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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Harris Beach, Special Referee

Case No. 92-CP-15-508

Nancy R. Beach ..... Respondent,

v.

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

SUPPLEMENTAL RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA  
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Case No. 1992-CP-15-508

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

v.

Caswell Communications, Inc., as assignee of the judgment creditor  
Nancy R. Beach ..... Respondent.


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NOTICE OF APPEAL

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Appellants Gresham Communications of Walterboro, Inc., a/k/a Gresham Communications, Inc., Gresham Broadcasting, Inc., and Rudi H. Gresham appeal the Orders of the Special Referee dated June 6, 2008 and December 3, 2008. Appellants received written notice of entry of these Orders on or about June 10, 2008 and December 4, 2008.

WHIPPER LAW FIRM

By:   
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December 31, 2008  
Mount Pleasant, South Carolina

COUNSEL FOR THE RESPONDENT: W. Andrew Gowder, Jr.  
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1 raised the possibility of FCC complications. I don't  
2 know what they are and I'm really not going to ask you  
3 to elaborate on them. I mean, there is a perfect  
4 right to a Fifth Amendment answer to some of these  
5 questions.

6 MR. GOWDER: Yeah. I mean, if Mr. Saunders  
7 thinks that he might be incriminating himself by an  
8 answer. I can't imagine asking him a question that  
9 would.

10 THE COURT: Yeah. Yeah.

11 MR. GOWDER: 'Cause that's not where I'm  
12 going. But if he thinks he needs to invoke the Fifth  
13 Amendment, then that's his right.

14 WITNESS: Then I would invoke the Fifth  
15 Amendment on all the other questions you've got for me  
16 because it is FCC that you're dealing with. And I'm  
17 not qualified to deal with that. That's -- anything  
18 that I answer to you is going to come back to haunt  
19 me.

20 MR. GOWDER: Well --

21 WITNESS: I'd rather be haunted with a  
22 contempt or jail or whatever than what's happening to  
23 me right now.

24 MR. GOWDER: Well, let me tell you what my  
25 line of questioning is and then we can see if we can

1 work our way through this.

2 WITNESS: Okay.

3 MR. GOWDER: My next line of questions is  
4 what assets does Gresham Communications own. And I  
5 don't know the full answer to that. I suspect that  
6 one of the answers is going to be that it owned the  
7 license.

8 And one of the things that I'm going to ask  
9 you to do is to attach that license with this creditor  
10 so that it can be sold and the asset -- and the  
11 proceeds used to pay the judgment.

12 THE COURT: Can you attach a license in  
13 State Court?

14 MR. GOWDER: You actually can. And I have  
15 some -- a case law here I'd be glad to show you. But  
16 you can do it. The FCC does have to approve the  
17 person or entity that acquires it, but the proceeds of  
18 the sale can be attached as a general intangible.

19 THE COURT: Yeah. I'd have to see a brief  
20 on that.

21 MR. GOWDER: Sure. And I understand. But I  
22 was trying to get the --

23 THE COURT: You don't have this come up in  
24 Supplemental Proceedings very often.

25 MR. GOWDER: I know. But I was trying to

1 get the testimony first so we could have that because  
2 I don't know that there may not be something else out  
3 there. I just don't know.

4 The license is of record, so I know that  
5 that's there.

6 THE COURT: Yeah, that's a public record.

7 MR. GOWDER: I wanted to get Mr. Saunders to  
8 acknowledge that, but I believe that's the case.  
9 Whether there's anything else, I don't know.

10 THE COURT: Do we know whether the license  
11 is in Gresham or in --

12 MR. GOWDER: We believe it's in Gresham  
13 Communications, Inc., which is one of the debtors  
14 here.

15 THE COURT: And that would be an asset of  
16 that corporation?

17 MR. GOWDER: Yes, sir. So I don't know how  
18 to proceed, whether --

19 BY MR. GOWDER:

20 Q. I mean, Mr. Saunders would you answer a question  
21 regarding what are the assets of Gresham Communications,  
22 Inc.?

23 A. You've got the answer. It's the license. That's  
24 all it owns.

25 Q. Are there any other assets?

Before the  
**Federal Communications Commission**  
Washington, DC

COPY

In re Application of )

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

File No. BALH-20070327AEK  
Facility No. 25374

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

Filed With: **Office of the Secretary**

To: **Chief, Media Bureau**

**PETITION FOR RECONSIDERATION**

**SUMMARY**

This is a Petition for Reconsideration of the Commission's grant of the application for involuntary assignment of Station WPAL-FM, Ridgeville, South Carolina, from Gresham Communications, Inc. to Charles W. Cherry, II.

This proceeding originated from the collection of a debt. As seen herein, the parties illegally are attempting to accomplish the assignment of a bare license to the Receiver, and in another application, to Caswell Capital Partners, LLC. In so doing, the local court placed an "attachment" on the FCC License (contrary to FCC policy), and auctioned the bare license, both in contravention of an earlier-issued federal court Order.

The FCC's policy of accommodating local court rulings does not extend to accommodating rulings which violates FCC practice and procedure. For this reason, the FCC grant of assignment should be reserved, and ownership and control of Station WPAL-FM should

be returned to Gresham Communications, Inc.

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**Federal Communications Commission**

*Washington, DC*

In re Application of )  
 )  
**CHARLES W. CHERRY, II** )  
**Receiver for Gresham Communications,** )  
**Inc.** )  
 )  
 )  
 )

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

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

Filed With: **Office of the Secretary**

To: **Chief, Media Bureau**

**PETITION FOR RECONSIDERATION**

Gresham Communications, Inc. (“Gresham Communications”), by its attorney, hereby requests reconsideration of the grant of the application of Charles W. Cherry, II, Receiver for Gresham Communications, Inc. (“Cherry”) for involuntary assignment of the license of Station WPAL-FM, Ridgeville, South Carolina.<sup>1</sup> With respect thereto, the following is stated:

**Standing**

Gresham Communications is the designated involuntary “assignor” of Station WPAL-FM. *Public Notice* of the proposed involuntary assignment of Station WPAL-FM was released on April 2, 2007 (Report No. 26455), and was granted the next day, on April 3, 2007.

Therefore, even though no informal objection was filed prior to grant, Gresham Communications has standing under Section 1.106(b)(1) of the Commission’s rules to file this petition. First, as the “involuntary assignor” of Station WPAL-FM, Gresham Communications

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<sup>1</sup> The Cherry application was granted on April 3, 2007. *Public Notice* of the grant was released on April 6, 2007. Report No. 46459. Therefore, this Petition for Reconsideration is timely filed.

clearly has been and will be “adversely affected” by any Commission decision permitting the involuntary assignment of Station WPAL-FM to “Charles W. Cherry, II, Receiver for Gresham Communications, Inc.” and later, back to “Caswell Capital Partners, Inc.”<sup>2</sup> As to why Gresham Communications could not participate earlier in the proceeding, as noted above, the subject application was granted only *one day* after release of *Public Notice* of the application. In *Ted Tucker & Janet Tucker*, 66 R.R.2d 514 (1989), the Commission recognized that an applicant did not have a meaningful opportunity to participate prior to grant (and therefore was entitled to seek reconsideration of the grant even though it had not participated in the proceeding previously), even when only *four* days had elapsed between a public notice and a grant. *Id.* at ¶ 3. Here, due to the extremely short period of time that had elapsed between notice and grant -- a period that even was shorter than that involved in *Tucker* -- under Commission precedent it must be determined that Gresham Communications has met his burden under Section 1.106(b)(1) of the Commission’s rules, and this petition for reconsideration is entitled to full consideration.

### **Background**

Gresham Communications has been licensee of Station WPAL-FM for over 37 years. Promissory Notes were signed by Gresham Communications on January 2, 1988, in the total amount of \$165,072 at an interest rate of 8% per annum in favor of Nancy R. Beach. Attachment 1. On August 18, 1992, a Complaint was filed to collect the sums due from Gresham Communications. Attachment 2. Despite the claim that over the course of time a debt in the amount of “\$299,429.49” was due as of March 20, 1997 (Attachment 3), on June 2, 1998, a

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<sup>2</sup> As assignment application, to transfer the WPAL-FM license from Cherry to Caswell Capital currently is pending. File No. BALH-20070406ADD.

Decree in the total amount of only \$56,276.10 was issued by the State of South Carolina Court of Common Pleas. In 2006, Nancy Breach assigned her interest in the judgment to "Caswell Capital Partners, LLC." Attachment 4. As noted above, Caswell Capital also is the proposed assignee in File No. BALH-20070406ADD.

An action for collection under the Judgement was initiated on August 23, 2006 (Attachment 5), resulting in an Order issued on September 22, 2006, stating in relevant part:

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

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

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

"While this proprietary interest does not allow any party to assert any rights contrary to the FCC's regulatory powers, the holder of a license may receive proceeds from the transfer of the license to a third party." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 173 B.R. 132 (Bankr.S.D.Fla.1994). The right to receive the proceeds of an approved sale is a private right that a party can give to its creditors. State St. Bank & Trust Co. v. Arrow Communications, 833 F.Supp. 41 (D.Mass.1993); In re Ridgely, 139 B.R. 374 (Bankr.D.Md. 1992) (debtor's broadcast license is a general intangible; a creditor can perfect security interest in proceeds of its transfer). "This limited interest allows for the enforceability of a

security interest in the proceeds of an FCC approved sale." PBR Communications Sys. v. Jefferson Bank (In re PBR Communications Sys.), 172 B.R. 132, 134 (Bankr.S.D.Fla.1994); see also In re Atlantic Business Community Dev. Corp., 994 F.2d 1069 (3<sup>rd</sup> Cir.1993) (allowing IRS to assert a tax lien against the proceeds of a sale of the debtor's FCC license). "[A] contrary outcome would mean that the distinction between private and public interests in FCC license proceeds... would have no meaning, and the private interests would be devoid of value." MLO Investors, L.P., v. Pacific Quadracasting, 146 F.3d 746, 479 (9<sup>th</sup> Cir.1998.)

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

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

#### Attachment 6.

For the reasons stated below, the Order of the Special Referee in contrary to law and is unenforceable, and the Commission's grant of the involuntary assignment application must be reversed.

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

The Commission has consistently held that a broadcast license, as distinguished from a station's plant or physical assets, is not an owned asset or vested property interest so as to be subject to a mortgage, lien, pledge, attachment, seizure, or similar property right. See Sections 301, 304, 309(h), 310(d), of the Communications Act, as amended (47 U.S.C. §§ 301, 304, 309(h) and 310(d)), and Section 73.1150 of the Commission's Rules (47 C.F.R. § 73.1150) . See also, *Radio KDAN, Inc.*, 11 F.C.C.2d 934, recon. denied 13 R.R.2d 100 (1968), *affirmed on procedural grounds sub nom., W. H. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969). Thus, while a court is

permitted to grant an interest with respect to a broadcast station's physical property, its receivables, or even future proceeds from any future sale of the such station (*In re Cheskey*, 9 FCC Rcd 986, 987 (1994) (holding that licensee may give security interest in the proceeds of sale of license, but not in the license itself)), the court may *not* treat a broadcast license in a similar manner, and a lien, mortgage, security interest, or reversionary interest in a broadcast license is not permitted.

In other words, although the cases and propositions cited by the Special Referee were entirely correct (*i.e.*, "licensees do have a proprietary right in the proceeds from a sale of a license"; "the holder of a license may receive proceeds from the transfer of the license to a third party," etc.), the Court then totally *misuses* the precedent to rule, incorrect, "that the license held by Gresham Communications, Inc. is properly subject to attachment." Attachment 6 at 2 (emphasis added). Commission precedent is clear. A license is not subject to attachment! In *Radio KDAN, Inc.*, 11 F.C.C.2d 934 (1968), recon. denied, 13 R.R.2d 100 (1968), aff'd, *W.H. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969), a seller of a station foreclosed on the personal and real property of the station and then sought to have the license transferred back to it after the buyer's default. When the buyer refused to sign an application for assignment of the license, the seller argued that the purchaser's signature was not required because the mortgage document gave the seller a mortgage on the license itself, with the right to act as the purchaser's attorney-in-fact and to execute an assignment application in the event of the purchaser's default. *Id.* at 934 n.1. Although the Commission did not have to address whether the seller's mortgage on the license was valid because the current licensee already had forfeited the license by allowing the station to go

silent, the Commission stated that the mortgage clause granting the seller the right to act as the purchaser's attorney in fact upon default was:

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

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

The Commission stated that:

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

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

In a case similar to the one at hand, in *In re Merkley*, 94 F.C.C.2d 829 (Merkley I), recon. denied, 56 R.R.2d 413 (1984), aff'd sub nom. Merkley v. FCC, 776 F.2d 365 (D.C. Cir. 1985), a court-appointed receiver filed an application with the FCC for the involuntary assignment of a broadcast license. A district court had appointed the receiver to file the application after the court found that the buyer of the license had defaulted on its contractual duties to the seller. *Merkley I*, 94 FCC 2d at 831.

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

The Commission has consistently held that a broadcast license, as distinguished from the station's plant or physical assets, is not an owned asset or vested property interest so as to be subject to a mortgage, lien, pledge, attachment, seizure, or similar property right. See Sections 301, 304, 309(h), 310(d), of the Communications Act, as amended, and Section 73.1150 of the Commission's Rules. See also *Radio KDAN, Inc.*, 11 FCC 2d 934, recon. denied 13 RR2d 100 (1968) affirmed on procedural grounds sub nom. *W.H. Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969). As stated in *Radio KDAN*, "This principle is firmly rooted in Commission practice, its rationale being that such hypothecation endangers the independence of the licensee who is and who should be at all times responsible for and accountable to the Commission in the exercise of the broadcasting trust." 13 RR 2d at 102.

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

After setting forth these basic principles, the FCC denied the receiver's application for involuntary transfer of the license despite the state court's ruling that the buyer had forfeited its rights in the license. Acknowledging that local courts had the expertise and jurisdiction to resolve contractual disputes, the Commission explained that the licensee's contract was subject to the Commission's rules and policies (in that case, its rule against reversionary interests). *Id.* at 839; 47 C.F.R. § 73.1150. The Commission found that the contractual provision contradicted FCC policy primarily because it "treated the broadcast license as the property of the former licensee . . .," allowing the former licensee to repossess the license. *Id.* at 839 n.10. Upon reconsideration of its decision in *Merkley*, the Commission again denied the receiver's application for an involuntary transfer of the license again. *In re Merkley*, 56 R.R.2d 413 (1984) (*Merkley II*). The Commission again made clear:

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

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

To be sure, state courts faced with contract disputes involving conflicting claims to broadcast stations realize that the physical assets are worthless without the licenses, and so are inclined to fashion remedial orders that treat the two as a bundle. That understandable inclination, however, runs afoul of the Commission's insistence that a broadcast license be treated distinctly...

*Id.* at 6.

Despite the citation of absolutely no authority that would allow a judicial "attachment" on an FCC license, that is exactly what the Special Referee did in this case, and despite the long line of cases specifically *disallowing* parties from treating a license as traditional "property," whether of a creditor (*Radio KDAN, Inc.*, 11 FCC Rcd 934 (1968)) or a bankruptcy estate (*Tak Communications, Inc.*, 138 BR 568, 70 R.R.2d 810 (Bankr D Wi 1992)), the Special Referee went beyond his judicial authority and the limits of the law in a manner that violates FCC policy. As seen below, the FCC has no choice but analyze the reasoning and rationale contained in the four corners of the decree, and determine whether the Decree is in accord with FCC policy. *Kirk Merkle*, 94 F.C.C.2d 829 (1983). In this case, it clearly is not, and cannot be enforced.

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

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

Our policy is to accommodate state and local court decrees adjudicating disputes over contract and property rights, unless a public interest determination under the

Communications Act, such as the determination in *Merkley*, compels a different result.

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

As seen in Attachment 7, Gresham Communications and Caswell Capital Partners, LLC each have been served with a copy of the Order of United States District Judge Margaret B. Seymour which enjoins “the transfer or other disposition of the ... radio station [WPAL]” without further court order. Attachment 7 at 1 and 3. No such further court order has issued, and the injunction remains outstanding.

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

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

If this Court were to agree with Gresham Communications and remand this case to the Commission with instructions to grant an application to reassign the Station's license to Gresham Communications, the grant of such an application would violate the Commission's longstanding policy of not permitting the sale of a "bare license."

As discussed more fully below, the rationale for the Commission's "bare license" policy is to prevent speculation and to encourage prompt initiation or resumption of broadcast operations. The assignment of a "bare license" to Gresham Communications would be in clear contravention of the public policy reasons underlying the Commission's policy. In *Radio KDAN, Inc.*, the Commission, on its own motion, dismissed an application to assign the license of Station KDAN, Eureka, California, because the proposed assignment "contemplates little more than the sale of a naked license" and "Commission policy bars such a sale." In *KDAN*, as here, the only asset of the Station to be conveyed to Gresham Communications would be the FCC license. In *Bonanza Broadcasting Corp.*, 10 F.C.C.2d 906, 11 RR 2d 1072 (1967), cited in *KDAN Radio*, the Commission dismissed an assignment application because the licensee owned none of the station's assets and was seeking to assign a "bare license." The Commission in that case refused to permit the parties to place a price on the transfer of a "bare license." See *Donald L. Horton (KHIP)*, 11 R.R.2d 417 (1967). Similarly, in *Two if By Sea Broadcasting Corporation*, 12 FCC Rcd 2254 (1997), the Commission refused to grant an assignment application where evidence was presented that "at the time it filed" its assignment application it held rights to nothing more than a "bare license." The Commission held that:

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

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

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

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

That is the exact situation present in this case. On September 22, 2006, it was ordered by the Special Referee that the "FCC license" held by Gresham Communications is subject to attachment; that "such FCC license" is attached; and that "the license" be sold "in the normal course" to satisfy the judgment. Attachment 6. No other property was ordered sold. By *Order* dated October 2, 2006, and *Amended Order* issued on October 4, 2006, it was ordered that "sale of this license" will be held at the offices of the Special Referee. Attachments 7 and 8. By *Notice of Sale* dated October 2, 2006, the following Notice was issued:

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

Attachment 9. In a subsequent *Notice of Sale*, the Special Referee stated:

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

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

Attachment 10.

In short, nothing has been put up for auction other than the "FCC License." This shortcoming also is reflected in the Asset Purchase Agreement on file with the FCC for this transaction. Other than the local public inspection file (to which the Receiver has no actual ownership title), the *only* asset Cherry *even seeks* to transfer pursuant to the signed "Agreement" is the license to WPAL-FM.

The *only* asset the Receiver has been awarded is a bare license, and as in *Edward B. Mulrooney*, a *bare* license is not properly assignable, even to a Receiver, under Commission policies. For this reason, as well, the order of the Special Referee cannot be accommodated, and grant of the assignment must be reversed.

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

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

In this crucial respect, this case bears little difference to the seminal *Merkley* case. *Kirk Merkley*, 94 F.C.C.2d 829 (1983). In that case, acknowledging that the courts have the expertise and jurisdiction to resolve contractual disputes, the Commission explained that a court's rulings

nevertheless are subject to the Commission's own licensing policies and interests. *Id.* at 839. As the

Commission stated:

we have established procedures which acknowledge bifurcated authority in certain licensing areas. For example, where a licensee is accused of breaching a contract to assign its license, the determination of whether a breach occurred is left to a local state court. *Carnegie Broadcasting Co.*, 5 FCC 2d 882 (1966). The Commission does not possess the resources, the expertise or the jurisdiction to adjudicate such claims fully. See *Regents v. Carroll*, 338 U.S. 586 (1950). On the other hand, we have determined that limits on the ability of licensees to hold certain types of interests and engage in certain types of contracts are required under the Communications Act. Thus, we have adopted policies and procedures which have effectively limited the ability of licensees in these areas. One example of this is our treatment of reversions, discussed earlier. Another example is in the area of media ownership and the Commission rules limiting the interests which can be held in conjunction with broadcast properties. See Section 73.35; 73.240; 73.636; and 76.501 of the Rules. Thus, the Commission would not approve the assignment of a license which would cause a violation of its multiple or cross-ownership rules, regardless of the contractual power of a licensee to acquire such an interest under state law. Similarly, **if an assignment application's related contract of sale violated existing rules or policies, we would withhold our approval until the problem was corrected. In this way, while the interpretation and enforcement of contracts are within the jurisdiction of state courts, the Commission has established certain public interest limitations on a licensee's contractual authority and imposes these limits by withholding its approval of a pending assignment application.** Moreover, through this procedure, conflicts between Commission policy and state laws can be avoided.

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

In this case, the Decree of the Special Referee violates FCC policies in at least three manners. As discussed above, the very fact that the Decree imposes an "attachment" on the FCC license, and

attempts to treat the license as mere mortgagable/lienable “property” itself violates a long line of Commission cases, and rather than simply placing a lien on the *proper* items (*i.e.*, to those items referred to in the cases researched and cited by the Special Referee, such as simply proceeds from any future sale of the station), the Special Referee specifically attached the *FCC License*, in blatant violation of FCC policy. Additionally, the only asset Caswell Capital has pursued and the only asset the Special Referee ordered sold in auction in the “FCC License.” The fact that an attempt to assign a bare license itself also violates decades of Commission precedent. Finally, honoring (and giving, essentially, favoritism) to the Special Referee’s Decree would itself violate a prior-issued Court Order issued by the United States District Court. This also would be contrary to Commission policy.

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

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

For these reasons, the Commission's grant of the application for involuntary assignment of the license for WPAL-FM must be reversed and rescinded.

**WHEREFORE**, it is respectfully requested that this "Petition for Reconsideration" filed by Gresham Communications, Inc., be granted, and that the grant of the application of "Charles W. Cherry, II, Receiver for Gresham Communications, Inc.," for involuntary assignment of Station WPAL-FM, Ridgeville, South Carolina, be reversed and held in abeyance.

Respectfully submitted,

**GRESHAM COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Dan J. Alpert

Its Attorney

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

*May 7, 2007*

***ATTACHMENT 1***

92-508

111

PROMISSORY NOTE

\$ 165,072.00

January 2, 1988

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

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

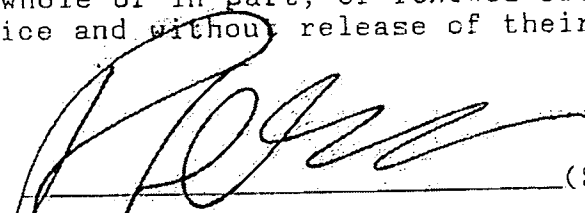
8%

97 MAR 24 AM 11:29  
COLLEGE PARK COUNTY  
COMM-FILING

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

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

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

  
\_\_\_\_\_  
President  
\_\_\_\_\_  
(SEAL)  
(SEAL)

12-008

H. B.  
K. 2

PROMISSORY NOTE

\$ 41,268.00

January 22 1988

ALLIANCE COUNTY  
COMMUNITY DEVELOPMENT  
MAR 21 AM 11:29

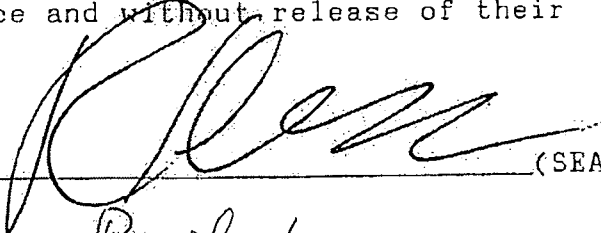
Nancy R. Beach **FOR VALUE RECEIVED**, the undersigned, jointly and severally promise to pay to the order of the principal sum of

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

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

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

  
\_\_\_\_\_  
President \_\_\_\_\_

***ATTACHMENT 2***

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

---

Plaintiff, complaining of Defendants, alleges:

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

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

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

FOR A FIRST CAUSE OF ACTION

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION

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

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

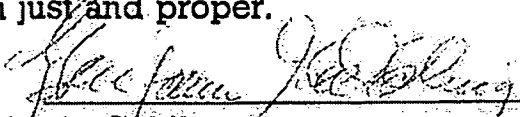
TWELVE: That the note is in default in that payment has not been made as required.

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

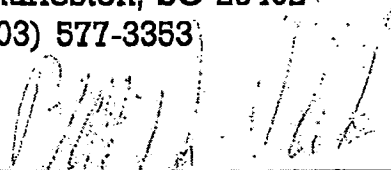
FOURTEEN: That the note has been placed in the hands of an attorney for collection.

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

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

  
\_\_\_\_\_  
Benjamin Goldberg

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

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

Attorneys for Plaintiff

Charleston, SC

August 18, 1992.

PROMISSORY NOTE

\$ 165,072.00

January 2, 1988

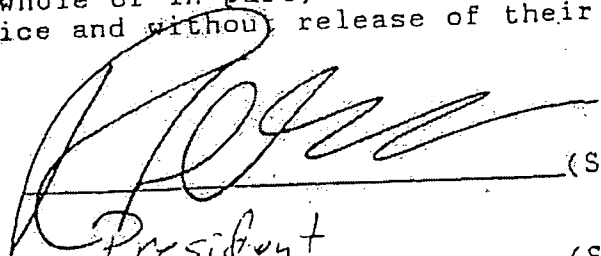
Nancy R. Beach FOR VALUE RECEIVED, the undersigned, jointly and severally promise to pay to the order of the principal sum of

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

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

  
\_\_\_\_\_  
President (SEAL)

*Handwritten mark*

PROMISSORY NOTE

January 2, 1965

\$ 41,268.00

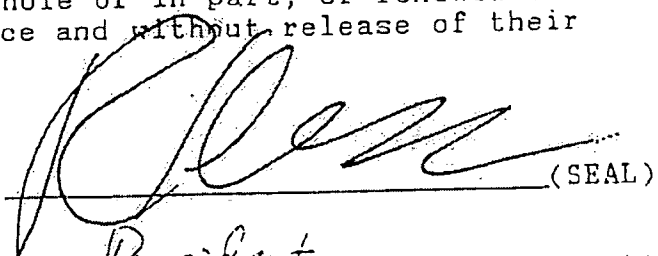
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\_\_\_\_\_  
President (SEAL)

*Handwritten scribble*

***ATTACHMENT 3***

11-2-94

12-508

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

Note #1- \$165,072.00

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

210,260.81

210,260.81

Note #2- \$41,268.00

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

52,768.14

52,768.14

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

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

36,400.54

36,400.54

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

299,429.49

97 MAR 24 AM 11:29  
COLLETON COUNTY  
COMMISSIONERS  
PLEASE

***ATTACHMENT 4***

STATE OF SOUTH CAROLINA )

IN THE COURT OF  
COMMON PLEAS

COUNTY OF CHARLESTON )

CASE NO. 92-CP-15-508

NANCY BEACH, )

Plaintiff, )

VS. )

ASSIGNMENT OF  
JUDGMENT INTEREST

GRESHAM COMMUNICATIONS OF WALTERBORO, INC., a/k/a )

GRESHAM COMMUNICATIONS, INC.; )

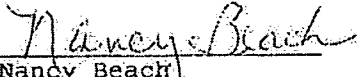
GRESHAM BROADCASTING, INC. and )

RUDI H. GRESHAM, )

Defendants. )

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

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

  
Nancy Beach

\_\_\_\_\_, 2006  
Charleston, South Carolina

***ATTACHMENT 5***

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 NANCY R. BEACH, )  
 )  
 ) Plaintiff, )  
 )  
 v- )  
 )  
 ) GRESHAM COMMUNICATIONS OF )  
 ) WALTERBORO, INC., a/k/a GRESHAM )  
 ) COMMUNICATIONS, INC.; GRESHAM )  
 ) BROADCASTING, INC., AND RUDI H. )  
 ) GRESHAM, )  
 )  
 ) Defendants. )

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

PETITION FOR  
 SUPPLEMENTAL HEARING

2006 AUG 24 PM 3:56  
 PRATT-THOMAS, EPTING & WALKER  
 COLLETON COUNTY  
 COMMON PLEAS

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

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

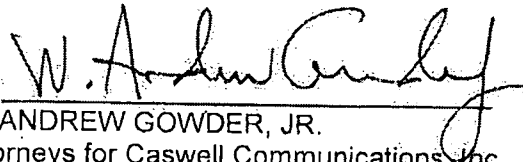
partnership interest agreements.

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

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

PRATT-THOMAS, EPTING & WALKER

BY:



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

August 23, 2006  
Charleston, South Carolina

***ATTACHMENT 6***

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON )

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

NANCY R. BEACH, )

**ORDER**

Plaintiff, )

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

Defendants )

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

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

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

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

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

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

this hearing.

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

Neither corporate defendant was represented by counsel.

4. In the course of his testimony, Mr. Saunders identified that the sole valuable asset currently owned by the judgment debtors was an FCC broadcasting license under which Gresham Communications currently operates an FM radio station, WPAL FM 100.9, utilizing a FM broadcast studio in North Charleston, South Carolina and a broadcasting tower in Ridgeland, South Carolina.

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

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

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

11/2/98  
#2  
*MLQ Investors L.P. v. Pacific Quadracasting, Inc.*, 146 F.3d 746, 749 (9<sup>th</sup> Cir.1998)


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

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

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

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

IT IS SO ORDERED.



Harris Beach, Special Referee  
Colleton County

September 22, 2006  
Walterboro, South Carolina.

12/13

**RADIO BROADCAST STATION LICENSE**

Licensee Name: GRESHAM COMMUNICATIONS INC

Radio Service: RP AUXILIARY REMOTE PICKUP License Effective Date: 08/16/2000  
 Call Sign: KS7087 File Number: 911416 License Expiration Date: 12/01/2003  
 Associated Broadcast Station: WPAL FM

20000816S 25 1 12

GRESHAM COMMUNICATIONS INC  
 1717 WAPPOO RD  
 CHARLESTON SC 29407

Station Technical Specifications

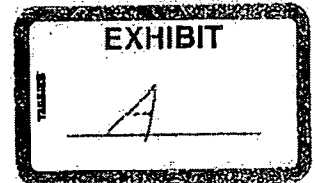
FCC ID	Frequency MHz	Station Class	No. of units	Station Designator	Output Power (Watts)	Transmit Height	Ground Elev.	Ant. Ht. to Tip	Antenna Latitude	Antenna Longitude
G:	170.15000	MO	1	60K0F3E	30.000					
<p>AREA OF OPERATION                  SITE G: SC CITIES: CHARLESTON</p> <p>SPECIAL COND: FAC ID 25374</p> <p>ADMIN NOTE: SUP: THIS LICENSE SUPERSEDES AND REPLACES PREVIOUS AUTHORIZATION OF SAME DATE AND FILE NUMBER TO UPDATE ADMINISTRATIVE LICENSE INFORMATION AND MAKE LICENSE TERM AGREE WITH PARENT CALL SIGN. JBL 08/16/00</p> <p>The latitude/longitude are authorized in North American Datum 1927 (NAD27). Additionally, the antenna height to tip, ground elevation, AAT and area of operation units are authorized in metric.</p>										
<p>EMISSION DESIGNATOR(S) CONVERTED TO CONFORM TO DESIGNATOR(S)                  SET OUT IN PART 2 OF THE COMMISSION'S RULES.</p>										

PAGE 1 OF 1



FEDERAL COMMUNICATIONS COMMISSION  
 GETTYSBURG, PENNSYLVANIA

FCC 3158  
 April 1993



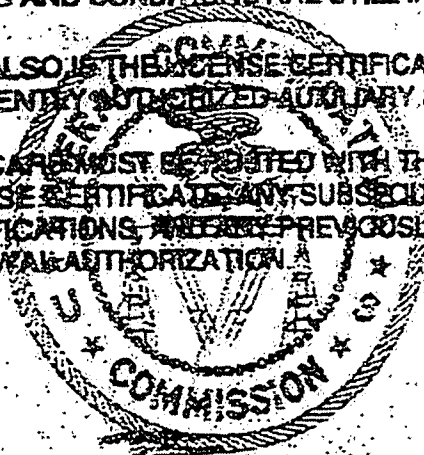
**REVISED LICENSE AUTHORIZATION**

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

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

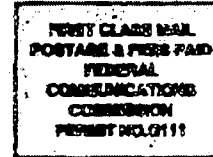
THIS ALSO IS THE LICENSE CERTIFICATE FOR YOUR CURRENTLY AUTHORIZED AUXILIARY SERVICES.

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



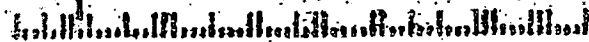
29007-7034 48

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20540  
  
OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300



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

FCC 372-A (1000)



***ATTACHMENT 7***

W Y C H E

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Attorneys at Law

April 13, 2007

VIA FEDERAL EXPRESS

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

VIA FEDERAL EXPRESS

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

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

07 APR 16 PM 1:40  
SOUTH CAROLINA  
COUNTY CLERK  
CHARLESTON

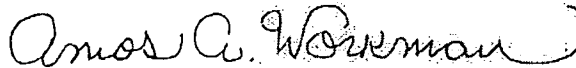
Dear Mr. Cherry and Ms. Aidoo:

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

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

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

Yours sincerely,



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

A.AW:lbw

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

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

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

Enclosures

FILED

SEP 16 2002

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

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

GREENVILLE DIVISION

ENTERED

SEP 16 2002

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

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

Plaintiffs, )

ORDER

v. )

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

Defendants. )

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

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

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

*msb*  
*p.1*

AO 72A  
(Rev. 3/82)

18

order of the court.

IT IS SO ORDERED.

*Margaret B. Seymour*  
Margaret B. Seymour  
United States District Judge

September 12, 2002

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 NANCY R. BEACH, )  
 )  
 Plaintiff, )  
 )  
 GRESHAM COMMUNICATIONS OF )  
 WALTERBORO, INC., a/k/a GRESHAM )  
 COMMUNICATIONS, INC., GRESHAM )  
 BROADCASTING, INC., AND RUDI H. )  
 GRESHAM, )  
 )  
 Defendants )

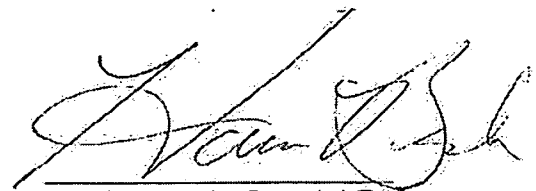
IN THE COURT OF COMMON PLEAS  
 C.A NO. 92-CP-15-508  
**ORDER**

06 OCT -2 AM 11:18  
 HARRIS BEACH  
 COLLETON COUNTY  
 COMMON PLEAS

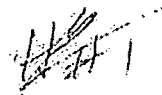
Pursuant to this Court's prior Order, dated September 22, 2006, providing for the sale of the FCC License in the name of the judgment debtor, sale of this license will be held in the office of Harris Beach, authority for selling as special referee, at 202 Carn Street, Walterboro, SC 29488 on October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

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

IT IS SO ORDERED.

  
 Harris Beach, Special Referee  
 Colleton County

October 2, 2006  
 Walterboro, South Carolina.



***ATTACHMENT 8***

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

06 OCT -4 PM 3:56  
 CLERK OF COURT  
 COLLETON COUNTY  
 COMMON PLEAS

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

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

IT IS SO ORDERED.

  
 \_\_\_\_\_  
 Harris Beach, Special Referee  
 Colleton County

October 3, 2006  
 Walterboro, South Carolina.

***ATTACHMENT 9***

STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 NANCY R. BEACH, )  
 Plaintiff, )  
 GRESHAM COMMUNICATIONS OF )  
 WALTERBORO, INC., a/k/a GRESHAM )  
 COMMUNICATIONS, INC., GRESHAM )  
 BROADCASTING, INC., AND RUDI H. )  
 GRESHAM, )  
 Defendants )

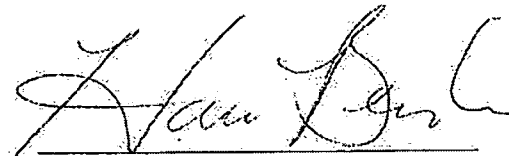
IN THE COURT OF COMMON PLEAS  
 C.A NO. 92-CP-15-508  
**NOTICE OF SALE**

06 OCT -4 PM 3:56  
 CLERK OF COURT  
 COLLETON COUNTY  
 COMMON PLEAS

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

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

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



Harris Beach  
 Special Referee

October 2, 2006  
 Walterboro, SC

***ATTACHMENT 10***

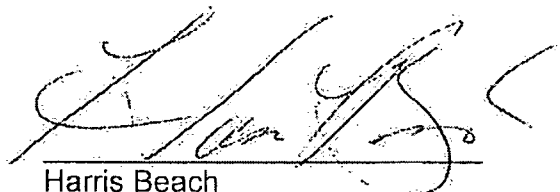
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	C.A NO. 92-CP-15-508
NANCY R. BEACH,	)	<b>NOTICE OF SALE</b>
	)	
Plaintiff,	)	
	)	
GRESHAM COMMUNICATIONS OF	)	
WALTERBORO, INC., a/k/a GRESHAM	)	
COMMUNICATIONS, INC., GRESHAM	)	
BROADCASTING, INC., AND RUDI H.	)	
GRESHAM,	)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

06 OCT 23 PM 2:03  
 HARRIS BEACH  
 COLLETON COUNTY  
 COMMON PLEAS

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

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

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

  
 \_\_\_\_\_  
 Harris Beach  
 Special Referee

October 20, 2006  
 Walterboro, SC

**CERTIFICATE OF SERVICE**

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

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

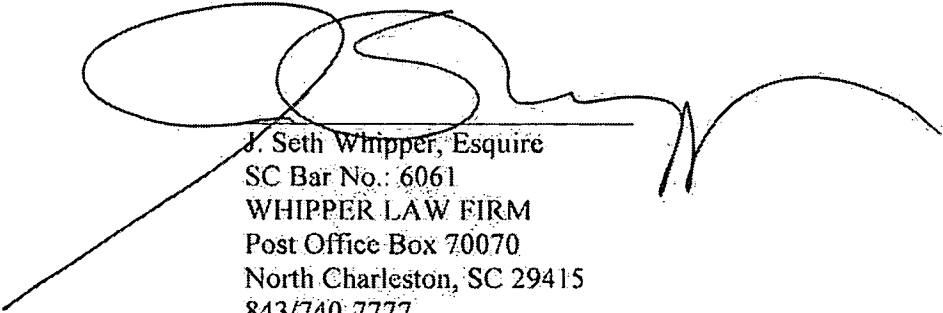
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Dan J. Alpert

Certificate of Appellant

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the other parties and not any other material.

January 7, 2011



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

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Harris Beach, Special Referee

---

Case No. 92-CP-15-508

---

Nancy R. Beach ..... Respondent,

v.

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

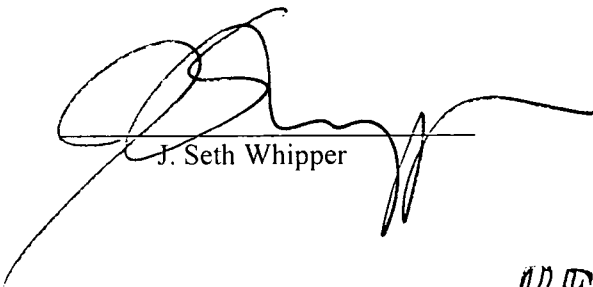
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PROOF OF SERVICE

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I certify that I have hand delivered the original Certificate of Counsel for the Appellant's Supplemental Record on Appeal and Record on Appeal by delivering it to Clerk of Court, Court of Appeals, 1015 Sumter St # 5, Columbia, SC 29201-3726.

February 22 2011

  
\_\_\_\_\_  
J. Seth Whipper

RECEIVED  
FEB 22 2011  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

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

---

Case No. 92-CP-15-508

---

Nancy R. Beach ..... Respondent,

v.

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

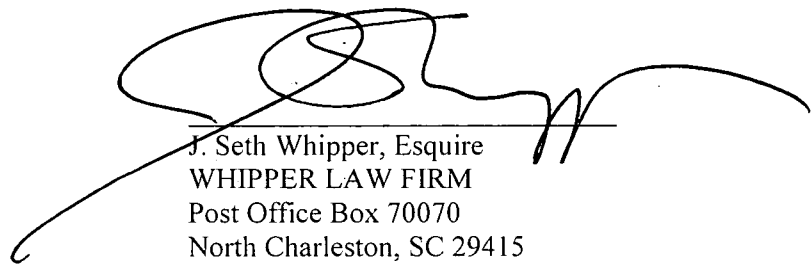
---

CERTIFICATE OF COUNSEL

---

The undersigned certifies that the Appellants' Supplemental Record on Appeal contains all material proposed to be included by the parties and not any other material.

January 10, 2011



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

RECEIVED  
FEB 22 2011  
SC Court of Appeals