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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No.: 2016-000341

1634 Main, L.P.

v.

Shirley Hammer, ... Respondent,

v.

Howard Hammer, ... Appellant,

and

Howard Hammer, ... Appellant,

v.

Shirley Hammer, ... Respondent.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

INTRODUCTION

Respondent Shirley Hammer has moved to dismiss this appeal on the alleged ground that it is untimely. The appeal arises out of the failure of Respondent and the lower court to adhere to the affirmed provisions of the lower court's controlling order dated January 21, 2014 including those provisions dealing with the accounting for sale's

proceeds and rental income for an office building on Main Street in Columbia. Several hundred thousand dollars remain in dispute because the Respondent and the lower court did not follow this Court's mandated procedure for the sale and accounting, and not all of the funds have been disbursed. Mr. Hammer filed his notice of appeal on February 24, 2016, less than 30 days after the lower court decision on the record on January 27, 2016 that it would not hear or rule on a timely filed motion to reconsider, and that it would neither require a proper accounting by Respondent nor issue the required order of distribution of funds from the sale of property. The January 27, 2016 hearing transcript is attached hereto as **Exhibit A**.

Respondent has collected approximately \$1,028,000 in sale's proceeds and rental income to satisfy judgments of \$335,932.44, and none of the collected funds has been distributed to Appellant Howard Hammer as required by the January 21, 2014 order. Stated thusly, Respondent has collected almost \$700,000 more than her judgments, has refused to account for the profits (income) made from the property, has asserted that Appellant still owes her almost \$60,000, and now asserts that Mr. Hammer can seek no relief from this court. Applying the information Respondent actually reported to the lower court, Appellant will assert in his appeal that after payment of the judgments and all of Respondent's properly recoverable expenses as permitted by the January 21 Order, that Respondent is entitled to a distribution of approximately \$300,000 from the approximate \$700,000, and the excess funds should be distributed to him. A full and detailed analysis will be provided in Mr. Hammer's brief in the appeal.

PROCEDURAL HISTORY AND FACTS

1. The lower court issued an order on January 21, 2014 (the “January 21 Order”), transferring to Respondent all interests of Appellant Howard Hammer in real property located at 1634 Main St. in Columbia and in personal property consisting of 1634 Main, L.P. and SH5, LLC (the other owners of 1634 Main St.) in order to satisfy judgments which totaled \$335,932.44. That Order is attached as **Exhibit B**.
2. The January 21 Order provided a specific process to sell the transferred property, ensuring that Respondent would be paid for her judgments and her expenses in holding and selling the property.

6. Mrs. Hammer shall pay herself from the sales proceeds:
 - a. Any and all costs incurred in connection with the marketing and sale of the property.
 - b. The total amount of the judgments held by her against Howard Hammer and 1634 Main LP as set forth above. Post judgment interest on the judgments shall stop on the judgments on the execution of this order.

Ex. B, p. 12, para. 6. The order also provided for payment of attorney’s fees and costs, but that part of the order is not relevant to the appeal.¹

3. The January 21 Order required that **after** the sale of the transferred property that Respondent submit an accounting of the sale’s proceeds and income from the property during her ownership. Ex. B, p. 11, para. 4 and p. 12. para. 7. The order further required that after Respondent paid herself for the costs of sale and

¹ The lower court awarded Mrs. Hammer attorney’s fees and costs in the supplementary proceedings of \$55,385.70 against Mr. Hammer. This Court reversed the award without prejudice. Thereafter, the lower court awarded attorney’s fees and costs of \$88,088.81. Although strongly disagreeing with the lower court’s findings and subsequent award, Mr. Hammer fully and timely paid it, thereby discharging this obligation.

satisfied her judgments, the additional funds be escrowed and the lower court issue an order of distribution based upon the post-sale accounting. Ex. B, p.12, para. 7.

4. This specific procedure for sale, accounting, and an order of distribution was affirmed by this Court on November 6, 2014, in Memorandum Opinion No. 2014-MO-045. It is binding on the parties and the lower court, and contrary to Respondent's argument, the procedure is not disputed by Mr. Hammer in this appeal. What is disputed in this appeal is the failure of Respondent and the lower court to carry out the procedure, and that failure was confirmed by the final action of the Court on January 27, 2016 when it decided it would act no further in these cases. Prior to this date, the lower court had not notified appellant that it was taking no further action.
5. Instead of following the affirmed provisions of the January 21 Order, before even contracting for a sale of the property, Respondent filed a motion seeking approval of what she characterized as the accounting. Motion to Approve Accounting attached hereto as **Exhibit C**.
6. In her motion to approve accounting, Respondent submitted to the lower court as Exhibit A to the motion an unverified and unsubstantiated "breakdown of the judgments and other costs due Shirley from the sales proceeds." (emphasis added) (Ex. C, p. 2, para. 3). Among the questionable entries, but clearly the most glaring, for which Respondent sought approval was \$247,016.50 which was neither a judgment nor a cost of sale nor any other reimbursable item under the

controlling January 21 Order, the breakdown of which Respondent set forth as follows:

Debts due from Howard Hammer to 1634 Main, LP		
Past due rent from Howard Hammer (2/2011 – 1/2014)	\$206,667.48	
Note 1 Due from Howard Hammer	\$ 30,059.93	
Note 2 Due from Howard Hammer	\$ 10,059.93	
Total Debts due from Howard Hammer to 1634 Main, LP		\$247,016.50

Thus, Respondent added almost \$250,000 to the amounts she alleged she was owed by Mr. Hammer and she was entitled to collect under the January 21 Order. In addition, in this accounting Respondent asserted she was owed as a cost of marketing and sale \$77,220 in attorney's fees despite not even having a contract for the sale of the property. Even if such fees were recoverable (which is disputed since they are not a cost of sale or marketing), there was no itemization of or affidavit of reasonableness for Respondent's assertion of entitlement to the amount of legal fees.² In addition to Respondent's request for approval of payment of improper amounts, Respondent sought a ruling that the sale of property was commercially reasonable even though she had not secured a contract for the sale of the property, much less a concluded sale.

7. This appeal contends, in part, that the lower court erroneously approved the premature accounting, including the unauthorized collection of unrelated debt and impermissible and unsubstantiated expenses, by order entered May 29, 2015

² When the property later sold, the closing attorney reasonably billed \$2,500.00. See settlement statement attached to Exhibit H, *infra*.

(**Exhibit D**),³ to which Appellant Howard Hammer timely filed a motion to reconsider (**Exhibit E**). However, the lower court never heard the motion to reconsider and first notified Appellant of its refusal to act when it convened the hearing on January 27, 2016. Thus, the time for appeal was stayed. Rule 2013(b)(1), SCACR. The time for appeal would have run from receipt of written notice of entry of an order granting or denying the motion, but because the lower court refused to rule despite request from both parties to do so, the ruling on the record on January 27 became the dispositive ruling of the lower court and effectively denied the motion from which Mr. Hammer timely appealed.

8. Over a six month period (June 19, 2015 – December 22, 2015) Appellant Howard Hammer notified the lower court of the filing of the motion to reconsider and its need to rule. (collectively **Exhibit F**) Respondent recognized the lower court's obligation to rule on the motion to reconsider when she also requested a ruling by the lower court. (**Exhibit G**)
9. Several months after seeking approval of the premature accounting, Respondent actually contracted for and concluded a sale of the real property in connection with which, on October 2, 2015 she filed another unsworn list of amounts with the lower court which she termed a supplemental accounting. (**Exhibit H**) This document was predicated on the hope of cards of the lower court's order approving the pre-sale unverified accounting, which order was still the subject of Mr. Hammer's motion to reconsider. However, in addition to reiterating the

³ This is the only Order issued by the Court prior to the determination of January 27, 2016 that it lacked jurisdiction to act further, as set forth in paragraphs 12 and 16 below

amounts already erroneously approved by the lower court, Respondent added new items and changed by almost \$50,000 amounts already determined by the lower court (including approximately \$24,000 in additional attorney's fees).

10. The supplemental accounting contained the settlement statement from the sale of the real property. The settlement statement was signed by the parties to the sale of the real property, and the amounts listed therein would not be contested by Mr. Hammer. From the settlement statement, it can be determined that the real property sold for \$825,000, and that Respondent apparently collected approximately \$203,000 in rental income from the property over the period of 20 months following its transfer by the lower court. The settlement statement also showed \$322,936.69 held in escrow after the payment of the judgments and actual closing costs of sale as stated in the settlement statement.
11. Respondent did not, however, file a motion requesting court approval for additions and changes to the originally approved accounting, nor did she seek an order of distribution from the lower court. In fact, the supplemental accounting did not seek any relief. It was effectively a status report to the lower court.
12. In addition to its ruling on January 27, 2016, that it would not hear the motion to reconsider, the lower court determined it would neither issue an order approving the supplemental accounting nor an order of distribution. (Ex. A, January 27, 2016 hearing transcript, p. 20, ll. 1 - 21).
13. Accepting as accurate the information on the real property settlement statement, Respondent collected an estimated One Million (\$1,028,000.00) Dollars to apply

to the payment of her judgments, costs of sale, and maintenance and operating expenses.

14. Under the governing requirements of the January 21 Order, Respondent was obligated to account for the income, assets, and proceeds of sale after the sale. Ex. B, para. 4 and 7. However, Respondent refused to account to the lower court for the actual income from the property. (Transcript of May 12, 2015 hearing, p. 48, ll. 7 – 14 (**Exhibit I**)), and the lower court erroneously relieved her of that obligation. Ex. D, Order Approving Accounting, p. 2. Recognizing the error in her position and the lower court's ruling, Respondent attempted to rectify the matter by glossing over the accounting obligation in the supplemental accounting, but at the same time taking differing and irreconcilable positions. She first contended that she had not received income (even though it was shown on the Settlement Statement). She then stated that income had been used for operations and maintenance, but the settlement statement showed that she was not, in fact, paying significant operating expenses for the real estate such as property taxes of \$44,130.19 (Settlement Statement (ll. 1306, 1307)). Ultimately she asserted that the income was minimal. (Ex. H, Supplemental Accounting, p. 5, para. 14) Even before this Court, in her motion to dismiss, Respondent attempts to obfuscate the income issue. She first asserts not receiving income then acknowledges its receipt by stating that the "majority of income had been used to maintain and operate the building." Motion, p. 4, para. 9. The only accounting for maintenance and operating expenses to be applied to the rental income shows expenses of \$15,953.56, thus, there exists an unaccounted for gap of approximately \$187,000

compared to the estimated rental income. Ex. C, Motion to Approve Accounting at Ex. A, p. 2 to the motion.

15. After the filing of the supplemental accounting, Appellant three times reminded the lower court of its obligation to dispose of the motion to reconsider and to issue an order of distribution, and that several hundred thousand dollars remained in dispute. (Ex. F (letters dated December 11 and 22, 2015) and Ex. A, January 27, 2016 Hearing Transcript, p. 4, l. 1 – p. 5, l. 3; and p. 14, l. 12 – p. 15, l. 14)
16. The lower court ultimately disposed of the motion to reconsider the order approving accounting by determining on the record on January 27, 2016 that it would not rule on the motion. At the same time, it announced that it would not issue an order of distribution as to any money remaining in dispute, and it would not issue orders of any kind because it believed the cases were over and that it lacked jurisdiction. (Ex. A, January 27, 2016 Tr. p. 20, ll. 1-21).
17. Appellant Howard Hammer appeals the order approving accounting (the last written order issued by the lower court), the January 27, 2016, decision of the lower court by which the lower court determined not to rule on Appellant's motion to reconsider the order approving accounting, and the failure of respondent and the lower court to follow the affirmed provisions of the controlling January 21 Order.
18. Appellant is not appealing the January 21 Order as Respondent contends in her motion. Ultimately, Appellant seeks (1) Respondent's compliance with the January 21 Order including a fair and accurate accounting of monies she collected and the recoverable expenses she paid, and (2) an order of distribution which the

lower court was required to issue. These issues on appeal and Appellant's right to seek relief in this Court only became ripe for appeal on January 27, 2016, when the lower court ruled for the first and only time that it would not address the motion to reconsider order approving accounting (thus, effectively denying it) and ruled that it would not issue an order for distribution of money Respondent had collected, as required by the prior January 21, 2014 order. The lower court decided at that time to do nothing further in these cases because it believed it no longer had jurisdiction of the cases.⁴ Until January 27, 2016 with the motion to reconsider pending and the approved costs of sale being in dispute, there was nothing to appeal, or from which to seek relief with this Court. Any such appeal would have been premature. The notice of appeal was filed February 24, 2016, less than 30 days after the decisions made on January 27.

DISCUSSION

Respondent makes three arguments as to the timeliness of the appeal. However, notably missing from her memorandum is any specification of what the final order is in these cases. She contends that the May 2015 order approving accounting (Ex. D) was interlocutory and not appealable. Memorandum at p. 6. In fact, this order was the last

⁴ The lower court never explained how or when it lost jurisdiction. However, during the January 27, 2016 hearing, the lower court adverted to its order awarding attorney's fees to Respondent of \$88,000.81. January 27 Hearing transcript, p. 12. ll. 2-4, Exhibit A hereto. That order was issued on April 24, 2015 and it was titled "Order Granting Motion for Sanctions (Concludes Cases)" and concluded with "This is a final order which concludes these actions for all purposes." Order attached as **Exhibit J**, pp. 1, 22. If, in fact, this order ended these cases, then Respondent's April 29, 2015 motion to approve accounting, the May 29, 2015 order approving accounting, the September 2015 sale, and the supplemental accounting filed October 2, 2015, were all void. Presumably no party is taking this position since each asserts the viability of the January 21, 2014 Order which remained to be followed and implemented after April 24, 2015.

written order in these cases. No further hearings were conducted or decisions rendered until January 27, 2016.

As to Respondent's arguments on the timeliness of appeal, she first argues that the motion to reconsider the order approving accounting did not toll the time to appeal. Second, Respondent contends that Mr. Hammer cannot appeal the lower court's decisions issued on the record January 27, 2016 specifically convened by the lower court to determine if it needed to undertake any further matters in these cases, and advise the parties accordingly.

The May 2015 order approving accounting was the last written order issued by the lower court. A motion to reconsider that order was filed. On January 27, 2016 the court declined to rule on the motion, effectively denying it on that date. Assuming for purposes of discussion that this order was interlocutory, an appeal would then lie when a final order ended the case. Either the order approving accounting was of sufficient finality such that the motion to reconsider tolled the time to appeal under Rule 203(b), SCACR, until the motion was denied, or the cases ended on January 27, 2016 when the lower court issued its decision that the cases were concluded. Under either disposition, the notice of appeal was filed less than 30 days after January 27, 2016.

The cases clearly did not end under Respondent's third argument as to timeliness. Respondent argues that the cases ended when SHE filed a supplemental accounting, not on any order issued by the court. She posits that because she claimed to be owed more than the sale's proceeds of the property that she could unilaterally end the cases. Of course, Respondent's assertion of the amount owed her is based upon, among other things, approximately \$250,000 improperly awarded by the court (§ 6 above), \$187,000

in unaccounted for income above Respondent's reported operating expenses (§ 14 above), and \$101,000 in unrecoverable attorneys' fees (§§ 6 and 9 above, and Ex. H at pp. 4, 5). At the time Respondent filed the supplemental accounting, all of these amounts were in dispute and the subject of, in whole or in part, the order approving accounting (the last written order in the cases) and the yet to be ruled upon motion to reconsider said order.

Respondent's third argument that SHE concluded the cases is a newly adopted position and is diametrically opposed to the position she took in the motion to approve accounting (Ex. C). At page 2, para. 4, Respondent stated (with emphasis added), "A SUPPLEMENTAL ACCOUNTING OF RESIDUAL FUNDS WILL BE SUBMITTED FOLLOWING FINAL CLOSING AFTER AUCTION AND DISBURSEMENT, **FOR FURTHER ACTION BY THIS COURT.**" Thus, Respondent acknowledged the lower court's obligation to approve a post-sale accounting and issue an order of distribution or at least some order ending the case. In fact, since the filing of the supplemental accounting, no order was issued by the court other than the lower court decisions made at the January 27, 2016 hearing. These decisions were the ending of the case at the lower court as there is no other order ending them, and these decisions are included in this appeal as being erroneous.

Despite acknowledging the requirement for the lower court to take further action after she filed a supplemental accounting, Respondent sought no further action by the lower court. Even though reminded by Appellant of its need to issue an order of distribution, and its need to decide the motion to reconsider, the lower court ended the case when it determined on January 27, 2016 that it was issuing no further orders. This

final decision was the event which triggered either parties' right to appeal and seek relief in this court.

Appeals are from "any final judgment, appealable order or decision." Rule 201, SCACR. Appeals are not from a party filing a document with the court, particularly a document which seeks no relief, action or ruling by the lower court as was the case with Respondent's supplemental accounting. The January 27, 2016 decisions of the lower court were the final decisions rendered by the lower court and the right and jurisdiction for this appeal arises from those decisions.

Respondent third argument that she ended the case seeks to take advantage of the lower court's inaction and failure to promptly address the motion to reconsider so that she can swoop in and claim monies to which she assuredly knows she is not entitled. Notification of the failure to address the motion to reconsider and the erroneous decision not issue any further orders in the case, including an order of distribution, occurred on January 27, 2016. Mr. Hammer consistently sought to have the motion heard, but the lower court was unwilling to address the issue between June, 2015 and January 2016. Now, when presented with the chance to claim the entire \$1,028,000 in income and sale's proceeds, Respondent recants her assertion that the lower court needed to take additional action after her October 2015 supplemental accounting.

Respondent misapplies the January 21 Order when she asserts, "The January 21, 2014 order provided for a final order from Judge Strickland only if there were excess proceeds from the sale. Since there were none, and the sale's proceeds did not even pay all amounts due to Shirley, no order was required." This argument fails in three respects.

First, one needs to review Respondent's obligations under the order. After paying herself the judgments and the costs of sale, Respondent "shall escrow any additional funds that remain after the above disbursements, until an accounting can be performed and distributions ordered by the court." Ex. B, p. 12, para. 7. The settlement statement shows the payment of the judgments and the costs of sale with \$332,936.69 remaining in escrow. Therefore, it was Respondent's obligation to seek an order allowing the escrowed funds to be distributed to her, if she felt entitled to it. Instead, she notified this Court that the cases were over. Respondent's Motion, Ex. E. Conversely, Appellant followed the January 21 Order by seeking a ruling on the unresolved accounting matters and an order for distribution, which the lower court refused on January 27, 2016. *See*, Exhibit F, and Ex. A, January 27, 2016 hearing transcript, p. 4, l. 1 – p. 5, l. 3, and p. 13, l. 21 – p. 15, l. 14.

Second, the entire supplemental accounting was predicated on the previous erroneous ruling of the lower court which approved the premature and incorrect accounting. Therefore, until the lower court ruled on the motion to reconsider Respondent's first approved accounting, the supplemental accounting was irrelevant to whether the sale generated any excess proceeds because the recoverable expenses were an undetermined number, and, in fact, have never have been determined by the lower court. At best from Respondent's perspective, once the court effectively denied the motion to reconsider on January 27, 2016, the order approving accounting became an order upon which a supplemental accounting could be based.⁵

⁵ This statement assumes that the motion to approve accounting and the order itself, both of which were filed before an enforceable contract for and sale of the property existed, complied with the procedure from the January 21 2014 Order. Appellant asserts that

Third, the gist and purpose of the January 21 lower court order was for the judge to control matters and decide after the sale who gets paid what amounts. Until January 27, 2016 the parties had no final decision from the lower court that it was not going to fulfill these obligations. Given the lower court's notification to the parties on January 27, 2016, that it would not issue any further rulings in the case, that was the operative date from which an appeal could arise and the date from which this court can and should intercede. This appeal was taken on February 24, 2016, less than 30 days thereafter.

CONCLUSION

Respondent began her motion with her common refrain of Mr. Hammer abusing the judicial system, which, of course, has nothing whatsoever to do with the timeliness of the appeal. She concludes point three of her argument that Mr. Hammer wants to continue to litigate. As to the last point, Mr. Hammer certainly wants compliance with the January 21 2014 order by which the judge was to allocate appropriate distributions of income and sale's proceeds to each party. Every ruling of substance in the order approving accounting is simply erroneous. It was erroneous for the lower court to even entertain the motion prior to the conclusion of a sale. It was erroneous for the lower court to effectively deny the motion to reconsider on January 27, 2016. It is virtually impossible for Respondent to collect over one million dollars to satisfy \$335,000 in judgments and for not a dime of the proceeds to be paid to Mr. Hammer as contemplated in the January 2014 order. Mr. Hammer is forced to litigate. He does not want to litigate. It was Respondent who chose not to present a transparent accounting, and leave \$187,000 in income unaccounted for. It was Respondent who improperly asserted \$250,000 in

aside from any irregularities in the accounting, that neither the motion nor the order complied as no accounting was to be performed or order issued until after the sale.

unrelated, unliquidated and unlitigated claims against the sale's proceeds.⁶ It was respondent who improperly asserted over \$100,000 in legal fees as costs of marketing and sale.

Instead of abusing the judicial system, Mr. Hammer has fully complied with the January 21 Order by paying the subsequently awarded legal fees and costs, and by not interfering with Respondent's sale of the property⁷. He further timely provided a list of his assets to the lower court as required in this Court's November 6, 2014 opinion. Those were the extent of the obligations imposed upon him by the lower court and this Court which arose after his property was transferred to satisfy the judgments.

The context of why it is now necessary for Mr. Hammer to return to this Court is the failure of Respondent and the lower court to fulfill **their** obligations imposed by the January 21 Order. This Court, in affirming *per curiam* the lower court's sale and distribution process as set out in the January 21 Order, had every reason to trust that both Respondent and the lower court would adhere to the safeguards in the order, including the careful guidance of Chief Justice Toal embodied in her comments from the oral argument:

“This is a direction for one of the parties in the action to perpetuate the court's ruling. **To get the property sold and have the proceeds under the control of the court's order in terms of how they are accounted for**

⁶ Even assuming *arguendo* that Respondent could strike out in this rogue fashion to collect unrelated debts, those amounts would have had to be applied toward reduction of the original judgments and associated costs, instead of giving the respondent another huge slice of the proceeds derived from the sale of the real estate. As to that “award” by the lower court, no pleadings were served, no evidentiary hearing was ever noticed, no evidentiary hearing was ever held, and no due process of any kind was afforded to Appellant. The lower court simply perfunctorily signed an order handed up by Respondent's counsel that superadded another \$247,000 to other amounts allegedly owed by the Appellant but never appropriately reviewed and adjudicated by the court.

⁷ Any assertion or implication to the contrary is simply inaccurate.

and how they are ultimately disbursed so now it's not a situation where the receiver has control of the money in the receiver's bank account and can maybe misappropriate it or charge too much money for expenses or whatnot. **Judge Strickland has it very carefully tied up so that the only thing that can be done with the proceeds is to sell the property and then let the judge order exactly what's going to happen with the proceeds** not make the receiver have any kind of judgment call about that.

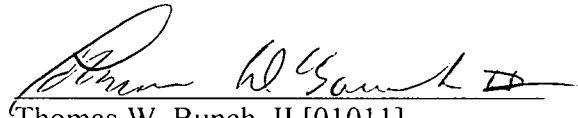
Overall the gist of the Order as I understand it and you tell me if I'm missing something, does not allow anything other than a commercially reasonable sale with proceeds under the control of the judge to decide how much goes and to whom.

How can there be any discretion when you are holding the proceeds and letting the court direct how they are to be disbursed? **All he's talking about, as I understand it, in terms of any expenses is the expenses of sale, commissions, closing expenses and the like. I don't see anything other than that that gives you any discretion in this matter.**"⁸

Unfortunately, Respondent included in her accountings much more than the expenses of sale, commissions, closing expenses and the like, and she failed to properly account for rental income. The lower court then committed legal error by not controlling the proceeds of sale, the income earned by Respondent, and the subsequent distribution of those monies as required by the January 21, 2014 Order and the expectations of this Court. The final erroneous decisions of the lower court in failing to act as required by the January 21 Order occurred on January 27, 2016, and this appeal is timely. The motion to dismiss should be denied.

Signature on following page

⁸ These quotations are not from an official transcript of the oral arguments, but are transcribed by the staff of the undersigned from this Court's online link to the oral argument. See <http://media.sccourts.org/videos/2014-000965.mp4> beginning at approximately 50 minutes, 25 seconds.



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March 14, 2016

Exhibit List

To Appellant's Return to Motion to Dismiss

Exhibit A: January 27, 2016 hearing transcript

Exhibit B: January 21, 2014 Order

Exhibit C: Motion to Approve Accounting (dated April 29, 2015)

Exhibit D: Order Approving Accounting (filed May 29, 2015)

Exhibit E: Motion to Reconsider (filed June 18, 2105)

Exhibit F: Correspondence from Mr. Bunch with the Court requesting a hearing
on Motion to Reconsider

Exhibit G: Correspondence from Ms. Ballard requesting a ruling on the Motion
to Reconsider

Exhibit H: Respondent's Supplemental Accounting (filed October 2, 2015)

Exhibit I: May 12, 2015 Hearing Transcript

Exhibit J: Order Granting Motion for Sanctions (filed April 24, 2015)

EXHIBIT A

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

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

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

Hammer owns, among other assets:

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

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

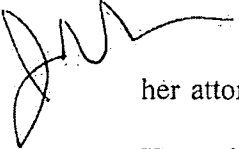
According to the evidence and documents of record, 1634 Main LP owns an unknown percentage of the real estate located at 1634 and 1632 Main Street, Columbia, SC, as described above.

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

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

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

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



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

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

ORDERS

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

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

Defendants' Motion for Summary Judgment is DENIED.

Howard Hammer's Motion for Recusal is DENIED.

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

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

IT IS FURTHER ORDERED:

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

5. Mrs. Hammer shall immediately take such action as she deems necessary or appropriate to market and sell the assets transferred to her in this order in a commercially-reasonable manner (including such treatment as is necessary of the limited partnership and corporate entity for purposes of selling the assets. Mrs. Hammer may use any income from the building for regular maintenance and operating expenses of the real property.

6. Mrs. Hammer shall pay to herself from the sales proceeds:

a. Any and all costs incurred in connection with the marketing and sale of the property;

b. The total amount of the judgments held by her against Howard Hammer and 1634 Main LP as set forth above. Post-judgment interest on the judgments shall stop on the judgments upon execution of this order.

c. The attorney fees and costs awarded herein plus post-judgment interest at the rate established by Order of the Supreme Court dated January 3, 2014.

7. Mrs. Hammer shall escrow any additional funds that remain after the above disbursements, until an accounting can be performed and distributions ordered by this Court.

8. Mrs. Hammer is and has all powers as an owner of the real and personal property conveyed to her in this order, and she may collect rents or other income and take such other actions as may be appropriate to manage, market and sell the real property located at 1634 and 1632 Main Street, Columbia, South Carolina.

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

IT IS SO ORDERED.



Joseph Strickland,
Master in Equity
For Richland County

January 21, 2014

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendant,

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

1634 Main, LP

Defendant,

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

**MOTION TO APPROVE
ACCOUNTING BY
SHIRLEY HAMMER**

Shirley Hammer (hereafter "Shirley") moves for an order approving the within accounting to establish full compliance by her and her agents with this Court's order dated January 21, 2014, in which assets previously held by Howard Hammer were transferred to Shirley Hammer as part of collection of judgments held by her against Howard Hammer and against 1634 Main LP. In support of her accounting, Shirley submits the following:

1. Pursuant to this Court's order of January 21, 2014, Shirley and her agents have actively and aggressively marketed the real estate that was transferred to her for sale to satisfy the judgments she holds and have managed it during this period. In the absence of a contract of sale brought to conclusion, Shirley has listed the property for sale by way

of public auction through McGee Auction Company, LLC. The auction is currently being advertised and will take place on May 13, 2015 at 2:00 p.m. with a minimum bid of \$837,000.00.

2. The minimum bid was arrived at through consultation with the auctioneer and the listing agent, based on an appraisal, as well as activity on the property during the past 15 months since it was offered for sale and the offers that have been made (and in some cases, accepted). Shirley is informed and believes that the minimum bid of \$837,000.00 is a commercially-reasonable minimum bid for a sale of the building by auction.
3. Pursuant to Paragraph 6 of the Court's order, Shirley will receive the sum of \$794,527.27 from the sales proceeds¹. A breakdown of the judgments and other costs due to Shirley from the sales proceeds is attached hereto as Exhibit A.
4. Any remaining proceeds, after payment by the closing attorney of encumbrances (including tax liens), commissions and other costs of sale not yet known, will be held in escrow pending an order of distribution by this Court as required by Paragraph 7 of the Order dated January 21, 2014. A supplemental accounting of residual funds will be submitted following final closing after auction and disbursement, for further action by this Court.

¹ The order of payment of the amounts due as set forth in Exhibit A shall be payable from the sales proceeds as follows: (1) Payment of all amounts due from Howard Hammer to Shirley Hammer under applicable judgments and orders; (2) Next, payment of any and all remaining proceeds for all amounts due from 1634 Main LP to Shirley Hammer under applicable judgments and orders; (3) Next, payment of funds due from Howard Hammer to 1634 Main LP, including rent. Any residual funds from the sales proceeds will be set forth in the supplemental accounting provided to the Court pursuant to Paragraph 4.

5. The within is submitted for the Court's approval and determination that Shirley and her agents have complied with all obligations imposed by the January 21, 2015 including the accounting required therein.

Wherefore, Shirley moves for an order approving the accounting and confirming that she and her agents have fully complied with the obligations imposed by the January 21, 2014 order of the Court, in advance of sale of the real property by public auction, on May 13, 2015, and that the only remaining obligation is to provide a supplemental accounting of residual funds, if any, after the auction is concluded and all real estate, broker and auction fees are paid.



Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

April 29, 2015

ATTORNEY FOR SHIRLEY HAMMER

I, an employee of Desa Ballard, P.A., do
certify that I have this date served a copy of:

Motion to approve Accounting by Shirley
on all opposing counsel by depositing a copy
properly addressed with sufficient First Class
Postage affixed to each, in the United States Mail.
Date: *4/29/15* Signed: *Desa Ballard*

EXHIBIT A**Judgments due to Shirley Hammer from Howard Hammer****(Incl interest as applicable):**

Order of Judge James dated 1/29/2013	\$ 139,011.85	
Order of Judge James dated 6/6/2013	63,513.57	
Bill of Costs as approved by the Supreme Court 06/12/2014	\$3,559.19	
Post Judgment Interest on Bill of Costs (04/30/2015)	\$227.64	
Bill of Costs as approved by the Supreme Court 03/10/2015	\$1,221.44	
Post Judgment Interest on Bill of Costs (04/30/2015)	\$12.37	
Sanctions awarded by MIE 04/24/2015	\$88,088.81	
Total due to Shirley Hammer from Howard Hammer		\$ 295,634.88

Judgments due from 1634 Main LP (Incl. interest as applicable):

Order of Judge James dated 1/29/2013	\$ 26,733.05	
Order of Judge James dated 6/6/2013	106,673.97	
		133,407.02

**Costs of Marketing and Sale of 1634 Main pursuant to paragraph
6A of Order dated 01/21/2014**Costs

B&W Attorney Fees through 04-27-2015	\$ 67,220.00
B&W Attorney Fees (Est. to close)	10,000.00
Aries Advisor's Lease Contract Buyout as of 04-30-2015	6,292.74
Appraisal	1,500.00
Survey	1,612.50
Lock Change (Key Shop)	2,959.50
Security for HH move (Barton)	443.75
Security for HH move (Middleton)	1,000.00
Removal of property left by HH (Got Junk)	1,434.00
New Bank Acct Check Chg	91.27
Insurance on Building (Expires 01/24/2016)	2,522.99
Umbrella Policy (Expires 04/28/2016)	1,196.80

EXHIBIT A

Weels Painting	1,400.00	
Sign A Rama	430.17	
Title Insurance	1,176.60	
Seal Maxx	625.00	
Frank Varn (Landscaping)	2,500.00	
LLC Set up charges	<u>110.00</u>	
Total Costs		\$ 102,515.32
Operating Expenses Unpaid by 1634 Main LP upon transfer <u>now due to Shirley Hammer</u>		
Danville	\$ 907.15	
Central Midlands Cleaning	4,865.00	
Madison Fludd	135.00	
Crawford Electric	350.00	
City of Columbia	210.61	
AT&T	218.09	
ThyssenKrupp	3,068.06	
ADT Security	335.24	
Air Cond .	1,368.00	
Gregory Pest	438.79	
SCE&G	4,057.62	
Total Operating Expenses		\$ <u>15,953.56</u>
Total Cost of Marketing and Sale Due to Shirley Hammer		\$ 118,468.88
Debts due from Howard Hammer to 1634 Main, LP		
Past Due Rent from Howard Hammer (2/2011 - 1/2014)	206,667.48	
Note 1 Due from Howard Hammer	30,059.92	
Note 2 Due from Howard Hammer	<u>10,289.10</u>	
Total Debts due from Howard Hammer to 1634 Main, LP		<u>247,016.50</u>
Total amounts due to Shirley Hammer pursuant to Order of 01/21/2014		<u>\$ 794,527.27</u>

EXHIBIT D



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

Howard Hammer)

Defendant,)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

1634 Main, LP)

Defendant,)

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

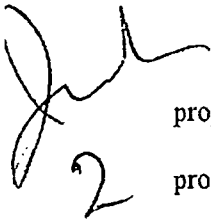
ORDER APPROVING ACCOUNTING

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

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

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

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



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

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

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

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

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

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



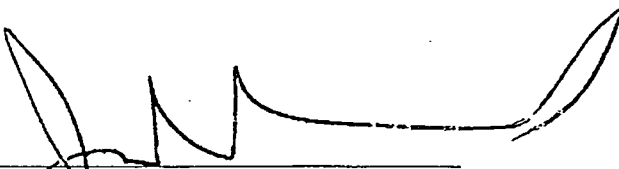
Shirley's accounting accurately sets forth the judgments noted in the January 21, 2014 order, the Supreme Court's judgments entered in both appeals, plus interest on those appeals at the post-judgment rate, expenses she has incurred in paying unpaid and overdue bills for 1634 Main LP that were found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

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

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

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

IT IS SO ORDERED.



Joseph Strickland
Master in Equity

May 13, 2015

EXHIBIT E

) COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2009-CP-40-05911

1

**MOTION TO RECONSIDER
ORDER APPROVING
ACCOUNTING**

6-10-57

) COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2010-CP-40-2889
)

**MOTION TO RECONSIDER
ORDER APPROVING
ACCOUNTING**

1

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

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

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

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

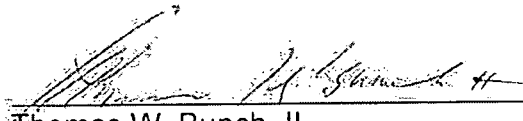
2. Allowing the recovery of new claims by way of motion is contrary to and a denial of due process under state and federal constitutions. No summons and complaint for these claims was filed. No complaint setting forth the basis of the claims was filed. It is improper to grant relief where a complaint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

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

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

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

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



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

June 18, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

1634 Main, LP

Defendant,

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

ORDER APPROVING ACCOUNTING

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

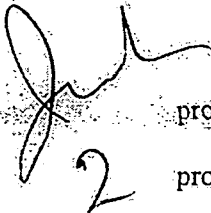
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The parties appeared before me with counsel on May 12, 2015 at a properly-noticed hearing. An auction of the real property is scheduled to be held on May 13, 2015 beginning at 2:00 pm.

EXHIBIT

A

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

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

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

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

Hammer
3

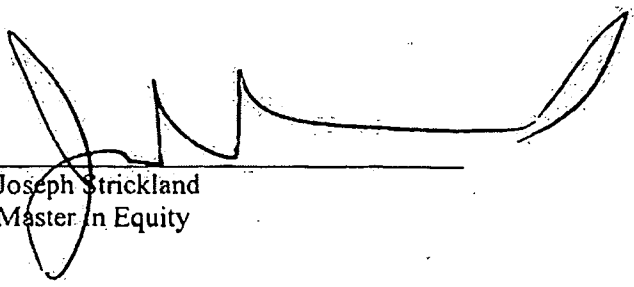
Shirley's accounting accurately sets forth the judgments noted in the January 21, 2014 order, the Supreme Court's judgments entered in both appeals, plus interest on those appeals at the post-judgment rate, expenses she has incurred in paying unpaid and overdue bills for 1634 Main LP that were found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

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

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

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

IT IS SO ORDERED.



Joseph Strickland
Master in Equity

May 13, 2015



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

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

June 12, 2015

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

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

Dear Ms. McBride:

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

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

Sincerely yours,

Beth Cogan, Paralegal
beth@desaballard.com

Enclosure

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

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

Howard Hammer)

Defendant,)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

1634 Main, LP)

Defendant,)

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

**CERTIFICATE OF SERVICE
ORDER APPROVING
ACCOUNTING**

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

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

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

June 12, 2015

Beth Cogan
Beth Cogan, Paralegal

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendants

IN THE COURT OF COMMON PLEAS

J.R. 2009-CP-40-05911
2010-CP-40-02889

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

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

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

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

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



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

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

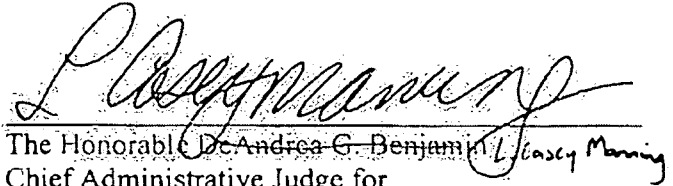
YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING THE FOLLOWING:

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

been made to you within the past five years; and

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

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


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

April 18, 2013
Columbia, South Carolina

) COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case No.: 2009-CP-40-05911

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COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2010-CP-40-2889

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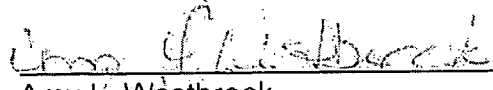
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This is to certify that I, Amy L. Westbrook, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Motion to Reconsider Order Approving Accounting** in the foregoing matters by depositing a copy of same in the United States Mail, postage prepaid, to the following address:

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

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, SC 29205

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



Amy L. Westbrook

EXHIBIT F

1 State of South Carolina

In the Court Of Common Pleas

2 County of Richland

3

4 HOWARD HAMMER,

5 Plaintiff,

6 vs.

) NO. 2009-CP-40-5911

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

9 Defendant.

10

1634 MAIN, LP,

11

Plaintiff,

12

13 vs.

) NO. 2010-CP-40-2889

14

SHIRLEY HAMMER A/K/A SHIRLEY GRACE
15 HIGHTOWER,

16

Defendant.

17

18 vs.

19 HOWARD HAMMER,

20 Additional Defendant on
21 Counterclaim.

22

23 SHIRLEY HAMMER,

24 Plaintiff,

25 vs.

) NO. 2013-CP-40-6898

26 HOWARD HAMMER, 1634 MAIN, LP, ALVIN)
27 HAMMER; SH5, LLC; SH4, LLC; SH3 LLC)
28 HASCI, LLC, D&M CHATEAU, LLC; HEART)
29 OF COLUMBIA, LLC; ALVIN J. HAMMER,)
30 AS PERSONAL REPRESENTATIVE OF THE)
31 ESTATE OF BERNSTEIN HAMMER; JOYE)

1/27/2016

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

6 STATUS CONFERENCE HEARING
7 BEFORE THE HONORABLE JOSEPH STRICKLAND

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

13 REPORTED BY: KATHRYN J. LINDLER

14 _____
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APPEARANCES:

Attorneys for the Plaintiff Howard Hammer:

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

By: Thomas W. Bunch, II, Esquire,

Attorneys for the Defendant Shirley Hammer:

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

By: Desa Ballard, Esquire,

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

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

By: Keith M. Babcock, Esquire,

Attorneys for the Defendant Chateau DeVille:

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

By: Joel M. Deason, Esquire.

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

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

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

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

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

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

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

5 THE COURT: Mr. Babcock.

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

1 would be helpful.

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

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

8 THE COURT: Sure.

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

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

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

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

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

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

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

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

17 THE COURT: Who is the closing attorney?

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

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

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

5 THE COURT: Mr. Bunch.

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

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

22 MR. BUNCH: Those were paid.

23 THE COURT: So that's over with.

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

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

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

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

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

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

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

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

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

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

1 MR. DEASON: Yes, sir.

2 THE COURT: Ms. Ballard.

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

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

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

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

1 should get that money, is that your position?

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

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

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

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

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

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

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

1 the problem all along.

2 THE COURT: Ms. Ballard.

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

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

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

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

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

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

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

23 MS. BALLARD: Yes.

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

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

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

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

12 MS. BALLARD: That sounds right.

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

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

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

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

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

20 THE COURT: Where does this writing come from?

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

23 THE COURT: I did.

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

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

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

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

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

22 MS. BALLARD: That's fine.

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

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

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

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

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

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

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

20 THE COURT: Anything else today?

21 MS. BALLARD: Thank you, Your Honor.

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

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

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

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

11 THE COURT: Why do you need that?

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

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

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

10 MS. BALLARD: We have done that.

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

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

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

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

1 named in that case.

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

3 MS. BALLARD: I'm saying it's moot as to

4 Mr. Hammer. The only thing we obtained out of it was the

5 charging order which I think is sufficient to protect

6 Mrs. Hammer and we don't intend to seek any further relief

7 on that matter.

8 THE COURT: You don't need me to do that. The

9 parties can stipulate to that.

10 MS. BALLARD: That's why I suggested a 40J, but

11 it sounds like there's opposition to that.

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

13 MR. BUNCH: Your Honor, there is opposition,

14 because that case should be dismissed, because they refused

15 to move forward under this Court's order as well as the

16 Supreme Court's order. That's why there's opposition.

17 That's the subject of our motion to dismiss. I don't think

18 that case should -- I mean the problem is these -- we're

19 saying these cases should've ended two years ago and

20 they'll never end, well, by 40J-ing it they're giving

21 themselves the opportunity to come back and gouge more

22 money out of Mr. Hammer. Let's end the cases based on

23 their failure to prosecute the cases under the Court's

24 orders.

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

1 with that?

2 MS. BALLARD: Have a problem with what?

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

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

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

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

21 MS. BALLARD: Thank you, Your Honor.

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

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

CERTIFICATE OF REPORTER

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

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

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 3rd day of February, 2016, at Columbia, Richland County, South Carolina.

Kathryn J. Lindler



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

EXHIBIT B

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

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

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

2014 JAN 21 AM 9:05
RICHLAND COUNTY
FILED
JEANETTE MCLENDEN
C.C.P.

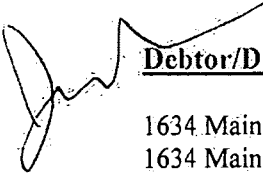
The matter before the court is a hearing in the nature of supplemental proceedings.

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

STATEMENT OF THE CASE

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

Plaintiff holds judgments against the defendant debtors, as follows:



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

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

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

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

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

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

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

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

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

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



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

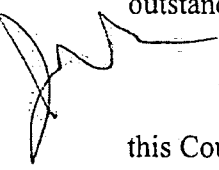
Neither Mr. Hammer nor 1634 Main LP has filed any responses to the written discovery served upon them, as they were required to do by this court's order dated June 10, 2013.

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

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

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

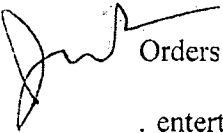
On September 9, 2013, the defendant debtors filed a motion for summary judgment alleging that transfer of the real property is beyond the power of this court, under S.C. Code §15-31-310, *et. seq.* A hearing was scheduled for January 9, 2014 for purposes of addressing all outstanding issues, and notice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



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

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

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

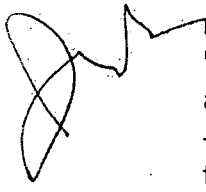


It was for this purpose the Orders of Reference were executed by Judge Manning. The Orders of Reference also specifically gave this court the “authority to enter into final judgment. . . entertain and *rule upon all motions necessary to dispose of this matter, to include but not be limited to:* motions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

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

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

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



BEGINNING at a Bldg. Corner at the westernmost corner of Parcel B whereat said property corners with property now or formerly of Martha W. Fowler, et al, along the eastern margin of the right-of-way of Main Street a distance of 107.4 feet, more or less, from its intersection with Blanding Street, and running along property now or formerly Martha W. Fowler, et al N70°16'01"E - 209.01 feet to a 1/2" rod; thence turning and running along property now or formerly of Lexington State Bank, as follows: S19°27'00"E -17.80 feet to a point; N71°09'40"E -211.75 feet to an "X" on concrete; thence turning and running along the western margin of the right-of-way of Sumter Street S19°25'59"E -42.33 feet to an "X" on concrete; thence turning and running along property now or formerly of James L. Tapp Co., Inc., as follows: S71°06'28"W -211.73 feet to an "X" on concrete; S19°27'00"E -0.77 feet to an "X" on concrete thence turning and running along property now or formerly of Kimbrell's Investment, Co. S70°17'08"W -208.84 feet to an "X" on concrete; thence turning and running along the eastern margin of the right-of-way of Main Street N19°36'31"W -61.03 feet to the POINT OF BEGINNING.

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

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

Tax Map #09014-04-19

Amy Westbrook

From: Thomas W. Bunch, II
Sent: Friday, June 19, 2015 9:28 AM
To: stricklandj@rcgov.us
Cc: 'scottj3@rcgov.us'
Subject: Hammer; Motion to Reconsider Order Approving Accounting
Attachments: Mtn Reconsider Accounting w_ transmittal.pdf

Dear Judge Strickland,

I filed and served the attached motion yesterday. In the event you wish to hear this motion sooner than later, in the near term I am available today, Monday morning and Tuesday.

Yours Truly,

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
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F: 803-744-1545
TBunch@robinsonlaw.com
v-card

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FAX
(803) 744-1545

tbunch@RobinsonLaw.com

June 18, 2015

VIA HAND DELIVERY

the Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street, Rm 205
Columbia, SC 29201-2819

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

**1634 Main, L.P. v. Shirley Hammer a/k/a Shirley Grace Hightower v.
Howard Hammer
Case No.: 2010-CP-40-2889**

Dear Ms. McBride:

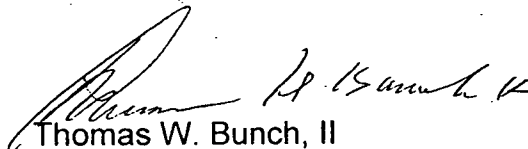
Enclosed for filing please find Howard Hammer's Motion to Reconsider Order Approving Accounting in the referenced matter. Please return a clocked copy with our courier. We are also enclosing a \$25.00 check to cover your fees.

By copy of this letter, I am serving same on opposing counsel and providing a copy to Judge Strickland.

Thank you for your attention to this matter.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Thomas W. Bunch, II

TWB:aelw

Enclosure

cc: The Honorable Joseph M. Strickland (with enclosures) (by hand delivery)
Desa Ballard, Esquire (by mail) (w/enclosure)
Arthur K. Aiken, Esquire (by mail) (w/enclosure)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Howard Hammer,
Plaintiff/Petitioner,
vs.
Shirley Hammer a/k/a Shirley Grace Hightower,
Defendant/Respondent,

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2009-CP-40-05911

MOTION AND ORDER
INFORMATION FORM

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

1634 Main, L.P.,
Plaintiff/Petitioner,
vs.
Shirley Hammer a/k/a Shirley Grace Hightower,
Defendant/Respondent,
vs.
Howard Hammer,
Additional Defendant on Counterclaim/Petitioner

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2010-CP-40-2889

MOTION AND ORDER
INFORMATION FORM

Plaintiff's Attorney:
Thomas W. Bunch, II, Bar No. 1011
Address: PO Box 944
Columbia, SC 29202
phone: (803) 779-8900 fax: (803) 771-9411
e-mail: tbunch@RobinsonLaw.com other:

Defendant's Attorney:
Desa Ballard, Bar No.
Address: 226 State Street
West Columbia, SC 29169
phone: (803) 796-9299 fax: (803) 796-1066
e-mail: desa@desaballard.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

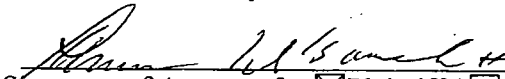
SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider Order Approving Accounting
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

- ☒ Written motion attached
☐ Form Motion/Order --

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 18, 2015
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE _____
☐ Other: _____	CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED - AMOUNT DUE: _____	

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant.

) **COURT OF COMMON PLEAS**
) **FIFTH JUDICIAL CIRCUIT**
) Case No.: 2009-CP-40-05911
)
)
)

) **MOTION TO RECONSIDER**
) **ORDER APPROVING**
) **ACCOUNTING**
)
)
)

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,
Additional Defendant on Counterclaim

) **COURT OF COMMON PLEAS**
) **FIFTH JUDICIAL CIRCUIT**
) Case No.: 2010-CP-40-2889
)
)
)

) **MOTION TO RECONSIDER**
) **ORDER APPROVING**
) **ACCOUNTING**
)
)
)

Pursuant to Rules 59 and 60, SCRCP, Howard Hammer respectfully moves that the Court reconsider its Order Approving Accounting which was filed May 29, 2015 (Attached hereto as **Exhibit A**). The undersigned learned of the filing of this Order on June 8, 2015, and received written notice of its entry from Shirley Hammer's counsel when she served it by mail on June 12, 2015.

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

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

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

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

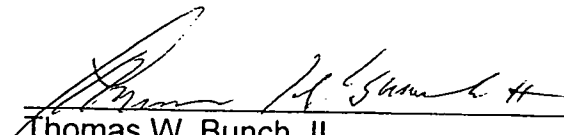
2. Allowing the recovery of new claims by way of motion is contrary to and a denial of due process under state and federal constitutions. No summons and complaint for these claims was filed. No complaint setting forth the basis of the claims was filed. It is improper to grant relief where a complaint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

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

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

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

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


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

June 18, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

1634 Main, LP

Defendant,

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

ORDER APPROVING ACCOUNTING

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

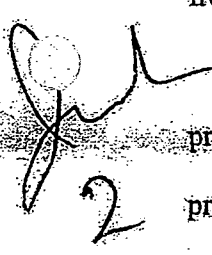
Shirley Hammer (hereafter "Shirley") moves for an order approving an accounting filed and served on April 29, 2015 (filed May 5, 2015) determining she has fully complied with this Court's order dated January 21, 2014, in connection with marketing of real property located at 1634 Main Street in Columbia.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

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

EXHIBIT

A

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

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

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

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

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

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

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

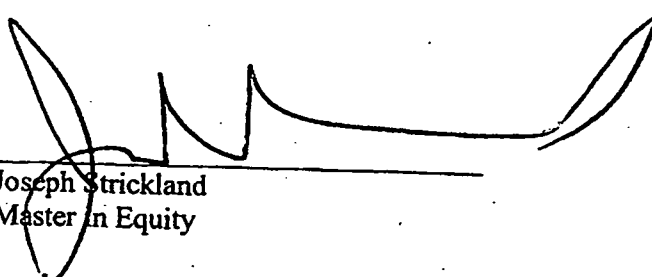
Shirley's accounting accurately sets forth the judgments noted in the January 21, 2014 order, the Supreme Court's judgments entered in both appeals, plus interest on those appeals at the post-judgment rate, expenses she has incurred in paying unpaid and overdue bills for 1634 Main LP that were found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

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

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

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

IT IS SO ORDERED.

Joseph Strickland
Master in Equity

May 13, 2015



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson II

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

June 12, 2015

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

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

Dear Ms. McBride:

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

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

Sincerely yours,

Beth Cogan
Beth Cogan, Paralegal
beth@desaballard.com

Enclosure

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

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

Howard Hammer)

Defendant,)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

1634 Main, LP)

Defendant,)

IN THE MASTER-IN-EQUITY COURT

CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

**CERTIFICATE OF SERVICE
ORDER APPROVING
ACCOUNTING**

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

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

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

Beth Cogan

Beth Cogan, Paralegal

June 12, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Shirley Hammer

Plaintiff,

vs.

Howard Hammer

Defendants

IN THE COURT OF COMMON PLEAS

J.R. 2009-CP-40-05911
2010-CP-40-02889

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

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

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

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

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



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

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

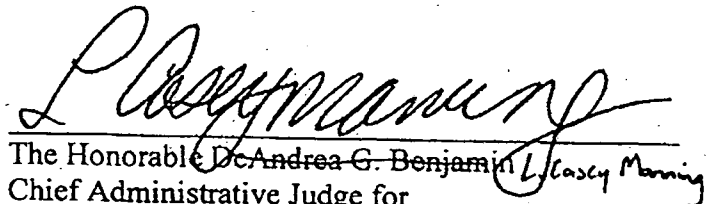
YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING THE FOLLOWING:

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

been made to you within the past five years; and

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

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


The Honorable Dr. Andrea G. Benjamin
Chief Administrative Judge for
Court of Common Pleas, Fifth Judicial Circuit

April 18, 2013
Columbia, South Carolina

**COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2009-CP-40-05911**

Case No.: 2009-CP-40-05911

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2010-CP-40-2889

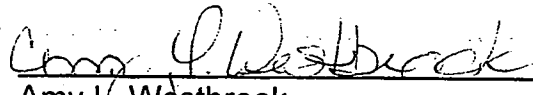
Case No.: 2010-CP-40-2889

This is to certify that I, Amy L. Westbrook, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Motion to Reconsider Order Approving Accounting** in the foregoing matters by depositing a copy of same in the United States Mail, postage prepaid, to the following address:

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

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, SC 29205

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


Amy L. Westbrook

Amy Westbrook

From: Thomas W. Bunch, II
Sent: Monday, June 22, 2015 12:10 PM
To: 'JOHN SCOTT'; Desa Ballard; art@aikenandhightower.com
Cc: JOSEPH STRICKLAND
Subject: RE: Hammer; Motion to Reconsider Order Approving Accounting

John,

My out-of-town afternoon hearing for today has been resolved, so I am also available this afternoon.

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
P: 803-227-1103
F: 803-744-1545
TBunch@robinsonlaw.com
v-card

Post Office Box 944
Columbia, South Carolina 29202

P: (803) 779-8900

MERITAS LAW FIRMS WORLDWIDE

From: JOHN SCOTT [mailto:SCOTTJ3@rcgov.us]
Sent: Monday, June 22, 2015 9:43 AM
To: Thomas W. Bunch, II; Desa Ballard; art@aikenandhightower.com
Cc: JOSEPH STRICKLAND
Subject: RE: Hammer; Motion to Reconsider Order Approving Accounting

Attorney Bunch, I was out of the office on Friday. I am just now printing off this correspondence with its attachment to forward to Judge Strickland.

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Friday, June 19, 2015 9:29 AM
To: Desa Ballard; art@aikenandhightower.com
Cc: JOSEPH STRICKLAND; JOHN SCOTT
Subject: FW: Hammer; Motion to Reconsider Order Approving Accounting

My apologies – as soon as I hit send on the below email I noticed I had forgotten to CC Art and Ms. Ballard.



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
P: 803-227-1103
F: 803-744-1545
TBunch@robinsonlaw.com
v-card

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Columbia, South Carolina 29202
P: (803) 779-8900

 MERITAS LAW FIRMS WORLDWIDE

From: Thomas W. Bunch, II
Sent: Friday, June 19, 2015 9:28 AM
To: stricklandj@rcgov.us
Cc: 'scottj3@rcgov.us'
Subject: Hammer; Motion to Reconsider Order Approving Accounting

Dear Judge Strickland,

I filed and served the attached motion yesterday. In the event you wish to hear this motion sooner than later, in the near term I am available today, Monday morning and Tuesday.

Yours Truly,

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW



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F: 803-744-1545
TBunch@robinsonlaw.com
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Columbia, South Carolina 29202
P: (803) 779-8900

 MERITAS LAW FIRMS WORLDWIDE

Amy Westbrook

From: JOHN SCOTT <SCOTTJ3@rcgov.us>
Sent: Wednesday, July 22, 2015 10:30 AM
To: Thomas W. Bunch, II
Cc: JOSEPH STRICKLAND; Desa Ballard; Amy Westbrook
Subject: RE: Hammer cases; Order re accounting and motion to reconsider

I am forwarding this correspondence along with its attachments to Your Honor as we speak Attorney Thomas Bunch.

From: Thomas W. Bunch, II [mailto:TBunch@robinsonlaw.com]
Sent: Wednesday, July 22, 2015 9:48 AM
To: JOHN SCOTT
Cc: JOSEPH STRICKLAND; Desa Ballard; Amy Westbrook
Subject: Hammer cases; Order re accounting and motion to reconsider

John,

Thank you for the email and sending the filed order denying Mr. Hammer's Motion to Reconsider Sanctions. There is one additional motion which the Judge needs to address.

Judge Strickland mentioned in a teleconference with counsel yesterday that he had executed an order denying a motion by Mr. Hammer to reconsider. I thought he was referring to his most recent order approving accounting and Mr. Hammer's most recent motion to reconsider that order. The motion to reconsider was filed and delivered to chambers on June 18. For your reference the order and motion are attached. Please let Judge Strickland know that there remains one unresolved motion which needs to be addressed. For scheduling purposes, I will be out of town Thursday and Friday of his week.

Thank you for your assistance in this matter.

Tommy Bunch



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

Thomas W. Bunch, II
P: 803-227-1103
F: 803-744-1545
TBunch@robinsonlaw.com
v-card

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Columbia, South Carolina 29202

P: (803) 779-8900

 **MERITAS** LAW FIRMS WORLDWIDE

From: JOHN SCOTT [mailto:SCOTTJ3@rcgov.us]
Sent: Wednesday, July 22, 2015 9:05 AM
To: Desa Ballard <desab@desaballard.com>
Cc: Thomas W. Bunch, II <TBunch@robinsonlaw.com>
Subject: FW: Message from KMBT_223

Attached is the scanned copy of the Order Denying Motion to Reconsider. 803-576-1901 John Scott, III if there are any questions.



ROBINSON MCFADDEN

ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

Thomas W. Bunch, II

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

December 11, 2015

PH
(803) 779-8900 | (803) 227-1103 direct

FAX
(803) 744-1545

tbunch@RobinsonLaw.com

VIA FACSIMILE AND FIRST CLASS MAIL

The Honorable Joseph M. Strickland, Master in Equity
Richland County Master In Equity
Post Office Box 192
1701 Main Street
Columbia, SC 29202

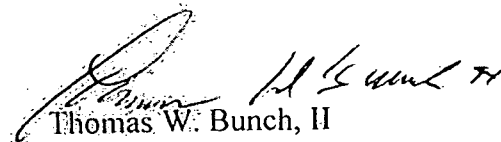
**Re: Shirley Hammer/Howard Hammer/1634 Main LLP Cases
Case No. 2009-CP-40-05911;
Case No. 2010-CP-40-02889; and
Case No. 2013-CP-40-6898**

Dear Judge Strickland:

Opposing counsel in these cases (Ms. Desa Ballard) has reported to Judge Barber that you have ruled on all matters and returned the file to the Clerk of Court's office. This report was news to me. My records and the Richland County Public Index show that (1) a motion to reconsider order approving accounting was filed on June 18, 2015, and is pending in case numbers 09-5911 and 10-2889, and (2) a motion to dismiss was filed April 27, 2015 and is pending in case number 13-6898. Can you confirm for my file if you will be ruling, or not ruling, on these motions.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.


Thomas W. Bunch, II

cc: (via e-mail)
Desa A. Ballard, Esquire
Keith M. Babcock, Esquire
Arthur K. Aiken, Esquire
Mr. Howard Hammer





ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.
COLUMBIA, SOUTH CAROLINA

December 22, 2015

Via Facsimile (803-576-1782) and First Class Mail

The Honorable James R. Barber, III
1701 Main St.
Columbia, South Carolina 29201

Thomas W. Bunch, II
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202

PH
(803) 779-8900 | (803) 227-1103 direct
FAX
(803) 744-1545

tbunch@RobinsonLaw.com

Re: Shirley Hammer/Howard Hammer/1634 Main LLP Cases
Case No. 2009-CP-40-05911;
Case No. 2010-CP-40-02889; and
Case No. 2013-CP-40-6898

Dear Judge Barber:

I am writing you only as a result of opposing counsel's continuing request that you intercede in these cases which have been referred to Judge Strickland and which are not concluded. I think you are well aware that Mrs. Hammer was tasked with the responsibility of selling property on Main Street in Columbia and paying her judgements and sale's expenses from the sale's proceeds of the property. The property sold for \$825,000 on September 23, 2015. Judgments and taxes totaling \$384,895.68 were paid from the sale's proceeds leaving a balance of \$440,104.32. With no recognition by Mrs. Hammer of any income earned by her while she owned the property (approximately \$200,000), Mrs. Hammer has filed an accounting in which she asserts that Mr. Hammer still owes her \$59,518.37. It is the failure of the master to recognize any income and to assess Mr. Hammer with over \$400,000 in costs of sale which are the subject of the motion to reconsider in case nos. 09-5911 and 10-2889.

Opposing counsel (Ms. Ballard) has stated that I have attempted to confuse the courts by writing Judge Strickland who happens to be the judge to whom these cases were referred. If there is any confusion, it arises from opposing counsel notifying the Supreme Court that the cases were concluded when opposing counsel knew a motion to reconsider (case nos. 09-5911 and 10-2889) and a motion to dismiss (13-6898) had not been heard by Judge Strickland. Opposing counsel had herself requested a ruling on the motion to reconsider as shown in the attached email to Judge Strickland's scheduling coordinator. When I responded to the Supreme Court that there were pending motions on which Judge Strickland had not ruled, opposing counsel then asked you, instead of Judge Strickland, to make a determination "whether these cases are, in fact, concluded?"

Until Ms. Ballard's December 8 letter to you, I had no indication that Judge Strickland might not rule on the pending motions. My belief was that Judge Strickland was awaiting the results of the sale of the property and that he would handle the motions in due course. Prior to my December 11 letter to Judge Strickland, I had communicated with him and his office at least three times to schedule and hear the motions in case nos. 09-5911 and 10-2889. Likewise, as shown in the attachment, opposing counsel had acknowledged and requested a ruling on the motion to reconsider in these cases. Upon receipt of opposing counsel's December 8 letter

revealing that Judge Strickland might not hear the motions, which had not been communicated to me by Judge Strickland, and because of the standing orders of reference to him, I requested that he clarify if he was or was not intending to rule on the motions. It is unclear how that communication and request to the responsible judge would be confusing to anyone.

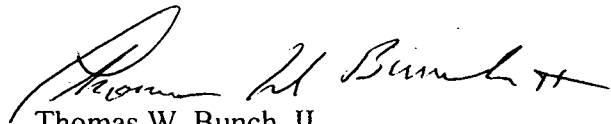
Judge Strickland has not advised me or Mr. Hammer how he intends to proceed. Nevertheless, there is no order concluding any of the referenced cases. No order is entered on the public index. Nor have either I or opposing counsel received any order disposing of the cases and motions.

I am available on Monday and Tuesday of next week to appear before you or Judge Strickland, if necessary. I am out of town the balance of the week. I am, of course strongly opposed to the proposed order submitted by opposing counsel. Of particular concern would be the suggestion in the last paragraph of the proposed order that opposing counsel's alleged accounting finalizes the cases, and somehow supersedes and renders moot a judge's order granting to Mrs. Hammer hundreds of thousands of dollars from the sale's proceeds of the property to which she had no entitlement. If you have any thoughts at all about executing such an order, I would specifically request a hearing and the opportunity to submit an appropriate order.

Thank you for your time and consideration of this matter.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Thomas W. Bunch, II

TWB/rhs

Enclosure (as stated)

cc: The Honorable Joseph M. Strickland
The Honorable Daniel E. Shearouse
Arthur K. Aiken, Esquire
Desa A. Ballard
Howard Hammer

Thomas W. Bunch, II

From: Mara Ballard <Mara@desaballard.com>
Sent: Monday, June 29, 2015 9:01 AM
To: JOHN SCOTT
Cc: Thomas W. Bunch, II; Desa Ballard; art@aikenandhightower.com; Mara Ballard
Subject: Hammer: 2010 matter: Motion to Reconsider

Dear Mr. Scott,

Mr. Bunch file a Motion to Reconsider the Accounting on or about 06/18/2015. Ms. Ballard does not plan to file a Response. Please let Judge Strickland know so that he may rule on Mr. Bunch's motion.

Thank you in advance for your time and attention to this matter. Please let me know if you need anything further.

With kindest regards,

Mara T. Ballard, CMA, CFE
Forensic Accountant (not a lawyer)
Ballard & Watson, Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com



EXHIBIT G

Amy Westbrook

From: Mara Ballard <Mara@desaballard.com>
Sent: Monday, June 29, 2015 9:01 AM
To: JOHN SCOTT
Cc: Thomas W. Bunch, II; Desa Ballard; art@aikenandhightower.com; Mara Ballard
Subject: Hammer: 2010 matter: Motion to Reconsider

Dear Mr. Scott,

Mr. Bunch file a Motion to Reconsider the Accounting on or about 06/18/2015. Ms. Ballard does not plan to file a Response. Please let Judge Strickland know so that he may rule on Mr. Bunch's motion.

Thank you in advance for your time and attention to this matter. Please let me know if you need anything further.

With kindest regards,

Mara T. Ballard, CMA, CFE
Forensic Accountant (not a lawyer)
Ballard & Watson, Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com



EXHIBIT H

STATE OF SOUTH CAROLINA	)	IN THE MASTER-IN-EQUITY COURT
	)	CA# 2009-CP-40-05911
COUNTY OF RICHLAND	)	CA# 2010-CP-40-02889
	)	
Shirley Hammer	)	
	)	
Plaintiff,	)	
	)	:
vs.	)	
	)	
Howard Hammer	)	
	)	
Defendant,	)	SUPPLEMENTAL ACCOUNTING BY
	)	SHIRLEY HAMMER (post sale)
STATE OF SOUTH CAROLINA	)	(Ends Case)
	)	
COUNTY OF RICHLAND	)	
	)	
Shirley Hammer	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
1634 Main, LP	)	
	)	
Defendant,	)	
	)	

Shirley Hammer (hereafter "Shirley") submits this supplemental (and final) accounting, following closing, to confirm full compliance by her and her agents with this Court's order dated January 21, 2014, in which assets previously held by Howard Hammer were transferred to Shirley Hammer as part of collection of judgments held by her against Howard Hammer and against 1634 Main LP. In support of her accounting, Shirley submits the following:

1. Pursuant to this Court's order of January 21, 2014, Shirley and her agents actively and aggressively marketed the real estate that was transferred to her, for sale to satisfy the judgments she holds, and has managed it during this period. In the absence of a contract of sale brought to conclusion, Shirley engaged McGee Auction Company, LLC, which

auctioned the property at public auction, following extensive advertising, on May 13, 2015 at 2:00 p.m. with a minimum bid of \$837,000.00.

2. The minimum bid was arrived at through consultation with the auctioneer and the listing agent, based on an appraisal, as well as activity on the property during the past 18 months since it was initially offered for sale and the offers that were made. Shirley received approval by this Court's order dated May 23, 2015 to auction the property for \$837,000.00 and establishing that sales price at a commercially-reasonable price.
3. This Court approved the auction minimum bid of \$837,000.00 by order approving accounting dated May 23, 2015. The order approving accounting also approved other sums due to Shirley from the proceeds of sale. *See below.*
4. At the auction on May 23, 2015, there was one bidder, who bid \$837,000.00. A contract of sale was executed by Buyer 1, but Buyer 1 refused to close the transaction without indemnification from Shirley personally against any costs and damages resulting from suits or claims that may have been advanced against Buyer 1 by Howard Hammer¹.
5. A second public auction was held on July 21, 2015, again conducted by McGee Auction Company, again with advertising. The minimum bid at Auction #2 was \$847,000.00. There were no bidders. The minimum bid was increased by \$10,000.00 in an effort to sell the property for a sufficient sum to pay all funds due to Shirley pursuant to this Court's order dated January 21, 2014.

¹ Buyer 1 was released from his contract on July 29, 2015.

6. One judgment against Howard Hammer in favor of Shirley, entered on April 24, 2015 in the amount of \$88,088.81, was paid separately by or on behalf of Howard, and a separate satisfaction of judgment has been recorded for that judgment. (Exhibit A).
7. Thereafter, Shirley accepted an offer to purchase the property from Buyer 2, for a sales price of \$825,000.00. Buyer 2 was aware of the aborted sale at \$837,000.00 and the absence of any bids at the second auction. A contract with Buyer 2 for sale of the building at \$825,000.00 was executed on July 29, 2015.
8. The closing with Buyer 2 concluded on September 23, 2015. A copy of the HUD statement reflecting the transaction is attached hereto as Exhibit B.
9. The original judgments held by Shirley Hammer from the prior orders of Judge James were listed as line items on the HUD at lines 1308 through 1311.
10. Numerous debts of Howard Hammer which encumbered the property were paid from the sales proceeds, as shown on lines 1305 (IRS lien), 1306 (2013 Property Taxes), 1307 (2014 property taxes).
11. Certain costs of sale incurred by Shirley were reflected on line items of the HUD:
 - Lines 511 (pro rata taxes for January 1, 2015 through September 23, 2015 at \$11,369.27)),
 - Lines 513 - 515 (pro rata rent for September from tenants \$2,370.28),
 - Lines 703-706 (Sales commissions totaling \$82,500.00)
 - Lines 1105, 1007, and 1115 (closing attorney's fee and related costs \$7,850.00),
 - Lines 1203, 1206, 1209, and 1210 (recording fees \$3,077.50).

12. As indicated by Line 1312, the balance of sales proceeds, \$332,936.69, will be distributed as follows, in accordance with the order of this Court dated January 21, 2014² and the order of this Court approving accounting dated May 23, 2015.

Item	Approved by Order dated 5-23-2015	Actual Cost
Amounts due from Howard Hammer to Shirley Hammer under applicable judgments and orders.	\$3,559.19 Bill of Costs approved by Supreme Court 6-12-2014	\$3,559.19
Amount due from Howard Hammer to Shirley Hammer under applicable judgments and orders.	\$227.64 Interest on 6-12-14 bill of costs through 4-25-2015	\$336.14 Additional interest through 9-23-2015 (per diem until disbursement will be \$0.76 per day)
Amount due from Howard Hammer to Shirley Hammer under applicable judgments and orders	\$1,221.44 Bill of Costs approved by Supreme Court 3-10-2015 through 4-25-2015	\$1,221.44
Amount due from Howard Hammer to Shirley Hammer under applicable judgments and orders	\$12.37 Interest on 3-10-15 bill of costs through 4-25-2015	\$47.80 Additional interest through 9-23-2015 (per diem until disbursement will be \$0.24 per day)
Costs of Marketing and Sale pursuant to	\$67,220.00	\$101,070.00

² The order of payment of the amounts due as set forth in Exhibit A shall be payable from the sales proceeds as follows: (1) Payment of all amounts due from Howard Hammer to Shirley Hammer under applicable judgments and orders; (2) Next, payment of any and all remaining proceeds for all amounts due from 1634 Main LP to Shirley Hammer under applicable judgments and orders; (3) Next, payment of funds due from Howard Hammer to 1634 Main LP, including rent. Any residual funds from the sales proceeds will be set forth in the supplemental accounting provided to the Court pursuant to Paragraph 4.

Paragraph 6(a) of 1-21-2014 order	Attorney fees for marketing and sale of property	Additional fees for marketing and sale of property due Ballard & Watson (estimate of \$10,000 was included as approved in order dated 5-25-2015)
Costs of Marketing and Sale pursuant to Paragraph 6(a) of 1-21-2014 order	\$25,295.32 Hightower LLC payments for repairs and marketing to sell building	\$23,250.43 Contract buyout for leasing agent reduced by collected rents.
Unpaid expenses of 1634 Main LP upon transfer, paid by Shirley	\$15,953.56	\$15,953.56
Debts due to 1634 Main LP from Howard Hammer	\$247,016.50	\$247,016.50
Total due Shirley Hammer from Line 1312 of HUD		\$332,936.69
Overage / <shortage> from \$332,936.69		<\$59,518.37>

13. Additionally, there is one outstanding Bill of Costs submitted to the Supreme Court of South Carolina for fees due to Shirley Hammer pursuant to Rule 222, SCACR, in the amount of \$1,053.25 that remains pending.

14. During the period of time Shirley has performed her duties pursuant to the January 21, 2014 order, neither she nor any of her agents, other than monthly management fees to Aries Advisors, have received income from rental proceeds collected. Rather, funds collected from tenants have been used for maintenance and operation of the building as a commercially leased building (although the income has been minimal because the space previously occupied by Howard (a substantial part of the rental space) is unusable and cannot be rented until renovations are made.

15. 1634 Main LP will purchase the 8% interest in the LP owned by the parties' minor child, David Hammer, at a price determined by the sales price of the real estate and the debts and rent owed by Howard Hammer, the total of which constituted the assets of 1634 Main LP at the time of the order of January 21, 2014. The value of David's interest is \$50,946.32. David's funds will be held in trust by Shirley, who is David's custodial parent. Upon completion of purchase of the minority interest of David Hammer, Shirley will transfer ownership of 1634 Main LP to Howard to complete her duties under the January 21, 2014 order.

16. As set forth above, the sales proceeds from the sale of real property transferred to Shirley by order dated January 21, 2014 were not sufficient to pay all funds due to Shirley Hammer, so there are no excess funds to deliver to the Court pursuant to Paragraph 7 of the order.

WHEREFORE, having fully complied with the requirements of the January 21, 2014 order, Shirley submits this final accounting for purposes of concluding this action.


Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

September 28, 2015

ATTORNEY FOR SHIRLEY HAMMER

EXHIBIT A

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Howard Hammer,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant.

) COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) Case No.: 2009-CP-40-05911

)
) **RECEIPT FOR PAYMENT OF**
) **SANCTIONS AND**
) **SATISFACTION OF ORDER**
) **AWARDING SAME**

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

1634 Main, L.P.,

Plaintiff,

vs.

Shirley Hammer a/k/a Shirley Grace Hightower,

Defendant,

vs.

Howard Hammer,
Additional Defendant on Counterclaim

) COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) Case No.: 2010-CP-40-2889

)
) **RECEIPT FOR PAYMENT OF**
) **SANCTIONS AND**
) **SATISFACTION OF ORDER**
) **AWARDING SAME**

The undersigned as counsel for Shirley Hammer a/k/a Shirley Grace Hightower acknowledges receipt of payment of \$88,088.81 from Howard Hammer as ordered by the Honorable Joseph M. Strickland by his order dated and filed April 24, 2015, in full satisfaction of the obligations imposed on Howard Hammer by said order. To the extent that the Clerk of


6.8.15

EXHIBIT A

Court has enrolled any judgment against Howard Hammer arising from the April 24, 2015 order, this document acts as a satisfaction thereof and Mr. Hammer's counsel may file it with the court.

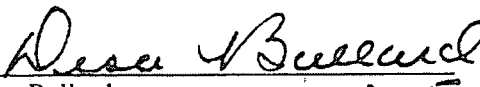

Desa Ballard 6.8.2015
Ballard & Watson
Post Office Box 6338
West Columbia, SC 29171
(803) 796-9299
(803) 796-1066 (fax)
desab@desaballard.com

EXHIBIT B

Craig Law Firm, P.C. 2001 Assembly Street Suite 201 Columbia, South Carolina 29201 (803) 252-5178 fax: (803) 252-5283	B. TYPE OF LOAN 6. File Number: 15RE0855 7. Loan Number: 8. Mortgage Ins. Case No.:
---	---

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked (poc) were paid outside the closing. They are shown here for informational purposes and are not included in the totals.

D. Buyer: Belser Five, LLC 400 Saluda Avenue Columbia, South Carolina 29205 E. Seller: Hightower, LLC 421 River Club Drive Lexington, South Carolina 29072 F. Lender: First Palmetto Bank 407 Dekalb Street Camden, South Carolina 29020 G. Property: 1634 Main Street Columbia, Richland County, South Carolina 29201 Richland County, South Carolina H. Settlement Agent: Craig Law Firm, P.C. Place of Settlement: 2001 Assembly Street, Suite 201, Columbia, South Carolina 29201 Richland County I. Settlement Date: September 23, 2015	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">J. Summary of Buyer's Transaction</th> <th style="width: 50%;">K. Summary of Seller's Transaction</th> </tr> <tr> <td> 100. Gross Amount Due From Buyer: 101. Contract Sales Price 825,000.00 102. Personal Property 103. Settlement Charges to Buyer (line 1400) 11,585.80 Adjustments for Items Paid by Seller in Advance: 106. City / Town Taxes 107. County / Parish Taxes 108. Assessments 120. Gross Amount Due from Buyer: 836,585.80 200. Amounts Paid by or in Behalf of Buyer: 201. Deposit / Earnest Money paid outside of Closing by Buyer and Held in trust by Colliers 20,000.00 202. Principal Amount of New Loan 203. Existing Loan(s) 204. Principal Amount of Loan: \$1,226,000.00 205. Initial Advance at Closing 701,250.00 206. Balance Available For Future Advances: \$524,750.00 Adjustments for Items Unpaid by Seller: 210. City / Town Taxes 211. County / Parish Taxes Jan 1, 2015 thru Sep 23, 2015 11,369.27 212. Assessments 213. Pro Rata Rent for September for Children's Trust of SC 1,725.85 214. Pro Rata Rent for September for Oliver Gospel Mission 318.42 215. Pro Rata Rent for September for Lipscomb Law Firm 326.59 220. Total Paid by / for Buyer: 734,990.13 300. Cash at Settlement from / to Buyer: 301. Gross Amount due from Buyer (line 120) 836,585.80 302. Less Amount Paid by/for Buyer (line 220) 734,990.13 303. Cash From Buyer: \$101,595.67 </td> <td> 400. Gross Amount Due To Seller: 401. Contract Sales Price 825,000.00 402. Personal Property 403. Adjustments for Items Paid by Seller in Advance: 406. City / Town Taxes 407. County / Parish Taxes 408. Assessments 420. Gross Amount Due to Seller: 825,000.00 500. Reductions in Amount Due to Seller: 501. Excess Deposit (see instructions) 502. Settlement Charges to Seller (Line 1400) 811,259.87 503. Existing Loan(s) 504. Payoff of First Mortgage 505. Payoff of Second Mortgage 506. Purchase Money Mortgage Adjustments for Items Unpaid by Seller: 510. City / Town Taxes 511. County / Parish Taxes Jan 1, 2015 thru Sep 23, 2015 11,369.27 512. Assessments 513. Pro Rata Rent for September for Children's Trust of SC 1,725.85 514. Pro Rata Rent for September for Oliver Gospel Mission 318.42 515. Pro Rata Rent for September for Lipscomb Law Firm 326.59 520. Total Reductions in Amount Due Seller: 825,000.00 600. Cash at Settlement to / from Seller: 601. Gross Amount due to Seller (line 420) 825,000.00 602. Less Reductions Amount due Seller (line 520) 825,000.00 603. Cash From Seller: \$0.00 </td> </tr> </table>	J. Summary of Buyer's Transaction	K. Summary of Seller's Transaction	100. Gross Amount Due From Buyer: 101. Contract Sales Price 825,000.00 102. Personal Property 103. Settlement Charges to Buyer (line 1400) 11,585.80 Adjustments for Items Paid by Seller in Advance: 106. City / Town Taxes 107. County / Parish Taxes 108. Assessments 120. Gross Amount Due from Buyer: 836,585.80 200. Amounts Paid by or in Behalf of Buyer: 201. Deposit / Earnest Money paid outside of Closing by Buyer and Held in trust by Colliers 20,000.00 202. Principal Amount of New Loan 203. Existing Loan(s) 204. Principal Amount of Loan: \$1,226,000.00 205. Initial Advance at Closing 701,250.00 206. Balance Available For Future Advances: \$524,750.00 Adjustments for Items Unpaid by Seller: 210. City / Town Taxes 211. 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Buyer Initials: **HFB** H. Freeman Belser

Seller Initials: **SH** Shirley Hammer

L. Settlement Charges			
		Paid from Buyer's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Sales / Broker's Commission:			
Based on Price \$825,000.00			
Division of Commission as follows			
701.			
702.			
703. Commission Paid at Settlement			28,750.00
704. Listing Broker's Commission 3.5% to McGee Real Estate			28,750.00
705. Property Management Commission 3.5% to Aries Advisors			25,000.00
706. Selling Broker's Commission 3.0% to Colliers			
800. Items Payable in Connection with Loan:			
801. Loan Origination Fee			
802. Loan Discount			
803. Appraisal Fee to First Palmetto Savings Bank		3,200.00	
804. Credit Report			
805. Lender's Inspection Fee			
806. Mortgage Insurance Application Fee			
807. Assumption Fee			
808. Flood Determination Fee to First Palmetto Savings Bank		10.00	
900. Items Required by Lender to be Paid in Advance:			
901. Daily interest charge from Sep 23, 2015			
902. Mortgage Insurance Premium			
903. Hazard Insurance Premium for 12 months to Vista Insurance Group		2,975.00	
904. Flood Insurance Premium			
1000. Reserves Deposited with Lender:			
1001. Hazard Insurance 0 months @ 247.92 per month			
1002. Mortgage Insurance			
1003. City Property Taxes			
1004. County Property Taxes			
1005. Annual Assessments			
1100. Title Charges:			
1101. Settlement or Closing Fee to Craig Law Firm, P.C.		2,500.00	
1102. Update Abstract/Title Search Service and Review Fee to Craig Law Firm, P.C.		100.00	
1103. Title Certification/Binder Fee to Craig Law Firm, P.C.		100.00	
1104. Title Insurance Binder			
1105. Litigation Search, Update and Title Clearing Review to Craig Law Firm, P.C.			250.00
1106. Notary Fees			
1107. Seller's Attorney Fees to Craig Law Firm, P.C. (includes above item numbers:			7,500.00
1108. Title Insurance to First American Title Insurance Company (includes above item numbers:		2,576.80	
1109. Lender's Coverage 1,226,000.00 Risk Rate Premium: \$100.00			
1110. Owner's Coverage 1,226,000.00 Risk Rate Premium: \$2,476.80			
1111. Courier Fee/ Copy/Email/Long Distance Calls/Faxes/Misc. Cost to Craig Law Firm, P.C.		40.00	
1112. Wire Fee for Loan Proceeds to Craig Law Firm, P.C.		15.00	
1113. Mortgage Satisfaction/Clearing Fees			
1114. Insured Closing Protection Letter to First American Title Insurance Company		20.00	
1115. Costs/copies/emails/overnight for lien payoffs to Craig Law Firm, P.C.			100.00
1200. Government Recording and Transfer Charges:			
1201. Recording Fees: Deed 10.00 Mortgage 15.00 Releases 0.00		25.00	
1202. City/County Tax/Stamp: Deed 0.00 Mortgage 0.00			
1203. State Tax/Stamp: Deed 3,052.50 Mortgage 0.00			3,052.50
1204.			
1205.			
1206. Recording Fee for Corrective/Quit Claim from Hammer to Hightower, LLC to Richland County Register of Deeds			10.00
1207. Assignment of Leases and Rents to Richland County Register of Deeds		14.00	
1208. UCC Financing Statement to Richland County Register of Deeds		10.00	
1209. Satisfaction Recording Fee for IRS Lien to Richland County Register of Deeds			5.00
1210. Survey Recording Fee to Richland County Register of Deeds			10.00
1300. Additional Settlement Charges:			
1301. Survey			
1302. Pest Inspection			
1303. Heating and Air Inspection			
1304. Home Warranty			
1305. Payoff for IRS Lien to United States Treasury			4,833.05
1306. 2013 Real Property Taxes to Richland County Treasurer			21,971.96
1307. 2014 Real Property Taxes to Richland County Treasurer			22,158.23
1308. Judgment Payoff as to 1634 Main, LP to Ballard & Watson, Attorneys at Law, FBO Shirley Hammer			26,733.05
1309. Judgment Payoff as to 1634 Main, LP to Ballard & Watson, Attorneys at Law, FBO Shirley Hammer			106,673.97
1310. Judgment Payoff as to Howard Hammer to Ballard & Watson, Attorneys at Law, FBO Shirley Hammer			139,011.85
1311. Judgment Payoff as to Howard Hammer to Ballard & Watson, Attorneys at Law, FBO Shirley Hammer			63,513.57
1312. Balance of Seller Proceeds Held in Escrow by CLF pending filing of final accounting per Order of the Honorable Joseph M. Strickland Dated January 21, 2014 to Craig Law Firm, P.C.			332,936.69
1400. Total Settlement Charges (Enter on line 103, Section J and line 502, Section K)		\$11,585.80	\$811,259.87

Buyer Initials: **HFB** H. Freeman BelserSeller Initials: **SH** Shirley Hammer

Settlement Date: September 23, 2015

File Number: 18350065 **EXHIBIT B**

SETTLEMENT STATEMENT
Craig Law Firm, P.C.
2001 Assembly Street
Suite 201
Columbia, South Carolina 29201
(803) 252-5178 fax: (803) 252-5283

Buyer: Belter Five, LLC
Freeman Belter, Sole Member and Authorized Agent

Seller: Highower, LLC
Shirley Hamner, Sole Member and Authorized Agent
Seller: _____

Settlement Agent: Craig Law Firm, P.C.

Date: September 23, 2015

STATE OF SOUTH CAROLINA)

IN THE MASTER-IN-EQUITY COURT

COUNTY OF RICHLAND)

CA# 2009-CP-40-05911

CA# 2010-CP-40-02889

Shirley Hammer)

Plaintiff,)

vs.)

Howard Hammer)

Defendant.)

**CERTIFICATE OF SERVICE
OF SUPPLEMENTAL
ACCOUNTING**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shirley Hammer)

Plaintiff,)

vs.)

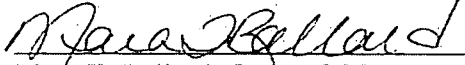
1634 Main, LP)

Defendant,)

The undersigned certifies that she, on September 28, 2015, caused to be served the Supplemental Accounting on Counsel of Record by electronic mail and by placing it in the US Mail, first class delivery, with sufficient postage to the following addresses:

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

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


Mara T. Ballard, CMA, CFE,
Forensic Accountant

September 28, 2015

EXHIBIT I

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

Shirley Hammer,) CASE #: 2009-CP-40-5911
Plaintiff,)
v.)
Howard Hammer,)
Defendant.)

Shirley Hammer,) CASE #: 2010-CP-40-2889
Plaintiff,)
v.)
1634 Main, LP,)
Defendant.)

HEARING

Tuesday, May 12, 2015

3:43 p.m. to 4:43 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was held in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 12th day of May, 2015, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201

APPEARANCES:

Desa Ballard, Esquire

Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, South Carolina 29169
Attorney for the Plaintiff

Thomas W. Bunch, II, Esquire

Robinson McFadden & Moore, PC
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Attorney for the Defendant Howard Hammer

INDEX

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The Court	23
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Double Recovery:

Mr. Bunch	24
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Mr. Bunch	39
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Mr. Hammer	41
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Official Court Reporter

*Master in Equity, Richland County
1701 Main Street – Post Office Box 192 (29202)
Columbia, South Carolina 29201*

EXHIBITS

Proffered:

Plaintiff's Exhibit Number One	49
(6/23/08 \$20,000 Note - Hammer to 1634 Main)	
Plaintiff's Exhibit Number Two	49
(10/30/09 \$7500 Note - Hammer to 1634 Main)	
Plaintiff's Exhibit Number Three	49
(11/8/13 Ltr - Hammer to Richland County Assessor)	
Defendant's Exhibit Number One	32
(Appraisal)	
Defendant's Exhibit Number Two	32
(5/8/14 Ltr - Bunch to Strickland)	
Defendant's Exhibit Number Three	33
(5/23/14 Amended Petition for Writ of Supersedeas)	

1 **THE COURT:** I think there are a couple of motions pending,
2 at least one motion. There's one motion to approve
3 an accounting, by Shirley Hammer.

4 **MS. BALLARD:** Your Honor, there's two avenues of relief
5 requested in that motion. That's the only motion
6 I'm aware of that's set for hearing.

7 **THE COURT:** Okay, go ahead.

8 **MS. BALLARD:** Do you have a copy of the motion for
9 accounting?

10 **THE COURT:** Yes, ma'am. It's called a Motion to Approve
11 Accounting?

12 **MS. BALLARD:** Yes.

13 **THE COURT:** Yeah, I'm with you on that.

14 **MS. BALLARD:** I have an extra copy I was going to hand up
15 to you.

16 **THE COURT:** Okay.

17 **MS. BALLARD:** Your Honor, as set forth in the motion to --
18 -

19 **MR. BUNCH:** Your Honor, if I may?

20 **THE COURT:** Yes, sir?

21 **MR. BUNCH:** I'm not sure where we are procedurally on the
22 motion. The motion was filed April the 29th. There
23 were no affidavits submitted to support the motion.
24 I think Ms. Ballard had brought in perhaps people to
25 testify. I'm not sure if they're here to testify or

1 not. I wasn't prepared for a contested hearing
2 today, didn't know that witnesses would be
3 testifying today. You know, I assume that if she's
4 filed a motion she would file affidavits, or at
5 least indicate that testimony would be made. So I
6 haven't had any notice or any preparation in terms
7 of testimony. I thought we were here on one motion
8 and argument of counsel. But it does create an
9 issue in terms of preparation, creates an issue in
10 terms of Mr. Hammer's due process, ability to
11 respond to the motion. And so I'm not sure where we
12 are procedurally and what the Court wanted to
13 accomplish today. All I received was a notice from
14 Ms. Ballard's office saying that you had set the
15 motion for a hearing at 3:30 today.

16 **THE COURT:** Well, I'm looking at what simply seems to be a
17 motion to approve the accounting by Shirley Hammer;
18 is that correct? It doesn't -- does it involve
19 anything by Mr. Hammer or?

20 **MS. BALLARD:** Nothing regarding Mr. Hammer, Your Honor.
21 Paragraph five of the motion asks that you determine
22 that Shirley has complied with all obligations
23 imposed upon her by the January 21st order, which
24 we're also requesting a finding that she has
25 commercially reasonably been -- engaged in a

1 commercially reasonable sale of the property. The
2 property's scheduled to be sold tomorrow at auction.
3 So I do have a witness to testify as to what -- I
4 mean, unless they want to stipulate that we've
5 engaged in commercially reasonable activities to
6 market the building. I think Your Honor needs
7 testimony in order to make that finding. I also
8 have Ms. Mara Ballard here to go through the
9 accounting and answer any questions anybody has
10 about any of the documentation, how the calculations
11 were arrived at.

12 **THE COURT:** Okay. Mr. Bunch, that's a problem for your
13 client?

14 **MR. BUNCH:** That's a problem certainly when we have an
15 appraisal right here, Your Honor, an appraisal for
16 \$1,475,000 and tomorrow they want to sell the
17 property for a \$837,000 minimum bid. That would be
18 a problem.

19 **THE COURT:** This is a property that your client doesn't
20 own anymore, unless I'm confused.

21 **MS. BALLARD:** That's correct.

22 **MR. BUNCH:** He does not. In fact, he transferred it. But
23 you also gave them the obligation to conduct a
24 commercially reasonable sale.

25 **THE COURT:** Okay.

1 **MR. BUNCH:** And the law in South Carolina, whether a sale
2 is commercially reasonable is a question for a jury.
3 There's case law directly on point, the Andrews
4 case, which I have, Your Honor.

5 **THE COURT:** Well, now -- yeah, but in this case -- these
6 cases, this is a supplemental proceeding post-
7 judgment. I'm not aware that you go before a jury
8 to resolve any issues post-judgment. You say you
9 have a case on point. In that case was there a
10 supplemental proceeding and the jury had to make a
11 decision post-judgment, or?

12 **MR. BUNCH:** That was a case involving a request for a
13 deficiency judgment, Your Honor, after the -- upon
14 the sale of the property. And the creditors sought
15 a ruling of the court that they had conducted a
16 commercially reasonable sale. And the court said --
17 I'll pull the case up, Your Honor. Here it is. The
18 court held that the issue of a commercially
19 reasonable sale was a question for the jury. It is
20 ---

21 **THE COURT:** I don't know. I'm not going to argue with
22 you, Mr. Bunch, but that doesn't sound like what we
23 have here today.

24 **MS. BALLARD:** Your Honor required us, as part of
25 supplemental proceedings, to engage in conduct that

1 was commercially reasonable, and we have our agent,
2 our broker here to testify about the efforts that
3 we've gone through and how we determined the minimum
4 auction price for tomorrow.

5 **MR. BUNCH:** Which gets us back to the initial issue about,
6 if they're going to come in here with testimony on a
7 motion then we ought to be allowed to develop facts
8 -- I don't -- if they want to put him up today and
9 let's come back one day next week, after I've had an
10 opportunity to develop some facts and determine what
11 they've actually done. What is particularly harmful
12 in this case to Mr. Hammer in terms of due process,
13 Your Honor, is we have inquired of Ms. Ballard all
14 along as to -- well, we've inquired of Ms. Ballard
15 as to what was going on, and she has refused to tell
16 us the names of purchasers. We found that out
17 through other means. She's refused to tell us what
18 the sales price was. She's refused to give us
19 information. So now we're coming in here blind,
20 with a witness coming to testify as to what they've
21 been doing for the last year. So we either need --
22 we need one of two things done. We need the
23 opportunity to have sufficient time to develop a
24 defense and come back, or Mr. Hammer is inclined to
25 request a jury trial, which he's entitled to under

1 the Andrews case, which I've just handed up. I
2 would also refer the Court to the South Carolina
3 Rules of Civil Procedure. I would refer the Court
4 to the rule governing your office, on Masters. And
5 I've highlighted this. It says, "Any party may
6 request a jury under Rule 38 on any or all issues
7 triable of right by a jury. And upon filing a jury
8 demand, the matter shall be returned to the circuit
9 court." I have a jury demand on the desk here,
10 which I can file at the present time.

11 **THE COURT:** But this is post-judgment, the case is over.
12 The judgment's already been entered. We spent two
13 years in supplemental proceedings.

14 **MR. BUNCH:** And under Rule 38, Your Honor, which I would
15 also hand up ---

16 **THE COURT:** Yes, sir. Thank you.

17 **MR. BUNCH:** "Issues of fact in an action for the recovery
18 of money only must be tried by a jury." Here, Mrs.
19 Hammer is seeking not only the judgments -- okay,
20 those are over. Yeah, maybe these sanctions could
21 be appealed, but the judgments themselves are over.
22 That's history, that's the number.

23 **THE COURT:** Right.

24 **MR. BUNCH:** But in addition to that, those judgments are
25 \$429,000; is that what we figured out? Four twenty-

1 nine. She's coming in here seeking another
2 \$365,000; she wants \$794,000. So she is seeking
3 additional money to be compensated over and above
4 those amounts of judgments, and I don't think it
5 makes a bit of difference if we're in supplementary
6 proceedings or where we are in the nature of a
7 proceeding, if they're trying to recover additional
8 money that are not the subject of any judgment, Mr.
9 Hammer's entitled to a jury trial.

10 **MS. BALLARD:** Your Honor, I would point out that the
11 Supreme Court in its most recent opinion affirming
12 Your Honor specifically said that the accounting was
13 to be performed before you. If they had any
14 problems with that, they should have petitioned for
15 a rehearing before the Supreme Court and said at
16 that point that they wanted a jury trial. Because
17 Your Honor's order is very clear. On page 12,
18 paragraph 6(b), that Mrs. Hammer should pay to
19 herself from the sales proceeds any and all costs
20 incurred in connection with marketing and sale of
21 the property. That's what we've included on our
22 accounting. We have the documentation here
23 regarding that and a witness, two witnesses
24 actually, to explain those issues. And if Your
25 Honor would, I'd like to proceed.

1 **THE COURT:** Well, let -- I may truncate this a little bit.
2 Are your witnesses going to say anything different
3 than what you've already submitted?

4 **MS. BALLARD:** Your Honor, my witnesses are going to -- Mr.
5 Marion Turbeville is the property manager, and he's
6 going to talk about the history on how we marketed
7 the property and how we came up with the price,
8 minimum price that we've set for the accounting. I
9 mean, excuse me, for the auction tomorrow. Ms. Mara
10 Ballard is going to testify as to what those costs
11 incurred in connection with the marketing and sale
12 of the property are and the other numbers that we've
13 included in our accounting. There -- they had these
14 numbers -- you know, we've been giving them --
15 during all these efforts to settle, they've had
16 these numbers for six months. The numbers have
17 increased because unfortunately we've had to do more
18 work as time went on. But they're not surprised by
19 these numbers. I've been served with no discovery,
20 nothing's been subpoenaed from Mr. Turbeville,
21 nothing's been subpoenaed from Hightower. This is
22 just another delay tactic, Your Honor.

23 **MR. BUNCH:** We're not ---

24 **THE COURT:** Mr. Bunch?

25 **MR. BUNCH:** We're not trying to delay anything. What

1 we're being done, we're being ambushed by witnesses
2 coming in, with no notice, and a full-blown hearing.
3 If you give us an adequate opportunity to develop a
4 case as opposing commercial reasonableness, then
5 that's fine. If you're not, we need to demand our
6 jury trial, which we're entitled to as a matter of
7 right. And we're prepared to do that.

8 **THE COURT:** My question though, Ms. Ballard, is are your
9 witnesses going to testify to anything different
10 than what you attached as exhibits to your ---

11 **MS. BALLARD:** No, sir. My legal argument would address
12 the issues as to why each of those are recoverable.
13 But I do have, as I said, Mr. Turbeville, who can
14 talk about how we came up with the number. I don't
15 think I explained that in here. Well, yeah, I did.
16 I explained in here how we came up with the number
17 of 837 as our minimum bid. We understand from the
18 auction folks that we've got at least five different
19 entities, persons or entities who are expected to be
20 bidding tomorrow. So I don't know what the final
21 sales price will be.

22 **THE COURT:** What time is the auction scheduled?

23 **MS. BALLARD:** The auction's at 2:00 tomorrow.

24 **THE COURT:** And where -- it's going to be right on Main
25 Street?

1 **MS. BALLARD:** On Main Street, in front of the building,
2 yes, sir. The McGee Auction Company is conducting
3 it. They've been marketing it on their website and
4 Mr. Turbeville has been marketing it on his website,
5 actually since Your Honor issued the January 2014
6 order. So the only purpose of his testimony was to
7 provide a little more detail. But if they don't
8 dispute that we've engaged in a commercially
9 reasonable sale of the building, then we don't need
10 testimony on that issue. And again, as I would say,
11 they've known since January 21st, 2014, that I was
12 going to come before this Court and ask for a
13 finding that we've engaged in commercially
14 reasonable marketing of this property. This is not
15 a surprise to them. They can argue, you know, the
16 auction -- the appraisal, or whatever they want to
17 argue, but I'm entitled -- I think we're entitled to
18 put up, just briefly, Mr. Turbeville and Ms. Ballard
19 to testify about how we calculated these numbers.

20 **MR. BUNCH:** And, Your Honor, they've known since I got
21 involved in this matter, in the supplementary
22 proceedings, back in May of last year I believe,
23 they've known since then that if they would sell the
24 property back to us we would agree on a number. But
25 if they would not, we would contest the amounts that

1 they were claiming. And they've known that for a
2 year and have not given us any evidence to
3 substantiate any of these requests and now seek to
4 come in and present witnesses to do that.

5 **THE COURT:** Mr. Bunch, is your client going to bid
6 tomorrow?

7 **MR. BUNCH:** I'm sorry?

8 **THE COURT:** Is your client going to bid on the building
9 tomorrow?

10 **MR. BUNCH:** I don't think my client has any money to bid,
11 Your Honor. He can't pay my legal fees; how's he
12 going to bid on the property? He's, in fact, you
13 know, what would most likely happen is that if we
14 have to go forward with a jury trial, Mr. Hammer
15 would allow me to be relieved as counsel and he
16 would proceed pro se on that issue. You know,
17 that's just where we are right now.

18 **THE COURT:** And I'm embarrassed to say this: I don't --
19 I'm confused as to why Mr. Hammer thinks he's
20 entitled to a jury trial at this stage in the
21 proceedings. There -- this is post-judgment. The
22 cases are over. We've been in supplemental
23 proceedings for two years, and he now demands a jury
24 trial on -- I don't understand, quite frankly. You
25 exceeded my expertise. Maybe I'm just missing ---

1 **MR. BUNCH:** Let me try to explain that, Your Honor.

2 **THE COURT:** Yes, sir.

3 **MR. BUNCH:** They brought, they have now brought before the
4 Court, by their motion filed 14 days ago I think,
5 maybe 15 days. Fourteen days ago I think. They
6 have brought before the Court a motion by which they
7 seek a determination of this Court two things: that
8 the sale was commercially reasonable and that
9 they're entitled to money over and above their
10 judgments. Okay? These are two new issues to be
11 brought before this Court. It doesn't matter
12 whether they're in supplementary proceedings or not.
13 The question of commercial reasonableness of a sale
14 is a question of fact for a jury under the case I
15 handed up, the Andrews case, Your Honor. So that's
16 a question of fact. The fact that they have no
17 proof at this time of the additional monies owed --
18 well, it doesn't really matter what the proof is.
19 But the fact that they have come forth now, 14 days
20 ago, and said, We're entitled to an additional
21 \$300,000-something over and above the judgments,
22 they have now put forth before this Court an
23 assertion that they're entitled to the recovery of
24 additional money outside of the supplementary
25 proceedings, Your Honor. And therefore that creates

1 a question of fact for a jury, to which they're
2 entitled to a jury trial under Rule 38. So the fact
3 that we have been in supplementary proceedings, they
4 have now interjected these issues, 14 days ago, that
5 allow for a jury trial. That's just -- I mean, I
6 understand we're in supplementary proceedings and
7 you would not normally conduct a jury trial on
8 supplementary proceedings, but this is a different
9 posture of this case.

10 **THE COURT:** Do we have any case law in South Carolina
11 that's allowed or conducted or ever had a jury trial
12 at this stage of supplementary proceedings? Have
13 you heard of one? I've never heard of it, but ---

14 **MS. BALLARD:** Your Honor, I haven't heard of one either,
15 and the point I was going to make is that they knew
16 when Your Honor issued the 2014 order that the
17 accounting for costs in connection with the
18 marketing and sale of the property were going to be
19 conducted by you. And that would have been the
20 point in time for them to raise the issue of a jury
21 trial. They appealed a whole bunch of other issues,
22 but they certainly didn't appeal that one. And if
23 there was going to be a request for a jury trial on
24 anything, it should have been made at that point in
25 time, when Your Honor ordered that the -- Mrs.

1 Hammer pay herself, under paragraph 6(a), any and
2 all costs incurred in connection with marketing and
3 sale of the building. And the Supreme Court, when
4 they issued their order, said Your Honor is going to
5 determine those. They're way, way too late to ask
6 for a jury trial at this point.

7 **MR. BUNCH:** Your Honor, we're 14 days after they filed
8 their motion. I don't think that can ever be a
9 waiver of a jury trial.

10 **THE COURT:** Okay. Anything else on the motion?

11 **MR. BUNCH:** Your Honor, I'm not sure -- I assume I need to
12 file my motion, my demand for a jury trial, with the
13 Court and make an appropriate filing with that.

14 **THE COURT:** But, but -- now, I'm not going to -- I don't
15 want to give the impression I'm arguing with you,
16 it's just that when I hear something I've never
17 heard before or seen before, it kind of piques my
18 curiosity, and that's why I asked about case law.
19 What's going to be tried I guess? And I hope,
20 again, I hope I'm not embarrassing myself. What's a
21 jury going to hear?

22 **MR. BUNCH:** A jury is going to make a determination of two
23 things, Your Honor. The jury can make a
24 determination as to whether the sale of the property
25 was commercially reasonable -- in fact, it's really

1 premature to even be having that motion today
2 because we don't even know when the property -- we
3 don't know that the property's going to sell
4 tomorrow.

5 **THE COURT:** Now, now, now keep in mind, I'm only the
6 master-in-equity. It was referred to me and, and,
7 quite frankly, I don't have the -- well, if you get
8 really, really deep in all the rules involving
9 masters-in-equity, we can sometimes convene advisory
10 juries in certain circumstances. At least we used
11 to be able to. I've never done that. And I've only
12 heard of it a few times having been done. But, but
13 -- and I'm trying to be fair, Mr. Bunch. What would
14 a jury try and how would it get before a jury?
15 Because I can't, I can't empanel a jury and ---

16 **MR. BUNCH:** It would try the factual issue -- it would try
17 the two factual issues of whether a sale was
18 commercially reasonable, and it would try the
19 factual issue of what amounts in addition to the
20 judgments are owed by Mr. Hammer.

21 **THE COURT:** And you haven't, you haven't, you haven't
22 heard of a case where that's been done before?

23 **MR. BUNCH:** Well, I'll -- I can rely upon Rule 53(b) of
24 the South Carolina Rules of Civil Procedure. Rule
25 53(b) references, talks about how cases may be

1 referred to the master.

2 **THE COURT:** Right.

3 **MR. BUNCH:** But it says, "Any party may request a jury,

4 pursuant to Rule 38, on any or all issues triable of

5 right by a jury. And upon the filing of a jury

6 demand, the matter shall be referred to the circuit

7 court."

8 **THE COURT:** Okay.

9 **MR. BUNCH:** So that's the procedure.

10 **THE COURT:** So you're -- so this is, again -- I mean,

11 you're not asking me to recuse myself; you're asking

12 me to send the case back to Judge Barber or back to

13 the circuit court ---

14 **MR. BUNCH:** Back to the circuit court.

15 **THE COURT:** --- or back to Judge James or whoever?

16 **MR. BUNCH:** You would not -- I don't think you would be

17 presiding over the jury trial.

18 **THE COURT:** Okay.

19 **MR. BUNCH:** I think it would have to go back to the

20 circuit court.

21 **THE COURT:** All right. All right. Now we've gotten to

22 the bottom of it.

23 **MS. BALLARD:** Just to follow ---

24 **THE COURT:** Yes, ma'am.

25 **MS. BALLARD:** --- up with one point, Your Honor? When

1 Judge Barber was assigned supervision of these cases
2 by the Supreme Court, he was required to file
3 monthly status reports with the Supreme Court, which
4 he did. And, of course, they're in the file. When
5 we were approaching the trial of the merits actions
6 in the 2009 and 2010 action, Mr. Hammer
7 affirmatively waived a jury trial at that point.
8 These cases -- and that's included in one of Judge
9 Barber's early status conference reports. He
10 assigned the case to Judge George James to try, and
11 Mr. Hammer, through Susan Lipscomb, waived a jury
12 trial at that point. And that's part of the record
13 in this case. And again, if there was going to be a
14 jury trial on anything else, the request comes a
15 year and a half too late.

16 **THE COURT:** Okay.

17 **MR. BUNCH:** Your Honor, I don't know that that waiver has
18 anything to do -- in fact, it does not have anything
19 to do with new claims now being asserted by Mrs.
20 Hammer that were raised 14 days ago, so.

21 **THE COURT:** All right. Anything else?

22 **MR. BUNCH:** I would hand up my demand for the jury trial,
23 Your Honor, and ask that it be considered a filing
24 with the court.

25 **THE COURT:** Okay.

1 **MR. BUNCH:** That's the original, Your Honor.

2 **THE COURT:** All right.

3 **MR. BUNCH:** And keep in mind, Your Honor, as I got into
4 this, the reason I'm filing this demand for a jury
5 trial is I feel like we're being now tried by ambush
6 by the bringing in of witnesses and seeking to
7 establish a record on something that we had no
8 notice about. If we're given sufficient time to
9 develop our own defense to those factual issues, I
10 can go forward before this Court. But right now
11 we're not being -- I mean, you haven't indicated
12 your willingness to give us sufficient time, and
13 it's -- the entire matter seems premature to me,
14 considering there's been no sale, to make a finding
15 today that it's been commercially reasonable. We
16 don't know what's going to happen at tomorrow's
17 auction. We don't know what the price will be, we
18 don't know if anybody will actually bid \$837,000.
19 And even if they were to bid \$837,000, there are
20 strong arguments that that's not a commercially
21 reasonable sale. But, that being said, the reason
22 I'm forced into demanding a jury trial is I've got
23 no indication from this Court that I'll be given an
24 adequate time to prepare a defense or that Mr.
25 Hammer will be given an adequate time to prepare a

1 defense and accorded due process in terms of
2 confrontation and examination of witnesses, as well
3 as discovery on the issue of commercial
4 reasonableness. And if you want to shorten the time
5 for discovery, that's fine. We'd be certainly
6 amenable to that. We don't want to delay this. We
7 want to move forward, but he's entitled to his day
8 in court. And the manner in which we're being -- it
9 may go forward today, is not affording him that
10 opportunity.

11 **THE COURT:** All right. Anything else from ---

12 **MS. BALLARD:** Nothing further from Mrs. Hammer. Thank
13 you, Your Honor.

14 **THE COURT:** Okay. Ms. Ballard, your motion to approve the
15 accounting by Shirley Hammer is granted.

16 **MS. BALLARD:** Thank you, Your Honor.

17 **THE COURT:** And the sale's tomorrow at 2:00. You
18 anticipate any other motions between now and then,
19 Mr. Bunch?

20 **MR. BUNCH:** No, Your Honor. I do want to file with the
21 Court, since we went right into that, I do want to
22 file with the Court a response to -- preserving our
23 right to the request for a jury trial. I want to
24 file the response of Howard Hammer to the motion to
25 approve the accounting.

1 **THE COURT:** All right, thank you.

2 **MR. BUNCH:** That's the original of that document, as well.

3 **THE COURT:** All right. Thank you, sir.

4 **MS. BALLARD:** Thank you. Your Honor, did you want a
5 proposed order, or are you just going to do a Form
6 4?

7 **THE COURT:** If you'd submit an order, a brief, non-
8 argumentative order.

9 **MS. BALLARD:** Yes, sir, I'll be happy to. Thank you, Your
10 Honor.

11 **MR. BUNCH:** Your Honor, there are ---

12 **THE COURT:** There's one other issue I wanted to take up:
13 the amended charging order, the other -- in the 2013
14 case.

15 **MS. BALLARD:** Yes, sir.

16 **THE COURT:** All right.

17 **MS. BALLARD:** I don't have that with me, but I can ---

18 **THE COURT:** Well, the reason I ask -- I think that's on
19 appeal, isn't it? There's nothing ---

20 **MS. BALLARD:** Mr. Babcock has appealed that, that's
21 correct.

22 **THE COURT:** I think ---

23 **MS. BALLARD:** Actually, I think both Mr. Hammer and Mr.
24 Babcock have appealed that. So that would not be
25 before the Court at this time.

1 **THE COURT:** That's what I was going to announce. Is that
2 your understanding, Mr. Bunch?

3 **MR. BUNCH:** The ---

4 **THE COURT:** Anything involving ---

5 **MR. BUNCH:** Her amended order on the charging order?

6 **THE COURT:** Right. Right. My first reaction was, it's on
7 appeal and it's stayed. There's nothing I can do at
8 this point.

9 **MR. BUNCH:** I would agree to that, Your Honor. Your
10 Honor, I do have one significant issue that I need
11 to raise with you.

12 **THE COURT:** Okay.

13 **MR. BUNCH:** Regarding the, which you have indicated you
14 are granting the motion to approve the accounting.

15 **THE COURT:** Yes, sir.

16 **MR. BUNCH:** If you look at that motion, and I'm -- I need
17 to find the motion itself. Here it is, Your Honor.
18 If you look at that motion and you go to the
19 accounting aspect of it, Exhibit A, at the bottom of
20 that motion, the last item includes \$247,016.50 of
21 alleged claims by 1634 Main Street against Mr.
22 Hammer. Okay? One of them is for past due rent
23 allegedly from Mr. Hammer. The other two items are
24 notes allegedly due from Mr. Hammer. Okay? There's
25 not been a lease presented into evidence, there's

1 not been a note presented into evidence, there's not
2 been any testimony regarding the terms of any lease
3 or notes. There's no evidence whatsoever to
4 substantiate a \$247,000 alleged debt owed by Mr.
5 Hammer to what used to be his limited partnership.
6 Okay? Now, in addition to that, if you grant this
7 motion in the full sum of \$794,000, and you've
8 included in that this \$247,000, you are giving Mrs.
9 Hammer a double recovery. You have already given
10 Mrs. Hammer the real property at Main Street and the
11 limited partnership to satisfy what is now \$429,000
12 in judgments. If you say that Mr. Hammer owes her -
13 - and this is an asset of the limited partnership,
14 and he owes her \$247,000, then you're piling on and
15 giving her something that she's not entitled to.
16 Right now, under the January 21st, 2014, order of
17 this Court, she's entitled to recovery of her
18 judgments, which are approximately \$429,000, she's
19 entitled to the costs of sale and marketing, she's
20 entitled to the -- and that's essentially it. Okay?
21 So if you're going to say that she's entitled to
22 this money too, you need to give Mr. Hammer credit
23 on that \$429,000 in judgments. She's not entitled
24 to both of those. She's only entitled to one
25 recovery, and that's 429 plus what you've provided

1 for in your order. By ruling in favor of Mrs.
2 Hammer on these issues, you have made findings of
3 fact without a wit of evidence presented before you
4 as to the validity of these debts. They are
5 contested, they are -- you know, it's beyond
6 comprehension that a court would actually give this
7 amount of money, \$247,000, without entertaining the
8 first evidentiary fact -- without entertaining any
9 evidence whatsoever in the record. This is just a
10 claim that she says she's owed money. That's all it
11 is.

12 **THE COURT:** Okay, you've gotten me confused again. Mr.
13 Bunch, didn't you just argue against her offering
14 evidence to support the motion?

15 **MR. BUNCH:** Your Honor ---

16 **THE COURT:** You were arguing against calling witnesses and
17 ---

18 **MR. BUNCH:** All I argued was that if we are going to -- if
19 they're going to put up evidence, then we need an
20 opportunity to respond to that. And they didn't put
21 up evidence but you granted the motion anyway, so.
22 I'm not being, I'm not being inconsistent in what
23 I'm saying, Your Honor. Your Honor, what I'm saying
24 is they've got an obligation to come to this Court
25 with affidavits and evidence, on personal knowledge

1 that is admissible into evidence in support of their
2 motion. They have not done that. Okay? They have
3 failed to do that. If they were going to come in
4 here and try a case and put up witnesses, then we
5 were entitled to -- then we ought to be entitled to
6 an opportunity -- that's what I was saying. They
7 need to follow the rules, which is to file your
8 motion and support it by an affidavit, which is Rule
9 Six of the South Carolina Rules of Civil Procedure.
10 Or they need to give some kind of notice that
11 they're going to have an evidentiary hearing and
12 give us an opportunity to prepare for that. I'm not
13 being inconsistent at all, Your Honor.

14 **THE COURT:** Okay.

15 **MS. BALLARD:** Can I respond just for the record?

16 **MR. BUNCH:** Well, I'm not finished.

17 **THE COURT:** Let him finish.

18 **MS. BALLARD:** I'm sorry, I thought that was ---

19 **THE COURT:** Yeah. Go ahead, Mr. Bunch.

20 **MR. BUNCH:** I'm not through at all. Your Honor, what
21 they've done is they've come in here and presented
22 you with a list of expenses that are not -- there's
23 no documentation that would be admissible in
24 evidence. There's no witness that's been competent
25 to testify to substantiate those. There -- in

1 addition to that 247, there's another \$118,000 that
2 they claim is owed. That amount is in dispute as
3 well. Chief Justice Toal, when they heard oral
4 arguments on this case, said, "All Judge Strickland
5 is talking about, as I understand it, in terms of
6 any expenses, is the expenses of sale. Commissions,
7 closing expenses and the like." I don't see
8 anything other than that that gives you any
9 discretion in the matter. Despite her comments and
10 the holdings of that court, they come in here and
11 added another, what appears -- 118,000 plus 247, so
12 another \$365,000 or so to the judgments. Your
13 Honor, the other issue which I need to bring up --
14 you've already granted the motion, but I want to
15 make sure it's in the record, Your Honor. The
16 motion fails to account for any rental receipts that
17 Mrs. Hammer has brought in. Attached to our
18 response is a rent roll from that building. It
19 shows that during her ownership of the property she
20 should have received \$150,000-something in income.
21 I don't know how much she's received; I don't know
22 if the tenants are paying her or if, you know, what
23 the status is. But I know that she should have
24 received \$150,000 in income.

25 **THE COURT:** Wait a minute. The rent roll is from when Mr.

1 Hammer owned the building?

2 **MR. BUNCH:** No. The rent roll is what they currently say
3 it is generating right now. We were able to obtain
4 that from the auction company so they can lure
5 bidders into bidding on the property tomorrow.
6 That's a current rent roll, as I understand it.
7 This is -- and it's ---

8 **THE COURT:** You got it from the auction company?

9 **MR. BUNCH:** Got it from the auction company.

10 **THE COURT:** Why'd you get it from the auction company?

11 **MR. BUNCH:** Because they wouldn't -- they won't give us
12 the information.

13 **THE COURT:** Well, maybe I should rephrase the question.
14 How'd you get it from the auction company?

15 **MR. BUNCH:** I asked them for it.

16 **THE COURT:** Did you tell them who you were?

17 **MR. BUNCH:** Actually, Mr. Babcock asked them for it, and
18 it came to me from Mr. Babcock's office.

19 **THE COURT:** Okay.

20 **MR. BUNCH:** Or somebody at Mr. Babcock's office asked them
21 for it. I would -- that type of information they
22 would want publicized if they think it's favorable
23 to the sale, and so they want people to know that
24 there are tenants in the building and they are
25 generating rent. They're not giving us credit for

1 that \$150,000 in expenses.

2 **THE COURT:** Wait a minute. Wait. Again, I'm ---

3 **MR. BUNCH:** I'm sorry, in receipts.

4 **THE COURT:** Okay. I feel -- I'm sorry. And, and, you
5 know, I don't know what the record's going to look
6 like when I keep getting confused. This is rent
7 that Mrs. Hammer's collecting after she owned the
8 building; is that correct?

9 **MR. BUNCH:** That's correct.

10 **THE COURT:** And you're saying your client is entitled to
11 an offset or a credit for rent that she collects
12 after she owned the building?

13 **MR. BUNCH:** If she says she's entitled to \$118,000 in
14 additional expenses from Mr. Hammer, then he ought
15 to get credit for the rent.

16 **THE COURT:** But, so you got the rent rolls for the purpose
17 of bidding or for the purpose of seeing if he's
18 going to get credit for ---

19 **MR. BUNCH:** The rent rolls were secured for the purpose of
20 bidding in case Mr. Babcock's clients want to bid.
21 They were provided to me. I don't know why. I
22 didn't ask for them, they were just sent over to me.
23 But, you know, I do find it interesting that now
24 that I understand the full scope of the rent, that
25 they've brought in \$150,000-something apparently

1 over the last 15 to 16 months, 16 months I believe
2 it is, starting February 1st. Assuming that's when
3 the rents started coming in after she became the
4 owner in January, that should have brought in
5 \$153,000 or so in rent. And the interesting thing
6 about the rents, Your Honor, is your order provided
7 specifically that she could use the rents, but only
8 use the income for maintenance and operating
9 expenses of the real property. Well, that's what
10 they've got in here are maintenance and operating
11 expenses. So based on your order previously, I
12 think he'd be entitled to a credit for that rent.
13 Your Honor, the other points I would bring up --
14 and, you know, I need to put all these matters into
15 evidence.

16 **THE COURT:** Yes, sir.

17 **MS. BALLARD:** Your Honor, if I wasn't allowed to put
18 anything into evidence, I'm going to object to him
19 putting any evidence.

20 **THE COURT:** Well, actually I've already ruled but ---

21 **MS. BALLARD:** Yes, sir.

22 **THE COURT:** I'm willing to let ---

23 **MR. BUNCH:** Your Honor, I would make a proffer since we
24 were not given an opportunity to do that.

25 **MS. BALLARD:** Your Honor, when will I have an opportunity

1 to respond to his arguments?

2 **THE COURT:** In a few minutes.

3 **MS. BALLARD:** All right.

4 **THE COURT:** Whenever he finishes.

5 **MR. BUNCH:** Your Honor, I would offer as an exhibit the

6 appraisal of the property.

7 **THE COURT:** Okay.

8 **MS. BALLARD:** No objection.

9 **THE COURT:** You want to make it Mr. Hammer's -- one

10 moment, let me look at it first. Do you want to

11 make it a Court exhibit or your ---

12 **MR. BUNCH:** I'm sorry, a Court exhibit or?

13 **THE COURT:** Or your exhibit.

14 **MR. BUNCH:** I would make it Mr. Hammer's exhibit.

15 **THE COURT:** All right. Hold one moment, please.

16 **(Defendant's Exhibit Number One is marked and entered into**

17 **the record as a proffer.)**

18 **MR. BUNCH:** I would also offer as an exhibit my letter to

19 you of May 8, 2014.

20 **MS. BALLARD:** Okay.

21 **(Defendant's Exhibit Number Two is marked and entered into**

22 **the record as a proffer.)**

23 **MR. BUNCH:** I would also offer as an exhibit Mr. Hammer's

24 amended petition for writ of supersedeas filed May

25 23 of 2014.

1 (Defendant's Exhibit Number Three is marked and entered
2 into the record as a proffer.)

3 MR. BUNCH: Your Honor?

4 THE COURT: Yes, sir?

5 MR. BUNCH: In the appraisal, which is the first exhibit,
6 the property's been appraised for \$1,475,000.
7 They're now seeking a sale for \$837,000. That is
8 not a commercially reasonable sale.

9 THE COURT: Now, I have a layman's view of what an
10 appraisal means, but the old cliché is that a
11 building's only worth what somebody's willing to pay
12 for it. Do you know if anyone's going to bid \$1.4
13 million for this property tomorrow?

14 MR. BUNCH: I couldn't tell you that. I couldn't tell you
15 what efforts they've made to sell the property.
16 Okay? But all I can tell you is based on the
17 numbers, it doesn't appear to be commercially
18 reasonable. The May 8th letter, which I gave you,
19 which I assume is Mr. Hammer's Exhibit Number Two
20 now, that was provided to the Court a year ago.
21 Based on Ms. Ballard's accounting at that time.

22 THE COURT: Letter of May 8th, 2014?

23 MR. BUNCH: Yes.

24 THE COURT: Not last Friday?

25 MR. BUNCH: Correct. May 8th, 2014.

1 **THE COURT:** All right.

2 **MR. BUNCH:** Mrs. Hammer provided an accounting -- Mrs.
3 Hammer's counsel provided an accounting to us that
4 \$439,000 was owed on these judgments. Then a few
5 weeks later she provided an updated accounting. We
6 filed a petition for writ of supersedeas, which this
7 Court never heard, never ruled upon, where we said,
8 okay, you've now said \$461,000 is owed, or something
9 to that effect. The numbers are written in the
10 motion itself. On both occasions Mr. Hammer agreed
11 to pay those amounts of money. On both occasions
12 those efforts were rebuffed and refused.

13 **MS. BALLARD:** Your Honor, I'm going to object to going
14 into the settlement offers. Again, that has nothing
15 to do with why we're here.

16 **MR. BUNCH:** It has everything to do with the commercial
17 reasonableness of the sale, Your Honor. If they
18 were given an opportunity to be fully paid a year
19 ago, but now they're going to claim \$300,000-
20 something more in expenses ---

21 **THE COURT:** Now ---

22 **MR. BUNCH:** --- if they're going to gouge Mr. Hammer for
23 those expenses, when he's offered to pay them in
24 full, the sale cannot be commercially reasonable.
25 And they're here asking for you to approve \$794,000

1 when they could have been fully paid over a year ago
2 for 439,000 or \$461,000.

3 **THE COURT:** Now, this was, this was before the Supreme
4 Court ordered that Mr. Hammer disclose what his
5 assets were, right?

6 **MR. BUNCH:** I'm sorry?

7 **THE COURT:** This was before the Supreme Court ruled back
8 in November of 2014, right?

9 **MR. BUNCH:** It is.

10 **THE COURT:** Okay.

11 **MR. BUNCH:** They had every opportunity to be made whole a
12 year ago, return the property back to Mr. Hammer.
13 They refused it. So anything done since then, they
14 are coming to the Court seeking -- they're coming to
15 the Court, what I would consider, with unclean
16 hands; what I would consider with -- should be an
17 estoppel applied, to recover anything more than what
18 he already agreed to pay them. Mrs. Hammer's
19 counsel has presented on her accounting \$77,220 in
20 fees for a closing that's never occurred. That's
21 just outrageous, Your Honor.

22 **THE COURT:** Okay. Now, I've already ruled on her motion.
23 And I'm going to let you put in the record what you
24 want to put in the record.

25 **MR. BUNCH:** I understand ---

1 **THE COURT:** But I'm, you know, I can't, I can't help but,
2 but see everything in the context -- you know,
3 anything that happened before last November, and I
4 forget the date of the Supreme Court's order, was it
5 November ---
6 **MS. BALLARD:** I don't remember the exact date either.
7 **THE COURT:** I know the report was due November 20th; does
8 that sound right?
9 **MS. BALLARD:** I don't if we brought that.
10 **THE COURT:** Well, the point is, the point is, Mr. Bunch,
11 you're saying Mr. Hammer was doing this and doing
12 that. This was back during the stage when he wasn't
13 even forthcoming with what his assets were. This is
14 supplemental proceedings. And this has been going
15 on for almost two years now. And, you know, I ---
16 **MR. BUNCH:** Your Honor, you sanctioned him \$88,000 for ---
17 **THE COURT:** That's right. I was going to ask ---
18 **MR. BUNCH:** --- not being forthcoming about his assets.
19 **THE COURT:** Right. I was going to ask that, ask about
20 that when we finished with this motion to approve
21 accounting by Shirley Hammer, which I had granted
22 that motion; I was going to ask about that now.
23 Now, is that still -- is that something he can pay,
24 or is he going to have to get relief from the Court
25 as far as payment on that?

1 **MR. BUNCH:** I don't know -- he doesn't have \$88,000 at the
2 present time, let's put it that way.

3 **THE COURT:** I think his testimony early in April indicated
4 that he was going to clear a little over \$400,000
5 from the sale of the property to HASCII.

6 **MS. BALLARD:** Your Honor, the 88,000 is included in our
7 accounting. So ---

8 **THE COURT:** That's part of it?

9 **MS. BALLARD:** Yes, sir. We would not request double
10 recovery on ---

11 **THE COURT:** Oh, no, I understand that. But my question
12 was, is he able to pay that. And, Mr. Bunch, you
13 said he doesn't have the money so he can't pay it.
14 And I thought the testimony was that they were going
15 to close on that sale, HASCII was, sometime late in
16 May and that his share of the proceeds of the sale
17 would be, I think you said \$463,000?

18 **MR. BUNCH:** I don't know the number, Your Honor. But
19 whether that money is distributed or not is not --
20 he's a 12 percent owner, I think it was. Maybe 16
21 percent, something like that.

22 **THE COURT:** I think I asked him, and he testified what his
23 share would be. And, in fact, HASCII even argued
24 they could buy this building back, and then it came
25 out they don't have any money now; they're basing

1 their belief on the fact they're going to close on
2 this sale by the end of May.

3 **MR. BUNCH:** I ---

4 **THE COURT:** So I'm just curious. Should I anticipate a
5 motion by Mr. Hammer to be relieved of the
6 obligation to pay that sanction because he's
7 destitute or anything like that?

8 **MR. BUNCH:** I don't know the answer to that, Your Honor.

9 **THE COURT:** All right. Mr. Hammer, he's itching to say
10 something. I don't mind, you want to ---

11 **MR. BUNCH:** You gave him a deadline I believe of June 15th
12 to pay that. Now you're also including that in the
13 -- so we haven't crossed that bridge ---

14 **THE COURT:** Did I say June 15th or June 8th? I'm trying
15 to remember. I'll have to go back and look. And I
16 apologize if I seem unprepared. It's because I
17 didn't ---

18 **MS. BALLARD:** It's June 8th according to my assistant,
19 Your Honor.

20 **MR. BUNCH:** Okay, it's June 8th. Either way, it's
21 approximately a month away. And so I haven't
22 discussed that with Mr. Hammer and whether he has
23 the ability to pay or how he intends to pay.

24 **THE COURT:** Right. I'll let Mr. Hammer speak if he wants
25 to, if you don't mind, if you don't object, Mr.

1 Bunch.

2 **MR. BUNCH:** He does want to, but I haven't -- I still have
3 an issue that I want to bring up concerning the
4 \$77,220 in attorney's fees. Your Honor, as I
5 understand what Ms. Ballard has done so far in this
6 case, she's reviewed one contract of sale that was
7 prepared by another lawyer ---

8 **THE COURT:** Now, now, now ---

9 **MR. BUNCH:** She did not bind the purchaser on that
10 contract; they walked away from the contract. They
11 walked away from the contract maybe without even
12 forfeiting any earnest money. At the same time, and
13 you alluded to it a minute ago, when HASCII wanted
14 to buy the property two or three months ago, I
15 prepared a contract of sale, I reviewed deeds, I did
16 a title search. I did all of that for less than
17 \$2500. My time records came out to \$2240. I didn't
18 ---

19 **MS. BALLARD:** Now, if Mr. Bunch is going to testify I'm
20 going to have to put up my witnesses about the
21 marketing of the property.

22 **THE COURT:** Yeah. Hold on a second. I'm going to
23 truncate this, and it is unlike me to do that to
24 attorneys, but. I've already ruled on the motion,
25 and you keep fighting. I've been intrigued though

1 by your getting information through Mr. Babcock,
2 especially since his client's been dismissed from
3 the case. And, you know, and I don't know, I don't
4 know if ---

5 **MR. BUNCH:** Well, Your Honor, keep in mind also that in
6 her last motion for the sanctions, they sought in
7 that motion to prevent Mr. Hammer or any of his
8 agents from attending the sale, contacting the
9 auction company, doing anything, so ---

10 **THE COURT:** Now, how did I rule on that?

11 **MR. BUNCH:** You did not ---

12 **MS. BALLARD:** You did not.

13 **MR. BUNCH:** You did not grant that motion.

14 **THE COURT:** That's right. That's right.

15 **MR. BUNCH:** But, you know, in the meantime, while that
16 ruling was pending, they were able to get the
17 information from the auction company and provided it
18 to me, so. Your Honor, I've said what I think I
19 need to say in terms of a proffer from Mr. Hammer.
20 And Mr. Hammer asks, and you offered for him to say
21 something, I think Mr. Hammer would like to better
22 explain this \$247,000 matter to the Court, if you
23 would entertain that.

24 **THE COURT:** Okay. Mr. Hammer, please raise your right
25 hand. If you don't want to be sworn, I'll accept

1 that. I won't say anything.

2 **MR. HAMMER:** Yes, sir. I'm doing this as an explanation
3 to the Court.

4 **THE COURT:** You don't want to be sworn, in other words?

5 **MR. HAMMER:** I don't mind being sworn if those are real
6 questions being asked, if you want to -- why don't
7 you hear what I have to say? It's more in terms of
8 an explanation, if you'll allow me, please, Your
9 Honor.

10 **MS. BALLARD:** Your Honor, I insist on him being sworn.

11 **THE COURT:** Okay. Well, I won't. I mean, if he'd prefer
12 not to be, that's fine. But go ahead, Mr. Hammer.

13 **MR. HAMMER:** Your Honor, there's a judgment, and we start
14 at that point. And the judgment is for a total
15 amount of -- let me get this judgment amount. The
16 judgment amount is for a total amount of 295,634
17 plus 133, which is a little over 400 -- about
18 \$435,000. They have come in and said I owe, and you
19 have said I owe them \$435,000. All right? You had
20 given them, as you explained, what you were trying
21 to do was to discover assets to pay them the 430.
22 If you discovered \$100,000 in a bank account that I
23 had, you would have taken that \$100,000 out, you
24 would have shifted it to her and instead of 435 it
25 would be 335 that I would owe. Correct? I think

1 so. Now, in this case, one of the assets that you
2 gave was 1634 Main Street. That was an asset.
3 That's like a bank account. That's like a brick of
4 gold. You gave her that asset. They now say that
5 that asset is worth \$250,000. Let us say for the
6 purposes of discussion, just for the purposes of
7 discussion, that I have \$250,000 and I put that into
8 the 1634 Main. That's the asset that you gave her.
9 That's part of the \$435,000 you've given her. You
10 take that 250 and you give that to her, that means
11 I've paid off \$250,000 of the 435 that you gave to
12 them. Whereas what they're asking to do is to have
13 the 435 and then to have the other asset added to
14 it. Now, that is not what Your Honor has explained
15 this is about. Your Honor's explained this is about
16 getting her paid her \$435,000. So to give her the
17 435, that's one thing. But to give her the 435 and
18 then to give her on top of that the value of the
19 1634 Main, which they say is 250,000, that's giving
20 her two -- that's adding to it when it should be
21 subtracted from it. It is a payment that is being
22 made to her. When they take the 1634 Main and they
23 get \$250,000 for it, which is what they're claiming,
24 even assuming that it was owed for the purposes of
25 discussion, which is contested factually, but even

1 assuming that, that 250 would come off of the 435.
2 If I had the ability to write a check right now for
3 the 250, that is the second asset that you gave her,
4 then you would say, okay, I gave a judgment of
5 \$435,000; Mr. Hammer's giving you a check today of
6 250; I'm subtracting that from the 435. So it
7 should be subtracted, not added, if it's paid. Your
8 Honor, I believe that what -- that anything that Mr.
9 Bunch had submitted in terms of exhibits, as I
10 understood, and Mr. Bunch can clarify this, was
11 submitted subject to and reserving our rights that
12 he requests a jury trial. I hope that my
13 explanation had been -- has helped to clarify a
14 little bit. Because as I sit here, I was really
15 confused by what you -- by some of the questions. I
16 hope that it's clarified. If you have any questions
17 on that, I'm glad to answer. If you think that that
18 needs to be said under oath, I'm glad to say the
19 same thing that I just now said under oath.

20 **THE COURT:** All right. Now, let me ask you, Mr. Hammer,
21 the order to pay the sanctions, are you going to be
22 able to meet that deadline, or you don't know?

23 **MR. HAMMER:** I can't answer that at this juncture, Your
24 Honor.

25 **THE COURT:** Okay. Because I think back in early April

1 when we were here, the testimony was that that
2 particular -- and maybe I'm getting the hearings
3 confused, but there was going to be a closing the
4 end of May and that your share would be over
5 \$460,000. And that's why I set the deadline the
6 8th, because I figured you'd be in a position to ---

7 **MR. HAMMER:** May I say two things on that?

8 **THE COURT:** Yes, sir.

9 **MR. HAMMER:** I don't know, but I do know two things. I
10 know one, there's a charging lien, as I understand
11 it, on that money. All right? So that money is not
12 coming to me to pay, even if I had the opportunity.
13 Number two, as Your Honor aptly pointed out in one
14 of your orders, and I don't recall which one, that
15 the HASCII, or whatever it was, had the right to
16 jettison me, as Your Honor pointed out.

17 **THE COURT:** Right, right. Either disassociate from you or
18 ---

19 **MR. HAMMER:** Or jettison me ---

20 **THE COURT:** --- expel you from the ---

21 **MR. HAMMER:** Right.

22 **THE COURT:** Have they done that? Have they done that?

23 **MR. HAMMER:** They have not included me in any of their
24 negotiations or any discussions. I did not know
25 until after the closing that there had been a

1 closing. I do not know the exact amounts. I do not
2 know what they've done in terms of that, but I do
3 know this: That my understanding is that they're
4 not making any -- I don't know it for a fact, but my
5 understanding is they're not making any
6 distributions. And my understanding is that they
7 are giving that strong consideration. So in either
8 of those two events, under either of those two
9 scenarios, I am not going to -- I'm sorry that you
10 were left with that impression, that I was going to
11 automatically get the money. You were right in your
12 second analysis, that I was not going to get the
13 money because they could jettison me. And you were
14 right in, I think it's part of your analysis, that
15 even if the money came in and even if they didn't
16 jettison me, they couldn't give me the money to give
17 -- to pay it because of your charging lien. And I
18 think the charging lien is -- or may not be under
19 appeal. I didn't quite understand that. So all of
20 those things go to answer, I don't -- at this point
21 I can't answer the question other than my
22 supposition is that I am not going to be getting --
23 based on the information that I have available right
24 now, and I want to make that clear because there's
25 been some confusion about whether -- about

1 information that I have available now as opposed to
2 information that I get later. Based on the
3 information that I have available right now, I don't
4 know the answer to that. But I go back to my
5 primary point that I was trying to raise to Your
6 Honor, and that is that if you give them -- if I had
7 \$250,000, that is something that should be
8 subtracted, not added to the judgment.

9 **THE COURT:** Let me go back to -- now, you say there has
10 been a closing on that Heart of Columbia property?

11 **MR. HAMMER:** I don't know for a fact. I have not been --
12 I haven't seen any paperwork, nobody's called me and
13 said, Howard, there's been a closing. I asked about
14 it, and they said, We're closing. I took it to mean
15 that they closed.

16 **THE COURT:** Okay.

17 **MR. HAMMER:** That's what I took it to mean, so I don't
18 know.

19 **THE COURT:** Yeah. My, my impression was that ---

20 **MR. HAMMER:** My impression is, they are. You know, if I
21 had to put my hand on a bible and you asked me, Mr.
22 Hammer, have they closed? I would say, I don't
23 really know for certain, but to the best of my
24 knowledge they have. And I believe that they have.

25 **THE COURT:** Mr. Bunch, is that -- do you know anything

1 about that?

2 **MR. BUNCH:** Only what I'm getting secondhand as well. So
3 I would answer the question much the same way Mr.
4 Hammer did, is I believe they have but I wasn't
5 there, I wasn't party to it. But it's my
6 information that they have.

7 **THE COURT:** They have closed and the funds are available,
8 but they're not making distributions to Mr. Hammer;
9 that's the point?

10 **MR. BUNCH:** I'm not aware of any distribution going to Mr.
11 Hammer.

12 **THE COURT:** Okay.

13 **MR. BUNCH:** But I'm not involved in -- I'm not
14 representing HASCII, so I don't know.

15 **THE COURT:** Okay.

16 **MR. HAMMER:** Your Honor, I would solicit questions from
17 you in connection with the explanation I've just
18 given you concerning value.

19 **THE COURT:** No, I'm not -- you made it clear. I'm not
20 saying I agree with it, but you made your point very
21 clear.

22 **MR. HAMMER:** Thank you very much, Your Honor. I
23 appreciate the opportunity to have spoken to you
24 about it.

25 **THE COURT:** You're welcome. Now ---

1 **MS. BALLARD:** Is it my turn, Your Honor?

2 **THE COURT:** I was going to say, Ms. Ballard, is ---

3 **MS. BALLARD:** Very briefly, Your Honor.

4 **THE COURT:** Famous last words from attorneys.

5 **MS. BALLARD:** I promise.

6 **THE COURT:** Okay.

7 **MS. BALLARD:** In Your Honor's order dated January 21st,
8 2014, on page 11, paragraph 4, Your Honor
9 specifically ruled that Mrs. Hammer did not have any
10 obligation to Mr. Hammer to account for the income
11 or assets of 1634 Main Street, other than the
12 accounting after the sale. So any money that may
13 have been collected by way of rent, you specifically
14 ruled was not applicable to an offset. Number two,
15 the issue of rent has been litigated before Judge
16 James in his order dated January 29th, 2013,
17 paragraph 79. Judge James found and the Supreme
18 Court affirmed that Howard had paid no rent on an
19 occupied office space through 2008, 2010, and at
20 least through May 2012, and that he, quote, "Did not
21 deny that he owed rent to the limited partnership
22 for several years." So that issue has already been
23 litigated. The other things that I would proffer,
24 since apparently there have been some proffers, I
25 would proffer three documents. The first, Your

1 Honor, is the note of Mr. Hammer to 1634 Main, LP,
2 dated June 23rd, 2008, in the principal amount of
3 \$20,000; that has not yet been repaid. The second
4 is the note from Mr. Hammer to 1634 Main, LP, dated
5 October 30th, 2009, in the amount of \$7500. And
6 then the last document I will proffer, and I will
7 proffer them in that order, is a letter from Mr.
8 Hammer dated November 8th, 2013, to the Richland
9 County Assessor's Office, where he asked for the
10 value of the property to be determined to be, and he
11 successfully asked, for the value of the property to
12 be determined to be \$376,484.50. So that was his
13 position as to the value of the property just before
14 Your Honor transferred it to Mrs. Hammer. I'd like
15 to mark these as Mrs. Hammer One, Two and Three.

16 **MR. BUNCH:** Do you have copies of those?

17 **MS. BALLARD:** I don't.

18 **THE COURT:** We can get you copies before we go today.

19 **MS. BALLARD:** They were introduced into evidence before
20 Judge James, so you have them.

21 **(Plaintiff's Exhibit Numbers One, Two and Three were**
22 **marked for identification and entered into the**
23 **record as a proffer.)**

24 **MS. BALLARD:** That's all I have, Your Honor.

25 **THE COURT:** Okay.

1 **MR. BUNCH:** Your Honor, I object to the proffer of those.

2 **THE COURT:** Hold on a second. Okay, go ahead.

3 **MR. BUNCH:** I object to the proffer of those. They've
4 never been provided to me prior to this. And just
5 to -- they actually -- just the submission of those
6 notes, there's no indication they were owed, whether
7 they've been satisfied. I do note that the, based
8 on what Ms. Ballard said, they're from 2008 and
9 2009. There's no -- they would have a serious
10 statute of limitations problem if they were demand
11 notes. I have no idea what kind of notes they are.

12 **THE COURT:** Now, now, Ms. Ballard, I heard you say when
13 you were marking those, that the exhibits that you
14 proffered today are actually already part of the
15 case file?

16 **MS. BALLARD:** Yes, sir.

17 **THE COURT:** Because they ---

18 **MS. BALLARD:** They were introduced before Judge James,
19 when we tried the case initially, all three of them.

20 **THE COURT:** Okay. You need a copy of them today though?

21 **MR. BUNCH:** I've never seen those notes. I wasn't part of
22 the case at that time, and I'm sure they had many
23 exhibits in that trial.

24 **THE COURT:** Okay, well, we -- that's not a problem. When
25 we finish here today we can get you a copy of them.

1 **MR. BUNCH:** All right.

2 **THE COURT:** And before I forget, let me hand back the
3 amended charging order.

4 **MS. BALLARD:** Oh, thank you, Your Honor.

5 **THE COURT:** Yeah, let me hand that back because that case
6 has been stayed, that issue has been stayed because
7 that case is on appeal. And I think that's about
8 everything today. I'm going to feel compelled to
9 write another report to Justice Toal, let her know
10 what's going on. I think she may be under the
11 impression that everything's finished as far as
12 supplemental proceedings are concerned.

13 **MS. BALLARD:** I'll get a proposed order to you tomorrow,
14 Your Honor.

15 **THE COURT:** Okay.

16 **MR. BUNCH:** Your Honor, I think I noted it for the record,
17 but the proffer of additional argument and exhibits
18 after you ruled was subject to our demand for a jury
19 trial?

20 **THE COURT:** Yes, sir, you did.

21 **MR. BUNCH:** I wanted to make sure.

22 **THE COURT:** Okay. All right.

23 **MS. BALLARD:** Thank you, Your Honor.

24 **THE COURT:** Oh, you're welcome. Mr. Bunch, anything else
25 today?

1 **MR. BUNCH:** No, Your Honor.

2 **THE COURT:** All right, thank you both.

3 (There being nothing further, the hearing was concluded
4 at 4:43 p.m.)
5

CERTIFICATE

I certify that the foregoing transcript, consisting of 52 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before the Honorable Joseph M. Strickland, Master in Equity for Richland County, on May 12, 2015, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

January 15, 2016

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

EXHIBIT J

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Howard Hammer,)
Plaintiff,)
vs.)
Shirley Hammer, et al.,)
Defendant(s),)
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
1634 Main LP,)
Plaintiff,)
vs.)
Shirley Hammer, et al.,)
Defendant(s),)

IN THE COURT OF COMMON PLEAS

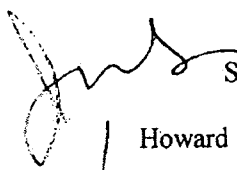
CA# 2009-CP-40-05911

CA# 2010-CP-40-2889

**ORDER GRANTING
MOTION FOR SANCTIONS
(Concludes Cases)**

RICHLAND COUNTY
FILED
2015 APR 24 AM 11:57
JENNIFER W. McBRIDE
C.C.P. & G.S.

INTRODUCTION

 Shirley Hammer (hereafter "Shirley") moved for an order awarding sanctions against Howard Hammer (hereafter "Howard" or "Howard Hammer") based on his misconduct during these supplemental proceedings. Sanctions are sought pursuant to Rule 11, SCRCP, S.C.Code Ann. § 15-36-10 *et seq.*, and the inherent authority of this Court. The motion is granted.

A hearing was held on April 2 and 3, 2015. Shirley was present and was represented by her counsel Desa Ballard. Howard was present and was represented by his counsel Thomas W.

Bunch and Art Aiken. The Court heard live testimony and written exhibits. The Court finds the following facts and Conclusions of Law.

FINDINGS OF FACT

1. This is the latest chapter of litigation between Shirley and Howard Hammer, which began when they entered into a settlement agreement in family court in their divorce case (which began in 2005) in May, 2008. A mutual release for all purposes was signed by the parties on May 9, 2008, releasing all disputes between them except any litigation related to the settlement agreement that was entered into them at that time. (Plaintiff's Exhibit No. 1).
2. Shortly thereafter, Howard was arrested and charged with several criminal offenses arising out of events related to his separation and divorce from Shirley. Those criminal charges were eventually dismissed, but they formed the basis for the South Carolina Supreme Court to place his license to practice law on interim suspension on June 12, 2008. *In re: Hammer*, 378 S.C. 413, 663 S.E.2d 37 (2008).
3. Howard filed these lawsuits against Shirley in circuit court in 2009 (*pro se*) and 2010 (through counsel). Howard's claims in the 2009 action were dismissed on motion, leaving only Shirley's counterclaims pending. While the 2010 action was ostensibly brought by a limited partnership controlled by Howard, the trial judge eventually concluded that Howard had instigated the filing of the lawsuit by providing false information to his property manager to prompt the suit against Shirley simply to harass her and cause her to incur fees and costs.
4. In 2011, Howard entered into an Agreement for Discipline by Consent with the Office of Disciplinary Counsel in which he admitted he had engaged in litigation

misconduct in connection with his *pro se* deposition of a "former friend" who had sided with Shirley in their contentious domestic case. He attributed his lack of judgment and control largely to the stress of his domestic action, but he acknowledged he "could have used better judgment." The agreement noted the dismissal of the prior criminal charges, and included an affidavit by then-Fifth Circuit Solicitor Barney Geise, who opined that Howard's conduct which formed the basis of the arrests had not been criminal in nature. (Plaintiff's Exhibit 46).

5. The agreement also included affidavits from numerous individuals, including a psychiatrist who had "seen Howard. . . professionally" and provided counseling. The numerous witnesses attested that Howard is "mentally and emotionally fit", "emotionally stable", "mentally stable", "absolutely fit, mentally and emotionally, to practice law", "intelligent, focused and mentally sound", and "rational and realistic". (Plaintiff's Exhibit 46). Howard advised the Supreme Court that he "regrets and apologizes" for his misconduct.

6. The South Carolina Supreme Court accepted Howard's Agreement to Discipline by Consent and imposed a definite suspension of six-months. The Court noted its "deep concern" with Howard's emotional stability, finding that he was "obsessed" with Shirley, from whom he had then been divorced for six (6) years. The Court also commented on Howard's initial refusal to accept responsibility for his actions, and his decision to characterize himself as the victim in disputes with Shirley and others. *Matter of Hammer*, 395 S.C. 385, 718 S.E.2d 442 (2011). The Supreme Court ordered Howard to remain in counseling for a period of two (2) years. *Id.*

7. The civil suits filed by Howard against Shirley in 2009 and 2010 did not progress in any appreciable way. Meanwhile, Howard continued to file motions in family court seeking to set aside the 2008 settlement and appealing each time his efforts were denied. Howard filed a total of seven (7) appeals from various orders of the family court after he purportedly settled all his domestic issues with Shirley. (Plaintiff's Exhibit No. 45).
8. In June, 2012, Shirley filed a petition with the South Carolina Supreme Court asking for an order to assist in bringing these matters, as well as multiple appeals by Howard from various orders of the family court, to a conclusion. (Plaintiff's Exhibit No. 45)
9. By order dated September 21, 2012, the Supreme Court issued an order assigning the supervision of these cases to Circuit Judge James R. Barber III, as well as granting relief regarding the related domestic matters that were then pending. *Id.* In so doing, the Supreme Court noted that its intervention was necessary "to curtail Howard Hammer's abuse of the judicial system." The Supreme Court's order required that these matters be expedited and required Judge Barber to provide monthly status reports to the Supreme Court regarding the progress of these actions.
10. Judge Barber assigned the trial of these matters to Circuit Court Judge George James, and set a non-jury trial date for both matters to begin on October 29, 2012. Judge James held several hearings, eventually issuing order filed on January 29, 2013 that dismissed the claim by 1634 Main LP against Shirley. (Plaintiff's Exhibit No. 3).
11. Judge James also found in favor of Shirley against both Howard and 1634 Main LP on her claims for abuse of process. He awarded Shirley actual and punitive damages

against Howard and the limited partnership controlled by him based on Howard's and the partnership's abuse of process in bringing and conducting the suits. *Id.*

12. Judge James found that Howard's conduct in pursuing frivolous claims against Shirley was "reprehensible. . . totally improper. . . totally unfounded." *Id.* @ ¶40. He found that Howard had threatened Shirley with never-ending litigation to bankrupt her, and that these two suits brought were brought solely to harass Shirley and try to force her into bankruptcy as he had threatened to do. *Id.* @ ¶2. Judge James found "clear and convincing evidence of Howard's intent to use unmeritorious litigation of any kind to harass and cause financial hardship to Shirley." *Id.*



13. Judge James specifically noted that Howard's testimony during the trial of these cases was "characterized by obfuscation and degenerated into areas having little to do with the issues germane to the case." *Id.* @ ¶ 1. "His manner of answering questions clearly established that he is intent on using the civil process to unnecessarily and unfairly prolonging any and all litigation involving Shirley." *Id.*

14. The findings in Judge James' order filed January 29, 2013 contain a detailed chronology of Howard's efforts to interfere with the sale of the former marital home, including "timing his arrival [at the closing attorney's office] to disrupt the closing." *Id.* @ ¶ 30.

15. Judge James found that Howard initiated the 2010 action "very soon after [he] was unsuccessful in stopping the sale" of the former marital home. *Id.* @ ¶ 32. The action was initiated by the limited partnership against Shirley because Howard provided inaccurate information to his property manager to insure suit was brought

only against Shirley, but not himself or other members of the limited partnership. *Id.* @ ¶ 58, 76, 77, 80, 83, 88, 89, 90, 92, 94.

16. In awarding actual damages to Shirley for abuse of process, Judge James found that “Howard is unable to entertain the thought that his relationship with Shirley is over, and he has chosen to resort to commencing and continuing . . . baseless litigation in a completely improper forum for reasons that are nothing but abusive . . .” and he had taken steps “to keep the litigation waters churning.” *Id.* ¶ 46.

17. In awarding punitive damages to Shirley, Judge James found that Howard’s abusive litigation against Shirley was brought at a time when she was “financially vulnerable” and that his “conduct was repeated, intentional consistent, and grounded in malice toward Shirley. The reprehensibility of Howard’s conduct and Howard’s awareness of the conduct are beyond doubt.” (emphasis added). *Id.* ¶ 123. Judge James noted that his award of punitive damages against Howard was “perhaps low in light of Howard’s conduct.” *Id.* @ ¶ 124.

18. All of Judge James’ findings of fact regarding the abusive nature of Howard’s conduct and malicious intent toward Shirley were affirmed on appeal by the South Carolina Supreme Court. *Hammer v. Hammer*, Memorandum Opinion No. 2014-MO-007 (filed March 19, 2014).

19. In March, 2013, Shirley attempted collection proceedings through the Richland County Sheriff, who reported that the judgements were “uncollectible” through the resources of his office. (Plaintiff’s Exhibit No. 4).

20. Shirley commenced these supplemental proceedings (hereafter called “supplemental proceeding”) in the 2009 and 2010 actions in April 2013, which were referred to this

Court for determination. A Rule to Show Cause was issued requiring Howard to appear before the undersigned at a hearing on May 30, 2013 and to bring specified financial documents to assist the court in locating assets from which the judgments could be satisfied.

21. Judge James heard Shirley's motion for sanctions (following his original order filed January 29, 2013) against Howard and 1634 Main LP on May 1, 2013 and May 17, 2013. (Exhibit 10, P. 2, ¶ 2).

22. While the motion for sanctions was pending before Judge James, Howard and his counsel contacted the undersigned on May 7, 2013 (through counsel), May 24, 2013 (independently, with copies to his counsel) and May 28, 2014 (independently, with copies to his counsel) seeking to cancel or delay the May 30, 2014 hearing.

(Plaintiff's Exhibits No. 5, 6, 7, 8 and 9). No delay was granted.

23. Howard did not appear and did not produce any documents at the May 30, 2013 hearing. His attorney Art Aiken appeared but brought no documents. This court recessed and rescheduled, instructing Mr. Aiken to have Howard present on June 4, 2013 to respond to the Rule to Show Cause.

24. Howard did appear on June 4, 2013, as ordered, but he brought none of the documents which were mandated by the Rule to Show Cause. Shirley's counsel questioned Howard, which produced several hours of evasive and rambling responses and no substantive information. Inexplicably, while evading the questions asked, Howard injected several colloquies with no one in particular accusing Shirley of failing to comply with her obligations under the prior family court orders. By way of

example, he provided his analysis of one property transfer arising from the family court proceedings:

And I might add, the property that you're talking about, a deed was supposed to have been delivered by my former wife. She did not deliver that deed to me. I repeat, the deed was delivered some six months after it was supposed to be or five months, or whatever, to the adverse attorney. Not to me. He had no authority to act on my behalf, no authority to receive a deed on my behalf. It was not received by me.

(Plaintiff's Exhibit No. 10, Page 49, lines 11-19).

25. The court made several inquiries directly to Howard. The court inquired of Howard what he did for a living, and he replied he received social security. (Plaintiff's Exhibit No. 10, Page 62, lines 17-19). The court inquired "[y]ou don't work at all?" and Howard replied "No, sir." (*Id.* P. 62, lines 20-21).

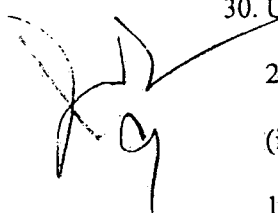
26. After observing Howard's refusal to answer questions, the court decided that written questions and responses would more likely produce substantive information that would assist the court in the task assigned to it and "make life easier for you and Mrs. Hammer." (Plaintiff's Exhibit 10, pp. 9-57; p. 63, lines 19-21).

27. Howard objected to continuing the matter by written inquiry, indicating that he intended to appeal preliminary rulings made at the commencement of the June 4, 2013 hearing, "which would put [these proceedings] on hold" and cause the court to "lose jurisdiction." *Id.* @ p. 60, lines 9-18; p. 64, lines 4-10). He also said he would not have time to respond to written questions due to his son's upcoming bar mitzvah, summer visitation with his sons, an anticipated medical appointment and "other

litigatory matters". (*Id.* @ p. 61, lines 14-20; p. 65, line 15 – p. 66, line 13; p. 121, line 5 – p. 123, line 12.)¹.

28. The court agreed to give Howard more than a month before he was required to respond to the written questions that were going to be propounded. (*Id.* @ p. 61, lines 17-20; p. 130, line 22 – p. 131, line 5). The court verbally instructed that, if the deadline it was establishing could not be met "you need to petition the court for an extension." *Id.*

29. Howard immediately stated he could not timely respond to the written questions because he didn't know when he was going to receive the order requiring him to respond, and he might move to reconsider the order. (*Id.* @ p. 131, line 21 – p. 132, line 5).



30. Unbeknownst to the court or the litigants, Judge James had issued an order on June 3, 2013, assessing sanctions against Howard for the original litigation of these matters (in addition to the actual and punitive damages already awarded), noting Howard and 1634 Main LP had raised "[m]any tenuous issues" during the trial. (Plaintiff's Exhibit 11, p. 12). Judge James concluded Howard's conduct in the original litigation "clearly and convincingly" warranted an award of sanctions. *Id.* @ p. 18. "[T]he court is convinced Mr. Hammer threatened and desired to bankrupt Mrs. Hammer through this litigation." Judge James concluded the litigation against Shirley was "groundless" and "baseless" and Howard's actions were "egregious" and his claims against Shirley were "frivolous" *Id.* @ pp 12- 13; pp. 18-19.

¹ Howard disputed the Supreme Court's requirement that these matters be expedited, suggesting some defect in the proceedings, but in doing so he acknowledged the Supreme Court's order to expedite existed. *Id.* @ p. 74, lines 1-14; p. 105, lines 13-20. He opined that the Supreme Court's order to expedite was "a substantive error." P. 110, lines 1-12;

31. The undersigned filed an order on June 10, 2013 addressing the matters heard on June 4, 2013. In that order, this court found that Howard had appeared on June 4, 2013 but was not prepared to answer questions and did not provide the required documents. (Plaintiff's Exhibit 12). Shirley was instructed to serve Interrogatories and Request to Produce in *lieu* of verbal responses to the Rule to Show Cause, and Howard was required to file and serve his answers to both on July 8, 2013.

32. Shirley's filed and served Interrogatories and Request to Produce on Howard by mail on June 11, 2013. (Plaintiff's Exhibits 14 and 15). On June 13, 2013, Howard returned the Interrogatories and Request to Produce to Shirley's counsel, advising that he had not yet received a copy of this Court's order of June 11, 2013, and instructing that he would calculate his time to respond when he was properly served based on the date on which he received the Interrogatories and Requests to Produce. (Plaintiff's Exhibit No. 16).

33. Shirley's counsel re-served the Interrogatories and Request to Produce by letter dated June 18, 2013, and enclosed a courtesy copy of this court's order of June 11, 2013. (Plaintiff's Exhibit No. 18).

34. By letter to the undersigned dated June 20, 2013, Howard acknowledged he had returned the written questions to Shirley's counsel, had received the courtesy copy of the order from Shirley's counsel and had received the written questions. (Plaintiff's Exhibit 19). Howard requested a status conference "in an effort to avoid the necessity of motions and potential objections." The court did not schedule a status conference.

35. The deadline of July 8, 2013 in which to respond to the Interrogatories and Requests to Produce came and went with no response from Howard. No motion was filed by Howard or on his behalf.

36. The Sheriff returned the second judgments (for sanctions) as uncollectible on July 25, 2013.

37. On July 10, 2013, the undersigned set a hearing on the motion for August 12, 2013 and Shirley's counsel provided notice to all parties by mail on that date. On August 2, 2013 Shirley's counsel filed a Motion for Contempt against Howard based on his failure to respond to the written questions by July 8, 2013.

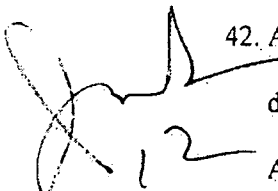
38. Howard may have interfered with at least three (3) subpoenas served by Shirley's counsel in an effort to locate assets to satisfy the judgments she held: Debra Covington, Bernie Ackerman and Synovus Bank. (Plaintiff's Exhibits 22, 23, 25). Shirley received documentary evidence from Debra Covington only after filing a motion for contempt against her, which prompted her to appear at a hearing and provide the materials subpoenaed from her earlier. Shirley never received the documents she subpoenaed from Mr. Ackerman or from Synovus Bank. Howard also refused to produce any document served upon him in his capacity as agent of multiple entities. (Plaintiff's Exhibits 17 and 21).

39. On August 6, 2013, Howard's former counsel Ms. Lipscomb² e-mailed the court and counsel to advise that she had been informed that Howard was "not able to send or receive e-mails. . . but should be to do so after the 19th." (Plaintiff's Exhibit No. 27).

² Ms. Lipscomb did not appear in these proceedings for any party. She represented 1634 Main LP in the earlier proceedings before Judge James.

40. Three days later, on Friday, August 9, 2013³, Mr. Aiken requested a continuance of the August 12, 2013 hearing, advising Mr. Hammer was departing on August 11, 2013 to take his sons on vacation to the Bahamas. (Plaintiff's Exhibit No. 28). Mr. Aiken also stated that he had not received the Notice of the Hearing (which was served by mail on July 10, 2013, and clocked in on July 11, 2013) until August 5, 2013.

41. The same date, August 9, 2013, the court spoke by phone with Ms. Ballard, on behalf of Shirley, and Mr. Aiken on behalf of Howard and declined to continue the August 12, 2013 hearing. Howard chose not to attend the hearing, and Mr. Aiken advised Howard had taken his sons to the Bahamas to swim with the dolphins.

 42. At the August 12, 2013 hearing, Mr. Aiken provided Shirley's counsel with what he described as answers to interrogatories on behalf of Howard and 1634 Main LP, dated August 12, 2013. None of the responses were filed with the court, as was required by the June 10, 2013 order. The documents were not provided to the court until Shirley's counsel filed them as exhibits at the hearing on sanctions held on April 2 and 3, 2015. (Plaintiff's Exhibits No. 29 and 30).

43. The "answers" were not answers in any real sense; most were objections but even the "answers" provided no information. By way of example, Howard's answer to Interrogatory No 2 said "... this Interrogatory will be answered in due course." His answer to Interrogatory No 21, he stated "this interrogatory will be answered after those records are located." (Plaintiff's Exhibit 29). Similarly, the "answers" provided on behalf of 1634 Main LP responded only to Interrogatory No. 20, to which 1634

³ The letter from Mr. Aiken, which is Plaintiff's Exhibit No. 28, is dated October 9, 2012, but is obviously dated incorrectly. The letter was received by Shirley's counsel via fax on August 9, 2013, a month after the Notice of Hearing was served.

Main LP claimed the 5th Amendment and South Carolina Constitution Article I, § 12 to invoke “the privilege against self-incrimination.” No purported “answers” were provided to any other questions that had been posed to 1634 Main LP. (Plaintiff’s Exhibit 30).

44. At the August 12, 2013 hearing, counsel for Shirley requested the court to transfer ownership of an unencumbered office building at 1634 Main Street, and the accompanying limited partnership and LLC interests owned by Howard, to satisfy the judgments, with any excess from a sale to be paid to the court for distribution as determined to be appropriate. The court directed she prepare an order to present to Howard upon his return for vacation. Alvin Hammer, Howard’s brother, also agreed to assist in resolving the satisfaction of Shirley’s judgments against Howard.

45. On September 9, 2013, Shirley’s counsel advised no progress had been made in settling the matter, and submitted a proposed order as the court had requested on August 12, 2013. (Plaintiff’s Exhibit No. 32).

46. In late September, the court scheduled a final hearing on these proceedings for January 9, 2014. (Plaintiff’s Exhibit No. 35). On December 19, 2013, Mr. Aiken requested a continuance of the hearing based on a conflict in his schedule. (Plaintiff’s Exhibit No. 36). The court did not respond because the date Mr. Aiken asserted for a conflict (January 7, 2014) was not the date set for the hearing (January 9, 2014)⁴.

47. The court held the scheduled hearing on June 9, 2014. By order dated January 21, 2014, the court transferred Howard’s interests in real property at 1634 Main Street,

⁴ Mr. Aiken did have a scheduling conflict for January 7, 2014 in connection with an appeal in the South Carolina Supreme Court in which he was listed as co-counsel for appellant, which was scheduled to begin at 9:30 a.m. <http://www.judicial.state.sc.us/supremeRosters/dspSupRosterChoice.cfm>

and his personal property interests in 1634 Main LP and SH5, LLC to Shirley Hammer for purposes of selling the property to satisfy judgments she held, then in the amount of \$335,168.76, which reflected the judgments through the date of the order, including interest. Shirley's motion for contempt was denied.

48. The order also ordered that Shirley could recover costs related to the transfer, marketing and sale of the property, and directed that any excess proceeds be paid to the court for further action. The court also awarded sanctions against Howard in the amount of \$55,385.70, based upon the attorney's fees and costs Shirley had incurred in pursuing the supplemental proceedings.

49. The Supreme Court later affirmed the January 21, 2014 order in all respects, with the exception of reversing the award of sanctions, concluding that Howard was entitled to more notice of intent to seek sanctions under the Frivolous Civil Proceedings Sanctions Act, S.C.Code Ann. § 15-36-10(D) and Rule 11, SCRCP. The Supreme Court specifically ruled that its reversal was "without prejudice as to allow Shirley to raise this issue before the Master in subsequent accounting proceedings."⁵ *Hammer v. Hammer*, Memorandum Opinion 2014-0045 (November 6, 2014).

50. The Supreme Court also required Howard to "file a financial disclosure of all his assets and income with the master within fifteen days of the filing of this opinion."

Id.

51. On December 12, 2014, Shirley filed a motion for sanctions against Howard for his misconduct in this proceeding, using as a basis for the award the fees she has incurred in these proceedings. At the time of the filing of the motion, Shirley's fees and costs

⁵ At the time the case was heard by the Supreme Court, Shirley had a contract to sell the real property at 1634 Main Street for slightly more than \$1 million dollars. The contract did not close.

were \$75,195.24. She also prayed that the court award a lodestar multiplier of four (4) to the award of sanctions, based upon Howard's egregious misconduct during these proceedings.

52. During the pendency of the appeal, attorney Tommy Bunch became co-counsel for Howard. In May, 2014, while the appeal was pending, Mr. Bunch notified the undersigned that Howard had now decided to pay the judgments awarded by Judge James. (Plaintiff's Exhibit No. 37). Mr. Bunch advised the court and counsel that "[t]his is not a negotiation." *Id.* Mr. Bunch's attempts to satisfy the judgments came too late, since this court's order of January 21, 2014 dealt with Judge James' judgments and imposed obligations on Shirley that had required her to incur time and expense in marketing and selling the property. Payment of the judgments awarded by Judge James were no longer a unilateral option that could be exercised by Howard.

53. By letter to the undersigned dated November 20, 2014, Howard submitted certain financial materials. Contrary to his earlier testimony, Howard disclosed, for the first time, that he had received income in addition to Social Security, some of which resulted in cash to him and other of which constituted "phantom" income generated by his various ownership interests (not previously disclosed) in several LLCs that owned real property.

54. When counsel for Shirley refused to accept Mr. Bunch's proposal⁶, Mr. Bunch, in conjunction with counsel for Alvin Hammer and several corporate entities in which Howard and/or Alvin had an ownership interest, made several attempts to settle with Shirley. On at least two (2) occasions, once before this court and once before the

⁶ There is no evidence that any funds were ever actually tendered to Shirley or her counsel by or on behalf of Howard or anyone else.

Supreme Court, Mr. Bunch (on behalf of Howard) filed motions attempting to force Shirley to accept settlement on terms dictated by Howard and/or his counsel. The Supreme Court declined (order dated October 24, 2014). This court also attempted to urge the parties to attempt to reach a settlement. The proposals were unacceptable to Shirley and she declined them, which she had every right to do.

55. Shirley has been in litigation with Howard for almost seven (7) years after she settled with and obtained a full release in her favor from Howard on May 9, 2008.

(Plaintiff's Exhibit No. 1). These supplemental proceedings have taken more than two (2) years, and more than a full year after this court created a mechanism by which her judgments could be satisfied, she remains unsatisfied judgment creditor; she has received not one penny from Howard toward her judgments against him.

56. There is insufficient evidence from which to conclude that Howard's belated attempts to reach settlements with Shirley were made in bad faith. There is no question his attempts, which did not begin until four (4) months after this court issued the order from which the judgments she held were to be satisfied, unnecessarily prolonged this proceeding

57. Howard filed a Motion to Dismiss these supplemental proceedings (which was denied). Howard, sometimes directly and sometimes through counsel, filed motions and contacted the court numerous times (letters, motion to quash, motion for summary judgment, motion for supersedeas, opposition to Shirley's request for an appeal bond). These contacts and filings did, in fact, unnecessarily delay and complicate these proceedings.

58. Moreover, Howard refused to answer the written questions that were necessitated by his refusal to verbally respond to questions he was required to answer when responding to the Rule to Show Cause. Howard has now acknowledged and apologized to this court for his intentional refusal to answer the questions regarding his assets.

59. Mr. Aiken attempted to accept blame for Howard's failure to provide the required information to the Court, asserting that he (Mr. Aiken) was simply too busy with other professional obligations to answer the written questions posed to Howard and to 1634 Main LP.

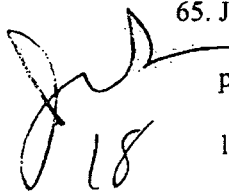
60. Howard divulged substantive information regarding his assets and income to this court only after the Supreme Court ordered that he do so in its opinion in November, 2014. Until then, he had disclosed nothing. Howard prolonged these supplemental proceedings unreasonably.

61. During his testimony on April 3, 2015, Howard demonstrated that he could have provided the information required of him in June, 2013, when he intentionally and falsely claimed lack of knowledge and produced none of the documents that he had been ordered to produce, and there were no impediments to him obtaining the information, had he simply bothered to gather it.

62. As noted above, Howard apologized to the court for his failure to provide information that this court ordered him to provide. He gave no explanation. Instead, he asked for "mercy." He made no apology to the judicial system, to the opposing party, or to the Supreme Court for his outrageous and unforgivable conduct.

63. Since the Supreme Court's order of September 7, 2012, which was intended to "curtail Howard's . . . abuse of the judicial system, Howard has continued his abuse unabated, despite being assessed punitive damages and sanctions.

64. In an effort to bring Howard's 2009 and 2010 civil claims against her to a conclusion, in 2012 Shirley sought assistance from the South Carolina Supreme Court. The Supreme Court issued order on September 9, 2012 which centralized both of these civil actions under the supervision of Honorable James R. Barber and expedited them for conclusion. Shirley incurred attorney's fees and costs for that proceeding in the amount of \$40,888.55.

 65. Judge Barber issued thirty (30) monthly status reports as these matters progressed, prompting a follow-up order from the Supreme Court, issued *sua sponte* on March 10, 2015, noting that "Mr. Hammer's customary dilatory tactics" had delayed these proceedings, and mandating that these proceedings be concluded within 45 days. (Plaintiff's Exhibit No. 44).

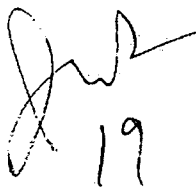
66. In pursuing these supplemental proceedings, Shirley incurred attorney's fees and costs in the amount of \$80,088.81 through March 31, 2015. She also incurred fees and defending against the appeals filed by Howard in the amount of \$32,165.85 (appeals from Judge James' orders) and \$22,420.69 (from this court's January 21, 2014 order) for total appellate fees in defending the appeal of \$54,586.54⁷.

⁷ Following the Supreme Court's order affirming (in part), this court's order of January 21, 2014, Shirley sought an award of sanctions from the Supreme Court, based upon the attorney's fees incurred in defending that appeal. The Supreme Court awarded the attorney fee and cost provided in the appellate court rules, but denied Shirley's request for sanctions. The Court specifically ruled that its denial of sanctions "shall not be construed as having any effect on the lower court's consideration of sanctions as permitted by the opinion of this Court" (Supreme Court order dated March 10, 2015)

67. Stated differently, since Howard was punished for bringing and pursuing abusive litigation against Shirley by awards of actual and punitive damages, and since being sanctioned for engaging in frivolous litigation, Howard's unrelenting attempts to prevent Shirley from collecting the judgments she holds against him, has caused Shirley to incur additional fees and costs of \$134,675.35.

68. During the last hearing, Howard's counsel asked for all individual time entries incurred by Shirley since the 2009 litigation was initiated.

69. Shirley seeks sanctions against Howard based on Rule 11, SCRCP, the Frivolous Civil Proceedings Sanctions Act, S.C.Code. Ann. § 15-36-10, and the inherent authority of the court.

 70. In addition to monetary sanctions, Shirley seeks injunctive relief pursuant as permitted by § 15-36-10(G) to try to prevent future frivolous litigation against her by Howard or at his behest.

71. The evidence presented, both at the hearing on the motion for sanctions and the court's own dealings with Howard throughout these proceedings. Establishes Howard's conduct in this matter included frivolous assertions, frivolous defenses, intentionally evasive and false testimony, intentional delay tactics and positions.

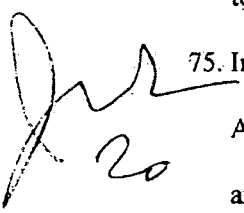
72. As in the earlier proceedings before Judge James, Howard's misconduct in this proceeding was malicious and intentional. He was not deterred in his misconduct by the prior damages and sanctions awarded against him.

CONCLUSIONS OF LAW

73. Howard argues the court lacks jurisdiction over the motion for sanctions because it was filed and served on December 12, 2014, before the remittitur was transmitted to

the trial court by the Supreme Court⁸ on December 18, 2014. This argument is without merit. While the motion was filed before the remittitur was returned from the Supreme Court, it was not heard until three (3) months after the remittitur was transmitted to the trial court. This court has jurisdiction over the subject matter of the motion, and over the parties.

74. Howard asserts Shirley should not be entitled to recover sanctions against him, arguing that she refused his numerous offers of settlement, or settlement offers made by others which would have absolved him of responsibility for the judgments against him. Howard cites to no authority, and this court finds none, that obligates a party to accept an offer of settlement.

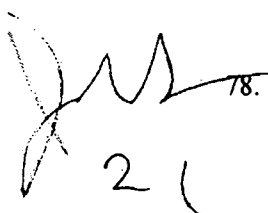
 75. In seeking sanctions under the Frivolous Civil Proceedings Sanctions Act, S.C.Code Ann. § 15-36-10, the party against whom sanctions are sought is entitled to "notice and an opportunity to respond." 15-36-10(D). Shirley's motion for sanctions was filed on December 12, 2014,

76. Howard filed a response arguing the motion for sanctions should be dismissed, delayed, postponed, and not heard at all, and reserving the right to present a full defense to the sanctions at any subsequent hearing. Other than that, Howard did not "respond to the allegations" in writing as permitted by Section 15-36-10(D), indicating he would do so later at a hearing. Shirley made no objection to Howard's presentation of evidence at the hearing on April 2 and 3, 2015. At the hearing, Howard testified, and also called his counsel Mr. Aiken and Shirley's counsel Desa

⁸ As set forth above, the Supreme affirmed this court's order of January 21, 2014 by its Memorandum Opinion No. 2014-045 dated November 6, 2014. Howard and 1634 Main LP filed motions for rehearing after the Supreme Court's ruling, so the Supreme Court retained jurisdiction until the motions were denied and the remittitur transmitted on December 18, 2014.

Ballard as witnesses and introduced exhibits without objection. The court set aside two (2) full days for the hearing on Shirley's motion for sanctions and Howard was given the opportunity to present any evidence he chose. The second day of hearing concluded before the end of the day, and Howard apparently offered all testimony and evidence he wished to provide.

77. Mr. Aiken testified all of his filings on behalf of Howard in this proceeding were filed in good faith and for a legitimate purpose. It was not the specific filings themselves that caused the problems, but rather Howard's entire approach to these proceedings which intentionally caused delay, and further causing these proceedings to be unnecessarily and unreasonably complex, convoluted and lengthy. Section (A) of 15-36-10 focuses on sanctions appropriate for filing of specific documents. That section is not applicable here.



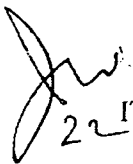
78. Shirley is entitled to recover sanctions against Howard pursuant to Section 15-36-10 (C), in that she has established that Howard's conduct in these supplemental proceedings were "not reasonably founded in fact" (in that he provided false or misleading facts regarding his assets), were "interposed merely for delay" and "were brought for a purpose other than . . . or adjudication of the claim . . . upon which the proceedings are based.

79. Shirley is also entitled to recover sanctions against Howard pursuant to Rule 11, SCRCF and the inherent authority of the court. Howard's actions during this proceeding have been intentional and have been intended to both burden the court and Shirley, and to successfully force Shirley to incur unnecessary fees and costs, and to interfere with the administration of justice.

80. Shirley incurred reasonable fees and costs in this proceeding in the amount of \$80,088.81, plus fees and costs incurred in the appeal of this court's order of \$22,420.69, the reasonableness or necessity of which is not disputed.

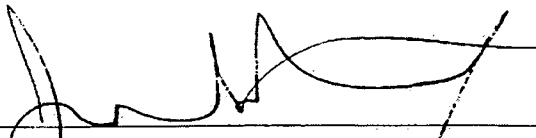
A. Shirley Hammer is awarded sanctions against Howard Hammer in the amount of, eighty-eight thousand, eighty-eight dollars and eighty-one cents (\$88,088.81), which shall be paid by Mr. Hammer on or before June 8, 2015 at 5:00 p.m.

B. This is a final order which concludes these actions for all purposes.



IT IS SO ORDERED.

April 24/2015



JOSEPH M. STRICKLAND
MASTER IN EQUITY FOR RICHLAND COUNTY

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No.: 2016-000341

1634 Main, L.P.

v.

Shirley Hammer, ... Respondent,

v.

Howard Hammer, ... Appellant,

and

Howard Hammer, ... Appellant,

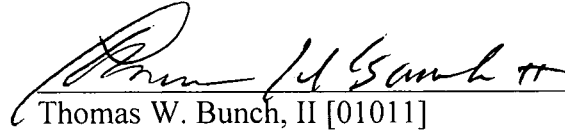
v.

Shirley Hammer, ... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondent's Motion to Dismiss upon opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on **March 14, 2016** addressed as follows:

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

A handwritten signature in black ink, appearing to read "Thomas W. Bunch, II", is written over a horizontal line.

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

ATTORNEYS FOR APPELLANT