

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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MAR 23 2016

APPEAL FROM RICHLAND COUNTY
JOSEPH M. STRICKLAND, MASTER-IN-EQUITY
Appellate Case No. 2016-00341

S.C. SUPREME COURT

1634 Main LP, [role not designated]

v.

Shirley Hammer,

Respondent.

v.

Howard Hammer

Appellant

And

Howard Hammer,

Appellant,

v.

Shirley Hammer,

Respondent.

**RESPONDENT'S REPLY AND AFFIRMATION OF
RESPONDENT'S MOTION TO DISMISS APPEAL**

Respondent Shirley Hammer (hereafter "Shirley") respectfully renews her request that this appeal be dismissed in its entirety via submission of this Reply to Appellant's Return to the Motion to Dismiss.

Setting aside the jurisdictional and statutory bars to review by this Court, arguments by Appellant Howard Hammer (hereafter “Howard”) are without merit. Primarily he asserts that he is dissatisfied with the supplemental accounting filed and served by Shirley, which was required by Judge Strickland’s January 21, 2014 order. He argues that Shirley has not fully accounted for the funds she received as rental income during her possession of the real property transferred to her, and that there are “excess” funds that should have been paid into the court for him to claim.

However, the January 21, 2014 order specifically provided as follows:

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.

(Order January 21, 2014, p. 11, ¶ 4).

Nonetheless, Shirley did, in fact, fully account for the income generated by the property and by the sale in the supplemental accounting filed on October 2, 2015 (Exhibit D to Motion to Dismiss). Specifically, she stated:

... [N]either [Shirley] nor any of her agents... 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...

Id., p. 5, ¶ 14. The balance of collected rentals are being held to return to Howard. See p. 4, *infra*.

Shirley also specifically accounted for every penny of the sales proceeds in the Supplemental Accounting, comparing the distributions line-by-line using the HUD line numbers as compared to the paragraphs of the January 21, 2014 order, and in the Order Approving Accounting dated May 29, 2015 (Exhibit C to Motion to Dismiss). The detailed supplemental accounting showed that there were no remaining funds to be paid into the court under the terms of

the January 21, 2014 order. In fact, as indicated, the sales proceeds were insufficient to pay all funds due, and a shortage remained in the amount¹ of \$59,518.37.

In its appeal from Judge James' order of judgment, 1634 Main LP argued before this Court, in Appellate Case No. 2014-000965, that the parties' minor son David Hammer had a 4.7% interest in 1634 Main LP. (Final Brief of Appellant 1634 Main LP undated, p. 14). Additionally, in Appellant's Brief in Appellate Case No. 2014-000965 (appealing the January 21, 2014 order), Howard argued that "a child" of the parties owned an interest in 1634 Main LP. (Final Brief of Appellant dated August 25, 2014, p. 3). On neither occasion had the argument been presented to the trial court, and this Court did not address the substance of the issue on appeal.

Nonetheless the arguments highlighted Shirley's obligations to David Hammer (the parties' oldest minor child, hereinafter "David") to account for his fractional interest in 1634 Main LP. For that reason, the supplemental accounting included the collection of funds due from Howard to 1634 Main LP, the collection of which was required by Shirley's fiduciary obligation to David (standing in the shoes of SH5, LLD, the general partner of 1634 Main LP)². See Landvest Associates v. Owens, 276 S.C. 22, 274 S.E.2d 433 (1980). As indicated in the Supplemental Accounting, the sales proceeds were used, in part, to purchase David's interest in 1634 Main LP and to pay other expenses incurred in connection with the sale. (Exhibit D to Motion to Dismiss, ¶ 15).

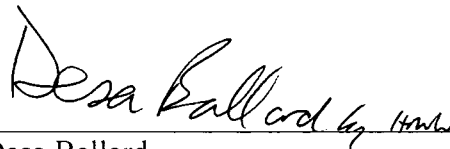
¹ As recited in Footnote 4 of the Motion to Dismiss, Shirley later compromised this figure through her settlement with HASCI LLC and others in Case No. 2013-CP-40-6898.

² These funds due by Howard to 1634 Main LP were detailed in the Motion to Approve Accounting which resulted in the Order Approving Accounting. (Exhibit C to Motion to Dismiss). To the extent that Howard now argues the insufficiency of the record regarding the funds he owed to 1634 Main LP, Shirley would point out that she brought witnesses to the hearing to detail each of the entries in the accounting, but Howard "objected to the introduction of any evidence by Shirley on the issues to be decided by the Court." (Order approving Accounting, Exhibit C to Motion to Dismiss, p. 2). The same order recited Howard's acknowledgment for his obligation for these debts. *Id.* pp. 3-4. Even if Howard could have appealed from the interlocutory Order Approving Accounting,

As indicated in that same paragraph of the supplemental accounting, all that remains to be done (and which cannot be done until Howard stops his frivolous litigation) is to return ownership of 1634 Main LP and SH5, LLC to Howard. *Id.* That transfer will include the remaining balance of collected rentals not expended in the maintenance and operation of the building, which total³ \$29,738.65. Those funds are being held in trust by Shirley's counsel, and will be transferred to Howard along with the assignment to Howard of the entity interests conveyed to Shirley for stewardship in the January 21, 2014 order.

CONCLUSION

The instant appeal is precluded both by statute, and by the absence of jurisdiction, despite the efforts of Howard and Mr. Bunch to keep it alive. This Court has completed the task it undertook in September 2012 to conclude these matters and stop Howard's abuse of the judicial process.



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ATTORNEY FOR RESPONDENT
SHIRLEY HAMMER

March 21, 2016

³ Transfer documents have been prepared since counsel's letter to this Court dated November 19, 2015. *See* Paragraph 10, Motion to Dismiss. At the time of the letter to this Court on November 18, 2015, Shirley and her counsel believed the transfer would be imminent. Howard's continued litigation, however, has prevented the transfer to him from occurring.

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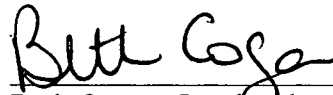
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I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on March 21, 2016, I served a copy of the **Respondent's Reply and Affirmation of Respondent's Motion to Dismiss Appeal** in the above-captioned case on the following individuals by electronic mail and by placing same in United States Mail, with sufficient first-class postage affixed, addressed as follows:

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March 21, 2016