
W. Andrew Gowder, Jr.
P.O. Box 22247
Charleston, SC 29455

2005 OCT -6 AM 11:05
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Harrison 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.

Nancy R. Beach, _____ Respondent.

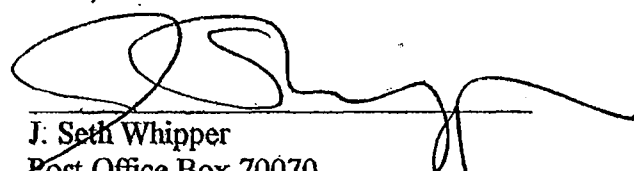
NOTICE OF APPEAL

William Saunders appeals the order of the special referee filed on March 26, 2007. Appellant
received written notice of entry of this order on March 27, 2007.

March 30, 2007

Other Counsel of Record:

W. Andrew Gowder, Jr. Esquire
Pratt-Thomas, Epting & Walker, Pa
P. O. Drawer 22247
Charleston, S. C. 29413-2247
843/727-2229
843/805-6512 (Fax)
Attorney for Respondent
Caswell Capital Partners, LP


J. Seth Whipper
Post Office Box 70070
North Charleston, South Carolina 29415
843/740-7777
843/740-9108 (fax)
Attorney for Appellant
Gresham Communications of Walterboro,
Inc., a/k/a Gresham Communications,
Inc.; and Rudi H. Gresham

RECEIVED

APR 02 2007

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,

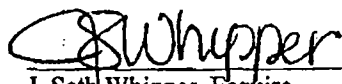
v.

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

NOTICE OF APPEAL

William Saunders appeals the Order of the Special Referee filed on November 27, 2007.
Appellant received written notice of entry of this Order on December 31, 2007.

January 31, 2008



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

Other Counsel of Record:
W. Andrew Gowder, Jr., Esquire
Daniel S. McQueeney, Jr., Esquire
Post Office Drawer 22247
Charleston, South Carolina 29413
843/ 727-2229
843/ 805-6512 FAX

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 1992-CP-15-508

CASE NO.: 1992-CP-15-508

)

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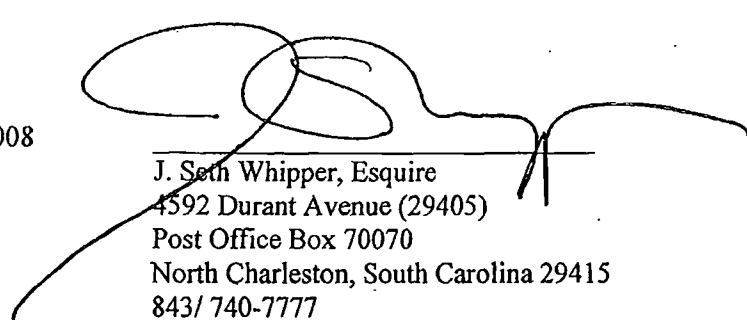
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D

PATRICIA C. GRANTY
COLLETON COUNTY
COMMON PLEAS
2008 APR -7 PM 4:51

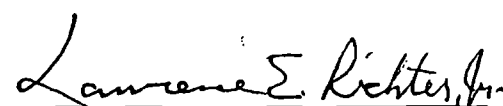
April 7, 2008



J. Seth Whipper, Esquire
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
843/ 740-7777
843/ 740-9108 FAX
jsw@whipperlaw.com

THE RICHTER FIRM, LLC

Attorney for Defendants



Lawrence E. Richter, Jr.
Lawrence E. Richter, Jr. *by J. Seth Whipper*
622 Johnnie Dodds Boulevard
Post Office Drawer 1089
Mt. Pleasant, South Carolina 29465
843/ 849-6000
843/ 881-1400 FAX

SOUTHCOAST

COMMUNITY BANK

P.O. Box 1561 • Mt. Pleasant, SC 29465

Remitter The Richter Firm, LLC

Memo

11 /10 Seq#29

SOUTHCOAST COMMUNITY BANK
MT. PLEASANT, SC 29465

67-794
532

033087

DATE

ACCOUNT NO.

PAY THIS AMOUNT

04/07/2008 15:03:19

RIM - 22849

\$106,268.78

Pay

Colleton Country Clerk of Court

*to
the
Order
of*

One Hundred Six Thousand Two Hundred Sixty-Eight Dollars and Seventy-Eight Cents

SOUTHCOAST

Paul Smith

VOID AFTER 90 DAYS

DEPOSITS INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

"033087" 1053207944:01 999999988"

033087

11 /10 Seq#29

Remitter The Richter Firm, LLC

Memo

04/07/2008 15:03:19 RIM - 22849

\$106,268.78

Pay To The

Order Of

Colleton Country Clerk of Court

One Hundred Six Thousand Two Hundred Sixty-Eight Dollars and Seventy-Eight Cents

SOUTHCOAST
COMMUNITY BANK

2008 APR -7 PM 4:51

PATRICIA C. GRANT
COLLETON COUNTRY
COMMON PLEAS

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	)	

01 FEB 21 PM 2:23

PATRICIA T. 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 Ridgeville, 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,

2008, 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.

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.

 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, COBS 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

18 February 2007

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

NANCY R. BEACH,
Plaintiff,

versus

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

D E C R E E

This is an action on a Promissory Note executed by the corporate defendants and guaranteed by the Defendant Rudi H. Gresham.

Due and proper service was made upon the defendants who failed to appear and were thereafter adjudged to be in default by the Order of The Honorable A. Victor Rawl dated October 6, 1994.

Thereafter, the matter was referred to me as Special Referee by The Honorable A. Victor Rawl by Order dated January 19, 1996. Pursuant to the Order of Judge Rawl, a hearing was scheduled before me on the 21st day of March, 1997, notice of which was given to the Defendants despite their default.

I thereafter held a hearing on March 21, 1997, at which time Barry I. Baker, Esquire, and Benjamin Goldberg, Esquire, appeared for the Plaintiff. The defendants did not appear. The testimony presented by the witness, Klein Beach, husband of the Plaintiff who handled the transaction involved, and after due consideration, it is hereby

6/903.10

ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment against the Defendants for the sum of \$56,276.10, together with interest at the rate of eight (8%) percent per annum from June 1, 1998, together with an attorneys' fee of \$5,627.00, and the costs of this action.


LOUIS E. CONDON, SPECIAL REFEREE

Charleston, SC

June 2, 1998

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 1992-CP-15-508

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2008 APR 19 AM 10:40

April 7, 2008

J. Seth Whipper
J. Seth Whipper, Esquire

4592 Durant Avenue (29405)

Post Office Box 70070

North Charleston, South Carolina 29415

843/ 740-7777

843/ 740-9108 FAX

jsw@whipperlaw.com

THE RICHTER FIRM, LLC

Attorney for Defendants

Lawrence E. Richter, Jr. by J. Seth Whipper
Lawrence E. Richter, Jr.

622 Johnnie Dodds Boulevard

Post Office Drawer 1089

Mt. Pleasant, South Carolina 29465

843/ 849-6000

843/ 881-1400 FAX

PROMISSORY NOTE

\$ 165,072.00

January 2, 1988

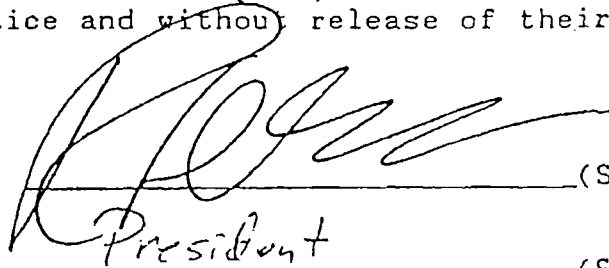
Nancy R. Beach FOR VALUE RECEIVED, the undersigned, jointly and severally promise to pay to the order of the principal sum of

with the interest after date at the rate of 8% per annum, payable in the following manner:

Said payments shall be applied first to the payment of accrued interest and the balance to reduction of principal. Interest shall be computed on the unpaid principal balance remaining. Upon failure to make any payment when due, the entire principal sum shall, at the option of the holder hereof, become immediately due and payable and any failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time. Should it become necessary to place this note in the hands of an attorney for collection, the undersigned agree to pay all costs of collection including a reasonable attorney's fee.

The makers may pay any part or all of the unpaid principal at any time without penalty and without payment of premium therefore.

Each maker, surety, and endorser waives demand, protest, notice of maturity, non-payment or protest and all requirements of law necessary to hold each of them liable as maker, surety, or endorser and agrees that this note may be extended in whole or in part, or renewed from time to time without notice and without release of their liability thereunder.


_____(SEAL)
President
_____(SEAL)

PROMISSORY NOTE

\$ 41,263.00

January 2, 1968

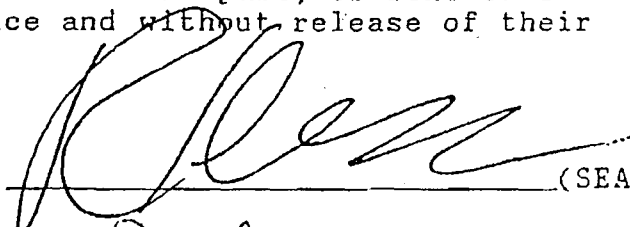
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_____(SEAL)
President
_____(SEAL)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	
	)	Case No.: 92-CP-15-508
Nancy R. Beach,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF THOMAS B. DANIELS,
	)	PRESIDENT OF JABAR COMMUNICATIONS,
	)	INC.
	)	
Gresham Communications of	)	
Walterboro, Inc., a/k/a Gresham	)	
Communications, Inc., Gresham	)	
Broadcasting, Inc., and Rudi H.	)	
Gresham	)	
	)	
Defendants.	)	
	)	

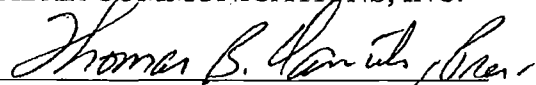
Thomas B. Daniels, as officer and agent of Jabar Communications, Inc., deposes and states the following:

1. I am an adult and am competent to make the statements contained in this affidavit. The statements contained herein are made of my own personal knowledge or belief, except to those matters stated on information and belief and as to those matters that I believe to be true.
2. I am the president and chief executive officer of Jabar Communications, Inc. and am duly authorized pursuant to Rule 11(c), SCRCP, to provide the statements contained in this affidavit on behalf of Jabar Communications, Inc.
3. Jabar Communications, Inc. is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principal office located at 5081 Rivers Avenue North Charleston, South Carolina 29406.
4. On April 7, 2007, \$106,268.78 was tendered to the Colleton County Clerk of Court for the sole purpose of satisfying the full amount of the underlying judgment in the above-

referenced matter. Said money tendered is owned by and is the property of Jabar Communications, Inc.

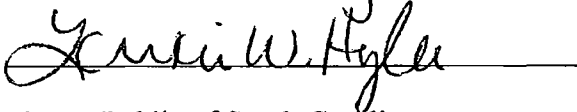
FURTHER THE AFFIANT SAYETH NOT!

JABAR COMMUNICATIONS, INC.


By: Thomas B. Daniels, President

SWORN TO BEFORE ME

This 12 day of August, 2008



Notary Public of South Carolina

My commission expires: April 27, 2010

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

March 3, 2009

VIA U.S. MAIL

The Honorable Patricia C. Grant
Colleton County Clerk of Court
P.O. Box 620
Walterboro, SC 29488

Re: *Beach v. Gresham Communications, et al.*
Case No. 92-CP-15-508

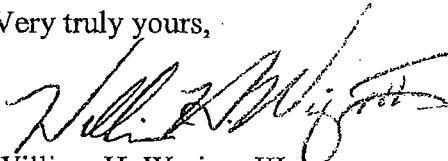
Dear Ms. Grant:

On December 3, 2008, Judge Beach issued an Order of Reconsideration in the above-matter, a copy of which is attached hereto. The Order states on page 4 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." Pursuant to Judge Beach's December 3rd Order, we request that you immediately return the amount of the funds, \$106,268.78, to The Richter Firm, LLC, who, as indicated by the attached copy of check #033087, had previously deposited said funds with the Clerk of Court on April 7, 2008.

Thank you very much for your prompt attention to this matter. By copy of this letter, I am serving the same to all counsel of record.

With kind regards, I am

Very truly yours,



William H. Waring, III

cc: The Honorable Harris L. Beach, Jr.
W. Andrew Gowder, Jr., Esq.
J. Seth Whipper, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
NANCY R. BEACH,)
)
Plaintiff,)
v-)
GRESHAM COMMUNICATIONS OF)
WALTERBORO, INC., a/k/a GRESHAM)
COMMUNICATIONS, INC.; GRESHAM)
BROADCASTING, INC., AND RUDI H.)
GRESHAM,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. NO. 92-CP-15-508

**RETURN TO MOTION TO STAY
AND REQUEST FOR THE APPOINTMENT
OF A RECEIVER TO FACILITATE
THE TRANSFER OF FCC LICENSE**

PAUL D. GRANT
COLLETON COUNTY
COMMON PLEAS
07 FEB 14 PM 3:19

Caswell Capital Partners and Caswell Communications, Inc. ("Caswell" herein) successors-in-interest to the judgment creditor, Nancy R. Beach and Caswell Capital Partners, LLC, hereby responds to 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" herein) as follows:

1. The Appeal has been dismissed and the case remitted to the Circuit Court.

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 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 sheriff's 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, 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.

2. This Motion is an invalid appeal of the Court's September 22, 2006 Order.

may

Defendants, through their Motion to "Stay" the effectiveness of the order attempt to challenge the propriety of the Court's order through a Motion to Stay rather than through an appeal. The proper mechanism for such a challenge would only be through appeal, as provided by the Rules of Civil Procedure and the Rules of Appellate Procedure. In fact, the defendants have taken an appeal of this matter, which appeal has now been dismissed with finality. The appeal having been exhausted, the September 22, 2006 Order is now the law of the case and is not subject to further challenge. Accordingly, this court should dismiss the Motion to Stay and proceed with the sale.

3. The Court should appoint a receiver to take possession of the license and apply for transfer of the FCC license to the ultimate successful bidder.

As stated in the Court's prior Order, though a license holder, its creditor or a buyer cannot take rights in a license contrary to those of the Federal Communication Commission 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, this Court has recognized that the judgment debtor is a holder of such a license, the sale of the license 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 to be used to satisfy the judgment of the judgment creditor.

In order to facilitate the transfer of the license to the ultimate successful bidder, the court should appoint a receiver to take legal possession of the attached FCC license and apply for the transfer. A sample order is attached to this Return. The appointment of the receiver is a process recognized by the FCC to allow a license to be sold and transferred as a result of a state court collection proceeding such as this one.

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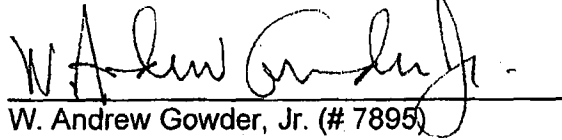
The FCC has established summary procedures to facilitate the assignment of a license to a court-appointed receiver. The FCC adopted FCC Form 316 to be used when applying for FCC consent to the assignment of the license of a broadcast station. The FCC regards the assignment of the license to a court-appointed receiver as an involuntary assignment. The Instructions for FCC Form 316 prepared by the FCC provide that applicants for involuntary assignment are required "to certify that courts order or other appropriate documents duly authorizing it to file the instant application have been issued and that certified copies of such court orders... have been submitted with the application". The FCC also requires that a certified copy of the aforementioned document or documents be placed in the public inspection file of the affected station and retained in the file until final action is taken on the application.

The Court should direct Gresham Broadcasting, Inc. to cooperate with the receiver in order to facilitate the assignment by the FCC of the license of WPAL-FM to the receiver. Such cooperation shall include promptly signing any applications or other instruments or documents that may be necessary or appropriate to obtain any required FCC consent for the assignment to the Receiver of the station's license. The Order Appointing Receiver should also state that in the event that officers of Gresham Broadcasting, Inc. refuse to affirmatively indicate a willingness to execute such applications or related documents, the Clerk of the Court shall subscribe the document on behalf of Gresham for the purposes of placing such applications before the FCC for the FCC's consideration. This process enables the Court to fulfill its statutory duty to direct the judgment creditor to collect its debt out of the proceeds of the sale of the judgment debtor's asset(s).

WHEREFORE, for the reasons stated above, Caswell respectfully requests that this court dismiss or deny the Motion to Stay and proceed with the sale of the license as outlined in this Return and the attached proposed Order. Also, Caswell requests that the Court hold the sale as scheduled, to identify the successful bidder, which will acquire the station license, subject to the approval of the FCC to the Receiver and the bidder.

Respectfully submitted,

PRATT-THOMAS, EPTING & WALKER, P.A.



W. Andrew Gowder, Jr. (# 7895)

16 Charlotte Street

P.O. Box 22247

Charleston, SC 29413-2247

(843) 727-2229

Attorneys for Caswell

February 12, 2007
Charleston, SC

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PATRICIA J. GRANT
COLLETON COUNTY
COMMON PLEAS

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this notice in accordance with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for each party(s).

on this 12th day of February, 2007,
Charleston, South Carolina


Paralegal

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON)

Case No.: 92-CP-15-508

Nancy R. Beach.)

Plaintiff.)

v.)

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO RECONSIDER**

Gresham Communications of)

Walterboro, Inc., a/k/a Gresham)

Communications, Inc., Gresham)

Broadcasting, Inc., and Rudi H.)

Gresham)

Defendants.)

TO: W. ANDREW GOWDER, JR. AND DANIEL S. MCQUEENEY, JR., ATTORNEYS
FOR PLAINTIFF.

Defendants (hereinafter referred to as Gresham) respectfully submit this Memorandum in
Support of their Motion to Reconsider.

**I. THE COURT INCORRECTLY DETERMINED THAT THE MONEY
TENDERED ON GRESHAM'S BEHALF TO REDEEM THE
UNDERLYING JUDGMENT WAS AN ASSET OF GRESHAM.**

Pursuant to the February 21, 2007 Order, which explicitly gives Gresham the right of redemption, and prior to FCC approval of assignment of license to the successful bidder, Caswell Communications, Inc. (hereinafter referred to as "Caswell"), \$106,268.78 was deposited with the Clerk of Court of Colleton County. This sum constitutes the full amount of the underlying June 2, 1998 judgment, together with all interest at the ordered rate of 8% per annum, and included fees. Gresham did not tender this money as discussed at the May 16, 2008 hearing, but rather a third party tendered its own money on Gresham's behalf and for Gresham's benefit. (Trans. May 16, 2008 Hearing at 49). Since Gresham does not own the money tendered, the money is

not an asset of Gresham. (See Black's Law Dictionary, defining "asset" as an item that is owned and has value). As such, the Court's ruling on this issue was, respectfully, in error. Alternatively, in the event the Court was to maintain that the right to redeem has been extinguished, Defendants request the Court to instruct the Clerk of Court to return the money deposited on behalf of Gresham to the party who submitted the money.

II. THE COURT INCORRECTLY FOUND THAT GRESHAM ADMITTED LIABILITY FOR ATTORNEYS' FEES AND COSTS AS A NECESSARY PRECONDITION TO TENDER.

Plaintiff contends, and the June 6, 2008 Order states, that the payment of Plaintiff's attorney fees and costs as well as the Receiver's fees and costs must be paid as a precondition to satisfaction of the underlying judgment. The June 6th Order further states that Gresham admitted as much at the May 16th hearing. This could not be further from the case. At the hearing, Gresham's attorneys admitted the existence of a contempt order, but they objected to the calculation of the costs and fees estimated by Plaintiff, the time frame with which the amount was calculated, and the necessity of paying the contempt fines prior to redeeming the underlying judgment; Gresham's attorneys also suggested a separate hearing on the amounts due under any outstanding contempt order. (Trans. May 16, 2008 Hearing at 56-60). Neither the Defendants nor their counsel stated that any money needed to be paid prior to satisfaction of the underlying judgment. In fact, Gresham's position is that any contempt fines or receivership costs that may be owed are separate from the underlying judgment.

III. THE COURT INCORRECTLY DETERMINED THAT THE RIGHT OF REDEMPTION BELONGED EXCLUSIVELY TO THE RECEIVER AND THAT THE CLERK OF COURT MUST TRANSFER THE MONIES DEPOSITED TO THE RECEIVER.

The June 6th Order states "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.” (June 6, 2008 Order at 11). As discussed earlier, the money tendered to the Clerk of Court was not an asset of Gresham, and no money placed into the Court has been represented as belonging to Gresham or otherwise an asset of Gresham. Furthermore, if the money tendered to the Clerk of Court by a third party had gone through the Receiver, the money would not have served the purpose for which it was intended, to satisfy the underlying judgment for the benefit of Gresham, who had been given a right of redemption. Rather, the money would have been disbursed to Plaintiff’s attorneys.

Moreover, since the money deposited is not and never was an asset of Gresham, it would be improper to order the Clerk of Court to disburse the money to the Receiver under these circumstances. Accordingly, the Court’s ruling that the Receiver is the only person or entity able to exercise Gresham’s right of redemption and the Court’s instruction to the Clerk to transfer the money to the Receiver was, respectfully, in error. In the alternative, and as previously stated, if the Court was to maintain Gresham’s right to redeem is extinguished, Defendants request the Court to instruct the Clerk of Court to return the money deposited on behalf of Gresham to the party who submitted the money.

IV. THE COURT INCORRECTLY APPLIED THE DOCTRINE OF UNCLEAN HANDS TO THIS MATTER.

The doctrine of unclean hands precludes a party from recovering *in equity* if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the other party. First Nat. Bank of South Carolina v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372 (S.C.App 1998) (emphasis added). The right of redemption is a substantive right. *See* 33 C.J.S. Executions § 265.

Here, Gresham sought to exercise its legal, substantive right of redemption as outlined in the Court's February 21st Order. No equitable remedy was sought, thus this doctrine cannot apply. The Court's consideration of this doctrine as a preclusion of Gresham's exercise of its right of redemption was therefore, respectfully, in error.

V. THE COURT OVERLOOKED THE PLAIN LANGUAGE OF THE FEBRUARY 21, 2007 ORDER REGARDING THE AMOUNT OF MONEY THAT COULD BE TENDERED TO THE CLERK OF COURT IN SATISFACTION OF THE UNDERLYING JUDGMENT.

As a general rule, judgments are to be construed like other written instruments. Hailey v. Hailey, 357 S.C. 18, 590 S.E.2d 495 (S.C.App. 2003). As stated in Stanaland v. Jamison,

[w]here the terms of a writing are plain and unambiguous, there is no room for construction, since the only office of judicial construction is to remove doubt and uncertainty. It is fundamental that the principles of construction cannot be applied to vary the meaning of that which is otherwise clear and unambiguous, and, in this respect, it is to be noted that if the language of the [writing] is plain and unambiguous, the intention expressed and indicated thereby controls. The intention must be gathered from that language and from that language alone.

275 S.C. 50, 268 S.E.2d 578 (1980) (citing 17 Am.Jur.2d Contracts § 241). Here, the plain language of the Court's February 21st Order is clear and unambiguous; Gresham has a right to redeem and satisfy the underlying judgment prior to final approval of any transfer from the FCC. If this judgment is satisfied prior to final approval, the FCC application must be withdrawn. (Feb. 21 Order).

The June 2, 1998 Order declared a judgment against Gresham "for the sum of \$56,276.10, together with interest at the rate of eight (8%) per annum from June 1, 1998, together with attorneys' fee of \$5,627.00, and the costs of this action." (June 2 Judgment at 2). There is no language providing for interest for the attorneys' fees. The Order specifically set forth a simple interest rate for the judgment amount, and a separate, non-interest bearing amount

for the attorney fees. The June 2, 1998 Order controls the amount due on the underlying judgment in this action.

The judgment amount of \$56,276.10, with a simple interest rate of 8% per annum accruing from June 1, 1998, until April 7, 2008, plus \$5,627.00 in attorneys' fees amounts to \$106,268.78. This amount was tendered on Gresham's behalf on April 7, 2008 to the Clerk of Court of Colleton County. Accordingly, the money tendered was a sufficient amount to satisfy the underlying judgment, and the Court's Order stating otherwise was, respectfully, in error.

VI. THE COURT OVERLOOKED THE ALLEGATIONS THAT RULE 60, SCRPC, AND THE LAW OF THE CASE DOCTRINE PROHIBIT PLAINTIFF FROM APPEALING OR OTHERWISE CHALLENGING THE FEBRUARY 21, 2007 ORDER.

The right of redemption is a substantive right. See 33 C.J.S. Executions § 265. An interlocutory order is immediately appealable if it affects a substantive right. S.C. Code Ann. § 14-3-330 (1976). An unappealed and unchallenged order is the law of the case. Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970).

Furthermore, the South Carolina Rules of Civil Procedure provide that relief from judgment or an order cannot be sought beyond one (1) year after the judgment or order was entered. Rule 60(b)(5), SCRPC. Moreover, it is a fundamental rule of law that failure to challenge a ruling is an abandonment of the issue. McCall v. State Farm Mut. Auto. Ins. Co., 597 S.E.2d 181 (S.C. Ct. App. 2004); First Nat. Bank of South Carolina v. Soden, 333 S.C. 554, 566 511 S.E.2d 372 (S.C.App 1998).

By its Order dated February 21, 2007, the Court granted Gresham the substantive right of redemption if it satisfied the June 2, 1998 judgment before the FCC granted an assignment of license to the successful bidder. No objection, challenge or appeal was made to this order, and

no subsequent order extinguished or otherwise modified Gresham's right to redeem. Thus, the February 21st Order remains the law of the case, and the failure by Plaintiff to object, appeal, or otherwise challenge the ruling waives that right and estops Plaintiff from now asserting said Order is no longer valid.

Since the February 21st Order affected a substantive right, said Order became immediately appealable by Plaintiff. However, Plaintiff never appealed or objected to the language of the February 21st Order, and more than one (1) year has passed since written notice of entry of the Order. Accordingly, Plaintiff has abandoned the issue of redemption, and seeking relief from the rights given under the Order to Gresham by Plaintiff is barred under Rule 60(b), SCRCF. Therefore, the right of redemption remains, and was properly exercised in accordance with the terms of the February 21st Order.

VII. THE COURT INCORRECTLY DETERMINED THAT SUBSEQUENT ORDERS REVOKED, MODIFIED, OR OTHERWISE DISPOSED OF THE PLAIN LANGUAGE OF THE FEBRUARY 21, 2007 ORDER GRANTING GRESHAM THE RIGHT OF REDEMPTION.

The Court's February 21st Order explicitly gives Gresham, in clear and unambiguous terms, the substantive right of redemption. However, the Court's June 6, 2008 Order, which was drafted by Plaintiff's counsel, terminates the substantive right of redemption. The Court does not interpret or construe its prior orders. Simply put, the right of redemption was given in the February 21st Order and taken away in the Court's most recent order.

The June 6th Order suggests that the right of redemption is a mere privilege which was conditioned upon compliance with other terms of subsequent orders. The June 6th Order further suggests that the requirement that Gresham comply with the license transfer process places a condition on Gresham's right of redemption. However, such a condition is not stated in the language of the February 21st Order; in fact, no conditional language (i.e. "if," "only if," etc.) is

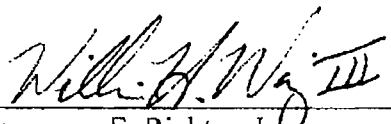
even used in the February 21st Order. The plain language is clear and unambiguous; Gresham has a right to redeem and satisfy *the underlying judgment* prior to final approval of any transfer from the FCC. As previously stated, Defendants aver that the guiding legal principle of construction in this matter is the plain, unambiguous language doctrine.

The Court's June 6th Order further suggests that the Court's retention of jurisdiction in the matter for the purpose of entering further orders "militates against Gresham's interpretation that the privilege is unconditional or irrevocable." However, the Court chose to amend specifically its February 21st Order in its November 27th Order, yet the Court made no mention of eliminating or revoking of the right of redemption outlined in its February 21st Order. The Court considered the terms of the February 21st Order but chose to leave the language of redemption untouched. Accordingly, the right of redemption remained pursuant to the February 21st Order, and to take away this right in its June 6, 2008 Order was, respectfully, in error.

WHEREFORE, Gresham respectfully requests that the Court grant the relief requested herein and to alter and/or amend its June 6, 2008 Order to provide for the following: (1) that the money tendered to the Clerk of Court to redeem the underlying judgment is not an asset of Gresham; (2) that the amount tendered, \$106,268.78 to the Clerk of Court in satisfaction of the underlying judgment was the correct amount pursuant to the plain, unambiguous language of the June 2, 1998 Order; (3) that the plain/unambiguous language of the February 21, 2007 granted Gresham the right of redemption, and that right has not been extinguished by the plain/unambiguous language of subsequent orders; (4) that Rule 60, SCRCF, and the law of the case doctrine preclude Plaintiff from appealing/challenging the February 21, 2007 Order; (5) that a separate hearing be held on the amounts due under any outstanding contempt order; (6) that language stating the right of redemption belonged exclusively to the receiver and that the Clerk

must transfer the monies deposited to the receiver be stricken; (7) that language stating that Gresham admitted liability for attorneys' fees and costs as a necessary precondition to tender be stricken; and (7) that language regarding the application of the unclean hands doctrine be stricken. In the alternative, Defendants request the Court to instruct the Clerk of Court to return the money deposited on behalf of Gresham to the third party who submitted the money.

THE RICHTER FIRM, L.L.C

By: 
Lawrence E. Richter, Jr.
William H. Waring, III
Post Office Drawer 1089
Mt. Pleasant, South Carolina 29465
(843) 849-6000

June 20, 2008
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	
	)	CASE NO.: 92-CP-15-508
Nancy R. Beach,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SECOND SUPPLEMENT TO
	)	MEMORANDUM IN SUPPORT OF
Gresham Communications of Walterboro,	)	DEFENDANTS' MOTION
Inc., a/k/a Gresham Communications, Inc.,	)	TO RECONSIDER
Gresham Broadcasting, Inc., and Rudi H.	)	
Gresham,	)	
	)	
Defendants.	)	
	)	

TO: W. ANDREW GOWDER, JR. AND DANIEL S. MCQUEENEY, JR., ATTORNEYS
FOR PLAINTIFF.

Pursuant to the Court's instruction at the June 23, 2008 hearing in the above-referenced matter, Defendants respectfully submit this supplemental brief in support of their position regarding the application of the doctrine of unclean hands.

Caswell Communications claims that pursuant to the doctrine of "unclean hands," Defendants (Gresham) may not exercise the right of redemption previously granted by this Court. It claims that because Gresham misled the Court as to its ownership of assets, it should not be allowed to reclaim ownership of those assets at this late date. Although Defendants maintain that the doctrine of unclean hand is inapplicable to this matter, Defendants aver that the Court should consider the following in balancing the equities among the parties:

First, the Court should not lose sight of the nature of this case; the value of the FCC station license; and the equities that flow therefore. The debt that currently is owed, together with all interest, is \$106,268.78. That sum has now been submitted to the Court and is ready for distribution, to allow for payment of the judgment debt in full. Therefore, on the underlying

debt, which is the sole focus of this proceeding, nothing more is owed.

Conversely, the general value of the license is well-established in this case. In April 2006, when Caswell and Gresham were working together in the marketing and operation of the Station, Caswell pressured Mr. Saunders to accept an offer for the sale of the Station for \$2 million. Exhibit 1. Much more recently, even though Caswell is not yet the owner of the Station, an agreement evidently *already* has been reached to sell the Station immediately upon its acquisition. As Mr. Cherry testified, an offer has *already* been accepted to sell the Station to WAY-FM for \$1.6 Million. TR 31-32 (Exhibit 2). Since that time, as recently as April 29, 2008, Gresham received an offer for the Station for \$1.89 million from Radio Training Network. Exhibit 3.

In light of the foregoing, allowing (as the June 6, 2008 Order provided), for Caswell to (i) keep the funds already tendered, along with, (ii) the license, simply so it can in turn "flip" ownership of the license to WAY-FM, for an additional sum of \$1.6 million, would result in a massive and manifest injustice.

Moreover and most importantly, the "unclean hands" theory of Caswell's is not supported by the underlying facts. The fact of the matter is that Caswell has now, and has always had, first-hand knowledge of the pertinent facts concerning Gresham ownership of station's operating assets, and it was Caswell silence in this regard that also led to the Court's confusion concerning the nature of the assets that remained to be "sold" at public auction.

As seen in Exhibit 4, Caswell Capital and its President, Judith Aidoo, first began working with Gresham in 2001. At that time, the Station already was on the air (and in fact had been under Gresham's stewardship for thirty years), and had a functional studio transmitter, building, leases, furniture, employees, etc. for the transmission of programming and conduct of business.

Caswell Capital/Aidoo, in fact, stepped right into that ongoing operation beginning in February 2002. Thus, Caswell/Aidoo was intimately aware that assets and rights existed *prior* to her involvement. As seen in the attachments to Exhibit 4, under the Time Brokerage Agreement ("TBA") entered into on February 23, 2002, while Caswell obtained a license during the term of the TBA to use Gresham's studios (Exhibit 4, Att. A at 2), the TBA specifically recited that "this Agreement shall not constitute an assignment of any contract or lease to which licensee is a party, including, without limitation, any studio or tower leases." Id. at 2-3. Thus, Caswell was aware of those Gresham assets. Section 9 of the TBA reflected that "[t]he transmitter equipment and antennas" were owned by Licensee and were required to be maintained by Gresham. Exhibit 4, Att. A at 4. Finally, Section 19.6 of the TBA even required Caswell, in the event of termination of the Agreement to "return the Station and its equipment to Licensee in the same condition, usual wear and tear excluded, as existed on the Operation Commencement Date." Exhibit 4, Att. B at 8.

In short, Caswell not only was aware of Gresham's assets at the time she commenced involvement with the Station, Caswell was contractually obligated to *return* possession of all assets when its involvement in the Station ended. Moreover, as seen in Exhibit 4, Att. B, not only was Caswell/Aidoo aware of the assets, she entered into an agreement to purchase those assets. Section 1 of the APA stated Caswell was to purchase the following:

At the Closing, and subject to the provisions of Paragraph 2 hereof, Sellers shall sell, assign and transfer to Buyer and Buyer shall purchase from Sellers all of Sellers' assets used or useful in the operation of the Station or the conduct of its business, including the following ("Assets"), free and clear of liens, encumbrances, and other security interests except as specifically provided herein:

A. **Tangible Personal:** All the fixed and tangible personal property owned by Sellers, used or useful in the operation of the Station listed in Schedule A hereto, less any property consumed, depleted or otherwise disposed of in the ordinary course of business, and all similar tangible property acquired by a Seller in the

ordinary course of business prior to the Closing Date (the "Tangible Personality").

* * * * *

C. **Agreements, Leases and Contracts:** The rights of Sellers under (1) all agreements, leases or contracts, written or oral, listed in Schedule C hereto and all agreements for the broadcast of advertising over the Station in exchange for goods or services other than cash ("Trade Agreements")) which are in effect on the Closing Date and which, by notation on Schedule C, Buyer expressly agrees to assume, (2) all contracts for the sale of air time for cash consistent with the Station's customary terms, rates and selling practices that are in effect on the Closing Date, and (3) all contracts entered into by Seller between the date hereof and the Closing Date, to the extent expressly permitted hereunder (collectively, the "Contracts").

D. **Intangible Personal Property:** Any trademarks, service marks, copyrights, trade names, common law property rights, good will and all other intangible personal property owned by Seller and used by it in connection with the operation of the Station (the "Intangible Property").

E. **Records:** Such of Sellers' files, logs, and other records relating to the operation of the Station required to be maintained by the FCC and advertising sales records of Seller (the "Records"). Sellers will be permitted to retain or obtain copies of all Records as needed for tax and financial purposes at Seller's cost. If required for tax audits, Sellers will furnish to Buyer at Buyer's cost copies of all other records Sellers will retain which are reasonably requested by Buyer.

Exhibit 4, Att. B. Therefore, in early 2001, Caswell/Aidoo clearly knew there were other assets, that Gresham owned because Caswell was attempting to purchase them.

As seen in mid-2002, Closing Documents were prepared for the consummation of the transaction. Exhibit 4, Att. C. Therefore, in mid-2002, Caswell/Aidoo clearly knew there were other assets; that Gresham owned them; and that Caswell was purchasing them.¹

¹ As seen in the Declaration of William Saunders (Exhibit 4), no closing ever occurred with respect to transaction. As Mr. Saunders testified to the FCC:

Even though draft closing documents were sent to her by my attorney, Scott Johnson (Attachment C), Judith Aidoo never would close the transaction. As a result, I recall several requests for extension of time to close were filed with the FCC. Every time the extension was to run out, she would tell me she needed more time. The station's renewal of license application was filed on August 1, 2003, and was granted in April 2004, which is a period during which I understand we were not allowed to close. Other than that, Gresham Communications was ready to close at any time. While there were certain outstanding judgments that needed to be paid (*i.e.*, ASCAP and BMI), it was Judith Aidoo's responsibility to pay those judgments as a part of closing.

It also is noteworthy that Cherry and Caswell have claimed to the FCC that:

As a result of such expenditures, Caswell (or an entity controlled by Judith Aidoo, Caswell's sole Member) currently owns the WPAL-FM tower and antenna, the tower building and leases, and most of the station's furniture, fixtures and broadcast equipment.

Exhibit 5 (except of Caswell FCC Brief) at 3. Mr. Cherry did not attach a single "declaration," "affidavit," or "bill of sale" supporting that allegation. Interestingly, here, before this Court, however, by and through plaintiff's counsel, Mr. Cherry is claiming "unclean hands," and is taking the opposite tact – seemingly acknowledging that Caswell does *not* own the property: that Gresham does *indeed* own the property; and Gresham hid those assets from the Court. In short, Caswell has argued one thing to the FCC and is taking quite a different position before this Court.

The plain and simple truth is that Caswell and Cherry at all times knew or should have known the status of the ownership of the physical assets of the station. Their feigned ignorance, should not foster them extra equities before the Court. They are elevating a simple error, which they *always* knew or should have known was a simple error, into a platform to smear Mr. Saunders.¹ As Mr. Saunders explains:

At no time did the previous transaction close in any way. Nearly all furniture at the station studios was owned by Gresham Communications before "Caswell's"

Exhibit 4. As seen in Exhibit 4, Att. D., it was on March 11, 2003, that Judith Aidoo essentially "tabled" any plan to move forward on the purchase. As she put it:

Bottom line: I have tapped out of all my own savings (and commitment), and I have insufficient confidence in the viability of WPAL, as both a business and a community institution, to borrow any more from my friends and my family for WPAL. Sp, it is imperative that we limit all expenses, as we find a graceful exit to this noble endeavor.

Exhibit 4, att. D.

¹ The only essential station-related asset that Caswell evidently controls is the land lease for the transmitter site. Upon information and belief, for reasons unknown, the land lease was placed in the name of "Aidoo Group, Ltd." when it was executed on November 1, 2001, before Judith Aidoo officially became involved with the Station.

involvement, and therefore remains owned today. Gresham Communications never assigned over its rights to use the station's current transmitter. In March 2002, right about the time Caswell became involved in the Station, WPAL-FM moved to its current transmitter site in Ridgeville, South Carolina. Gresham Communications bought and paid for the tower itself from funds from the sale of WPAL(AM). The antenna used was the same antenna used by Gresham Communications for WPAL-FM at the previous transmitter site. For the new site, Gresham Communications itself purchased a transmitter, without any funds from "Ms. Aidoo" or "Caswell." Except for whatever minor supplemental equipment Judith Aidoo brought in during her TBA, all equipment continued and continues to be owned by Gresham Communications. For Caswell Communications to claim otherwise is absolutely false.

Exhibit 2 at 2. Similarly, for Caswell/Aidoo to claim that it was somehow "unaware" of the true state of affairs is contrary to the documentary trail that led to this proceeding.

CONCLUSION

The plaintiff initiated this case not to simply receive payment on the Note, but (with the Court's unwitting assistance) to seize ownership of Radio Station WPAL-FM, licensed to Ridgeville, South Carolina. As seen in Exhibit 4, Attachment A, Caswell was initially contractually obligated to operate the Station (pursuant to a "Time Brokerage Agreement"), and as seen in Exhibit 4, Attachment B, eventually obligated itself to purchase the Station from Gresham Communications (pursuant to an "Asset Purchase Agreement") for total consideration in excess of \$1.3 million. Caswell evidently lost money during its course of operation of the Station under the Time Brokerage Agreement, and it was Caswell that defaulted on its purchase commitment. Caswell evidently was actually without funds to close. Exhibit 4, Attachment D. Despite the fact that the Closing never occurred, and despite the fact that the Time Brokerage Agreement specifically recited that "The parties agree that nothing herein shall constitute a joint venture relationship between them," (Exhibit 4, Attachment A at Section 32) Caswell began treating the Station as its own, marketing the Station, and insisting on a portion of the sale proceeds (Exhibit 4, Attachment E); and grew angry and indignant when a plan to ensure that

Caswell's self-inflicted losses would not be agreed to by Gresham Communications. Exhibit 4 at

2.

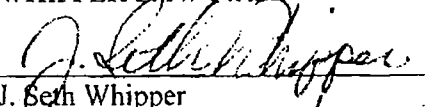
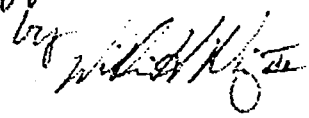
Then began the tactic (despite that fact that it was Caswell itself that was the defaulting party on a Asset Purchase Agreement to purchase the Station), of using an old judgment and the Court's processes to obtain ownership of the Station indirectly in a back-door fashion. by first purchasing the old June 3, 1998, Judgment from Nancy Beach, and then using it as a mechanism to force a judicial sale (at a reduced price, to itself), thereby allowing it to obtain for less than \$100,000 that which it originally was contractually obligated to pay in excess of \$1.3 million. Despite the fact that it only is the payment of the June 3, 1998 Judgment that is at issue in this proceeding, as can be seen by Caswell's filings and behavior before the Court, Caswell does not simply "want to be paid" on the Judgment. It solely wants the Station so it can sell it; and now keep *all* the funds for itself; and in fact, it already has a deal in place to do just that. Exhibit 2. Caswell is manipulating and thereby abusing the Court's processes to that end, and as such, in light of Gresham's tender, that objective should be rejected.

Gresham Communications has now made the requisite payment of the Note. Any payment of any additional "contempt" fees also will be paid (although, as seen above, it is believed that Caswell has consistently been less than forthcoming in revealing that it *already* knew of the existence of the majority of the assets, and that its "confusion" was mostly self-serving and aimed at further pressuring Gresham to discontinue its efforts to oppose Caswell's FCC Application and court suit). Respectfully, that should allow for the conclusion of the matter, and any suggestion that, in return for its ownership and enforcement of a more-than-ten-year-old Judgment originally valued at \$56,276.10 that Caswell should walk away with (i) the tendered payment of \$106,268.78; (ii) a radio Station, which by Caswell itself is valued at over

\$1.6 million (and possibly much more); and (iii) all the other assets of Gresham Communications (consisting of land, etc., none of which has yet even been the subject of a validly-advertised judicial sale), is unfair and far beyond the realm of reasonableness. Caswell has been paid; Predominantly, that should end this matter, and the Station and its property should be returned to Gresham Communications.

WHEREFORE, Defendants respectfully request the Court to reconsider its June 6, 2008 Order regarding its ruling on the issue of unclean hands and alter and/or amend the same to reflect the arguments submitted in this supplemental brief.

WHIPPER LAW FIRM


J. Seth Whipper
Attorney for Defendants 

July 25, 2008
Charleston, South Carolina

EXHIBIT 1

*1311 Chuck Dawley Blvd/Suite 202
Mount Pleasant, South Carolina 29464
(843) 972-2260*

April 10, 2006

Bob Augsburg, President
WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, CO 80962

Dear Mr. Augsburg,

This is a Letter of Intent ("LOI" or "Letter") for the purchase and sale of the assets of WPAL- FM, licensed to Ridgeville (Charleston) SC (the "Station").

The parties to the LOI are:

Buyer: WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, CO 80962

Seller: Ms Judith Aidoo
CEO
Caswell Communications, Inc.
2045 Spaulding Drive
North Charleston, SC 29406

Broker: David F. Reeder
American Media Services Brokerage, LLC
9208 Timbercreek Drive
Bonham, TX 75418

Subject to execution of a definitive Asset Purchase Agreement (and satisfaction of terms and conditions to be contained therein including conditions precedent), and such other terms set forth below, Seller agrees to sell and Buyer agrees to buy the licenses, business, assets, and trade names of the Station on terms and conditions as generally described herein.

1. Purchase Price. Buyer agrees to pay the sum of TWO MILLION DOLLARS (\$2,000,000), IN CASH, subject to completion of due diligence by Buyer and the terms and conditions of this Agreement (the "Purchase Price"). The Purchase Price shall be the consideration for the Broadcasting Assets. "Broadcasting Assets" to the extent not specifically excluded in the Buyer's sole discretion, shall include all assets that are used or useful in the operation of the Station, including, but not limited to, all FCC licenses, real estate, equipment, tower sites, RF equipment and other tangible and intangible assets used or useful in the operation of the Station. Seller to pay American Media Services Brokerage, LLC commission of 5%.

2. Liabilities and Contracts. Except as specifically provided by this Agreement or the Asset Purchase Agreement, the Buyer shall not assume any liabilities, contracts or other obligations of Seller. The parties shall negotiate in good faith regarding any contracts which are in place at the time of execution of the Asset Purchase Agreement to the extent that any contracts provide revenue to Buyer after closing and will not otherwise conflict with Buyer's programming on the Station.

3. Asset Purchase Agreement. As soon as possible after the date hereof, and, in any case, within sixty (60) days of the execution of this Letter of Intent, Buyer and Seller will negotiate, prepare, and execute an Asset Purchase Agreement that will reflect in detail the general understanding in principle set out in this Letter. Within ten (10) days of the execution of the Asset Purchase Agreement, the parties will file an appropriate application with the FCC for the assignment and transfer of the station license. Each party will bear its own respective costs incident to the preparation of the Agreement and will split FCC filing fees equally. In addition, the Seller shall file, or cause to be filed, an application with the Federal Communications Commission seeking to move the station's tower location to another location of the Buyer's choice. This filing shall be at the Buyer's sole expense.

4. Due Diligence. The time period between the signing of this Letter of Intent and execution of the Asset Purchase Agreement will be considered the Due Diligence period, during which Buyer will have reasonable access to relevant station records, files, equipment, and other such items and the Real Estate.

5. Equipment. All equipment used and/or useful in the operation of the Stations is now and will at Closing be in good operating condition and suitable for its intended purposes.

1 of floating offers to you, what kinds of offers were
2 made by them in terms of this rent-to-own kind of
3 thing or just let us operate the station?

4 A. Yes, some of them were people -- one or
5 two in particular who had had programs on WPAL before
6 under Mr. Saunders wanted to continue their
7 programming, and they said, "Look, we had a deal with
8 Mr. Saunders. We would like to continue to
9 broadcast. Is that something that you would like to
10 do?" My concern again was to try to operate here as
11 an absentee receiver and to do it legally where you
12 had to have one full-time and one part-time person
13 with no assets, and then now you are trying to run a
14 going concern on an absentee basis in a situation
15 where there is not goodwill between the receivership
16 and the owner. I didn't think that was something
17 that was reasonable under the circumstances.

18 Q. And so WAY-FM made their first approach
19 in '08 or '07?

20 A. In '07.

21 Q. And what was your first offer to them?

22 A. I didn't make an offer.

23 Q. You didn't have a value that you
24 suggested to them at all?

25 A. Well, what we try to do was to, first of

1 all, to see, you know -- have people putting numbers
2 on the table. We believed that, and we did some
3 preliminary due diligence to try to determine a stick
4 value, which in radio jargon is essentially a station
5 that is not cash flow positive. It is really the
6 value of the signal itself exclusive of any land or
7 anything like that. And it came up between 1.5
8 million and probably two million dollars.

9 Q. And so right now the deal that has been
10 accepted is 1.6 million?

11 A. Correct.

12 Q. Now, who are you -- I need some names.
13 Who are you dealing with at WAY-FM?

14 A. Robert Ausburg is the CEO.

15 Q. Where is he located?

16 A. He is in Colorado.

17 Q. And you have a broker in there between
18 Ausburg. Who is that?

19 A. That is American Media Services, Todd
20 Fowler. His office is out of Mount Pleasant,
21 South Carolina.

22 Q. He is in Mount Pleasant, South Carolina?

23 A. Right.

24 Q. All right. Now, your personnel that are
25 involved of keeping this thing alive, who are they?

EXHIBIT 3



James L. Campbell, President

April 29, 2008

COPY

William Saunders, President
Gresham Communications, Inc.
61919 Chisolm Rd.
John Island, SC 29455

Re: Letter of Intent for WPAL-FM

Dear Mr. Saunders,

Contingent upon the successful exercise of the rights of Gresham Communications, Inc. to satisfy the debt at issue in C.C. No. 92-15508 in the State of South Carolina, Court of Common Pleas, and its subsequent successful reacquisition of the properties to be sold therein, the undersigned, Radio Training Network, Inc., or its assignee (the "Buyer") hereby offers to purchase from Gresham Communications, Inc. (the "Seller") (collectively Buyer and Seller shall be referred to as the "Parties") certain assets associated with the operation of the radio station WPAL-FM (the "Station") licensed to Ridgeville, South Carolina, *Facility No. 25374* and subject to the terms and conditions set forth herein.

Assets To Be Purchased

Buyer will purchase all of the assets, tangible and intangible, real, personal and/or useful in the operation of the Station, including but not limited to the FCC license, transmitting tower, antennae, transmitter, broadcasting equipment, STL transmitter/receiver, (collectively the "Assets") to the limited extent such assets currently may exist.

The Assets are to be free and clear of any debts, liens, or encumbrances of any kind or nature except as to any obligation or liability of Seller, which Buyer may expressly agree in writing to assume. The Assets specifically include the right, but not the obligation, to assume all leases (real property and service) and rights to content pertinent to the operation of the Station without adverse material change.



P.O. Box 7217 - Lakeland, FL 33807-2217
3015 South Florida Avenue, Suite 304 - Lakeland, FL 33813-2043
853-644-3464 FAX 853-646-5128
E-mail: grescom@aol.com

#409

Purchase Price

The purchase price shall be \$1,890,000.00.

Exclusive Period

The Parties agree that pursuant to this letter of intent Buyer shall be granted an exclusive period of twenty-five (25) days to negotiate and conclude a definitive Asset Purchase Agreement for the Assets (the "Agreement"). Provided that the Buyer is continuing negotiations in good faith, during such exclusive period Seller shall not engage in discussions with any other party concerning the purchase or acquisition of any or all of the Assets or the business of the Station. In addition, throughout such period the Parties shall not disclose to any third party the existence of such negotiations.

However, the Parties are permitted to inform prospective buyers that the station is currently unavailable and operating under a Letter of Intent. Within fourteen (14) business days after receipt of a fully executed copy of this letter, Buyer will deliver to Seller a draft of the Agreement, which the Parties agree to negotiate in good faith.

Deposit / Liquidated Damages

The Agreement shall embody the terms of this letter of intent and shall contain such other provisions as are mutually acceptable to both Parties and are usual and customary in such agreements. Buyer will provide for a deposit, in a mutually agreeable escrow account, of \$100,000.00 upon signing the Agreement. An escrow account will be established with a duly qualified escrow agent or financial institution in Greenville, South Carolina.

Should Buyer breach its obligations under the Agreement, this sum will be paid to Seller as liquidated damages in full, as compensation for all damages sustained by Seller thereby. The escrow deposit and any interest earned thereon will accrue to the account of the Buyer and be credited against the purchase price upon closing. Buyer shall have the right to demand specific performance of Sellers obligations under the Agreement.

Fees and Expenses

Except as may be otherwise agreed, each of the Parties shall bear its own legal and accounting fees in connection with this letter and forthcoming Agreement. Additionally, each of the Parties hereby agrees that RadioMetrix Solutions, hereinafter referred to as Broker, will be paid a brokerage fee of \$90,000.00 payable by the Seller from the proceeds of the sale.

Prorations

Under this Agreement, all taxes and assessments, utility bills, and other ongoing costs of customary operations of the Station shall be prorated as of the date of closing.

Contingencies / Timing

This letter shall constitute a non-binding letter of intent and the obligations of the Buyer to proceed with negotiation of the Agreement hereunder shall be specifically subject to a successful due diligence review (including financial, legal, and environmental analysis) of the Station and the Assets by the Buyer and its representatives.

Other than the exclusive period, the obligations of the Parties hereunder are contingent upon execution of the Agreement which shall be contingent upon: (i) the Seller's redemption of the WPAL-FM FCC license and Assets from any judicial collection proceeding; (ii) a formal approval from the Buyer's board of directors; and (iii) the consent of the FCC to an assignment of Station's license(s) from Seller to Buyer. Within five (5) days after execution of the Agreement, the Parties will join in an application to the FCC seeking consent to the assignment. During such time as the FCC Application is pending before the FCC, Buyer shall provide programming upon the Station pursuant to a Time Brokerage Agreement ("TBA"), which Seller shall enter into with Buyer at a mutually agreed to monthly rate plus reimbursement of operating expenses.

Closing will take place on a mutually acceptable date after consent to the assignment has been granted by the FCC staff under delegated authority, but in no event later than ten (10) days after such FCC consent shall have become a Final Order.

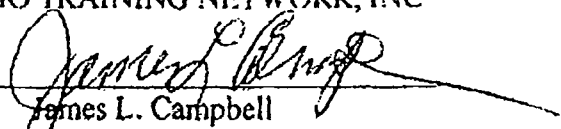
If closing of the purchase and sale contemplated herein has not been completed within nine (9) months after acceptance by the FCC of the applications for assignment of license to Buyer, either party hereto shall have the right to rescind its obligations hereunder without any further obligation due and owing to the other party.

This letter will expire at 5:00PM, Friday, May 22nd, 2008 unless countersigned by the Seller.

Please indicate your acceptance of the terms and conditions of this Letter of Intent by signing in the space provided below.

Buyer

RADIO TRAINING NETWORK, INC

By: 

James L. Campbell
President/C.E.O.

Date: 4-29-2008

Seller

GRESHAM COMMUNICATIONS, INC.

By: _____

William Saunders
President

Date: _____

EXHIBIT 4

DECLARATION

I, William Saunders, hereby state as follows:

I am President of Gresham Communication, Inc., former licensee of Station WPAL(AM) (currently known as WLTQ(AM)), Charleston, South Carolina. Until action by the Court and the Commission appointing a Receiver, it also was licensee of Station WPAL-FM, Ridgeville, South Carolina.

I first became involved with Caswell Capital Partners, LLC's President, Judith Aidoo, in 2001. At that time, the Station was experiencing financial difficulties (due largely to a judgment that was rendered against Gresham Communications by Nancy Beach in the amount of approximately \$57,000), and Ms. Smith, the President of the local Black Credit Union, had a friend, Judith Aidoo, who was interested in getting involved in running the Station, and eventually expressed an interest in purchasing the station. She came to me to offer help stating that she believed WPAL was important to the Black community. I am African-American, and the Station had in the past run formats attractive to the African-American community. Ms. Aidoo's interest in preserving the tradition of WPAL as a station serving the African-American community made me feel good.

The understanding that tentatively was reached was that the station would be run together, i.e., she would manage the station under a Time Brokerage Agreement, and she eventually would purchase the station, payment in part for which would be the direct payment and resolution of certain debts of Gresham Communications and the payment of a lump sum payment. The Time Brokerage Agreement was entered into on February 23, 2002. Attachment A. After multiple drafts, the discussions for the purchase of the Station culminated in the execution of an Asset Purchase Agreement on April 21, 2002, a copy of which is attached as Attachment B. The Agreement contemplated closing no later than December 31, 2002. The FCC approved the assignment in early August 2002.

Even though draft closing documents were sent to her by my attorney, Scott Johnson (Attachment C), Judith Aidoo never would close the transaction. As a result, I recall several requests for extension of time to close were filed with the FCC. Every time the extension were to run out, she would tell me she needed more time. The station's renewal of license application was filed on August 1, 2003, and was granted in April 2004, which is a period during which I understand we were not allowed to close. Other than that, Gresham Communications was ready to close at any time. While there were certain outstanding judgments that needed to be paid (i.e., ASCAP and BMI), it was Judith Aidoo's responsibility to pay those judgments as a part of closing. Those payments have never occurred.

During all this time closing did not occur, Caswell Communications, Inc. continued to provide programming on the Station under the Time Brokerage Agreement. Judith Aidoo terminated all of the purchases for blocks of time that had run on the Station since the 1950's, and totally changed the format of the Station - in my opinion to the detriment of the Station. I don't think the Station did well financially under Judith Aidoo's management (at one point claiming to be losing \$12,000 per month (Attachment D)), and when there were certain equipment problems

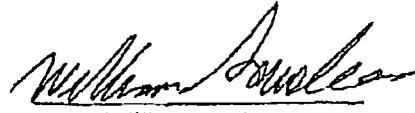
and catastrophes occurred that under the Time Brokerage Agreement Caswell was responsible for paying, things went especially sour between Ms. Aidoo and myself. Specifically, in April 2006, the transmitter at the Station's tower site experienced a fire, and the Station was off the air for three months. Ms. Aidoo started becoming abusive, telling me she was not going to "put another nickel" into the station and threatening that if I didn't sign the Station over to her, she would see to it that the Station would remain off the air. Prior to this, she even started marketing the Station as though the Station already were owned by Caswell, whereby "Caswell" was the Seller of the Station. Attachment E.

I did not give in to her demands. I borrowed a transmitter and paid some engineers and tower people independently, and with their help, the Station was back on the air in July 2006. However, the Station was off the air the entire political primary season, which hurt station revenues, and may have had an impact on the Black vote.

Caswell Communications/Judith Aidoo was not involved in station operations since that time. However, she has continued to interfere with the marketing and sale of the Station. After the transmitter was restored, it was discovered that the studio board would not work, and a part was missing. When we ordered the part, we were told Ms. Aidoo's already had the part. We paid him some money, and obtained the part. Later, Gresham Communications began entering into discussions concerning participation in the Station. They would not speak with us further after ostensibly being told by Judith Aidoo they would be "throwing their money away," and they backed out. She also interfered with Gresham Communications' acquisition of a bank loan for operating funds for the Station. Sometime in 2006, Judith Aidoo then went ahead and purchased the Judgment that previous was outstanding against Gresham Communications. An action for collection was initiated by Caswell in August 2006, which resulted in a order for collection in September 2006, which also resulted in her trying to force a sale of the station for an amount far below what she agreed contractually in pay in April 2002.

At no time did the previous transaction close in any way. I moved the station to a new studio in approximately January 2007, and moved all studio equipment and furnishings to that new location at that time. That lease is in my name. Attachment E. Nearly all furniture at the station studios was owned by Gresham Communications before "Caswell's" involvement, and therefore remains owned today. Gresham Communications never assigned over its rights to use the station's current transmitter. In March 2002, right about the time Caswell became involved in the Station, WPAL-FM moved to its current transmitter site in Ridgeville, South Carolina. Gresham Communications bought and paid for the tower itself predominantly from funds set aside from the prior sale of WPAL(AM). See Attachment G (WPAL(AM) distribution of funds list) and Attachment H ("FM Improvement Escrow Agreement"). The antenna used was the same antenna used by Gresham Communications for WPAL-FM at the previous transmitter site. Much of the studio equipment and furniture was owned by Gresham long before "Judith Aidoo" became involved in the Station. For the new site, Gresham Communications itself purchased a transmitter, without any funds from "Ms. Aidoo" or "Caswell." The replacement transmitter also is owed by Gresham. See Attachment I (sales contract with Gresham and Glory Communications for purchase of transmitter). As Attachment I also reflects, an Amigo Audio Processor was provided by Mr. Snipe to Gresham to assist WPAL-FM's resuming service. Except for whatever minor supplemental equipment Judith Aidoo brought in during her TBA, all equipment continued and continues to be owned by Gresham Communications. For Caswell Communications to claim otherwise is absolutely false.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.


William Saunders

Attachment A

TIME BROKERAGE AGREEMENT

THIS TIME BROKERAGE AGREEMENT ("Agreement"), dated as of February 23, 2002, is made and entered into by and between Gresham Communications, Inc., a Florida corporation ("Licensee"), and Carwell Communications, Inc., a Delaware corporation ("Broker"), (individually a "Party," and collectively, the "Parties").

RECITALS:

WHEREAS, Licensee is authorized to operate WPAL-FM, 100.9, licensed to Ridgeville, South Carolina (the "Station");

WHEREAS, concurrently with the execution of this Agreement, Licensee and Broker are entering into an asset purchase agreement (the "Asset Purchase Agreement"), pursuant to which Broker has agreed to buy and Licensee has agreed to sell certain assets of the Station;

WHEREAS, Licensee desires to make available to Broker substantially all of the broadcasting time on the Station; and

WHEREAS, Broker is engaged in the business of radio broadcasting and desires to avail itself of the Station's available broadcast time from the Operational Commencement Date (as defined herein) until the Closing of the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, Broker and Licensee, intending to be legally bound, hereby agree as follows:

1. Commencement Date and Facilities.

Commencing 12:00 a.m. Eastern Standard Time on Monday, February 25, 2002 (the "Operational Commencement Date"), Licensee shall broadcast, or cause to be broadcast, over the Station's transmission facilities, certain programming, consisting of programs, announcements and advertising (the "Programming"). The period from the Operational Commencement Date to the termination of this Agreement is the "Operating Period."

2. Term.

This Agreement is effective as of the date hereof ("Effective Date") and, unless sooner terminated, extended or renewed as hereinafter provided, shall end upon the earlier of (1) the Closing (as defined in the Asset Purchase Agreement) or (2) the termination of the Asset Purchase Agreement, or (3) as otherwise terminated pursuant to Article 19 hereof. The period from the Effective Date to the termination of this Agreement is the "Term."

3. Payments by Broker.

(a) In consideration of the air time made available to Broker as provided in this Agreement, Broker shall pay and reimburse Licensee as set forth in Appendix A attached hereto and incorporated herein by reference.

(b) The failure of Licensee to demand or insist upon timely and full payment of any payment due hereunder shall not constitute a waiver of Broker's obligations under this Section 3.

4. Payments by Licensee.

Licensee shall pay in a timely manner the following costs of the Station: (i) the salaries, payroll taxes, insurance, health benefits and related costs of personnel employed by Licensee in the operation of the Station after the Operational Commencement Date; and (ii) income, gross receipts, sales, personal property, excise or any other taxes of any nature whatsoever pertaining to the Station's transmitter facilities.

5. Programs.

Subject to Licensee's ultimate control and supervision, during the Operating Period, Broker shall furnish or cause to be furnished, at its own cost, material in broadcast-ready form for broadcast on the Station pursuant to this Agreement at all times other than the times of the Licensee Programming, and shall be responsible for implementing its transmission to the Station, utilizing assets owned by Broker to the extent necessary. All such Broker programs shall accord with the Communications Act of 1934, as amended (as so amended, the "Act"), and with all other applicable statutes and Federal Communications Commission ("FCC") rules, policies and requirements. All rights, including, without limitation, all ownership rights and rights of use, relating to the Programming shall belong exclusively to Broker, and Licensee shall have no rights of any kind in or to such programs and hereby disclaims all rights thereto. Broker shall be solely responsible for all costs associated with the production, delivery and implementation of the Programming.

6. License to Use Studio Facilities.

Broker is hereby granted authority to utilize certain portions of Licensee's studio facilities for Station located at 1717 Wappoo Road, Charleston, South Carolina, (the "Premises"), during the Term, subject to Licensee's continuing control over the Premises as provided elsewhere hereunder; provided further, that Broker's use of the Premises must comply with Licensee's existing security policies and procedures. Broker shall not make any material physical improvements or changes to the Premises without the prior written consent of the Licensee, which consent shall not be unreasonably denied or delayed; provided, however, that Broker shall, subject to Licensee's approval, provide, install and maintain, at its own cost, any additional equipment necessary for the receipt of programming by the Station, including, but not limited to, satellite receivers, network terminal, control and monitoring and server equipment. Title to any equipment installed on the Premises by Broker shall remain with Broker. Broker does not

assume, and shall not be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated by this Agreement, any liabilities, obligations or commitments of the Licensee of any nature whatsoever, regardless of whether they arise from or relate to the ownership, operations or business of the Station. With the exception of the provisions of Section 21.1 herein, this Agreement shall not constitute an assignment of any contract or lease to which the Licensee is a party, including, without limitation, any studio or tower leases. Consistent with this Agreement, Licensee shall continue to perform all of its obligations under all contracts, leases and other agreements in a timely manner and otherwise keep all such contracts and leases in full force and effect.

7. Employment.

(a) It is hereby agreed that, at a minimum, Licensee will employ at least one full-time and one part-time employee at the main studio of the Station in compliance with the FCC's rules and regulations. Licensee shall employ a Manager and such other engineering, programming and other personnel as are necessary to fulfill Licensee's obligations under this Agreement and the rules and regulations of the FCC. Licensee's employees shall have managerial control over and direct the Licensee's day-to-day operations at the Station. Licensee's employees shall report to and be accountable to Licensee. Broker shall have no control or right of review whatsoever over any decision by Licensee to hire or to dismiss any employee of Licensee. Licensee shall be responsible for the salaries, taxes, insurance, severance, bonuses and other benefits or obligations due or payable to all employees of Licensee.

(b) Broker shall employ its own personnel and shall be solely responsible for, and shall indemnify Licensee, its employees, contractors, agents or affiliates from and against, all claims, costs, losses, liability, damages, and other expenses (including reasonable professional fees and disbursements) relating to salaries, taxes, insurance, severance, bonuses, and other benefits or obligations due or payable to: (i) Broker's personnel used in the production, delivery or implementation of the Programming hereunder or necessary to fulfill Broker's obligations hereunder; and (ii) all employees of Broker. Broker's employees shall be solely accountable to Broker.

8. Handling of Mail and Public File.

Licensee or Licensee's employees shall handle all mail, cables, teletypes or other written correspondence received at the Licensee's studio facilities. To the extent that Licensee receives any correspondence in connection with the Programming, Licensee or Licensee's employees shall promptly notify Broker in writing and deliver a copy of any written communications from the public or the FCC. To the extent that Broker receives or handles mail or telephone calls in connection with any material broadcast over the Station during the Term, Broker promptly shall advise Licensee, in writing, of any public or FCC complaint or inquiry concerning the Programming or the Licensee Programming. Broker also shall deliver to Licensee copies of all operating and programming information relating to Broker necessary to maintain the public file and other records required to be kept by FCC regulations, rules and policies. During the Term, Broker, as to the Programming, also shall maintain and deliver to the Station and Licensee such records and information required by the FCC to be placed in the public inspection file of the

Station relating to the broadcast of political programming and advertisements, in accordance with the provisions of Sections 73.1943 and 73.3526 of the FCC's rules, and pertaining to the broadcast of sponsored programming addressing political issues or controversial issues of public importance, in accordance with the provisions of Section 73.1212 of the FCC's rules. Broker also shall consult with Licensee concerning the Programming to ensure that the Station is compliant with the Act and all other applicable statutes and the rules, regulations and policies of the FCC, as announced from time to time, with respect to the carriage of political advertisements and programming (including, without limitation, the rights of candidates and, as appropriate, others to "equal opportunities") and the charges permitted therefore. Broker shall provide to Station such documentation relating to the Programming as Licensee reasonably shall request. In particular, and without limitation, Broker shall immediately provide to Licensee complete records of all requests for broadcast time made by or on behalf of any candidate for public office, together with information concerning the disposition of such requests and the charges made. Licensee shall be responsible for providing the personnel necessary to maintain a complete public file (as required by the FCC) including, but not limited to, all required quarterly issues/programs lists for the Station.

9. Maintenance of Equipment.

The transmitter equipment and antennas used for the Station's broadcasts owned by Licensee (the "Transmission Equipment") shall be maintained by Licensee, with the cooperation of Broker, in a condition consistent with good engineering practices and in compliance in all material respects with the Act and all other applicable rules, regulations and technical standards of the FCC. Licensee shall maintain power and modulation of the Station broadcasts in a manner consistent with Licensee's past practices. Broker shall promptly reimburse Licensee for all pre-approved capital expenditures that may reasonably be necessary in order to maintain the equipment in good working order and repair and its compliance with applicable laws and regulations.

10. Responsibility for Production Expenses.

Broker shall pay for all costs associated with producing and providing the Programming and sale of radio time, all fees to ASCAP, BMI and SESAC and any other music licensing organization, attributable to the Programming and any other copyright fees attributable to the Programming. With respect to the Programming, Broker shall pay any costs associated with any affiliation with any network.

11. Control of the Station.

During the Term, Licensee shall retain ultimate control over the Station's technical facilities and Broker agrees that Licensee shall be entitled to take any and all steps necessary to maintain such control continuously throughout the Term. Licensee and Broker acknowledge and agree that Licensee's responsibility to retain control is an essential element of the continuing validity and legality of this Agreement. Licensee shall retain ultimate control, said control to be reasonably exercised, over the policies, programming and operations of the Station, including, without limitation, the right to decide whether to accept or reject any programming or advertisements, and the right to take any other actions necessary to comply with the laws of the United States and the rules, regulations and policies of the FCC. Licensee shall maintain its main studio in compliance with the FCC's rules and regulations and Broker shall take such actions as Licensee may reasonably request to ensure such requirements are met. Broker shall not represent, warrant or hold itself out as the Station's owner and shall sell all advertising time and enter into all agreements in its own name. Licensee reserves the right to refuse to broadcast any program or programs containing matter which is, or in the reasonable opinion of Licensee may be, violative of any right, law, or governmental rule, regulation or policy.

12. Special Events.

Licensee has the right to reject any of the Programming and to substitute on a temporary basis a program that, in the reasonable opinion of Licensee, is of greater local or national importance. Licensee confirms that no Programming shall be rejected on the basis of Programming performance or ratings, advertiser reaction or the availability of alternative programming (including, but not limited to, sporting events or paid programming) that Licensee believes to be more profitable or more attractive. In the event of such rejection and substitution, Licensee shall give Broker written notice of such rejection and substitution, and the reasons therefor, in advance of the scheduled broadcast, or as soon thereafter as possible (including an explanation of the cause of any lesser notice). In the event of such preemption, Broker shall receive a payment credit in an amount equal to the actual loss of revenue by Broker during the time its Programming was preempted, which shall equal the loss of the Station's local and national revenues and the Station's allocation of Broker's revenues in connection with the actual time preempted.

13. Force Majeure.

Any failure or impairment (i.e., failure to broadcast at Station's full authorized power) of facilities or any delay or interruption in broadcast programs, or failure at any time to furnish facilities, in whole or in part, for broadcasting, due to any acts of God, strikes or threats thereof or *force majeure* or due to any other causes beyond the reasonable control of Licensee or Broker shall not constitute a breach of this Agreement and Licensee or Broker, as the case may be, will not be liable to the other Party hereto therefor, provided such Party uses reasonable diligence to correct such failure or impairment as soon as is reasonably possible. In no event shall Licensee have any liability to Broker for loss of broadcast time arising from a failure of any Broker equipment used in connection with the presentation or broadcast of the Programming on the

Station. Nor shall Broker be entitled to a credit against the compensation due to Licensee on Appendix A arising from a failure of any Broker equipment.

14. Station's ID's.

Licensee hereby grants to Broker an exclusive license to use the call letters WPAL, and other identifiers as are currently used or in the future may be used by the Station (the "Station's Licensed Identifiers") in connection with the broadcast of Broker's Programming on the Station, but for no other purpose. The license granted herein shall expire at the time of Closing or upon the expiration or earlier termination of this Agreement. During the Term of this Agreement, Broker shall use the Station's Licensed Identifiers in Broker's Programming in a manner consistent with the use thereof by Licensee in broadcasts on the Station immediately prior to the Operational Commencement Date and as may be required by the Act or the rules, regulations and policies of the FCC.

15. Payola.

Broker shall provide Licensee with payola affidavits, substantially in the form attached hereto as Appendix B, signed by such of Broker's employees and at such times as Licensee may reasonably request in writing, and shall notify Licensee promptly of any violations it learns of relating to the Act, including Sections 317 and 308 thereof.

16. Compliance with Law and Other Agreements.

Broker and Licensee shall, throughout the Term, comply in all material respects with the Act, the rules, regulations and policies of the FCC, the terms of the Station's FCC license and all other laws and regulations applicable to the conduct of the Station's business.

17. Indemnification Warranty.

Each Party (as the case may be, the "Indemnitor") shall indemnify and hold harmless the other Party (as the case may be, the "Indemnitee"), its directors, officers, employees, agents and affiliates, as applicable, from and against any and all liability, including without limitation all reasonable attorneys' fees, arising out of or incident to the programming furnished by the Indemnitor, any breach of this Agreement by the Indemnitor or the conduct of the Indemnitor, its directors, officers, employees, contractors, agents or affiliates. Without limiting the generality of the foregoing, Indemnitor shall indemnify and hold and save the Indemnitee, its directors, officers, employees, agents and affiliates harmless against liability for libel, slander, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights and proprietary rights resulting from the programming furnished by the Indemnitor.

18. Events of Default.

Each of the following shall constitute an "Event of Default" under this Agreement:

18.1. Default in Covenants. Broker's or Licensee's material non-observance or material non-performance of any covenant or agreement contained herein, provided, however, that such default shall not constitute an Event of Default hereunder unless such default is not cured within thirty (30) business days after delivery of written notice thereof to the breaching Party by the non-breaching Party.

18.2. Breach of Representation. Broker's or Licensee's material breach of any representation or warranty herein, or in any certificate or document furnished pursuant to the provisions hereof, which shall prove to have been false or misleading in any material respect, as of the time made or furnished, and not cured within thirty (30) business days after delivery of written notice thereof to the breaching Party by the non-breaching Party; or

18.3. Insolvency. The voluntary filing by Licensee or Broker (or an involuntary filing with respect to Broker or Licensee not vacated within one hundred and twenty (120) days after such filing) of a petition for reorganization or dissolution under Federal bankruptcy laws or under substantially equivalent state laws.

19. Termination.

19.1. Termination Upon an Event of Default. Either Party may terminate this Agreement by written notice to the other Party upon the occurrence of an Event of Default; provided, however, that the Party serving such notice shall not then be in default of its obligations under this Agreement.

19.2. Residency Change. If any order or decree is issued by an administrative agency or court of competent jurisdiction or there is a material change in or clarification of FCC rules, policies or precedent that would cause this Agreement to be in material violation of any applicable rule or law, and such order or decree or material change or clarification is no longer subject to administrative or judicial reconsideration, review or appeal (a "Final Order" or "Final Decree"), the Parties will use their respective best efforts and negotiate in good faith to modify this Agreement to the extent necessary to comply with such Final Decree or material change or clarification without causing material economic detriment to either Party, and this Agreement, as so modified, shall then continue in full force and effect. If the Parties are unable, after negotiating in good faith for at least thirty (30) days commencing on the date any such Final Decree or material change or clarification becomes final, to modify this Agreement to comply with such Final Decree or material change or clarification, then either Party, if it is not then in material default of this Agreement, may terminate this Agreement immediately upon written notice to the other Party. If termination pursuant to this Section 19.2 occurs, Broker, provided it is not otherwise in material default of this Agreement, will not be liable for any further payments described in Appendix A and will be entitled to a prorated rebate of any advance payments.

19.3. Effect of Termination. Upon termination of this Agreement pursuant to this Section 19, each Party shall be free to pursue any and all remedies available pursuant to the Asset Purchase Agreement. Licensee shall be entitled immediately to cease making available to Broker any further broadcast time or broadcast transmission and facilities, and all amounts accrued or payable to Licensee prior to the date of termination which have not been paid shall be

immediately due and payable. Broker shall be entitled immediately to cease providing any further Programming to be broadcast on the Station, and any amounts which have been prepaid to Licensee beyond the termination date shall be immediately due and payable to Broker.

19.4. Liabilities Upon Termination. Broker shall pay all debts and obligations resulting from its use of the Station's air time and transmission facilities, including, without limitation, accounts payable and net barter balances relating to the period on and after the Operational Commencement Date and through the effective date of termination of this Agreement and shall be entitled to the revenues and other credits for that period.

19.5. Specific Performance. In addition to Broker's rights of termination hereunder (and in addition to any other remedies available to it or provided under law), Broker may seek specific performance of this Agreement in which case Licensee shall waive the defense of an adequate remedy at law and interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy hereunder.

19.6. Condition of Equipment. In the event of termination of this Agreement for any reason other than the Closing, Broker will return the Station and its equipment to Licensee in the same condition, usual wear and tear excluded, as existed on the Operational Commencement Date.

20. Revenues

Broker shall receive all revenues attributable to the Programming aired on the Station on and from the Operational Commencement Date and for the period thereafter during the Term of this Agreement. All revenues arising from the operation of the Station prior to the Operational Commencement Date shall be the sole property of Licensee.

21. Assignment of Certain Agreements and Rights

21.1. Assignment of Contracts. On the Operational Commencement Date, Licensee shall assign to Broker all executory contracts for the sale of time on the Station and all executory trade agreements ("Contracts"). Licensee has provided Broker with true, complete and accurate copies, including any amendments thereto, of the Contracts. Licensee warrants that the Contracts are freely assignable, or, if the consent of the other contracting party to any such Contract is required to assign the Contract to Broker, Licensee shall obtain such consent prior to or as soon as practical after the Operational Commencement Date. If Licensee is unable to obtain any consent that is necessary to permit the valid assignment of a Contract to Broker, Licensee shall act as Broker's agent in connection with any such Contract and the Parties shall cooperate to cause Broker to receive the benefit of any such Contract in exchange for performance by Broker of all of Licensee's obligations thereunder. Any such assignment and any new contracts entered into by Broker during the Term, shall contain a revision clause requiring Broker to reassign any such Contract back to Licensee should the Asset Purchase Agreement fail to close according to its terms on or before the Drop Dead Date.

21.2. Collection of Accounts Receivable. Commencing March 15, 2002, Broker will use Broker's best efforts to collect the Licensee's accounts receivable relating to or arising from the operation of the Station prior to the Operational Commencement Date (the "Receivables") for Licensee's accounts and in the same manner and with the same diligence that Broker uses to collect its own accounts receivable; provided, however, that Broker will not be obligated to utilize any means of collection, including but not limited to the institution of legal proceedings or employment of any collection agency, legal counsel or other third party. So long as the Receivables are in Broker's possession, neither Licensee nor its agents will make any collection of any Receivables. Broker will have sixty (60) days beginning March 15 to collect Licensee's accounts receivables using Broker's best efforts, and Broker will at the end of such period pay to Licensee fifty percent (50%) of all amounts collected on the Receivables less any reasonable sums expended by Broker to collect such Receivables. The remaining fifty percent (50%) of such collections shall be the property of Broker. All amounts received by Broker from its advertisers whose accounts are also included among the Receivables shall be applied first to the Receivables unless a payor instructs that the payment be otherwise applied. Unless this Agreement is sooner terminated pursuant to Article 19 hereof, the Receivables still outstanding at the expiration of the sixty (60) day period shall be returned to Licensee for collection.

22. Representations, Warranties and Covenants.

22.1 Broker represents and warrants to, and covenants with, Licensee that:

(a) This Agreement has been duly executed and delivered by Broker, and constitutes its valid and binding obligation, enforceable against it in accordance with its terms, except as limited by laws affecting the enforcement of creditor's rights generally or equitable principles. Broker has all necessary corporate power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action of Broker.

(b) No consent of any other party and no consent, license, approval or authorization of, or exemption by, or filing, restriction or declaration with, any governmental authority, bureau, agency or regulatory authority, is required in connection with the execution, delivery or performance by Broker of this Agreement, except that Broker is required to file a copy of this Time Brokerage Agreement with the FCC.

(c) The execution, delivery and performance of this Agreement will not violate any provision in Broker's articles of incorporation or by-laws, nor will it constitute or result in the breach of any term, condition or provision of, or constitute a default under, or accelerate or permit the acceleration of any performance required by, any agreement or other instrument to which Broker is a party or by which any part of its property is bound, or violate any law, regulations, judgment or order binding upon Broker.

(d) No proceeding is pending or, to the knowledge of Broker, threatened against Broker before any court, government agency or arbitral tribunal that would enjoin or prohibit, or

which otherwise questions the validity of any action taken or to be taken in connection with this Agreement.

(e) Broker shall present Programming which shall serve the needs and interests of the Station's service area.

22.2 Licensee represents and warrants to, and covenants with, Broker that:

(a) This Agreement has been duly executed and delivered by Licensee, and constitutes its valid and binding obligation, enforceable against it in accordance with its terms, except as limited by laws affecting the enforcement of creditor's rights generally or equitable principles. Licensee has all necessary corporate power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action of Licensee.

(b) No consent of any other party and no consent, license, approval or authorization of, or exemption by, or filing, restriction or declaration with, any governmental authority, bureau, agency or regulatory authority, is required in connection with the execution, delivery or performance by Licensee of this Agreement, except that Licensee is required to file a copy of this Time Brokerage Agreement with the FCC.

(c) The execution, delivery and performance of this Agreement will not violate any provision in Licensee's articles of incorporation or by-laws, nor will it constitute or result in the breach of any term, condition or provision of, or constitute a default under, or accelerate or permit the acceleration of any performance required by, any agreement or other instrument to which Licensee is a party or by which any part of its property is bound, or violate any law, regulations, judgment or order binding upon Licensee.

(d) No proceeding is pending or, to the knowledge of Licensee, threatened against Licensee before any court, governmental agency or arbitral tribunal that would enjoin or prohibit, or which otherwise questions the validity of, any action taken by Licensee or to be taken in connection with this Agreement.

(e) During the Term of this Agreement, Licensee will hold all licenses and other permits and authorizations necessary for the operation of the Station, and such licenses, permits and authorizations are and will be in full force and effect throughout the Term of this Agreement. There is not pending, or to Licensee's knowledge, threatened, any action by the FCC or by any other party to revoke, cancel, suspend, refuse to renew or modify adversely any of such licenses, permits or authorizations. Licensee is not in violation of any statute, ordinance, rule, regulation, policy, order or decree of any federal, state or local entity, court or authority having jurisdiction over it or the Station, which would have an adverse effect upon Licensee, its assets, the Station or upon Licensee's ability to perform this Agreement. Licensee shall not take any action or omit to take any action which would have an adverse impact upon Licensee, its assets, the Station or upon Licensee's ability to perform this Agreement. All reports and applications required to be filed with the FCC or any other governmental body during the Term of this Agreement will be

filed in a timely and complete manner. Licensee has, and throughout the Term of this Agreement will maintain, good title to, or rights by license, lease or other agreement to use, all of the assets and properties used in the operation of the Station. During the Term of this Agreement, Licensee shall not dispose of, transfer, assign or pledge any of such assets and properties, except with the prior written consent of Broker, if such action would adversely affect Licensee's performance hereunder or the business and operations of Licensee or the Station permitted hereby.

23. Modification and Waiver.

No modification or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Parties, and then such waiver and consent shall be effective only in the specific instance and for the purpose for which given.

24. Delay in Exercise of Remedies: Remedies Cumulative.

No failure or delay on the part of Licensee or Broker in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Licensee and Broker herein provided are cumulative and are not exclusive of any right or remedies which they may otherwise have.

25. Construction.

This Agreement shall be construed in accordance with the internal substantive (that is, without reference to conflict of) laws of South Carolina, without regard to its principles of conflicts of laws, and the obligations of the Parties are subject to all Federal, state or municipal laws or regulations now or hereafter in force and to the regulations and policies of the FCC and all other governmental bodies or authorities presently or hereafter duly constituted. The Parties believe that the terms of this Agreement meet all of the requirements of current FCC policy for time brokerage agreements for radio stations and agree that they shall negotiate in good faith to meet any FCC concern with respect to this Agreement if they are incorrectly interpreting current FCC policy or if FCC policy as hereafter modified so requires. If the Parties cannot agree to a modification or modifications deemed necessary by either Party to meet FCC requirements, the termination provisions of Section 19 above shall apply. The Parties further agree that they will make all required filings with the FCC with respect to this Agreement.

26. Headings.

The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

27. Successors and Assigns

Neither Party may assign its rights or obligations hereunder to another party without the advance written consent of the other Party provided, however, that: (i) upon notice to Licensee, Broker may assign its right under this Agreement to a newly formed affiliate or subsidiary of Broker, provided such affiliate or subsidiary is controlled by or under common control with Broker, and any Party's rights to indemnification under Article 17 hereof will inure to the benefit of and be enforceable by any successor-in-interest, by merger or consolidation. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors or assigns.

28. Counterpart Signatures

This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the Parties notwithstanding that the Parties are not signatory to the same original or the same counterpart.

29. Notices

All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by hand, by courier (including nationally-recognized overnight delivery service) or sent by registered or certified mail, first class mail, postage prepaid, or by facsimile with receipt confirmation and a follow-up copy sent by nationally-recognized overnight delivery service on the same day as such facsimile, addressed as follows:

If to Licensee: Gresham Communications, Inc.
1717 Wappoo Road
Charleston, South Carolina
Attention: Mr. William Saunders
Tel: 843-763-6330
Fax: 843-

If to Broker: Caswell Communications, Inc.
C/o The Aldoe Group Ltd.
140 Broadway, 46th Floor
PMB 46002
New York, New York 10005
Tel: 917-853-0707
Fax: (212) 858-7666

or such other address with respect to either Party as such Party may from time to time specify (as provided above) to the other Party. Any such notice, demand or communication shall be deemed to have been given:

(a) if sent by first class mail, as of the close of the third business day following the date so mailed;

(b) if personally delivered or sent by overnight courier (with or without prior delivery by facsimile), on the date delivered; and

(c) if faxed; on the date faxed, provided written or verbal confirmation of receipt has been obtained by the sending party.

30. Entire Agreement.

This Agreement and the Asset Purchase Agreement embody the entire agreement between the Parties regarding the subject matter hereof and there are no other agreements, representations, warranties, or understandings, oral or written, between them with respect to the subject matter hereof. No alteration, modification or change of this Agreement shall be valid unless it is embodied in a written instrument signed by both Parties.

31. Severability and Assignment.

If any provision or provisions contained in this Agreement are held to be invalid, illegal or unenforceable, this shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had not been contained herein, provided that the benefits afforded each Party hereunder are not materially changed.

32. No Joint Venture.

The Parties agree that nothing herein shall constitute a joint venture relationship between them. The Parties acknowledge that call letters, trademarks and other intellectual property shall at all times remain the property of the respective Parties and that neither Party shall obtain any ownership interest in the other Party's intellectual property by virtue of this Agreement.

33. Access to Records.

Each of Licensee and Broker agrees to permit the other Party and its agents and representatives access to all books and records relating to the operation of the Station that may be in its possession.

34. Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer on any person other than the Parties and their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

35. Further Assurances.

Subject to the terms and conditions herein provided, each of the Parties hereto agrees to use its commercially reasonable efforts to take or cause to be taken all such further actions, and to do, or cause to be done, all things necessary, proper or advisable in order to fully effectuate the purposes, terms and conditions of this Agreement.

36. Certifications.

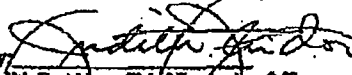
Licensee, by the signature of its undersigned authorized representative, certifies that it maintains and will continue to maintain ultimate control over the Station's facilities, including specifically, control of the Station's finances, personnel and programming. Broker, by the signature of its undersigned authorized representative, certifies that the arrangement provided for herein complies with the provisions of Section 73.3555 of the FCC's Rules, 47 C.F.R. Section 73.3555.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

GRESHAM COMMUNICATIONS, INC.

By 
William Saunders, Chairman

CASWELL COMMUNICATIONS, INC.

By 
Judith R. Ajapa, Chief Executive Officer

APPENDIX A

1. Broker shall pay a Time Brokerage Agreement signing fee of US\$100.00, as consideration.

2. Broker shall reimburse Licensee for all of Licensee's expenses in the operation of the Station under this Agreement, including but not limited to, the full cost of utilities, salaries, rent, payroll taxes and benefits for certain of Licensee's employees, real and personal property taxes related to the Station, regulatory fees, insurance, and maintenance costs relating to the Station's tower and transmitter site and operating equipment. Such payments shall be made by the 15th of the month following the month in which invoices, receipts or other evidence of the payment of such expenses are presented to Broker.

2. Payments due under this Agreement shall be prorated for partial months.

APPENDIX B

FORM OF PAYOLA AFFIDAVIT

City of _____)
County of _____)
State of _____)

SS:

ANTI-PAYOLA/PLUGOLA AFFIDAVIT

_____, being first duly sworn, deposes and says as follows:

1. He/She is _____ for _____ Position
2. He/She has acted in the above capacity since _____.
3. No matter has been broadcast by Station _____ on frequency _____ for which service, money or other valuable consideration has been directly or indirectly paid, or promised to, or charged, or accepted, by him/her from any person, which matter at the time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person.
4. So far as he/she is aware, no matter has been broadcast by Station _____ on frequency _____ for which service, money, or other valuable consideration has been directly or indirectly paid, or promised to, or charged, or accepted by Station _____ on frequency _____ or by any independent contractor engaged by Station _____ on frequency _____ in furnishing programs, from any person, which matter at the time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person.

Affiant

Subscribed and sworn to before me
this ____ day of _____, ____.

Notary Public

My Commission expires: _____

Attachment B

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is made and entered into this 21st day of April 2002, by and among Gresham Communications, Inc., a Florida corporation ("Gresham"), and WPAL-FM, Inc., a South Carolina corporation ("WFI"), (each a "Seller" and together the "Sellers") and Caswell Communications, Inc., a South Carolina corporation ("Buyer").

WITNESSETH:

WHEREAS, Gresham is the licensee and operator of radio broadcast station WPAL-FM, Ridgeville, South Carolina (the "Station"); and

WHEREAS, WFI owns or has rights to certain equipment and holds certain contract and other rights used in the operation of the Station; and

WHEREAS, William Saunders ("Saunders") is the controlling shareholder and President of each Seller; and

WHEREAS, Judith Aidoo ("Aidoo") is the controlling shareholder and Chief Executive Officer of Buyer; and

WHEREAS, Buyer has entered into an agreement with Klein and Nancy Beach (the "Beaches") to purchase and release all claims and judgments of the Beaches against the property of Sellers; and

WHEREAS, Buyer had previously entered into an option (the "Grant" option) to purchase a certain enforceable judgment of Grant against the real property of WFI used in the operation of the Station and had incurred certain expenses in connection therewith; and

WHEREAS, Buyer agreements with the Beaches have satisfied and released any and all claims and judgments of the Beaches with respect to Sellers and Saunders or assets of Sellers or Saunders; and

WHEREAS, Sellers desire to sell and assign and Buyer desires to purchase and acquire the Station as an on-going business, including the Station's licenses and substantially all of the property and assets of Seller used or useful in the operation of the Station; and

WHEREAS, the licenses issued by the Federal Communications Commission ("Commission" or "FCC") for the operation of the Station may not be assigned to Buyer without the prior written consent of the Commission; and

WHEREAS, Buyer and WFI have entered into a time brokerage agreement (the

"TBA"), as provided in Exhibit A, whereby WFI will make available to Buyer substantially all of the Station's broadcast time for carriage of programming to be provided by Buyer, including commercial advertising;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties do hereby agree as follows:

1. SALE OF ASSETS AND ASSIGNMENT OF LICENSES

At the Closing, and subject to the provisions of Paragraph 2 hereof, Sellers shall sell, assign and transfer to Buyer and Buyer shall purchase from Sellers all of Sellers' assets used or useful in the operation of the Station or the conduct of its business, including the following ("Assets"), free and clear of liens, encumbrances, and other security interests except as specifically provided herein:

A. Tangible Personalty: All the fixed and tangible personal property owned by Sellers, used or useful in the operation of the Station listed in Schedule A hereto, less any property consumed, depleted or otherwise disposed of in the ordinary course of business, and all similar tangible property acquired by a Seller in the ordinary course of business prior to the Closing Date (the "Tangible Personalty").

B. Licenses and Authorizations: All licenses, permits, permissions and other authorizations as listed in Schedule B hereto (including without limitation the use of the Station's call letters) which are issued by the Commission and other governmental agencies and that are associated with the operation of the Station, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Licenses").

C. Agreements, Leases and Contracts: The rights of Sellers under (1) all agreements, leases or contracts, written or oral, listed in Schedule C hereto and all agreements for the broadcast of advertising over the Station in exchange for goods or services other than cash ("Trade Agreements") which are in effect on the Closing Date and which, by notation on Schedule C, Buyer expressly agrees to assume, (2) all contracts for the sale of air time for cash consistent with the Station's customary terms, rates and selling practices that are in effect on the Closing Date, and (3) all contracts entered into by Seller between the date hereof and the Closing Date, to the extent expressly permitted hereunder (collectively, the "Contracts").

D. Intangible Personal Property: Any trademarks, service marks, copyrights, trade names, common law property rights, good will and all other intangible personal property owned by Seller and used by it in connection with the operation of the Station (the "Intangible Property").

E. Records: Such of Sellers' files, logs, and other records relating to the operation of the Station required to be maintained by the FCC and advertising sales records of Seller (the "Records"). Sellers will be permitted to retain or obtain copies of all Records as needed for tax and financial purposes at Seller's cost. If required for tax audits, Sellers will

furnish to Buyer at Buyer's cost copies of all other records Sellers will retain which are reasonably requested by Buyer.

2. ASSETS EXCLUDED

It is understood and agreed that the Assets purchased pursuant to this Agreement shall not include cash on hand, cash equivalents and accounts receivable of Sellers, together with any assets listed on Schedule E hereto.

3. PURCHASE PRICE AND TERMS

A. The purchase price for the Assets (the "Purchase Price") shall consist of the following: (a) the \$60,000 already expended by Buyer for the Grant option, the investigation costs associated therewith and the acquisition of new transmission equipment for the Station (the "Investigation Costs"); (b) all amounts paid by Buyer to the Beaches to satisfy and obtain full and complete release of any and all claims and in judgments against Sellers and Saunders; (c) such amounts owed by Sellers and Saunders to secured and unsecured creditors listed in Schedule F hereto which will be paid by Buyer in order to procure the release of such creditors' claims against the Assets, Sellers and Saunders, not to exceed amounts listed in Schedule F; and; (d) amounts not to exceed those listed in Schedule G in payment of Sellers' legal fees; (e) amounts necessary for the build-out of the Station's Ridgeville construction permit (file no. BPH-990219IM) and its studios; and (f) cash or other assets; provided, however, that the value of the total payment by Buyer shall not exceed \$850,000. The Purchase Price is to be allocated among the Assets in a manner to be agreed upon by the Buyer and Sellers prior to the Closing hereof. Should the parties fail to so agree, then the matter shall be resolved by mutual agreement between Sellers' and Buyer's respective CPA's, or, in the absence of such agreement, shall be submitted to binding arbitration by a CPA to be selected by Sellers' and Buyer's respective CPA's. Buyer shall prepare and file IRS Form 8594 consistent with such allocation in time for Sellers to prepare and submit their income tax forms in a timely manner. Portions of the Purchase Price not paid prior to Closing (with the exception of the cash or assets to be granted to Seller) will be paid before December 31, 2002.

B. Following the Closing, Buyer shall have the right to sell the Station to a third party, and the proceeds of such sale shall be applied as follows: first, any remaining cash or assets to be granted to Seller as part of the Purchase Price as defined in paragraph 3A(f), up to the amount of \$250,000, shall be paid to Saunders; second, Buyer shall be repaid all amounts expended or incurred by Buyer and its principals for "acquisition" costs (Investigation Costs and other items included in the Purchase Price defined in ¶ 3A above), "developmental" costs (expenses for capital improvement and real estate) and "operational" costs (expenditures to cover Station's operational expenses to the extent Station's revenue is insufficient); Buyer will also be entitled to a reasonable allowance for the value of time devoted by Buyer's principals to Station matters (not to exceed the total of \$100,000 per year without Saunders' approval, such approval not to be unreasonably withheld); third, Buyer will receive in addition a one time 100% return on its acquisition and development costs and operational costs as defined above; fourth, Saunders shall receive a payment of an additional \$250,000; fifth, the remaining proceeds shall be divided

between Aidoo and Saunders on the basis of 80% to Aidoo and 20% to Saunders.

E. The Buyer's acquisition, developmental, and operational costs (defined in 3C) (in excess of the \$850,000 referenced in Purchase Price 3(A)) shall be reasonably consistent with broadcast industry standards for similar sized markets as that of Station and the Buyer's records shall be maintained consistent with generally accepted accounting principles. During the term of this Agreement, Seller will be permitted to inspect the monthly financial and operational records of the Station at reasonable times and be entitled to copies of the profit and loss, balance sheet, and other financial statements of the Station at the time such records are prepared.

4. PRORATIONS AND ADJUSTMENTS

All personal property and employment taxes, prepaid insurance premiums (to the extent Buyer assumes such insurance), deposits (including lease deposits), utility charges, contracts to be assigned to and assumed by Buyer, and income and operating expenses of the Station shall be prorated between Buyer and Seller as of the Closing Date. Insofar as feasible, prorations under this paragraph shall be determined and paid on the Closing Date, with a final accounting of prorated items, and the sum due from one party to another pursuant to this proration paid, within sixty (60) days after the Closing Date.

5. EXPENSES

Except as otherwise provided herein, each party shall bear its own legal, engineering and accounting fees and other costs and expenses with respect to the transaction. Recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Sellers to Buyer, if any, will be paid by Seller or Buyer according to prevailing custom in the State of South Carolina. The FCC fee for filing the application described in Paragraph 8 hereof shall be paid one-half by each of Buyer and Sellers.

6. ASSUMPTION OF CERTAIN LIABILITIES

At the Closing Buyer shall assume all of the Contracts which by the terms thereof require the payment of money or the performance of other obligations after 12:01 a.m., Ridgeville, South Carolina time on the Closing Date. Buyer specifically does not assume responsibility for (a) any of Sellers' liens, taxes, debts, accounts payable or contracts other than the Contracts and debts to be paid to creditors under ¶ 3, Purchase Price and (b) any employment contracts to which a Seller or the Station may be a party, severance pay, retirement plans, or similar obligations.

7. FILING OF FCC APPLICATION

Buyer and Sellers agree to proceed no later than ten (10) days from execution hereof to file an application requesting FCC consent to the transactions herein set forth (the

"Application"). The parties agree to prosecute the Application, defend it against challenges and file any amendments or additional information requested by the FCC, all in good faith and with due diligence, such that it may be granted, and such grant may become a Final Order as expeditiously as possible. A "Final Order" shall mean an FCC grant that is no longer subject to review, reconsideration or appeal by the FCC or any court of competent jurisdiction.

9. TERMINATION

This Agreement may be terminated as follows:

A. If the Closing hereunder shall not have occurred within nine (9) months of the date hereof, either Buyer or Sellers may terminate this entire Agreement upon written notice to the other, provided that the party seeking to terminate is not in material default hereunder.

B. If the Commission designates the Application for hearing, either party shall have the option of terminating this Agreement by notice to the other party prior to the commencement of the hearing, provided, however, that the hearing is not a proximate result of the failure of the party seeking to terminate to have prosecuted the Application diligently and in good faith or to have satisfied a Commission request for additional information.

C. Either party may terminate this Agreement if the other shall be in material breach hereof and if the said breach shall not have been cured within ten (10) days of written notice thereof by the party seeking to terminate, provided, however, that if any such breach is not reasonably susceptible of being cured within ten days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable.

10. REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers make the following representations and warranties, all of which have been relied upon by Buyer in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. Organization: Gresham is a corporation duly organized, validly existing, and on or before Closing Date will be in good standing under the laws of the State of Florida, authorized to do business in the State of South Carolina, and has full power and authority to enter into and perform this Agreement. WFI is a corporation duly organized, validly existing, and in good standing under the laws of the State of South Carolina, is authorized to do business in the State of South Carolina, and has full power and authority to enter into and perform this Agreement. Saunders has full power and authority to enter into and perform the Consulting Agreement and Non-Compete Agreements.

B. Authorization: The execution, delivery and performance of this

Agreement have been duly authorized by all of the respective shareholders and directors of Gresham and by all shareholders of WFI, and constitutes a valid and binding agreement of each Seller, enforceable in accordance with its terms.

C. No Contravention: The execution, delivery and performance of this Agreement by Gresham and WFI will not violate any provision of their respective organizational documents and will not result in the breach of, or constitute a default under, or violate any provision of any agreement or other instrument to which a Seller or any of its principals is a party or by which it or they or any of the Assets is bound or affected except with respect to judgments or other matters disclosed in § 3 or elsewhere in this Agreement.

D. Commission Licenses: Schedule B hereto contains a complete list of all the licenses, permits, and other authorizations issued by the Commission, together with any applications therefor pending before the Commission, needed for Sellers' present operation of the Station. Except as set forth in Schedule B, the Licenses are in full force and effect and are free and clear of any restrictions which might limit the full operation of the Station as presently authorized or operated. There are no investigations, proceedings, or material complaints pending or, to the best of Sellers' knowledge after due inquiry, threatened, at the Commission which might adversely affect the business or operations of the Station, other than proceedings of a rule making nature intended to affect substantial segments of the industry generally. Provided however, as Buyer is aware, the Station is currently off-the-air due to damage to its equipment and other circumstances known to Buyer. A request was filed with the FCC for authority to remain silent. Further as set forth in Section 14 of this Agreement, Buyer and Seller will cooperate in returning the Station to operation and may in lieu of use of its current facilities, build the construction permit (BPH-990219IM) facilities and return to on-air operation at the construction permit site.

E. Tangible Personalty: Sellers have good and marketable title to each item of Tangible Personalty and the Fixtures, free and clear of all mortgages, liens, charges or encumbrances, with the exception of those judgments, liens and encumbrances disclosed to Buyers in § 3 or elsewhere in this Agreement. The Tangible Personalty and the Fixtures are suitable for their intended purposes, are in existing "as is" condition and state of maintenance and repair, ordinary wear and tear excepted, and subject to repair and replacement of certain equipment (See § 14 below) permit the Station to operate in its customary manner and in accordance with the Licenses and the Rules and Regulations of the Commission and all other governmental authorities having jurisdiction thereof. The Buyer has inspected and is satisfied with the condition of the Tangible Personalty and Fixtures.

F. Employee Relations: In the conduct of the Station's affairs, to their knowledge, Sellers have complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor including those relating to collective bargaining and other unfair labor practices, wages, hours, discrimination, and the withholding and payment of social security and similar taxes and is not liable for any arrears or penalties relating thereto which would have a material adverse effect on the operations of the Station or which could result in liability to the Buyer following the Closing. Except as may be provided in any TBA agreement between the parties, Sellers shall be solely responsible for, and hold Buyer harmless from, any and all employment compensation, personnel benefits, accrued benefits and bonuses up to 12:01 a.m. on the Closing Date with respect to the operation of the Station. No labor union is certified, or otherwise recognized, as the collective bargaining representative for any of the Station's employees; Sellers have no knowledge of any labor strike, union organizing efforts, equal employment opportunity or discrimination allegation or other employee or labor controversy or dispute pending which could affect Buyer's operation of the Station. Sellers have not promised to any employee of the Station that Buyer will be hiring any such employee or otherwise made any offer of employment on behalf of Buyer and Buyer shall have no obligation to employ any employee of the Station. Sellers shall be fully responsible for all severance and other obligations owing to any of Sellers' employees who are not hired by Buyer at the Closing.

G. Contracts: Schedule C includes all contracts, agreements and commitments which are necessary to or used in Sellers' operation of the Station. All Contracts are valid, binding, and enforceable by Sellers in accordance with their terms. Except due the current off-air status (See ¶ 14) Neither Sellers nor any other party to such Contracts is in material breach or default on any of the Contracts; there is no claim of breach or default by a Seller or any other party thereto, and Sellers have no knowledge of any act or omission which has occurred or which has been threatened which could result in any party to such contract being in breach or default thereof. Sellers will procure the written consent of all contracting parties to the assignment of the Contracts designated as "material" on Schedule C prior to the Closing if such consent is required by the terms of such Contracts.

H. Compliance with Laws; Litigation: Except as otherwise set forth herein, to their knowledge, Sellers have operated the Station in material compliance with all applicable federal, state and local laws. Without limiting the generality of the foregoing, to their knowledge Sellers have timely filed all tax returns, FCC reports and other documents required to be filed by any governmental authority with respect to the Assets or the Station; Sellers have maintained the Station's local public inspection file in full compliance with FCC requirements; and Sellers have not stored, disposed of nor used nor has any knowledge that any other party has disposed of or used, any hazardous substance in a manner that could result in liability for Buyer under any applicable law or regulation. Except as disclosed in this Agreement, there is no judgment outstanding and no litigation, proceeding or investigation of any nature (other than legislation intended to affect substantial segments of the industry as a whole) pending or, to the knowledge of Sellers, threatened which might materially and adversely affect the continued operation or earnings of the Station or materially and adversely affect the enjoyment and use by Buyer of the Assets to be purchased hereunder.

I. Payment of Taxes: As of the Closing Date, Sellers will have paid and discharged (or made adequate provision for) all taxes, assessments, excises and levies which, if not paid, would interfere with Buyer's full enjoyment of the Assets to be conveyed hereunder.

J. Accuracy of Information: No representation or warranty made by Sellers in this Agreement or any information furnished or to be furnished to Buyer or any principal of Buyer in connection with the transactions contemplated herein to Sellers' knowledge contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the information therein not misleading.

11. COVENANTS OF SELLERS

A. Negative: Between the date hereof and the Closing Date or earlier termination of this Agreement, Sellers will not do any of the following without the written consent of Buyer:

(i) Enter into any contract or commitment in relation to the Station's business or employees to which the Buyer will be bound or which will materially adversely affect Buyer's operation of the Station following Closing hereunder, other than (a) cash advertising contracts made in the ordinary course of business or (b) agreements cancelable without penalty prior to the Closing Date;

(ii) Increase the salary, benefits or other compensation payable to any Station employee except to the extent consistent with existing practice;

(iii) Create or assume any mortgage upon or pledge or subject to lien or encumbrance any of the Assets, whether now or hereafter acquired;

(iv) Sell, assign, lease, convey, or otherwise transfer or dispose of any of the Assets, whether now owned or hereafter acquired other than in the ordinary course of business, unless, in the case of the Tangible Personalty, the same are replaced in the normal course of business by assets of at least equal quality and usefulness;

(v) Directly or indirectly attempt to sell, offer to sell, advertise for sale, entertain offers for sale, or otherwise take any steps toward a possible sale of the Station or a significant portion of the Assets to any person other than Buyer or an assignee of Buyer, as permitted hereunder;

(vi) Commence any proceeding seeking protection in

bankruptcy or otherwise, which could have the effect of frustrating a Seller's ability to fully and timely consummate all of the transactions contemplated herein; or.

(vii) Take any action that could have the effect of interfering with Buyer's agreements with the Beaches or which could otherwise frustrate Buyer's ability to fully and timely consummate all of the transactions contemplated herein.

B. Affirmative: Pending the Closing Date, Sellers will:

(i) Give to Buyer, its counsel, engineers, accountants and other authorized representatives, reasonable access during normal business hours to all of the properties, premises, books and records pertaining to the operations of the Station for the purposes of inspection, and to such other properties, premises, books and records of Sellers as are necessary to complete such inspections and audits; provided, however, that all such access shall be scheduled in advance and conducted with due regard for the need of Station personnel to maintain broadcast operations without unreasonable interference;

(ii) Subject only to the TBA, use their best efforts to maintain the present character of the Station and quality of its programs, to preserve the business organization and makeup of the Station, to preserve the Station's present customers and business relations, and otherwise to operate the Station in the normal and usual manner;

(iii) Subject only to the TBA, perform all of the Contracts according to their terms and, if necessary, renew the same, provided, however, that at Buyer's request, Sellers will give protective notices of cancellation with respect to all contracts which Buyer is not to assume;

(iv) Maintain the Tangible Personality to be sold or replacements thereof in their present condition, ordinary wear and tear excepted, and keep in effect all current insurance policies with respect thereto;

(v) Promptly notify Buyer of any unusual or material developments with respect to the business or operations of the Station;

(vi) Remove any and all violations of Commission Rules and Regulations which come to its attention or assume responsibility

ty for the costs of removing same, including the payment of any fines that may be assessed for any such violation; and

(vii) Extend their full cooperation to file and prosecute such applications as Buyer may request to upgrade the facilities of the Station, provided, however, that the grant of any such applications shall not be a condition of this Agreement nor delay the Closing hereunder.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

Buyer makes the following representations, warranties and covenants, all of which have been relied upon by Sellers in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct as of Closing (and which shall apply as of Closing to any assignee of Buyer permitted hereunder).

A. Organization: Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of South Carolina and has full power and authority to enter into and perform this Agreement.

B. Authorization: The execution and delivery of this Agreement has been duly authorized by the Board of Directors and Shareholders of Buyer, and constitutes a valid and binding Agreement of Buyer, enforceable in accordance with its terms.

C. No Contravention: The execution, delivery and performance of this Agreement by Buyer will not violate any provision of its Articles of Incorporation or By-Laws nor will result in a breach of, or constitute a default under, the provisions of any agreement or other instrument to which Buyer is a party or by which it or its property is bound or affected.

D. Qualification: Buyer knows of no reason under current law why it would not be found fully qualified by the FCC to become licensee of the Station and to consummate the transactions contemplated by this Agreement. Buyer knowingly shall take no action or engage in any conduct which would materially impair its ability to consummate this transaction. Buyer has the financial resources necessary to pay the Purchase Price hereunder and to fulfill the terms and conditions of this Agreement.

13. CONTROL OF STATION

Nothing contained in this Agreement shall be construed as giving Buyer any right to directly or indirectly supervise or direct the operation of the Station prior to the Closing. Such operation, including complete control and supervision of all programming, shall be the sole responsibility of WFL, other than to the limited extent provided in the TBA (if implemented). Buyer shall, however, be entitled to reasonable inspection of the property, books and records of the Station, as provided in Section 11.B(i) hereof. Effective on the Closing Date

and thereafter, Sellers shall have no control over, nor right to intervene or participate in, the operation of the Station.

14. RISK OF LOSS - DAMAGE TO AND REPAIR OF FACILITIES

In the event of such loss or damage prior to the Closing, the proceeds of, or any claim for any loss payable under, any insurance policy with respect thereto shall be used by Sellers and Buyer to repair, replace, or restore such lost or damaged assets.

15. CONFIDENTIALITY OF MATERIAL

Pending the Closing Date, each of Buyer and Sellers and their respective employees, representatives and agents will maintain the confidentiality of the information and materials delivered to them or made available for their inspection by the other party pursuant to this Agreement, except where such information, schedules, and other documentation are required to be filed with the Commission in connection with the Application. If for any reason the transaction is not consummated and does not close, each of Buyer and Sellers will cause their respective employees, representatives and agents to return to the other party all such materials in their possession and will continue to preserve the confidentiality of all such information.

16. CLOSING DATE AND PLACE

The Closing Date and time shall be fixed by Buyer by giving at least five (5) days' written notice thereof to Sellers. Unless extended by mutual written consent of Buyer and Sellers, the date of Closing shall no less than ten (10) days after FCC grant of the Application nor, at Buyer's sole option, more than ten (10) days after FCC grant of the Application becomes a Final Order. The Closing shall take place at the Station or at such other location as the parties may mutually agree.

17. CONDITIONS OF CLOSING - SELLERS' OBLIGATIONS

The obligations of Buyer under this Agreement are, at Buyer's option, subject to compliance by Sellers with each of the following terms and conditions at or prior to the Closing Date:

A. Status of Station and Business: The Station shall be operating in compliance with all parameters listed on the construction permit (BPH-990219IM) or pursuant to special temporary authority, unless the efforts (See ¶ 14) of the parties preclude such operations by Closing Date;

B. Commission Consent: The Commission shall have granted the Application and, should Buyer so request, such approval shall have become a Final Order;

C. Consents: Sellers shall have obtained required written consent(s), if any, to the assignment of all Contracts designated as material in Exhibit C and delivered such consents to Buyer along with true copies of all said Agreements and WFI shall have delivered the written consents (in the form of corporate resolutions or otherwise) of all WFI shareholders to the transactions contemplated herein;

D. Instruments of Conveyance: Sellers shall have delivered to Buyer the following instruments, all of which shall be in form customary in the State of South Carolina and reasonably satisfactory to counsel for Buyer:

(i) Bills of sale and other instruments of assignment and transfer, covering all the Tangible Personality and Fixtures;

(ii) Assignments and other appropriate instruments assigning the Licenses and other authorizations of the Station and the Contracts to be assumed by Buyer;

(iii) A report of lien searches in all jurisdictions in which the Assets are located demonstrating the absence or release of all liens, encumbrances or security interests of any nature whatever, except for those contemplated hereunder to be paid by Buyer; and

(iv) Such other documents as Buyer shall reasonably request and which are necessary to place Buyer in actual possession and operating control of Station and the Assets being transferred hereunder.

E. Accuracy of Representations - Compliance with Covenants: The representations, warranties and covenants of Sellers contained in Paragraph 10 hereof shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made on that date, and Sellers shall have complied with all the covenants contained in Paragraph 11. Sellers shall provide Buyer with the certificate of their respective presidents so stating under oath.

F. Other Acts: Sellers shall, within reason, have done any other acts which are necessary to effectuate the transactions contemplated herein.

18. CONDITIONS OF CLOSING - BUYER'S OBLIGATIONS

The obligations of Sellers under this Agreement are, at Sellers' option, subject to compliance by Buyer with each of the following terms and conditions at or prior to the Closing Date:

A. Commission Consent: The Commission shall have approved the assignment of the Licenses from Seller to Buyer.

B. Assumption of Agreements: Buyer shall have delivered to Sellers a document, in form and substance reasonably satisfactory to Sellers, whereby Buyer assumes those liabilities and obligations of Sellers under the agreements to be assumed pursuant to Paragraph 6 hereof.

D. Accuracy of Representations: The representations, warranties and covenants of Buyer contained in Paragraph 12 hereof shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made on that date, and Buyer shall deliver to Sellers the certificate of its President so stating under oath.

E. Other Acts: Buyer shall, within reason, have done any other acts which are necessary to effectuate the transactions contemplated herein.

19. SPECIFIC PERFORMANCE

If the Agreement is terminated due to a material default of a Seller then, as an alternative to and in lieu of any other remedies to which it may be entitled, Buyer may seek a decree of specific performance, it being agreed by both Buyer and Sellers that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyer for the loss of an opportunity to acquire the Station on the terms set forth herein.

20. INDEMNIFICATION

Sellers shall indemnify, defend, and hold Buyer harmless against all claims, demands and legal actions and will reimburse Buyer for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the operation of the Station prior to Closing or the material breach by Sellers of any of its representations, warranties or covenants set forth herein, except as provided in the TBA. Buyer shall indemnify, defend and hold Sellers harmless against all claims, demands and legal actions, and will reimburse Sellers for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the operation of the Station after Closing or the material breach by Buyer of any of its representations, warranties or covenants set forth herein. Should any claims covered by the foregoing provisions be asserted against either party, the party being charged shall notify the other promptly and give it an opportunity to defend the same; the parties shall extend reasonable cooperation to each other in connection with such defense.

21. ATTORNEY'S FEES; PREJUDGMENT INTEREST

In the event of commencement of suit by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive such attorney's fees and costs as a court may adjudge reasonable in addition to any other relief granted. Any award of damages following judicial remedy as a result of the breach of this Agreement or any of its provisions shall include, to the extent permitted by applicable law, an award of prejudgment interest from the date

of the breach at the maximum rate of interest allowed by law.

22. PRESERVATION OF BOOKS AND RECORDS

For three (3) years after the Closing, (a) Buyer will preserve the books and records of Sellers delivered pursuant to Paragraph 1.F. hereof, and will allow Sellers reasonable access to them and (b) Sellers will preserve all other books and records relating to the Sellers and the Station (including all tax records) and will allow Buyer reasonable access to them.

23. SURVIVAL

The representations, warranties, covenants, and agreements with respect to title and taxes contained herein and in any certificate or other instrument delivered pursuant hereto shall be deemed and construed to be continuous and shall survive the Closing hereunder and the payment of the purchase price for a period of three (3) years.

24. BROKER/FINDER

Buyer and Sellers hereby mutually represent that there are no finders, consultants or brokers involved in this transaction and that neither Sellers nor Buyer has agreed to pay any brokers', finders' or consultants' fees in connection with this transaction.

25. NOTICES

All necessary notices, demands and requests shall be deemed duly given if mailed by registered or certified mail, postage prepaid, addressed as follows:

Sellers: Gresham Communications, Inc.
WPAL-FM, Inc.
P.O. Box 30999
Charleston, S.C. 29417
Attn: William Saunders, President

Copy to: M. Scott Johnson, Esquire
(which shall not constitute notice) Gardner Carton & Douglas
1301 K Street, NW, East Tower, Suite 900
Washington, DC 20005-3317

Buyer: Carwell Communications, Inc.
140 Broadway, 46th Floor, PMB 46002
New York, NY 10005
Attn: Judith Aidoo, President

and

2045 Spaulding Drive
North Charleston, SC 29406

Copy to:
(which shall not constitute notice)

Vincent Pepper, Esquire
Peter Gutmann
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

26. CONSTRUCTION

This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and to this end only the provisions of this Agreement are declared severable.

27. ASSIGNMENT AND BENEFIT

This Agreement is not assignable by either Buyer or a Seller without written consent of the other, except by Buyer to an entity under common control with Buyer or the principals of Buyer. This Agreement and all of the obligations set forth herein shall be binding upon the parties and their respective heirs, assigns and successors.

28. COOPERATION

Each party hereto agrees to perform such further acts and to execute and deliver such further documents as may be necessary or desirable to effectuate the purposes of this Agreement.

29. TIME OF ESSENCE

Time is of the essence with respect to every provision of this Agreement.

30. WAIVER

No waiver of any right pursuant hereto or waiver of a breach hereof shall be effective unless in writing and signed by the parties waiving such right or breach. No waiver of any right or waiver of any breach shall constitute a waiver of any other or similar right or breach; and no failure to enforce any right hereunder shall preclude or affect the later enforcement of such right.

31. ENTIRE AGREEMENT

This Agreement embodies the entire agreement among the parties and supersedes all prior agreements and understandings among the parties. No attempted change, termination or waiver of any of the provisions hereof shall be binding except by a written instrument signed by the party against which the same is sought to be enforced.

32. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

-- THE NEXT PAGE IS THE SIGNATURE PAGE --

EXECUTED on the day first above written.

ATTEST:

GRESHAM COMMUNICATIONS, INC.



By


William Saunders, President

ATTEST:

WPAL-FM, INC.



By

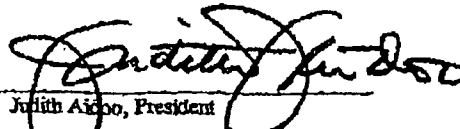

William Saunders, President

ATTEST:

CASWELL COMMUNICATIONS, INC.



By


Judith Aiso, President

GARDNER, CARTON & DOUGLAS

1501 N STREET, N.W.

SUITE 900, EAST TOWER

WASHINGTON, D.C. 20005

(202) 408-7100

FAX: (202) 222-1504

INTERNET: gcdlawdc@gcd.com

WRITER'S DIRECT DIAL NUMBER

M. SCOTT JOHNSON

(202) 408-7122

mjohnson@gcd.com

CHICAGO, ILLINOIS

August 20, 2002

Via First Class Mail

Mr. William Saunders
WPAL Radio Station, Inc.
1717 Wappoo Road
Charleston, SC 29407

Ms. Judith Aidoo
Caswell Communications, Inc.
140 Broadway, 46th Floor
PMB 46002
New York, NY 10005

Re: Draft Closing Documents

Dear Bill and Judith:

Please find enclosed draft closing documents for the WPAL-FM assignment.

If you have any questions, please do not hesitate to contact Jennifer Lewis at (202) 408-7141 or the undersigned. After receipt of any comments, we can easily finalize the documents.

Sincerely,



M. Scott Johnson

MSJ/jal
Enclosure

DC01/383181.1

DRAFT OF GRESHAM, WPAL-FM / CASWELL CLOSING

VII. Acknowledgment:

Seller and Buyer acknowledge and confirm their agreement for the Closing to be concluded, without material variation, in accordance with this Closing Memorandum on August __, 2002. The parties agree that this Closing Memorandum may be signed in counterpart.

**Gresham Communications, Inc.
WPAL-FM, Inc.**

By: _____
William Saunders
President

Caswell Communications, Inc.

By: _____
Judith Aidoo
President

DC01/330720.1

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT is made this ____ day of August, 2002, by and between GRESHAM COMMUNICATIONS, INC., a Florida corporation and WPAL-FM, INC., a South Carolina corporation (hereinafter "Seller"), and CASWELL COMMUNICATIONS, INC., a South Carolina corporation ("Buyer").

WHEREAS, pursuant to an Asset Purchase Agreement dated April 21, 2002 (the "Agreement") by and between Buyer and Seller, Seller has agreed to sell and assign to Buyer and Buyer has agreed to purchase and accept from Seller, for the consideration and upon the terms and conditions set forth in the Purchase Agreement, certain of the assets, properties and rights of Seller.

NOW, THEREFORE, pursuant to the Purchase Agreement and in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

1. **CONVEYANCE.** Seller hereby sells, assigns, conveys, transfers and delivers to Buyer the following described assets and property, each of which is defined in the Purchase Agreement (each of which is a "Purchased Asset") for the Station (as defined in the Purchase Agreement), including but not limited to the following:

- (a) the Tangible Personalty attached hereto as Schedule A;
- (b) the Licenses and Authorizations attached hereto as Schedule B;
- (c) the Agreements, Leases and Contracts attached hereto as Schedule C;
- (d) the Intangible Personal Property attached hereto as Schedule D;
- (e) the Records attached hereto as Schedule E.

2. **ACCEPTANCE.** Buyer hereby accepts the foregoing sale and assignment as of the date hereof.

3. **WARRANTY OF TITLE.** Seller warrants that it has good and marketable title to the Purchased Assets, free from any and all "Liens" (as defined in the Purchase Agreement) except for current personal property taxes not yet due and payable.

4. **FURTHER ACTS.** Seller will from time to time after the date hereof, without further consideration, execute, acknowledge, and deliver all such further acts, assignments, transfers, conveyances, assumptions, and assurances as may be reasonably required to carry out the intent of the Purchase Agreement.

5. **THE PURCHASE AGREEMENT.** This Bill of Sale and Assignment is subject in all respects to the terms and conditions of the Purchase Agreement. Nothing contained in this Bill of Sale and Assignment shall be deemed to supersede any of the covenants, agreements, representations or warranties of Seller or Buyer contained in the Purchase Agreement.

6. **COUNTERPARTS.** This Bill of Sale and Assignment may be executed in one or more counterparts, and all such counterparts shall collectively be deemed one and the same document.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

DRAFT OF GRESHAM, WPAL-FM / CASWELL CLOSING

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale and Assignment as of the date first above written.

"SELLER"

**GRESHAM COMMUNICATIONS, INC.
WPAL-FM, INC.**

Dated: August __, 2002

William Saunders
President

"BUYER"

CASWELL COMMUNICATIONS, INC.

Judith Aidoo
President

DRAFT OF GRESHAM, WPAL-FM / CASWELL CLOSING

Schedule A
TANGIBLE PERSONALITY

DRAFT OF GRESHAM, WPAL-FM / CASWELL CLOSING

Schedule B
LICENSES AND AUTHORIZATIONS

DC01/330720.1

DRAFT OF GRESHAM, WPAL-FM / CASWELL CLOSING

Schedule D
INTANGIBLE PERSONAL PROPERTY

DC01/330720.1

DRAFT OF GRESHAM, WPAL-FM / CASWELL CLOSING

Schedule E
RECORDS

DC01/330720.1

Attachment D

Johnson, M. Scott

From: Judith Aidoo [jfaidoo@hotmail.com]
Sent: Tuesday, March 11, 2003 10:32 AM
To: bill.saunders@psc.state.sc.us; Johnson, M. Scott
Subject: Lessons and Moving Forward ...

Bill and Scott, good morning to you both.

I would like to table any formal conversations between us regarding the way forward re (1) the tower; and (2) any LMA or sale arrangements until I have all options clarified in my own mind. Hopefully, this will be within a week's time, and it should help us to be more efficient and reduce costs.

Bottom line: I have tapped out of all my own savings (and commitment), and I have insufficient confidence in the viability of WPAL, as both a business and a community institution, to borrow any more from my friends and family for WPAL. So, it is imperative that we limit all expenses, as we find a graceful exit to this noble endeavor.

Since we have been in business for a full 12 months, (almost to the day March 10, 2002), I have learned the following lessons:

1. WPAL will likely be a marginal Charleston signal, even with the extra 100 feet. See the original engineering studies down by Culpepper out of NC.

2. We have already spent more than \$5,000 at the local level in legal lobbying fees trying to get the zoning restrictions changed, and we have never even made it to a hearing, since local opposition started to galvanize in the form of a petition. I am loathe to spend any more money at this juncture fighting this point. So, I am examining other options, as defined below.

3. Judging from a conversation I had a few weeks ago with Bill, it became clear to me that insufficient work was done originally regarding WPAL's ability to use an existing Citadel 1000 foot tower a mile away in Ridgeville, our city of license.

I erroneously assumed that someone, any one, would have exhausted all possibilities regarding using an existing tower, rather than go through the heart ache and tremendous expense of building our own. (Right now, the Citadel tower has only one antenna for their country station, and they are excited by the prospect of generating revenue any way that they can...)

Based on recent conversations with Bill, Klein Beach, etc., my assumption is that the only reason we did not proceed with this option in the first instance is that we got "stopped" because we would have to pay for a structural engineering study to see if the Citadel antenna could handle the weight, etc. So, rather than spend probably \$3K for a study, we've paid some \$300K to cut a road to build our own 300 foot tower.

I just got off the phone this morning with the new Citadel General Manager, Reggie Jordan, in Charleston, and I should get an estimate from them shortly on what it may cost for that engineering study. Stay tuned.

4. The competitive landscape in Charleston is bruising and WPAL as a music station, certainly with urban music, is uncompetitive. The best we have done since being on air is to get a 1.2 share. Even if we got the 400 feet and doubled our Arbitron ratings, we still would not earn enough to have a viable business. The radio market in Charleston is over saturated and there is a local recession. We sold \$6K in ads in February, not enough to even cover our electricity, rent and telephone! Forget about salaries.

This is not dramatically different from the old WPAL, since on closer inspection I noted that the revenues generated under Tanya's leadership were more from paid programs than from radio ads.

Matt Fulmer with 880 watt AM makes more money from his unrated station, than

WPAL does with its 25,000 watts...! And ... has only 1 full time employee...!

Bill Saunders has more relationships in Charleston than I will have in 10 lifetimes and the facts reveal that the old WPAL, even with 2 stations, never did more than approximately \$600,000. It would be a minor miracle for us to reach that level of revenues in 3-5 years. Even then, at best, we would do well to squeeze out net profits of 10% of that figure (assuming we paid our bills, including likely funding costs), ie \$60,000 a year, and that would be by divine providence.

If we fail, we will be making losses, and we will be, just as Bill was himself, just one step away from an engineering or business disaster.

And for what? This is not a service to the black community in Charleston.

5. I have learned that having a money losing broadcasting platform is a luxury for the retired wealthy, not for the working class, even privileged working class.

The good that WPAL did and still does for the community is in our talk programming. Right now we rent 2 hours every day on 1480 AM for \$900 a month from Matt Fulmer for David Mack's URBAN EDITION programming, the updated version of his legendary open rap.

WPAL loses \$12,000 a month, even with our dramatically reduced costs, so with what we lose in one month from WPAL, we could fund Open Rap/Urban Edition talk programming that gives African Americans in Charleston their own platform for a full YEAR!!!!

6. Bottom line:

My goal is to sell or merge WPAL in a larger broadcasting group, as soon as possible, ie within the next 15-30 days. Once I get a full idea of our options, I will present them in writing to Bill, with a copy to you Scott, so we can discuss them and we can proceed accordingly.

7. I am proud of our efforts to date to improve and build on the legacy of WPAL. We have worked hard, sacrificed much, and we have put our money where our mouths are.

I surrender fully to whatever God has in store for us going forward. I am confident that we can achieve a soft landing, but come hell or high water, I am unwilling to incur a single red cent more on behalf of the company that is not related to a sale or merge and maximizing the price thereof. Period.

I welcome any assistance in finding buyers or merger partners to add to the 2 or 3 that I am speaking with at present. Since I have, together with my friends and family, invested more than \$900,000, documented by Jerry Gambrell, the old WPAL CPA, I can withstand no more.

Indeed, I think any thing more than simply keeping the lights on is foolish under the circumstances, since even winning is losing: we cannot as a single station or 2 station group, even if we managed to close Matt's AM, be very profitable. A small radio group in this market and in this recession is too great a risk for too little pay off.

Moreover, I see more clearly now than I did a year ago that I do not need to spend \$1 million to create a job for myself, certainly not one as voracious and competitive as this one. So, I surrender...

I will do my best to maximize the value of our asset as quickly as possible, and to pay people off and move on...

To this end, please stay tuned for a presentation from me of options later this week. Thanks in advance, Judith

Attachment E

**1311 Chuck Dawley Blvd/Suite 202
Mount Pleasant, South Carolina 29464
(843) 972-2200**

April 10, 2006

Bob Angsburg, President
WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, CO 80962

Dear Mr. Angsburg,

This is a Letter of Intent ("LOI" or "Letter") for the purchase and sale of the assets of WPAL- FM, licensed to Ridgeville (Charleston) SC (the "Station").

The parties to the LOI are:

Buyer: WAY-FM Media Group, Inc.
P.O. Box 64500
Colorado Springs, CO 80962

Seller: Ms Judith Aidoo
CEO
Caswell Communications, Inc.
2045 Spaulding Drive
North Charleston, SC 29406

Broker: David F. Reeder
American Media Services Brokerage, LLC
9208 Timbercreek Drive
Bonham, TX 75418

Subject to execution of a definitive Asset Purchase Agreement (and satisfaction of terms and conditions to be contained therein including conditions precedent), and such other terms set forth below, Seller agrees to sell and Buyer agrees to buy the licenses, business, assets, and trade names of the Station on terms and conditions as generally described herein.

1. Purchase Price. Buyer agrees to pay the sum of TWO MILLION DOLLARS (\$2,000,000), IN CASH, subject to completion of due diligence by Buyer and the terms and conditions of this Agreement (the "Purchase Price"). The Purchase Price shall be the consideration for the Broadcasting Assets. "Broadcasting Assets" to the extent not specifically excluded in the Buyer's sole discretion, shall include all assets that are used or useful in the operation of the Station, including, but not limited to, all FCC licenses, real estate, equipment, tower sites, RF equipment and other tangible and intangible assets used or useful in the operation of the Station. Seller to pay American Media Services Brokerage, LLC commission of 5%.

2. Liabilities and Contracts. Except as specifically provided by this Agreement or the Asset Purchase Agreement, the Buyer shall not assume any liabilities, contracts or other obligations of Seller. The parties shall negotiate in good faith regarding any contracts which are in place at the time of execution of the Asset Purchase Agreement to the extent that any contracts provide revenue to Buyer after closing and will not otherwise conflict with Buyer's programming on the Station.

3. Asset Purchase Agreement. As soon as possible after the date hereof, and, in any case, within sixty (60) days of the execution of this Letter of Intent, Buyer and Seller will negotiate, prepare, and execute an Asset Purchase Agreement that will reflect in detail the general understanding in principle set out in this Letter. Within ten (10) days of the execution of the Asset Purchase Agreement, the parties will file an appropriate application with the FCC for the assignment and transfer of the station license. Each party will bear its own respective costs incident to the preparation of the Agreement and will split FCC filing fees equally. In addition, the Seller shall file, or cause to be filed, an application with the Federal Communications Commission seeking to move the station's tower location to another location of the Buyer's choice. This filing shall be at the Buyer's sole expense.

4. Due Diligence. The time period between the signing of this Letter of Intent and execution of the Asset Purchase Agreement will be considered the Due Diligence period, during which Buyer will have reasonable access to relevant station records, files, equipment, and other such items and the Real Estate.

5. Equipment. All equipment used and/or useful in the operation of the Stations is now and will at Closing be in good operating condition and suitable for its intended purposes.

Commercial Lease Agreement - Preview
"Agreement") is entered into, this February 16, 2007
by and between:

The Lessor:

Jim French/The Charleston Chronicle of 1111 King Street
Charleston, South Carolina
29403

(Hereinafter "Landlord")

and the Lessee:

Bill Saunders/WPAL 100.9 FM of 2045 Spaulding Dr.
N, Charleston, South Carolina
29405

(Hereinafter "Tenant")

In regards to the Property:

Office Space located at 1109 King Street
Charleston, South Carolina
29403

(Hereinafter "Premises")

The Landlord and Tenant do hereby agree to abide by the
terms set out in this Agreement. The terms of this
Agreement are as follows:

GENERAL PROVISIONS

The Tenant shall use the Premises for the following
activities and for no other purpose: Radio Station.

The parties acknowledge the rented area of the
Premises is 2500 square feet, excluding the exterior
walls.

LENGTH OF AGREEMENT

This Agreement shall begin March 1, 2007 and will
remain in effect until September 1, 2007 unless
renewed or extended pursuant to the terms herein and
shall be based on a Monthly term.

The parties may choose to extend this agreement upon
such terms as may be agreed upon in writing and signed
by the parties at the time of any such extension.

PAYMENT SCHEDULE AND DETAILS

Tenant shall pay to Landlord as Rent the Amount of Six
Hundred Fifty dollars (\$650.00) in lawful money of the
United States; (hereinafter the "Rent"), in advance
without demand on or before 1st of month of each
payment period at 1111 King Street, Charleston South
Carolina, 29403, or at such other place as the

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Commercial Lease Agreement - Provision
Landlord and Tenant agree upon.

Tenant shall pay to Landlord a security deposit in the amount of \$100.00.

the security deposit shall be held and upon termination of the tenancy, shall be applied to pay
Any damages sustained by the Landlord as a result of the Tenant's non-payment of rent;
Any damages to the premises for which the tenant is responsible;
Any unpaid bills which become a lien against the premises due to the Tenant's occupancy;
Any cost of re-leasing premises after a breach of this Agreement by the Tenant.

Should a Tenant's rent payment to the Landlord be returned for insufficient funds, the Tenant shall be liable to the Landlord for \$25.00 as a penalty.

Should a tenants rent payment to the Landlord be 10 days late, the tenant shall be liable to the Landlord for \$20.00 as a penalty.

Tenant shall be responsible for paying all property taxes with respect to Tenant's personal property at the Premises directly to the Landlord.

UTILITIES

The Tenant shall be responsible for the following utilities:

Power: 100%
Gas: 100%
Water: 20%
Heat: 100%
Phone: 100%
Cable: 100%
High Speed Internet: 100%
Satellite television: 100%
Security system: 100%

SERVICES

The Tenant shall be responsible for the following services:

Guards/Security service: 100%

OPERATING EXPENSES

The Tenant shall be responsible for the following expenses:

All business licenses;
All permits;
Insurance;
All other fees related to the business;

TENANT RESPONSIBILITIES

The Tenant shall be responsible for the following:
Maintenance and Upkeep of the premises;
Maintain a clean area in the front and rear of the premises;

Commercial Lease Agreement - Preview

ASSIGNMENT, SUB-LET AND LICENSE

The Tenant shall not assign this Agreement, or sub-let or grant any license to use the Office Space or any part thereof without the prior written consent of the Landlord. Consent by the Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of the Landlord or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at the Landlord option, terminate this Agreement.

IMPROVEMENTS AND REPAIRS

Tenant shall make no alterations or improvements to the Premises without first obtaining the express written consent of Landlord. The Landlord shall also be solely responsible for repairs or improvements to the structure and to the exterior of the building.

INSURANCE

If the Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

Landlord shall maintain fire and extended coverage insurance on the Building and the Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Premises.

SIGNS

Tenant shall not affix any sign, advertisement or notice without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too inconsistent with or inappropriate to the Premises or use of any other Tenant. Tenant shall repair all damage to the Premises resulting from the removal of signs installed by Tenant.

PARKING

Parking is on a first come first serve basis.

BUILDING RULES

Tenant will comply with the rules of the Premises adopted by Landlord and will cause all of its agents, employees, invitees and visitors to do so; all changes to Premises rules will be sent by Landlord to Tenant

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Commercial Lease Agreement - Preview
in writing.

The Tenant agrees that no pets of any kind shall be allowed in the Office Space. Failure to abide by this paragraph will result in immediate eviction without prior notice and forfeiture of all prepaid rent and deposits.

TERMINATION

Landlord may terminate this lease for any one of the following or any other cause permitted by law:

15 days arrears of rent or additional rent
the bankruptcy or insolvency of the Tenant
substantial damage to or destruction of the Premises

any significant willful or negligent damage to the Premises caused by the Tenant or by persons permitted on the Premises by the Tenant
a material change in the use of the Premises by the Tenant in particular (without limiting the generality of this provision), any change that affects the Landlord's building insurance or that constitutes a nuisance
any unauthorized assignment or subletting of this lease by the Tenant
any sale or material change in use of the building in which the Premises are located by the Landlord

AMENDMENT OF AGREEMENT

Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by both parties.

LEGAL FEES

If the Tenant is in breach of this Agreement, and the Landlord finds it necessary to enforce this Agreement, or collect rental or other damages, through an attorney or in a legal action, the Landlord shall be indemnified by the Tenant for any reasonable attorneys' fees and out-of-pocket costs which in any way relate to, or were precipitated by, the breach of this Agreement by the Tenant.

SURRENDER OF PREMISES

At the expiration of the Agreement, the Tenant shall immediately surrender the Premises in the same condition as at the start of the Agreement, reasonable use and wear thereof and damages by the elements excepted; and the Tenant shall return to the Landlord a complete set of keys to the Premises and provide the Landlord in writing, the Tenant's forwarding address. The Landlord may, in the Landlord's sole discretion, elect to keep any of the Tenant's improvements, alterations, or fixtures.

GOVERNING LAW

This Agreement shall be governed and construed in
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EXHIBIT 5

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of	)	
	)	
CHARLES W. CHERRY, II	)	File No. BALH-20070406ADD
RECEIVER FOR	)	Facility ID No. 25374
GRESHAM COMMUNICATIONS, INC.	)	
	)	
<i>Assignor</i>	)	
	)	
CASWELL CAPITAL PARTNERS, LLC	)	
	)	
<i>Proposed Assignee</i>	)	
	)	
<i>For Assignment of License of</i>	)	
<i>Station WPAL-FM, Ridgeville, South Carolina</i>	)	
To: Chief, Media Bureau		

OPPOSITION TO PETITION TO DENY

Charles W. Cherry, II, Receiver for Gresham Communications, Inc. ("Receiver" or "Cherry") and Caswell Capital Partners, LLC hereby jointly submit their Opposition to the petition filed by Gresham Communications, Inc. ("Gresham") requesting denial of the above-captioned application for assignment of the license of Station WPAL-FM, Ridgeville, South Carolina.¹ In support thereof, the following is shown:

I. BACKGROUND

The Petition to Deny represents the most recent effort in Gresham's deliberate campaign to avoid the consequences of its failure to perform on various agreements entered into with

¹ Gresham also filed a petition with the Bureau requesting reconsideration of the grant of an application for involuntary assignment of the license of WPAL-FM to the Receiver (File No. BALH-20070327AEK). Both the Petition to Deny and the Petition for Reconsideration are identically worded in virtually all respects.

Caswell Capital Partners and its affiliates Caswell Communications, Inc. and The Aidoo Group Ltd. ("Caswell"). As we shall show, Gresham and William Saunders, its majority stockholder, have demonstrated an utter contempt for the civil legal system. On numerous occasions, they have acted in contempt of court orders. Indeed, the South Carolina Court, Colleton County, issued an Order attaching the FCC license of WPAL-FM to use as proceeds to pay the outstanding judgment based on Mr. Saunders' perjured testimony stating that the license was the only asset of WPAL-FM held by Gresham. That Order is now the centerpiece of Gresham's attempt to have the FCC reconsider its decision assigning the license of WPAL-FM to the Receiver (File No. BALH-20070327AEK) and to deny the pending assignment application. Caswell is preparing and will be filing with the Court shortly a petition requesting that Mr. Saunders be held in contempt for perjured testimony which he has used as a means of attacking the Commission's grant of the application to assign the license of WPAL-FM to the Receiver.

Prior Acquisition of WPAL-FM's Assets by Caswell

Caswell had earlier contracted with Gresham to purchase the assets of WPAL-FM (see File No. BALH-20020620AAD, granted on August 8, 2002). The assignment of the license of WPAL-FM could not be closed, however, due to a federal court order in an unrelated collection case by ASCAP against Gresham for failure to make payments for another station, WPAL(AM). However, there was a closing of several aspects of the transaction. As indicated in the Whereas and Purchase Price sections of the 2002 Asset Purchase Agreement, Caswell had already expended \$60,000 for the purchase an option to acquire the mortgage against the real property of WPAL-FM and related legal environmental and consulting expenses. Caswell has paid an additional \$830,000 (a) to enter into an agreement with Klein and Nancy Beach to release claims and judgments of the Beaches against the property of WPAL-FM; (b) to resolve certain corporate debts of Gresham and personal obligations of Mr. Saunders; (c) to build out a construction

permit held by WPAL-FM; (d) to purchase equipment for the station; and (e) to defray transactional and legal expenses related to the various payments to date. As a result of such expenditures, Caswell (or an entity controlled by Judith Aidoo, Caswell's sole Member) currently owns the WPAL-FM tower and antenna, the tower building and leases, and most of the station's furniture, fixtures and broadcast equipment.

The Perjured Testimony of Gresham's Majority Shareholder

This matter arose out of a supplemental proceeding to aid in the collection of a money judgment. Caswell is the assignee of a judgment creditor (the Beaches) who, as noted above, obtained a judgment against Gresham Communications of Walterboro, also known as Gresham Communications, Inc. and Gresham Broadcasting, Inc. In an apparent effort to obstruct the attachment of the assets held by Gresham for the operation of WPAL-FM, Mr. Saunders, testified at a Court hearing held on September 20, 2006, that the only asset belonging to Gresham Communications was the FCC license for the station --- "that's all it owns." (Hearing Transcript, at 28). Asked by Caswell's counsel whether Gresham owns "any other assets," Mr. Saunders testified: "No, that's all it owns." (*Id.* At 29). Mr. Saunders' sworn testimony is directly contradicted by his Declaration attached to the Petition to Deny (Attachment 1), in which he declares, under penalty of perjury, that "the WPAL-FM tower, transmission equipment, files, tower, tower land lease, programming rights, and trademark and other intellectual property, all continue to be under the ownership and control of Gresham Communications, Inc."²

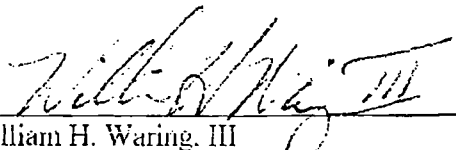
Following the supplemental hearing, the Court entered an Order dated September 22, 2006, providing for the sale of the license of WPAL-FM, along with the associated local public

² Similar to his sworn testimony in a court deposition, Saunders has committed perjury in his Declaration. Caswell, not Gresham, owns the tower, the ground lease for the tower and nearly \$100,000 worth of equipment that is used by WPAL-FM.

CERTIFICATE OF SERVICE

I DO HEREBY certify that on this date I have served the foregoing SECOND SUPPLEMENT TO MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO RECONSIDER and PROPOSED ORDER GRANTING DEFENDANTS MOTION TO RECONSIDER ORDER OF JUNE 6, 2008 by placing a true and correct copy of the same in an envelope, postage prepaid, and depositing same in the United States Mail, to counsel at the address(es) indicated as follows:

W. Andrew Gowder, Jr., Esq.
PRATT-THOMAS EPTING & WALKER, PA
P.O. Drawer 22247
Charleston, SC 29413-2247



William H. Waring, III

July 25, 2008
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH CIRCUIT
COUNTY OF COLLETON	)	CA NO. 92-CP-15-508
NANCY R. BEACH,	)	
	)	
Plaintiff,	)	
v-	)	PLAINTIFF'S MEMORANDUM OF
	)	LAW IN OPPOSITION TO
GRESHAM COMMUNICATIONS OF	)	REDEMPTION AND PETITION FOR
WALTERBORO, INC., a/k/a GRESHAM	)	RULE TO SHOW CAUSE
COMMUNICATIONS, INC.; GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants.	)	

TO: J. Seth Whipper and Lawrence E. Richter, Jr., attorneys for Defendants

Plaintiff submits the following memorandum in opposition to the purported exercise by Defendant Gresham Communication, Inc. (Gresham) of a right to "redeem" its FCC license under an order of the Special Referee entered on February 21, 2007.¹ Plaintiff asserts the following factual and/or legal impediments to Gresham's attempted exercise of this purported right: (1) the Receiver has sole ownership and control of Gresham's assets and property; therefore, only the Receiver has standing to transfer Gresham's funds or, a fortiori, exercise this right; (2) Gresham's right has been extinguished, expired, or waived; (3) Gresham's right is barred by the doctrines of unclean hands, estoppel, and laches; and (4) alternatively, Gresham's tender is insufficient.

In addition, Plaintiff moves the court for a Rule to Show Cause why the Defendant Gresham and its principal Williams Saunders should not be held in contempt of this Honorable

¹ As explained more fully *infra*, the February 21, 2007 order does not provide any right to redeem the license. Rather, at most, Gresham obtained an option to pay the judgment, including all interest, fees, and costs appurtenant thereto, up until the time the FCC approved a transfer of the license.

Court and its various Orders issued in this Supplemental Proceeding, beginning with its Order entered on September 22, 2006. Specifically, Plaintiff contends Gresham and Saunders willfully violated (1) the Special Referee's orders of September 22, 2006, February 21, 2007, March 26, 2007, April 27, 2007, and November 27, 2007, by failing to cooperate in, and actively impeding, the transfer of the FCC license to the successful bidder at the judicial sale of the license; and (2) the Special Referee's orders of March 26, April 27, and November 27, 2007 by failing to disclose or transfer to the Receiver at least \$106,268.78 in assets of Gresham as required by these orders.

Finally, Plaintiff moves the Special Referee to exercise his statutory authority over Gresham's assets and order the Clerk of Court of Colleton County to transfer the \$106,268.78 deposited by Gresham, or someone purporting to act on its behalf, to the Receiver, as trustee of these assets on behalf of the judgment creditor, and allow the Receiver to manage and dispose of these assets pursuant to his order of appointment.

Factual and Procedural Background

On June 2, 1998, Nancy R. Beach obtained a judgment on a promissory note against, inter alia, Gresham Communications, Inc. (June 2, 1998 Judgment). The judgment was for \$56,276.10 and interest ran at a rate of 8% per annum. (June 2, 1998 Judgment). The judgment also included attorneys' fees and costs of \$5,627.00 that run at the legal rate of interest. (June 2, 1998 Judgment).

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. (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). However, the Special Referee tempered this right in the next paragraph of the order, which required Gresham "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) (emphasis added). 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).

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 transfer despite several requests from Caswell. Based on the foregoing, Plaintiff moved for the appointment of a receiver to facilitate the license transfer. 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 and any appurtenant documents, based on Saunders's sworn September 20, 2006 testimony.

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 appropriate property to Caswell. (March 3, 2006 Order ¶4). This order does not provide any option for Gresham to pay the judgment and stay the transfer of the license.

On April 3, 2007, the FCC consented to the transfer of the license from Gresham to the Receiver, and any possible argument that Gresham could still exercise its option to pay the judgment in lieu of the transfer of the license had expired, to the extent this option survived the March 26, 2007 order. (FCC License Approval). On April 27, 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

27, 2007 Order). Despite this order, Gresham continued to oppose the transfer before the FCC. In further 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) (emphasis added). Saunders and Gresham were ordered to turn over these assets within three days of the order. (Nov. 27, 2007 Order p.9).

In addition, Saunders and Gresham were ordered to pay all of Plaintiff'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). This language is completely inconsistent with any alleged redemption or option right. The Court of Appeals dismissed and remitted Gresham's appeal of this order. (Remittitur).

Despite all of the above, someone purporting to act on Gresham's behalf deposited \$106,268.78 with the Clerk of Court of Colleton County, as notice of redemption and tender of payment of the judgment. The same entity filed a notice with the FCC of the pending action, requesting the assignment application be dismissed or given no further consideration. This filing delayed that proceeding further. Not only did these actions violate the November 27, 2007 order requiring Saunders and Gresham to refrain from interfering with the transfer of the license from the Receiver to Caswell, but they also violate all of the Special Referee's orders requiring Gresham, Saunders, and any agents acting on their behalf, to turn over all of Gresham's assets to the Receiver. To the extent this money has been tendered on Gresham's behalf, it is an asset of Gresham and rightfully belongs to the Receiver.

Law/Analysis

I. Only the Receiver may tender property on behalf of Gresham

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.

II. Gresham’s option to pay the judgment and stay the license transfer is extinguished, expired, and waived

In South Carolina, there is no statutory right of redemption following an execution on a judgment. 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.”). Accordingly, Gresham’s only basis for asserting a right to pay the judgment and stay the license transfer is the Special Referee’s order of February 21, 2007. No other order from the Special Referee gives rise to such a right.

The February 21, 2007 order prescribing the right 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 order further compels Gresham to cooperate with the preparation and filing of the application for FCC approval in lieu of appointing a receiver. (Feb. 21, 2007 Order p.3, §2). Importantly, the Special Referee retained jurisdiction to enter "such further orders as are just under the circumstance." (Feb. 21, 2007 Order p.4).

On March 26, 2007, the Special Referee properly exercised this jurisdiction and extinguished any right of Gresham to pay the judgment. Between February 21 and March 26, 2007, Gresham failed to cooperate with the transfer despite repeated attempts by the successful bidder. As a result, the Special Referee appointed a receiver over all of Gresham's assets. (March 26, 2007 Order). This order is completely inconsistent with any continuing right by Gresham to pay the judgment and stay the transfer of the license. As such, the order clearly extinguishes any such right.

Further, on April 3, 2007, the FCC granted the Receiver's application to transfer the license to himself. (FCC License Transfer Approval). Thus, even if Gresham's right under the February 21, 2007 order was not extinguished by the March 26, 2007 order, such right expired after this approval, per the plain terms of the February 21, 2007 order.

Finally, Gresham's conduct between February 21 and March 26 exhibits intent to completely disregard this order and is inconsistent with an intent to exercise a right under the

order. "Waiver is an intentional relinquishment of a known right and may be implied from circumstances indicating an intent to waive." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Id. Accordingly, Gresham waived any right it obtained through the February 21, 2007 order.

III. Gresham's attempt to exercise any option to pay the judgment and stay the license transfer is barred by the doctrines of unclean hands, estoppel, and laches

"[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).

"The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Hubbard v. Beverly, 197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941). With regard to the party estopped, the elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, "or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;" (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. S. Dev. Land & Golf Co., v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993). "As related to the

party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.” Id.

“Laches is an equitable doctrine defined as ‘neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.’” Strickland v. Strickland, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007) (citation omitted). “In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant.” Id.

Here, Gresham and Saunders have sought, from the beginning of this supplementary proceeding, to stall the judicial sale and FCC transfer of the license and other assets of Gresham in satisfaction of the judgment. The earliest evidence of such actions is Saunders’s perjured testimony at the supplemental hearing on September 20, 2006. Since that time, Plaintiff has spent \$104,444.65 in total attorneys’ fees and costs through continued motions, hearings, and other requests for relief from the Special Referee in an attempt to address these actions, not to mention prosecuting three separate appeals. (Affidavit of W. Andrew Gowder, Jr.). Further, Gresham’s actions before the FCC have necessitated hiring special counsel to seek FCC approval of the license transfer, to the tune of \$63,837.75 in attorneys’ fees and costs. (Affidavit of Erwin Krasnow). Moreover, the Receiver has expended at least \$20,000.00 in costs and fees to acquire Gresham’s property and operate its business since his appointment on March 26, 2007. Under these circumstances, Plaintiff has suffered overwhelming prejudice from Saunders’ and Gresham’s improper actions. As a result, Saunders and Gresham should be barred by the doctrines of unclean hands, estoppel, and

laches from asserting 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).

IV. Gresham failed to tender sufficient payment to exercise his option

The February 21, 2007 order provides the appropriate method to calculate a proper tender: The judgment debtor, Gresham, must tender the full amount of the underlying judgment, together with all interest, fees and costs. The judgment includes \$56,276.10 in principal with interest at 8% per annum from June 1, 1998, as well as an award of fees and costs of \$5,627.00, which carries interest at the legal rate of 14% per annum. See S.C. Code Ann. § 34-31-20(B) (Supp. 1998) ("All money decrees and judgments of courts enrolled or entered shall draw interest according to law. The legal interest shall be at the rate of fourteen percent per annum."); Collins Music Co., Inc. v. IGT, 365 S.C. 544, 553, 619 S.E.2d 1, 5 (Ct. App. 2005) ("We rule the fourteen percent (14%) rate applies to all causes of action arising between June 9, 1982 and December 31, 2000"). As a result, Gresham owed \$130,794.83 on the judgment as of June 1, 2007, to say nothing of the interest accruing on the judgment since this time.

Notwithstanding the foregoing, as stated above, Plaintiff has also incurred substantial attorneys' fees and costs in prosecuting this action, which the Special Referee has also ordered be paid as a contempt sanction and part of any exercise of Gresham's option. The total amount of attorneys' fees and costs Plaintiff has expended from September 22, 2006 to the present is \$168,282.40. Despite the plain terms of the February 21, 2007 order requiring these expenses be included in an exercise of the option, Gresham did not tender this amount. Accordingly, Gresham

failed to properly exercise this option. See Ingram v. Kasey's Assocs., 340 S.C. 98, 108, 531 S.E.2d 287, 292 (2000) ("[I]f the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required.").

V. Plaintiff petitions the Special Referee for a Rule to Show Cause why Saunders and Gresham should not be held in contempt for their willful disregard of this court's prior orders

Plaintiff further petitions the court for a Rule to Show Cause why Saunders and Gresham should not be held in contempt of this Honorable Court and its various Orders issued in this Supplemental Proceeding, specifically including its March 26, April 27, and November 27, 2007 orders. Pursuant to section 15-39-490 of the South Carolina Code: "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." In support of this petition, Plaintiff shows the following to the court:

1. The Special Referee's Orders of March 26 and April 27, 2007 compel Gresham and its officers to transfer all of Gresham's assets to the Receiver and to fully and timely cooperate in the transfer of the FCC license to Caswell.

2. The Special Referee's Order of November 27, 2007, compels Saunders and Gresham to transfer all of Gresham's assets to the Receiver and to fully and timely cooperate in the transfer of the FCC license to Caswell.

3. In willful violation of the foregoing, Saunders and Gresham failed to transfer at least \$106,268.78 in Gresham's cash assets to the Receiver.

4. In willful violation of the foregoing, Saunders and Gresham filed a petition for

dismissal of the FCC assignment application before the FCC, which further delayed the approval process transferring the license from Gresham to Caswell.

WHEREFORE, Plaintiff moves the Special Referee to enter an Order requiring Saunders and Gresham to appear and show cause as to why they should not be held in contempt of court and for such other and further relief, including compensatory relief, attorneys' fees, and the forfeiture of the \$106,268.78 in cash assets of Gresham deposited into the court to satisfy the foregoing, as the Special Referee deems just and appropriate.

VI. Plaintiff moves the Special Referee for an Order compelling the Clerk of Court of Colleton County to transfer the funds deposited by Saunders and Gresham to the Receiver for the Receiver's incorporation of these assets into the receivership property

"The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied." S.C. Code Ann. § 15-39-410. The Special Referee's orders of March 26, 2007 and November 27, 2007 unconditionally provide the Receiver with the exclusive right to possession of Gresham's business and property. Despite these orders, Saunders and Gresham have tendered \$106,268.78 in Gresham's assets to attempt to effectuate a right of "redemption." To the extent the provider of these funds purported to deposit them on behalf of Gresham and in exercise of a right belonging solely to Gresham, this money constitutes property rightfully belonging to Gresham. Consequently, Plaintiff requests the Special Referee order these funds transferred to the Receiver for disposition in accordance with his order of appointment.

Conclusion

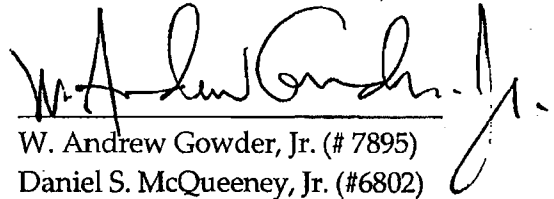
The Receiver has the sole right to any funds or other property belonging to Gresham, and the Special Referee granted the right to tender the amount of the judgment in lieu of sale exclusively to Gresham. As such, any person or entity purporting to deposit funds on behalf of Gresham lacks standing to do so. Furthermore, any right Gresham maintained to "redeem" the FCC license expired on April 3, 2007, when the FCC approved the transfer of the license to the Receiver. Moreover, Gresham's conduct between February 21, 2007 and March 26, 2007 is inconsistent with any right to "redeem" the FCC license, and the Special Referee's order on March 27, 2007 extinguished any such right. In addition, Saunders and Gresham's conduct from September 20, 2007 to the present constitutes a willful disregard for the truth, as well as the Special Referee's orders. Plaintiff expended great sums of money in response and will be prejudiced if Gresham is allowed to "redeem" the license at the final hour. Therefore, the doctrines of unclean hands, equitable estoppel, and laches prevent Gresham from exercising any continuing right to "redeem" the license. Finally, Gresham's tender is insufficient, as a matter of law. Based on the foregoing, Plaintiff respectfully requests the Special Referee deny Gresham's motion to set aside the sale and dismiss its notice of redemption and tender of payment.

Based on Saunders and Gresham's willful disregard of prior court orders, Plaintiff also asks the Special Referee to issue a Rule to Show Cause why Saunders and Gresham should not be held in contempt and ordered to pay sanctions for the misconduct. Additionally, Plaintiff requests the Special Referee exercise his authority over the property of the judgment debtor, Gresham, to issue an order compelling the Clerk of Court for Colleton County to transfer the funds deposited on

behalf of Gresham to its Receiver for disposition according to the terms of his order of appointment.

Respectfully submitted,

PRATT-THOMAS WALKER, P.A.

A handwritten signature in black ink, appearing to read "W. Andrew Gowder, Jr.", is 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 Plaintiff

April 14, 2008
Charleston, SC

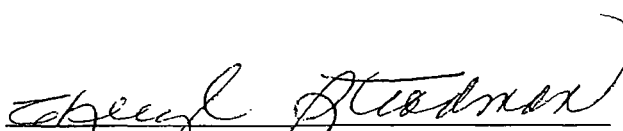
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CA NO. 92-CP-15-508
	)	
NANCY R. BEACH,	)	
	)	
Plaintiff,	)	
v-	)	<u>CERTIFICATE OF SERVICE</u>
	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC.; GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants.	)	

The undersigned hereby certifies that a copy of the Plaintiff's Memorandum of Law in Opposition to Redemption and Petition for Rule to Show Cause in the above-referenced matter has been served upon the parties listed below by hand delivery to the attorneys at the addresses listed below:

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

Lawrence E. Richter, Jr.
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Done this 14th day of April 2008.


Cheryl Steadman
Paralegal to W. Andrew Gowder, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

)
)

IN THE COURT OF COMMON PLEAS
C.A NO. 92-CP-15-508

NANCY R. BEACH,

)
)

NOTICE OF HEARING

Plaintiff,

)
)

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

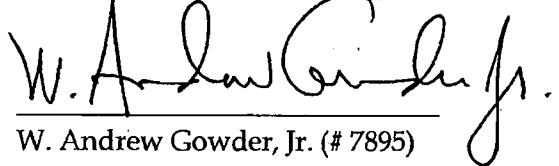
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)

Defendants

TO: J. SETH WHIPPER, ESQUIRE AND LAWRENCE E. RICHTER, JR., ESQUIRE,
ATTORNEYS FOR THE DEFENDANTS:

Pursuant to the Rule 6 (d) of the SCRCF, a hearing on Friday, April 25, 2008 beginning at
2:00 pm before the Honorable Harris Beach at 202 Carn Street, Walterboro, SC.

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 Plaintiff

April 14, 2008
Charleston, SC

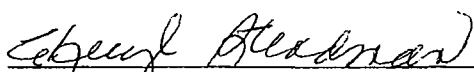
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	CA NO. 92-CP-15-508
	)	
NANCY R. BEACH,	)	
	)	
Plaintiff,	)	
v-	)	<u>CERTIFICATE OF SERVICE</u>
	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC.; GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)	
	)	
Defendants.	)	

The undersigned hereby certifies that a copy of the Notice of Hearing in the above-referenced matter has been served upon the parties listed below by hand delivery to the attorneys at the addresses listed below:

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

Lawrence E. Richter, Jr.
 622 Johnnie Dodds Blvd.
 Mt. Pleasant, SC 29464

Done this 14th day of April 2008.



 Cheryl Steadman
 Paralegal to W. Andrew Gowder, Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	
	)	C.A NO.: 92-CP-15-508
Nancy R. Beach.	)	
	)	
Plaintiff.	)	
	)	
v.	)	DEFENDANTS' RETURN IN
	)	OPPOSITION TO PLAINTIFF'S
Gresham Communications of	)	MEMORANDUM OF LAW AND
Walterboro. Inc.. a/k/a Gresham	)	PETITION FOR RULE TO SHOW CAUSE
Communications. Inc., Gresham	)	
Broadcasting. Inc.. and Rudi H.	)	
Gresham	)	
	)	
Defendants.	)	
	)	

TO: W. Andrew Gowder, Jr. and Daniel S. McQueeney, Jr., attorneys for Plaintiff.

Defendants (hereinafter referred to as "Gresham") submit the following reply to Plaintiff's memorandum in opposition to Gresham's exercise of its right to redeem:

BACKGROUND

On June 2, 1998, Nancy R. Beach obtained a judgment on a promissory note against Gresham. The judgment was for \$56,276.10, with interest ordered at 8% per annum, and it included attorney's fees and costs in the amount of \$5,627.00. (June 2, 1998 Judgment). Plaintiff, as assignee of the judgment creditor, petitioned the court for supplemental proceedings. The Special Referee issued an order finding proceeds from the judicial sale of Gresham's FCC license were subject to attachment. (Sep. 22, 2006 Order). Gresham timely appealed the order of attachment and filed a motion to stay the sale. The appeal was ultimately dismissed.

Subsequently, the Special Referee ordered the judicial sale to go forward, requiring the successful bidder to apply for FCC approval of the assignment of the license and decreeing that the sale would only be final upon the FCC grant of consent to the assignment. (Feb. 21, 2007

Order). The Special Referee then specifically granted Gresham the right to redeem the assets subject to the judicial sale stating "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 at 2). Only the FCC can authorize and approve a license transfer or assignment. No appeal of this order was made.

Subsequent to the February 21st order, the Special Referee issued two further orders, one on March 26, 2007 appointing a receiver to preserve and protect Gresham's business and property, and one on November 27, 2007 ordering, among other things, Gresham to turn over all assets to the receiver and amending the February 21, 2007 order to include, in the judicial sale, additional radio station assets. The November 27th order also found Gresham in contempt for misstating assets and ordered Gresham to pay attorney's fees and costs incurred by the Plaintiff since September 20, 2006 until the entry of the order on November 27, 2007. Neither order extinguished nor otherwise modified Gresham's right of redemption as specifically set forth in the February 21, 2007 order. Neither order modified or otherwise affected the amount due on the underlying judgment.

Pursuant to the February 21, 2007 order explicitly giving Gresham the right of redemption, and prior to FCC approval of assignment of license to the successful bidder, Caswell Communications, Inc. (hereinafter referred to as "Caswell"), deposited \$106,268.78 with the Clerk of Court of Colleton County. This sum constitutes the full amount of the underlying June 2, 1998 judgment, together with all interest at the ordered rate of 8% per annum, and included fees.

ARGUMENT

I. **The February 21, 2007 Order specifically authorizes the right of redemption prior to the FCC's grant of consent to the assignment to the successful bidder.**

The right of redemption is a substantive right. *See* 33 C.J.S. Executions § 265; (Pl. memo at 7). An interlocutory order is immediately appealable if it affects a substantive right. S.C. Code 1976, § 14-3-330. An unappealed and unchallenged order is the law of the case. Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). The South Carolina Rules of Civil Procedure provide that relief from judgment or an order cannot be sought beyond one (1) year after the judgment or order was entered. Rule 60(b)(5), SCRPC. Moreover, it is a fundamental rule of law that failure to challenge a ruling is an abandonment of the issue. McCall v. State Farm Mut. Auto. Ins. Co., 597 S.E.2d 181 (S.C. Ct. App. 2004).

The right to redeem from an execution sale is purely statutory in the absence of an agreement between the interested parties. *See* 33 C.J.S. Executions § 265. Since there is no statutory right of redemption following an execution on a judgment in South Carolina, the right of redemption lies as an agreement between the parties or by authorization of the Court.

Here, in the February 21st order, the Special Referee specifically gave Gresham the substantive right of redemption if it satisfied the June 2, 1998 judgment before the FCC granted an assignment of license to the successful bidder. No objection, challenge or appeal was made to this order, and no subsequent order extinguished or otherwise modified Gresham's right to redeem. Thus, this order remains the law of the case.

Plaintiff argues that Gresham's right of redemption pursuant to the February 21st order expired upon the FCC's License Transfer Approval to the receiver on April 3, 2007. However, the appointment of a receiver works no change in the title or interest in the assets of the

insolvent. Claffly v. Mechanics Bldg. & Loan Ass'n, 197 S.C. 198, 15 S.E.2d 142 (1941). Thus, in this case, there is no distinction between the receiver holding the license and Gresham holding the license. The FCC License Transfer Approval to the receiver on April 3, 2007 did nothing more than give the receiver control of the License to which Gresham still holds title.

Moreover, the plain terms of the February 21st order clearly states that the sale will not be final until the FCC grants consent to the assignment *to the successful bidder*. (Feb. 21st Order at 2) (emphasis added). The Plaintiff's successor-in-interest, Caswell, was the successful bidder at the judicial sale, not the receiver. The receiver was appointed only to preserve and protect Gresham's business and property from waste or destruction. (March 26th Order). Accordingly, the April 3, 2007 License Transfer to the receiver did not extinguish Gresham's right of redemption as set forth in the February 21, 2007 order.

Plaintiff further argues that the subsequent orders issued on March 26, 2007 and November 27, 2007 somehow extinguished Gresham's right of redemption, alleging that the subsequent orders are inconsistent with a continuing right of redemption and that Plaintiff is now prejudiced. However, the Special Referee could have easily extinguished this right in either of these orders by simply stating Gresham no longer has an option of redemption or by amending its February 21st order. The Special Referee did, in fact, specifically amend the February 21, 2007 order in its November 27, 2007 order to include in the judicial sale additional radio station assets owned by Gresham. (Nov. 27th Order at 9-10). Clearly, if the Special Referee intended to extinguish Gresham's right of redemption, this intention would have been stated in its November amendments to the February 21st order. This never happened, and Plaintiff never requested such relief. The Special Referee amended the part of the February order which it felt did not comport with its subsequent orders, implicitly stating that all other aspects of the February order that were

not amended were still in effect, including Gresham's right of redemption. In fact, Gresham would aver that pursuant to the South Carolina Rules of Civil Procedure, any amendments to the February 21st order could only have been made following a timely motion to the court within ten (10) days of the entry of the February 21st order, which also never happened. Rule 59(e), SCRPC. Accordingly, Plaintiff has been on notice of this right since the February 21st order and any expense or fee incurred since that time has been with full knowledge of Gresham's right of redemption.

II. The tender of payment with the Clerk of Court of Colleton County was proper.

The appointment of a receiver places the property in the hands of the court for the benefit of those ultimately found to be entitled to it. Stone v. Mincey, 180 S.C. 317, 185 S.E. 619 (1936). A receiver is an officer of the court and not of the party seeking appointment; he or she is the agency and officer through which the court acts. Kirven v. Lawrence, 244 S.C. 572, 137 S.E.2d 764 (1964). The property in the hands of the receiver is in *custodia legis*; the possession of the property by him is the possession of the court which appointed him. Peurifoy v. Gamble, 145 S.C. 1, 142 S.E. 788 (1928).

On Gresham's behalf, \$106,268.78 was deposited with the Clerk of Court of Colleton County as notice of redemption and tender of payment of the June 2, 1998 judgment. Gresham was authorized by order of the Special Referee to satisfy the full amount of the underlying judgment prior to FCC grant of assignment of license to the successful bidder, Caswell, in order to redeem. The FCC has not granted an assignment of the license to Caswell. Since the receiver is the officer and agent through which the court acts and possession of property by the receiver is the possession of the court which appointed him, it makes no difference whether a deposit in satisfaction of judgment is tendered to the receiver or the court itself.

In its March 26th and November 27th orders, the Special Referee did give the receiver the authority to take possession of all of Gresham's assets. Through these two subsequent orders, the Special Referee had the opportunity to withdraw Gresham's right of redemption, yet he did not do so. These subsequent orders merely required assets in Gresham's possession at the date of the order to be placed in possession of the receiver. (Nov. 27th Order at 8). The tender was properly placed in the hands of the court, through its clerk, as redemption and satisfaction of the underlying judgment in order to ensure that the tender was applied to the underlying judgment amount and not to any contempt fine or any other collateral amount owed separate from the underlying judgment amount. As the notice of redemption and tender of payment did not come from assets owned by Gresham at the time of the November 27th order, it did not violate any court order, nor was it required to go through the receiver. Since the tender satisfies the full amount of the underlying judgment, the FCC assignment application must be withdrawn.

III. The amount deposited with the Clerk of Court of Colleton County satisfies the underlying June 2, 1998 judgment.

The June 2, 1998 order declared a judgment against Gresham "for the sum of \$56,276.10, together with interest at the rate of eight (8%) per annum from June 1, 1998, together with attorneys' fee of \$5,627.00, and the costs of this action." (June 2 Judgment at 2). There is no mention of interest for the attorneys' fees. The order specifically set forth a simple interest rate for the judgment amount, and a separate, non-interest bearing, amount for the attorney fees. The June 2, 1998 order controls the amount due on the underlying judgment in this action.

A note that calls for interest at 8% per annum calls for simple interest only, and it is error to compound interest on the same. Rhodus v. Goins, 129 S.C. 40, 123 S.E. 645 (1924). The judgment order specifically excluded attorneys' fees from gaining interest. Thus, by the plain language of the judgment order, only the judgment amount is to gain interest. The judgment

amount of \$56,276.10, with a simple interest rate of 8% per annum accruing from June 1, 1998, until April 7, 2008, plus \$5,627.00 in attorneys' fees amounts to \$106,268.78. This amount was tendered on Gresham's behalf on April 7, 2008 to the Clerk of Court of Colleton County.

Plaintiff alleges that nearly \$300,000 is required to be paid by Gresham in order to satisfy the judgment, and further alleges that Plaintiff's attorneys' fees and costs expended since September 22, 2006 to the present are to be included in order to satisfy the June 2, 1998 judgment. (Pl.'s memo at 11).

Gresham was held in contempt and is required to pay, as a separate penalty, Plaintiff's attorney's fees and costs incurred since September 20, 2006. Plaintiff alleges they are entitled to attorneys' fees and costs from September 22, 2006 through the present. However, the contempt order includes fees and costs until only November 27th. (Nov. 27th order at 10). Gresham is aware that this amount is outstanding, but contests Plaintiff's calculation. This separate penalty makes no mention of the underlying judgment or the amount owed thereon, and has no effect on the June 2, 1998 judgment that is the basis for Gresham's right of redemption, or the amount owed on that judgment. The right of redemption as created in the February 21st order requires only satisfaction of the underlying judgment, and no subsequent order alters or amends that amount. Accordingly, the June 2nd judgment controls the amount owed for redemption of the underlying debt. As calculated above, the money tendered to the Clerk of Court satisfies the full amount of the underlying judgment in this matter. This amount has been tendered before the FCC grant of assignment of the license to the successful bidder. Therefore, Gresham has properly exercised its right of redemption, and the FCC assignment application must be withdrawn.

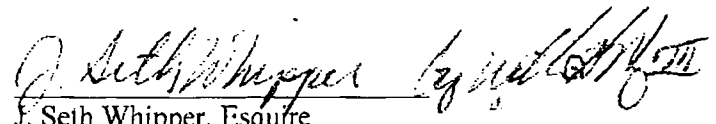
CONCLUSION

For the foregoing reasons, Defendant Gresham respectfully requests the Court to deny Plaintiff's petition for Rule to Show Cause as no court order has been violated, and that the Court issue immediately an Order 1) prohibiting the Receiver from taking any further measures or actions to conclude or consummate any conveyance of the Gresham license, property, or equipment; 2) taking the necessary measures in cooperation with Gresham Communications, Inc. to restore control of the Station to Gresham Communications, Inc.; and 3) returning ownership, possession and/or title to all property, specifically including the FCC license to operate as well as all real estate, leases, tower, and transmission and studio equipment, to Gresham.

Respectfully submitted,

WHIPPER LAW FIRM

By:



J. Seth Whipper, Esquire
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, SC 29415
843/ 740-7777
843/ 740-9108 FAX
www.whipperlaw.com
ATTORNEY FOR DEFENDANTS

THE RICHTER FIRM, LLC

Lawrence E. Richter, Jr.
William H. Waring, III
P.O. Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000
CO-COUNSEL FOR DEFENDANTS

May 15, 2008
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.

INITIAL BRIEF OF APPELLANT

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

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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. 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. 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 judgement. 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 judgement.

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. The Special Referee further ordered that "the judgement 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. 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." 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 re__ interest in a broadcast license is not permitted.

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; the majority owner of Gresham appeared at a Supplemental proceeding without legal counsel; 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. 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

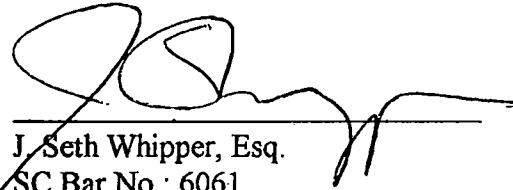
set aside, stayed, and this collection action dismissed.

CONCLUSION

The Order appointing a Receiver is another stage in this action to collect upon a money judgement. 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,

June 27, 2007



J. Seth Whipper, Esq.

SC Bar No.: 6061

WHIPPER LAW FIRM

Post Office Box 70070

North Charleston, SC 29415

843/ 740-7777

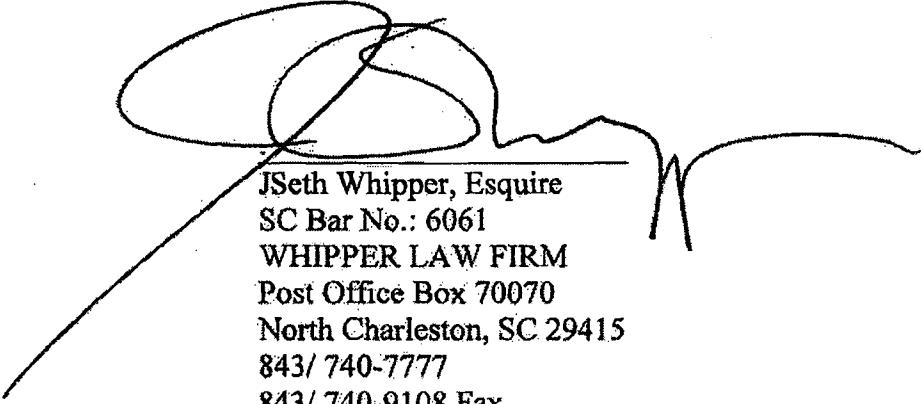
843/ 740-9108 FAX

Attorney for Appellant

Certificate of Appellant

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the other parties and not any other material.

November 12 2010



JSeth 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

Nancy R. Beach Respondent,

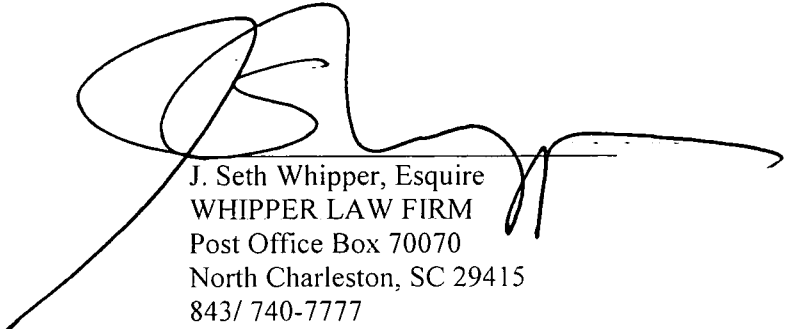
v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellants' Record on Appeal contains all material proposed to be included by the parties and not any other material.

January 10, 2011



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

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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

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SC Court of Appeals

Nancy R. Beach Respondent

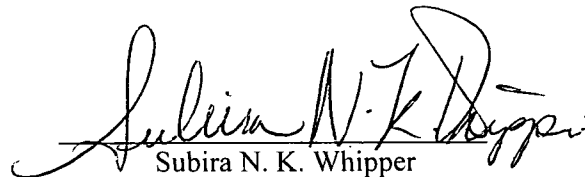
v.

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

CERTIFICATE OF SERVICE

I certify that on November 17, 2010, I served the **RECORD ON APPEAL** for the above-captioned matter on Nancy R. Beach by depositing a copy of it in the United States mail, postage prepaid, 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.

November 17, 2010


Subira N. K. Whipper

ORIGINAL