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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Circuit Court

L Casey Manning, Circuit Court Judge

Case No 2009-CP-40-05911

Howard Hammer

Appellant

v

Shirley Hammer

Respondent

RECORD ON APPEAL

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SC Court of Appeals

INDEX

Order Dismissing Complaint by The Honorable L Casey Manning, April 14, 2010	3
Order Denying Motion for Reconsideration	10
Amended Complaint for Declaratory Judgment filed November 9, 2010	13
First Amended Answer to Amended Complaint, Motion to Dismiss, Motion for Injunction filed November 3, 2009	21
Answer to Amended Complaint, Motion to Dismiss, Motion for Injunction filed November 23, 2009	30
Memorandum in Support of Defendant's Motion to Dismiss filed February 26, 2010	41
Transcript of Record from Hearing before Judge Manning on March 2, 2010	52
Order Ending Action by The Honorable James M Rucker filed August 19, 2009	101
Order Approving Settlement Agreement by Judge Rucker filed August 19, 2009	115
Divorce Decree by The Honorable Dorothy Mobley Jones filed May 12, 2008	137
Order (with Partial agreement) by Judge Jones filed May 12, 2008	161
Summons and Complaint for Declaratory Judgment, Family Court filed August 25, 2010	182
Family Court Orders by Judge Rucker filed January 27, 2010	
A Order Regarding Child Support Being Paid Through Clerk of Court	190
B Order Regarding Defendant's Motion to Reconsider, Amend, Alter, Modify and/or for New Trial and Stay	193
C Order Correcting Scrivener's Error – IRA	200
D Order Regarding Defendant's Pro Se Motion dated 08/19/09	202
E Order (Regarding Plaintiff's Motion for atty's fees and costs)	208

Dismissal of Warrant No K37389 & K373840 dated October 19, 2009	213
Order Sealing Record	214
Plaintiff's 59(e) Motion	216
Memorandum Order Filed May 12, 2008, by Judge Jones	222

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Howard Hammer,)
)
Plaintiff,)
)
vs)
)
Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
)
Defendant)

IN THE COURT OF COMMON PLEAS

Case No 2009-CP-40-05911

ORDER DISMISSING COMPLAINT

(Does not end action)

2010 APR 14 PM 3 11
JENNIFER HIGHTOWER
CCP & GS

FILED
CLERK OF COURT

Defendant Shirley Hightower moved for dismissal of Plaintiff's complaint because this Court lacks subject matter jurisdiction. Present at the March 2, 2010, hearing on this motion were Desa Ballard, attorney for Defendant, and Plaintiff Howard Hammer, who argued on his own behalf with the assistance of his lawyer, Susan Lipscomb. For the reasons set forth below, Defendant's motion to dismiss for lack of subject matter jurisdiction is GRANTED.

FINDINGS OF FACT

This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr Hammer"), seeking a declaratory judgment and other relief in connection with "*a certain contract*" entered between the parties in May 2008 ("May 2008 Contract"), which was incorporated into an order of the Family Court. Mr Hammer asserts that the May 2008 Contract is void *ab initio* as violating public policy because a key term of the contract is a payment of funds by Mr Hammer to Defendant Shirley Hammer in exchange for her agreement to drop certain criminal charges against Mr Hammer. The contract also included terms involving, among other matters, property located at 320 St James Street,

Columbia, South Carolina, which was formerly the marital home, and retirement (IRA) accounts

The “May 2008 Contract” is a partial settlement of family court litigation that has been pending since September 2, 2005. More significantly, the Family Court expressly “adopted, approved, incorporated into, merged, integrated with and made” the May 2008 contract a court order. *Hammer v. Hammer*, C.A. NO. 2005-DR-40-2871 (Order of Judge Dorothy Mobley Jones at page 4, paragraph 1 (May 12, 2008) (the “May 2008 Order”). In the Order, the Family Court expressly retained “jurisdiction to issue any orders necessary to effectuate the terms of the Agreement.” *Id.* at 4, ¶ 2 (A copy of the May 2008 Order is attached as Exhibit “A”).

Mrs. Hammer invoked the jurisdiction of the Family Court on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. She filed a Second Amended Complaint on December 6, 2007, seeking a divorce and other relief. The Family Court litigation was settled in two phases. First, the divorce and property settlements were agreed to on May 9, 2008 and made Orders by Judge Jones on May 12, 2008. Second, on June 23 and 24, 2009, the parties settled issues relating to child custody, visitation, and related issues. The Family Court entered its Orders approving this Settlement Agreement and Ending the Action on August 19, 2009. The 2009 Family Court Order expressly re-affirmed the May 2008 Order.

Beginning in May 2009, Mr. Hammer mounted at least four attacks on the 2008 and 2009 Settlement Agreements and Family Court Orders.

First, on May 4, 2009, Mr. Hammer sought to amend, modify, void, and set aside the May 12, 2008 Order and requested a new trial under Rule 60(b). By Order of Judge

Jones entered September 1, 2009, this motion was dismissed with prejudice in view of the August 19, 2009, Orders

Second, Mr Hammer, *p/o se*, filed a motion to withdraw, rescind, and repudiate his consent to the June 23, 2009, Settlement Agreement, incorporated by the 2009 Order That motion was denied by Order of the Family Court (Judge Rucker) on January 27, 2010

Third, September 4, 2009, Mr Hammer filed a Motion to Reconsider, Amend, Alter, Modify and/or For a New Trial and Stay of the following four family court orders, each dated August 19, 2009 (1) Order for Transfer of Individual Retirement Account, (2) Order Sealing Record, (3) Order Approving Settlement Agreement, and (4) Order (Ending Action) This omnibus motion was denied by Order of Judge Rucker on January 27, 2010

Finally, Mr Hammer filed this declaratory judgment action in the Court of Common Pleas Both in her Answer and First Amended Answer, Motion to Dismiss, and Counterclaims to the Complaint, Mrs Hammer asserted three affirmative defenses (1) lack of subject matter jurisdiction (Rule 12(b)(1), SCRCP), (2) failure to state facts sufficient to constitute a cause of action (Rule 12(b)(6), SCRCP), and (3) *res judicata* (Rule 8(c), SCRCP)

CONCLUSIONS OF LAW

S C Code Ann § 20-3-690 provides that “[t]he *family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those*

contracts ” S C Code Ann § 20-3-690 (emphasis added) This section refers to Divorce and settlement agreements in South Carolina

Further, S C Code Ann § 63-3-50 provides

(A) The family court has exclusive jurisdiction

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney’s fees, if requested by either party in the pleadings,

(25) to modify or vacate and order issued by the court,

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury, however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such prohibition,

S C Code Ann § 63-3-50 Each claim raised by Mr Hammer in this court has already been heard and determined by the Family Court, which had exclusive subject-matter jurisdiction under S C Code Ann § 63-3-50(A)(2)(25) & (30), and under S C Code Ann § 20-3-690 (1976, as amended)

The First and Fourth Causes of Action for a Declaratory Judgment in Mr Hammer’s complaint declare the May 2008 Family Court Order void as against public policy These issues were heard by the Family Court, which rejected Mr Hammer’s post-trial attack on the June 2009 Settlement Agreement and August 19th order approving the settlement agreement and order ending the action (Family Court Orders,

January 27, 2010) The August 19, 2009, Order ending the action expressly reaffirmed the May 12, 2008, Order as later modified by the August 19, 2009, Order Consequently, the May 2008 and the August 19, 2009, orders are both indivisible and indistinguishable

Accordingly, the public policy attack was already heard, determined, and rejected by the Family Court (Family Court Order Regarding Defendant's *Pro Se* Motion, January 27, 2010)

The Second, Third, Fifth, and Sixth causes of action in Mr Hammer's complaint to this circuit court complaint all relate to disposition of the marital home, to transfer of Mr Hammer's IRA account, and to other matters intrinsically related to the domestic relations litigation within the exclusive jurisdiction of the family court

All of the property settlements in the May 2008 and June 2009 Settlement Agreements are in connection with the divorce proceeding The law in this State expressly grants exclusive subject matter jurisdiction to the family court over the construction and enforcement of all these contracts S C Code Ann §§ 63-3-50(A)(2)(25) & (30), 20-3-690

Plaintiff argues that this Court has concurrent jurisdiction with the Family Court as to the issues set forth in the May 2008 contract and argues that Plaintiff has the right to choose his forum for litigating the matters In the seminal case of *Moseley v Mosier*, 279 S C 348, 306 S E 2d 624 (1983), our Supreme Court expressly held that, once a settlement agreement is approved by the Family Court, it may be enforced only by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction *Id* at 353, 306 S E 2d at 627 ("With the court's approval, the terms become a part of the decree and are binding on the parties and the court However,

unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the court and enforceable by contempt ”)

Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements See May 2008 Order at 4, ¶ 2, 2009 Order Ending Action at 8, ¶¶ 7 and 9 Accordingly, under *Moseley*, the Family Court, and only the Family Court, has continuing subject matter jurisdiction over the claims raised by the Amended Complaint See also, *Swentor v Swentor*, 336 S C 472, 478-79, 520 S E 2d 330, 334 (1999) (holding that, even in the face of an agreement to arbitrate, the Family Court does not lose jurisdiction)

Even if this Court had concurrent jurisdiction, which it plainly does not under applicable law, the family court would still have exclusive jurisdiction over the May 2008 Court Order and incorporated contract because litigation began in the family court first, and has continued there

It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive *McDonald v McDonald*, 276 S C 573, 281 S E 2d 109 (1981) In affirming a circuit court order dismissing a complaint for lack of subject matter jurisdiction, the Supreme Court held “Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction The family court acquired jurisdiction first, therefore it acquired exclusive jurisdiction to hear all further

proceedings in the case” See *Tucker v Tucker*, 264 S C 172, 177, 213 S E 2d 588 (1975)” (emphasis added) *Id* at 575, 281 S E 2d at 110

Here the family court acquired jurisdiction on September 2, 2005, almost four years before Mr Hammer filed his complaint in this case

Collectively, the Family Court Orders concern the same parties’ in litigation and concern the same claims and issues, all of which were adversely determined against Mr Hammer Accordingly, he is barred from re-litigating those claims and issues here

THEREFORE, for the reasons set forth above, Defendant Shirley Hammer’s Motion to Dismiss for lack of subject matter jurisdiction is GRANTED This order does not end the action as to Defendant’s counterclaims

IT IS SO ORDERED


Casey Manning
Circuit Court Judge
Fifth Judicial Circuit


March 14, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No 2009-CP 40 05911
	)	
Howard Hammer,	)	
	)	
Plaintiff,	)	
	)	
vs	)	ORDER DENYING
	)	MOTION TO RECONSIDER
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant	)	

RICHLAND COUNTY
 FILED
 2010 MAY 18 AM 10 57
 JEANETTE W MCBRIDE
 C C P & G S

The Court issued an Order dated April 14, 2010 dismissing Plaintiff's complaint in the referenced matter Plaintiff filed "Plaintiff's 59(e) Motion" on April 28, 2010 Plaintiff's motion for reconsideration is DENIED

The findings of fact and conclusions of law set forth in the Order of this Court dated April 29, 2010 are incorporated hereto, by reference Further, this motion is denied based on the following findings of fact and conclusions of law

1 This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr Hammer"), seeking a declaratory judgment and other relief in connection with "*a certain contract*" entered between the parties in May 2008 ("May 2008 Contract") This Court found that the "certain contract" had been incorporated into an order of the Family Court, being a partial settlement of family court litigation that has been pending since September 2, 2005 which was "adopted, approved, incorporated into, merged, integrated with and made" a court order Hammer v Hammer, C A NO 2005-DR-40-2871 (Order of Judge Dorothy Mobley Jones at p 4, (May 12, 2008)

2 Plaintiff argues that this Court erred in finding that the "*certain contract*" was incorporated into a Family Court order on the basis that there was "no admissible evidence of record on which the Court could base such finding" and because this court could not, therefore, take judicial notice of the Family

Court pleadings or orders. The Plaintiff alleges that because of there is a sealing order filed in the Family Court, no filings associated with that action are admissible in this matter.

3 The sealing order provides that the parties and court may access and use the file in connection with this [domestic] litigation. Although this particular case is not captioned in the family court, I find that Plaintiff's civil court suit is a continuation of a marital dispute still ongoing in the family court since September 2, 2005. Therefore, I find that this Court may take notice of all portions of the family court record despite the sealing order. Further, the Court may take judicial notice of any filed pleadings, sealed or not. SCRE 201(b).

4 Plaintiff initiated this action in the civil court raising the issue of whether the Family Court agreement of May 2008 (and related orders) is void because of public policy and therefore unenforceable. Plaintiff created the necessity that this Court have access to, and take notice of, the Family Court filings in the parties' related domestic case.

5 Plaintiff argues that his 2nd, 3rd, 4th, 5th and 6th causes of action should not be dismissed because there was "no evidence of record from which the Court could make a finding that" those causes of action are not "intrinsically related to the domestic relations litigation." All of plaintiff's causes of action address or allege breach of contract, conversion of property referenced in the contract, or breach of faith stemming from 'that certain contract' from May 2008, which is the settlement agreement incorporated into the Family Court order. Therefore, since these remaining allegations in the motion to reconsider are premised on the incorrect notion by Plaintiff that this Court may not consider the prior orders of the Family Court, there was suitable evidence in the record to support the Court's findings. The Plaintiff's motion for reconsideration is denied.

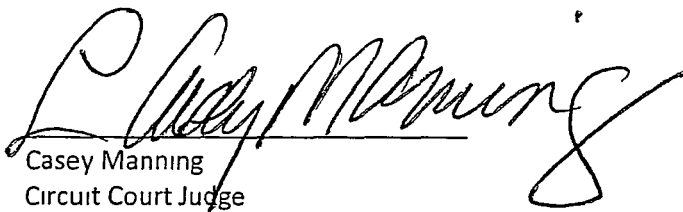
6 Plaintiff argues that this Court has concurrent jurisdiction with the Family Court as to the issues set forth in the May 2008 contract (i.e. *certain contract*) and argues that Plaintiff has the right to choose his forum for litigating the matters, claiming this Court's interpretation of case law and statutory

law is incorrect. It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive. McDonald v McDonald, 276 S C 573, 281 S E 2d 109 (1981). Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements.

7. Plaintiff argues that the motion to dismiss was improperly granted because the Plaintiff is entitled to address a jury with his cause(s) of action under the declaratory judgment statutes and Article 3 of the Constitution. The Sixth Amendment, which applies against the states (see, Gideon v Wainwright, 372 U S 335 (1963)), only pertains to criminal prosecutions. Further, the Seventh Amendment, providing for jury trials in civil cases, only applies in federal court, and has never been incorporated into the 14th Amendment due process clause and applied against the states. The plaintiff's arguments are without merit.

) THEREFORE, for the reasons set forth above, Plaintiff's motion pursuant to Rule 59(e) is DENIED.

IT IS SO ORDERED.


Casey Manning
Circuit Court Judge
Fifth Judicial Circuit


May 18
March 2010
Richland County

Hammer

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Howard Hammer,

Plaintiff,

vs

Shirley Hammer, a/k/a Shirley Grace
Hightower,

Defendant

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action # 09-CP-40-05911

AMENDED COMPLAINT FOR A
DECLARATORY JUDGMENT
AND/OR IN THE ALTERNATIVE
FOR DAMAGES

FILED
CLERK OF COURT
JUL 19 2009
RICHLAND COUNTY

NOW COMES Plaintiff Howard Hammer, through undersigned counsel, by way of his Amended Complaint For a Declaratory Judgment and/or In the Alternative for Damages, would respectfully show the court as follows

- 1) Plaintiff is, and at the time this suit was commenced, Defendant was a resident and citizen of the State of South Carolina, County of Richland
- 2) This court has personal jurisdiction of the parties
- 3) This matter involves *inter alia*, a request for a declaratory judgment by this court that a certain contract entered into by the parties as set forth below is invalid as against public policy, and/or that the contract contains provisions obnoxious to, contrary to, against principles of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the contract is therefore void and/or in the alternative for damages on account of Defendant's breach of her promises in connection with the aforesaid contract and on account of various other acts giving rise to causes of action as hereinafter set forth
- 4) This court has subject matter jurisdiction of the issues set forth herein

FOR A FIRST CAUSE OF ACTION

0

(Declaratory Judgment)

5) The allegations of the foregoing Paragraphs are realleged herein as if verbatim

6) Beginning in July 2007 through February 2008, Plaintiff made numerous spurious criminal complaints and caused criminal warrants to be issued against Plaintiff, thereby jeopardizing Plaintiff's law license

7) Plaintiff seeks declaratory judgment and relief in connection with a certain contract entered between the parties in May 2008 ("May 2008 Contract"), which Contract involves, among other matters, property located at 320 St James Street, Columbia, South Carolina and Plaintiff's retirement (IRA) accounts

8) An integral part of the consideration of Plaintiff's agreements in the May 2008 Contract was Defendant's agreement to withdraw her criminal complaints and allow the criminal charges against Plaintiff to be dismissed in addition to which Defendant required that Plaintiff agree to an "Order of Protection" not only as to her, but also as to her sister, who was not a party to the contract, and the further requirement that the parties execute an Agreement and Release of claims one against the other and that Plaintiff execute a Receipt and Release in favor of Plaintiff's sister-in-law Florence Medlin and a Receipt and Release in favor of Plaintiff's brother-in-law Alan Medlin on account of any potential claims

9) Plaintiff was required to agree to the terms and conditions of the May 2008 Contract as a prerequisite to Defendant's agreement to withdraw her criminal complaints and agree to the dismissal of the criminal charges filed against Plaintiff by Defendant and Defendant's sister/Plaintiff's sister-in-law, Florence Medlin

10) Plaintiff is informed and believes that pursuant to S C Code of Laws § 15-53-10, *et seq* (1976 as amended) and the express terms of the May 2008 Contract itself this court has

jurisdiction to declare the rights, status and other legal relations between Plaintiff and Defendant and to declare the invalidity of the May 2008 Contract

11) Plaintiff is informed and believes that he is entitled to a declaratory judgment order declaring that the May 2008 Contract is against public policy, and/or that the May 2008 Contract contains provisions obnoxious to, contrary to, against principles of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the May 2008 Contract is therefore void *ab initio*, and, that all transfers, including but not limited to the transfer by Plaintiff to Defendant of any and all of his interest in 320 St James Street, Columbia, S C was and is accordingly void *ab initio*, and all other terms, provisions, and requirements of the May 2008 Contract are invalid, void and unenforceable

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

12) The allegations of the foregoing Paragraphs are realleged herein as if verbatim In the event the Court determines the May 2008 Contract is valid, Plaintiff pleads in the alternative as follows

13) That Plaintiff has performed all acts required under the ^{above} May 2008 Contract except those Plaintiff has been unable to perform because of impossibility

14) That notwithstanding Plaintiff's performance which included payments to Defendant of the sum of over one million dollars cash, the payment of a mortgage on a home located at 320 St James Street, Columbia, SC jointly owned by the parties in a sum greater than two hundred thousand (200,000) dollars, and thereafter the deeding of Plaintiff's interest in said home to Defendant, and on the further performance of other obligations required of Plaintiff and by Plaintiff, Defendant has failed and refused to perform any of the essential material conditions

and requirements of the May 2008 Contract on account of which Plaintiff has been caused to and has suffered a considerable financial loss including but not limited to the loss of monies paid to Defendant, loss of interest on said monies paid to Defendant, loss of any appreciation in value of any properties deeded to Defendant including but not limited to the 320 St James Street, Columbia, S C property referred to hereinabove, loss of use of properties, loss of properties rightfully belonging to Plaintiff, which Defendant has refused and continues to refuse to convey to Plaintiff (personal and real properties), and diminution of values of properties real and personal which Defendant has failed to convey to Defendant as required under the terms of said May 2008 Contract

 FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Intent)

- 15) The allegations of the foregoing Paragraphs are realleged herein as if verbatim
- 16) Upon information and belief Defendant made fraudulent and false representations relating to a preexisting fact and that Defendant intended to deceive Plaintiff and that further Plaintiff had a right to rely upon the representations made by Defendant
- 17) That upon information and belief the falsity of the representations was known or should have been known to Defendant
- 18) That upon information and belief the misrepresentations were of material facts
- 19) That upon information and belief the misrepresentations were made in reckless disregard for their truth or falsity
- 20) That upon information and belief the Defendant intended that Plaintiff rely on the misrepresentations and that he act in reliance on them, that Plaintiff was ignorant of the falsity of the misrepresentations, and relied upon the truth of the representations that the Plaintiff had a

right to rely on the truth and that Plaintiff suffered consequential damages and proximate injury as a result of the said misrepresentations of Defendant

21) That Defendant breached the May 2008 Contract, that she had a fraudulent intent relating to the breach, and that the breach was accompanied by a fraudulent act

22) That as direct and proximate consequence of the above, Plaintiff has been damaged as hereinafter set forth

FOR A FOURTH CAUSE OF ACTION
(Against Public Policy)

23) The allegations of the foregoing Paragraphs are realleged herein as if verbatim

24) That the contract contained provisions obnoxious to, contrary to, against the principles of the common law and statutory enactments and/or constitutional provisions of this state and repugnant to justice and morality and further in contravention of the public policy of the state as found in either the constitution or the statutes or judicial decisions and that the contract is therefore void *ab initio*, including but not limited to the provisions relating to the transfer of the 320 St James Street, Columbia, S C property to Defendant hereinabove referred to

25) That as a direct and proximate consequence thereof, Plaintiff has been damaged in the manner that is hereinafter set forth

FOR A FIFTH CAUSE OF ACTION
(Conversion)

26) The allegations of the foregoing Paragraphs are realleged herein as if verbatim

27) That Defendant heretofore, in or about December 2007, unlawfully and illegally entered Plaintiff's residence

28) That the entry into Plaintiff's home in December 2007, was thereafter accompanied by an unlawful, reckless, willful conversion of Plaintiff's property which unlawful, reckless and willful conversion continues though the present, notwithstanding Plaintiff's request prior to the institution of this action for immediate inventory, accounting for and return of Plaintiff's property located in the home (320 St James Street) he was occupying at the time of the conversion

29) That the aforesaid conversion was and has been aided by and through the assistance and actions of unknown co-conspirators including upon information and belief, but not limited to, actions directly or indirectly taken by Plaintiff's domestic attorneys, upon information and belief on her request and/or at their direction with their knowledge and acquiescence and upon information and belief also at her behest through the efforts of agents assisting her in attempting to avoid her responsibility and liability for her unlawful, reckless and willful aforesaid conversion

30) That as a proximate result and on the account of the unlawful, willful and malicious conversion by Defendant, Plaintiff has been caused to suffer loss of his property, loss of the use of his property, diminution in the value of his property and has been otherwise damaged all to his damage in such sum as The Court shall determine to be fair, just and proper

✓ FOR A SIXTH CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)

31) The allegations of the foregoing Paragraphs are realleged herein as if verbatim

32) That all agreements entered into under the laws of the State of South Carolina carry with it a primary, absolute and unalterable covenant whether express or not requiring good faith and fair dealing in connection with any agreement or purported agreement

33) That Defendant has wrongfully, recklessly, carelessly and willfully breached the covenant of good faith and fair dealing in connection with the purported agreement with Plaintiff

34) That as a direct and proximate result and in consequence thereof, that Plaintiff has suffered damages both actual and punitive as hereinafter set forth

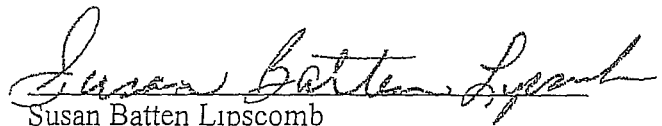
35) That on account of and as a direct proximate result and in consequence of all of the above separately and/or in combination, Plaintiff has lost the value of the monies and other consideration paid to Defendant, Plaintiff has lost interest on the value of said monies, Plaintiff has been required to obtain loans in order to meet the obligations he has met under the said agreement leaving Plaintiff with the obligation of repayment of said loans and interest thereon, Plaintiff has suffered anguish, loss of earnings and income and loss of the value of the bargained for consideration and has been otherwise damaged all to his damage in addition to those damages hereinbefore set forth

WHEREFORE, Plaintiff prays for judgment against Defendant for the following relief

- A) For a declaratory judgment declaring that the May 9, 2008 contract between the parties is void *ab initio* as against public policy,
- B) For an order for actual damages in favor of Plaintiff against Defendant in such amount as may be fair, just and proper on the aforesaid causes of action,
- C) For an order requiring Defendant to return to Plaintiff properties both real and personal, including but not limited to his interest in the 320 St James Street, Columbia, S C and all other property all rightfully belonging to Plaintiff,

- D) For an order for punitive damages in favor of Plaintiff against Defendant on the aforesaid appropriate causes of action in such amount as the Court shall deem just and proper,
- E) For an order for attorneys' fees and costs as appropriate in favor of Plaintiff against Defendant, and,
- F) For such other and further relief as may be just and fair

Respectfully submitted,



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Attorneys for Plaintiff



Howard Hammer, *Pro Se*

by att w/permission

November 4, 2009
Columbia, SC



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No 2009-CP-40-05911
	)	
Howard Hammer,	)	
	)	
Plaintiff,	)	FIRST AMENDED
	)	ANSWER, MOTION TO DISMISS,
vs	)	AND COUNTERCLAIMS
	)	
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant	)	

Defendant, responding to the complaint of the Plaintiff herein, denies that the Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows

- 1 Admits the allegations of paragraph 1, except denies that she is a resident of Richland County
- 2 Admits that the parties entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, and that this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order") The Family Court expressly retained jurisdiction to enforce this Order
- 3 No responsive pleading is required to the allegations in paragraph 3, except Defendant denies that she breached The Family Court Order described in paragraph 2 above

ANSWER TO FIRST CAUSE OF ACTION

- 4 Denies that this Court has subject matter jurisdiction over matters contained in Plaintiff's complaint Subject matter jurisdiction is proper only in Family Court
- 5 Denies the allegations of paragraph 5
- 6 Answering Paragraph 6, Defendant admits that Plaintiff performed some, but not all, obligations required of him by The Family Court Order Defendant denies that she has failed to perform any requirements of The Family Court Order



ANSWER TO SECOND CAUSE OF ACTION

- 7 Repeats and re-alleges her answers to paragraphs 1-6
- 8 Denies the allegations of paragraph 8
- 9 Denies the allegation of paragraph 9
- 10 Denies the allegation of paragraph 10
- 11 Denies the allegation of paragraph 11
- 12 Denies the allegations of paragraph 12
- 13 Denies the allegation of paragraph 13

ANSWER TO THIRD CAUSE OF ACTION

- 14 Repeats and re-alleges her answers to paragraphs 1-13
- 15 Denies the allegations of paragraph 15
- 16 Denies the allegation of paragraph 16

ANSWER TO FOURTH CAUSE OF ACTION

- 17 Repeats and re-alleges her answers to paragraphs 1-16
- 18 Denies the allegation of paragraph 18
- 19 Denies the allegations of paragraph 19
- 20 Denies the allegations of paragraph 20
- 21 Denies the allegations of paragraph 21

ANSWER TO FIFTH CAUSE OF ACTION

- 22 Repeats and re-alleges her answers to paragraphs 1-21
- 23 No responsive pleading is required to the legal conclusions stated in paragraph 23
- 24 Denies the allegations of paragraph 24
- 25 Denies the allegations of paragraph 25



26 Denies the allegations of paragraph 26

DEFENSES

27 This Court lacks subject matter jurisdiction over the matters contained in the complaint

28 The Complaint fails to state facts sufficient to constitute a cause of action

29 The claims asserted are barred by the doctrine of *res judicata*

COUNTERCLAIMS

(Allegations Common to All Counterclaims)

30 To the extent relevant to these counterclaims, the responses set forth above are incorporated herein as fully as if repeated verbatim

31 Defendant was the sole owner of the real estate located at 320 St James Street, Columbia, SC, 29205 ("320 St James") at all relevant times

32 On or about February 9, 2009, Defendant placed 320 St James on the market for sale

33 On July 31, 2009, Plaintiff filed a *lis pendens* against 320 St James (a copy of which is attached as **Exhibit A**) but did not provide notice of the *lis pendens* to Defendant

34 At the time he filed the *lis pendens*, Plaintiff had no interest in or claim against 320 St James

35 Upon information and belief, Plaintiff's purpose in filing the *lis pendens* was to prevent the closing of the sale of 320 St James under the contract of sale that had been entered into between Defendant and her purchaser

36 On August 18, 2009, Plaintiff filed the complaint in this action but did not serve Defendant. The complaint alleges no interest of Plaintiff in 320 St James

37 On or about August 19, 2009, Plaintiff communicated with the closing attorneys for Defendant's purchaser under the contract of sale for 320 St James, stating that he would cancel the *lis pendens* if Defendant's purchaser would instead buy his house at 1609 Catawba Street, Columbia, SC, 29205 and Plaintiff provided could purchase 320 St James

38 Plaintiff also communicated to the purchaser's closing attorneys the false information that the pool at 320 St James had a current leak

39 On or about July 25, 2009, Defendant entered into a contract to purchase the real estate located at 421 River Club Drive in Lexington County, SC ("421 River Club")

The closing was contingent on Defendant's consummation of the sale of 320 St James because Defendant was to use the proceeds from that sale to fund the purchase of 421 River Club

- 40 Upon information and belief, after Plaintiff became aware of Defendant's contract of sale to purchase 421 River Club, Plaintiff and/or his agent contacted Defendant's seller and offered to purchase 421 River Club for more than Defendant's contract price
- 41 Because of Plaintiff's interference, including but not limited to his filing of the *lis pendens* and the complaint, Defendant's original contract of sale with her purchaser failed. Eventually, Defendant was able to sell 320 St James to her purchaser on August 20, 2009, but on significantly less favorable terms than the original contract of sale
- 42 On information and belief, sometime after Defendant purchased 421 River Club, Plaintiff began negotiating to purchase real estate in the same neighborhood as, and right down the street from, Defendant's new home at 421 River Club
- 43 On or about September 8, 2009, Plaintiff served the complaint on Defendant
- 44 Plaintiff's actions caused and continue to cause Defendant to sustain severe emotional distress as well as financial loss

**FIRST COUNTERCLAIM
(SLANDER OF TITLE)**

- 45 Defendant repeats and re-alleges the allegations of paragraphs 30 through 44
- 46 Plaintiff published false statements about Defendant's title to 320 St James by filing the *lis pendens* and the complaint and/or making other false statements that Plaintiff had a claim to or interest in 320 St James
- 47 Upon information and belief, Plaintiff's false statements were made with malice for the purpose of preventing the closing of the sale of 320 St James and to harass Defendant
- 48 Plaintiff's false statements were derogatory to Defendant's title to 320 St James and caused the original contract of sale to fail
- 49 Plaintiff's false statements caused special damages to Defendant in the form of the lost sale of the property and the diminution of its sales price
- 50 Plaintiff's false statements diminished the value of Defendant's property interest in 320 St James
- 51 Plaintiff's false statements constituted a slander of Defendant's title to 320 St James



for which Defendant is entitled to recover actual and punitive damages from Plaintiff

SECOND COUNTERCLAIM
(TORTUOUS INTERFERENCE WITH AN EXISTING CONTRACTUAL RELATIONSHIP)

- 52 Defendant repeats and re-alleges the allegations of paragraphs 30 through 51
- 53 On information and belief, Plaintiff was aware of Defendant's contract to sell 320 St James
- 54 Upon information and belief, Plaintiff through his actions, including but not limited to his false statements, intended to cause the breach of Defendant's original contract to sell 320 St James
- 55 Plaintiff had no justification for his actions because he had no interest in 320 St James
- 56 Plaintiff's actions constituted a tortuous interference with Defendant's existing contractual relationship
- 57 Plaintiff's tortuous interference with Defendant's existing contractual relationship caused damage to Defendant as set forth above for which Defendant is entitled to recover actual and consequential damages from Plaintiff

THIRD COUNTERCLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE)

- 58 Defendant repeats and re-alleges the allegations of paragraphs 30 through 57
- 59 Through his conduct, Plaintiff intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct
- 60 Plaintiff's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community
- 61 Plaintiff's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from the Plaintiff
- 62 Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff for damages as set forth above

FOURTH COUNTERCLAIM
(ABUSE OF PROCESS)

- 63 Defendant repeats and re-alleges the allegations of paragraphs 30 through 62

- 64 Upon information and belief, Plaintiff had an ulterior purpose in bringing this action to harass Defendant and to prevent the Defendant from selling 320 St James and from purchasing 421 River Club
- 65 Plaintiff's willful actions in the use of process was not proper in the regular conduct of proceedings and was intended to gain an objective not legitimate in the use of process
- 66 Defendant suffered damages as a result of Plaintiff's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff

FIFTH COUNTERCLAIM
(INVASION OF PRIVACY/WRONGFUL INTRUSION
AS TO CONTRACTS TO SELL AND PURCHASE)

- 67 Defendant repeats and re-alleges the allegations of paragraphs 30 through 66
- 68 Plaintiff intruded into Defendant's private contractual arrangements involving the sale of 320 St James and the purchase of 421 River Club
- 69 Plaintiff intruded into Defendant's private contractual arrangements for which she had normal expectation to be free from exposure to Plaintiff
- 70 Plaintiff's intrusion caused emotional distress to Defendant and was a blatant and shocking disregard of her rights
- 71 Plaintiff's course of conduct was intentional
- 72 Defendant suffered damage as a result of Plaintiff's invasion of Defendant's privacy for which Defendant is entitled to recover actual and punitive damages from the Plaintiff

SIXTH COUNTERCLAIM
(MALICIOUS PROSECUTION)

- 71 Defendant repeats and re-alleges the allegations of paragraphs 30 through 72
- 72 The filing of this action by Plaintiff was filed with malice in instituting the proceedings, without probable cause
- 73 On information and belief, Plaintiff's claims will be resolved in favor of Defendant
- 74 Defendant has suffered injuries and damages as set forth above as the result of the actions of the plaintiff as described herein

WHEREFORE, Defendant prays for judgment against Plaintiff as follows

- A Dismissing the complaint in its entirety,
- B For actual and punitive damages on the counterclaims set forth above,
- C For the costs of this action and prejudgment interest as permitted by law,
- D For such other and further relief as may be appropriate



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ATTORNEY FOR DEFENDANT

October 30, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Howard Hammer,

Petitioner,

vs

Shirley Hammer AKA Shirley Grace Hightower,

Respondent

LIS PENDENS

JEANETTE W McBRIDE
CLERK OF COURT

2009 JUL 31 PM 4:42

RICHLAND COUNTY
FILED

NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced by the above-named Petitioner against the above-named Respondents concerning among other things and matters the property described as follows

All that certain piece, parcel, or lot of land, together with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and designated as Lot 6, Block A, on a plat prepared for Carolina Research and Development Foundation by McNair, Gordon, Johnson & Karasiewicz, dated May 1, 1981, and recorded in the Office of the RMC for Richland County in Plat Book Z at pages 363 and 363-A. Being more specifically shown and delineated on a plat prepared for Howard Hammer by Cox and Dinkins, Inc., dated June 20, 1985. Said lot is bounded and measures as follows: On the Southwest by St James Street, whereon it fronts and measures first in a curved line the chord distance of 69.6 feet, and then in a straight line the distance of 71.09 feet, on the Northwest by Lot 7, Block A, whereon it measures 69.73 feet, on the North by Lot 8, Block A, whereon it measures 39.33 feet, on the East by Lot 10, Block A, whereon it measures 73.37 feet, and on the Southeast by Lot 5, Block A, whereon it measures 44.16 feet. Be all measurements a little more or less.

This being the same property conveyed to Howard Hammer by deed of Will H. Byrd Jr., dated July 25, 1985, and recorded July 26, 1985, in Deed Book D751 Page, 584, with an undivided one half interest in said property thereafter being conveyed to Shirley Hightower Hammer by

deed of Howard Hammer dated February 23rd, 2004 and recorded on February 27th, 2004 in Deed Book/Page 00906 – 3447, the remaining undivided one half interest of Howard Hammer being conveyed to Shirley Hammer by deed of Howard Hammer dated May 20th, 2008 and recorded June 18th, 2008 in Deed Book/Page 1439 – 1279 for which reference to each of deeds is hereby incorporated herein

Said conveyance having been made is subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to any shown on recorded plats

-
TMS# 11307-09-16

The action will sound inter alia in causes for breach of contract and tort

Respectfully Submitted,



Howard Hammer, Petitioner

Pro-Se

July 30, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No 2009-CP-40-05911
	)	
Howard Hammer,	)	
	)	
Plaintiff,	)	
	)	
vs	)	ANSWER TO AMENDED
	)	COMPLAINT, MOTION TO DISMISS
	)	AND COUNTERCLAIMS
Shirley Hammer, a/k/a	)	
Shirley Grace Hightower,	)	
	)	
Defendant	)	

Defendant, responding to the amended complaint of the Plaintiff, denies that the Plaintiff is entitled to any relief, and specifically responds to the allegations thereof as follows

- 1 The motion to dismiss set forth in Defendant's Answer, Motion to Dismiss and Counterclaim filed on October 5, 2009 is incorporated by reference herein, and no defenses or claims set forth in Defendant's previously filed Answer, Motion to Dismiss and Counterclaims or the First Amended Answer, Motion to Dismiss and Counterclaims filed on November 3, 2009 are waived
- 2 Defendant admits the allegations of Paragraph 1, except denies that she is a resident of Richland County
- 3 Responding to Paragraph 3, Defendant admits that the parties entered into an agreement entitled "PARTIAL SETTLEMENT OF OUTSTANDING ISSUES," on May 9, 2008, and that this agreement was adopted, approved, incorporated into, merged, integrated with and made an Order by the Family Court for the Fifth Judicial Circuit, Richland County, on May 12, 2008 (hereinafter "The Family Court Order") The Family Court expressly retained jurisdiction to enforce this Order As to the remaining assertions therein, Defendant believes no responsive pleading is required to the allegations in Paragraph 3, but to the extent this paragraph may be interpreted as an allegation against Defendant, such claim is denied
- 4 Defendant denies that this Court has subject matter jurisdiction over matters contained in Plaintiff's complaint, and therefore denies Paragraphs 2 and 4 Subject matter jurisdiction is proper only in Family Court

ANSWER TO FIRST CAUSE OF ACTION

- 5 Paragraph 5 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and

repeats and re-alleges her answers to Paragraphs 1-4

- 6 Defendant admits only that she caused criminal warrants to be issued against Plaintiff. The remaining allegations set forth in Paragraph 6 are denied.
- 7 The assertions made in Paragraph 7 do not require a response, but, to the extent that any allegation may be derived therein against Defendant, Defendant denies these allegations and specifically incorporates her responses in Paragraph 3 above.
- 8 Defendant denies the allegations of Paragraph 8, except Defendant admits that she entered into an Agreement with Plaintiff that was incorporated into an order of the Family Court, as more fully described in Paragraph 3 above, that Plaintiff insisted that Defendant withdraw her own criminal complaints and request that the Richland County solicitor nol prosequere with leave to restore charges brought by the Solicitor against Plaintiff, which Defendant eventually agreed to do in exchange for an Order of Protection, and, that Plaintiff, upon his own insistence, executed general releases in favor of Defendant and Florence and Alan Medlin in exchange for the execution of general releases in favor of Plaintiff by Defendant and Florence and Alan Medlin.
- 9 Defendant denies the allegations of Paragraph 9 and expressly incorporates her answer in Paragraph 8 above.
- 10 Defendant denies that this Court has jurisdiction over any matter related to The Family Court Order.
- 11 Defendant denies the allegations and assertions set forth in Paragraph 11, and specifically denies the Plaintiff is entitled to any of the relief claimed. Defendant is informed and believes that declaratory relief is not warranted because S.C. Code Ann. Section 15-53-70 precludes such relief since such relief would not terminate the controversy between the parties and, because jurisdiction resides exclusively in the Family Court.

ANSWER TO SECOND CAUSE OF ACTION

- 12 Paragraph 12 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-11.
- 13 Defendant admits that Plaintiff performed some, but not all, obligations required of him by The Family Court Order. Defendant denies that she failed to perform any obligations under The Family Court Order. The remaining allegations set forth in Paragraph 13 are denied.
- 14 Defendant denies the allegations in Paragraph 14. By way of additional response, Defendant would show that pursuant to the requirements of The Family Court Order, she deeded the real property located at 1 Rice Court in Columbia, South Carolina to

Plaintiff, who sold that real property to a third party and kept the proceeds from that sale

ANSWER TO THIRD CAUSE OF ACTION

- 15 Paragraph 15 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-14
- 16 Defendant denies the allegations in Paragraph 16
- 17 Defendant denies the allegations of Paragraph 17
- 18 Defendant denies the allegations of Paragraph 18
- 19 Defendant denies the allegations of Paragraph 19
- 20 Defendant denies the allegations of Paragraph 20
- 21 Defendant denies the allegations of Paragraph 21
- 22 Defendant denies the allegations of paragraph 22

ANSWER TO FOURTH CAUSE OF ACTION

- 23 Paragraph 23 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-22
- 24 Defendant denies the allegation of paragraph 24
- 25 Defendant denies the allegations of paragraph 25

ANSWER TO FIFTH CAUSE OF ACTION

- 26 Paragraph 26 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-25
- 27 Defendant denies the allegations of Paragraph 27
- 28 Defendant denies the allegations of Paragraph 28 and further alleges that she had the exclusive right to possess 320 St James in Columbia, South Carolina pursuant to an Order of the Richland County Family Court dated September 12, 2005

29 Defendant denies the allegations of paragraph 29

30 Defendant denies the allegations of paragraph 30

ANSWER TO SIXTH CAUSE OF ACTION

31 Paragraph 31 of the Amended Complaint does not necessitate a response, but to the extent a response may be warranted, Defendant denies the allegations therein and repeats and re-alleges her answers to Paragraphs 1-30

32 No responsive pleading is required to the legal conclusions stated in Paragraph 32

33 The allegations of Paragraph 33 are denied

34 The allegations of Paragraph 34 are denied

35 The allegations of Paragraph 35 are denied

DEFENSES

36 This Court lacks subject matter jurisdiction over the matters contained in the Amended complaint

37 The Amended Complaint fails to state facts sufficient to constitute a cause of action

38 The claims asserted are barred by the doctrine of *res judicata*

39 The Amended Complaint should be dismissed because there is another action pending between the parties for the same relief

40 Plaintiff is not entitled to the relief requested because he is pursuing the same remedies in the family court

41 Plaintiff is precluded from the relief sought because of laches, waiver, and estoppel. Plaintiff is estopped, inter alia, because pursuant to the requirements of The Family Court Order, Defendant deeded the real property at 1 Rice Court, Columbia, South Carolina to Plaintiff, who sold that real property to a third party and then kept the proceeds from that sale.

42 Plaintiff is precluded from the relief sought because he executed a general release in favor of Defendant

43 Plaintiff is precluded from the relief sought because there is an adequate remedy at law in the Family Court

COUNTERCLAIMS
(Allegations Common to All Counterclaims)

- 44 To the extent relevant to these counterclaims, the responses set forth above are incorporated herein as fully as if repeated verbatim
- 45 Defendant was the sole owner of the real estate located at 320 St James Street, Columbia, South Carolina, 29205 ("320 St James") at all relevant times
- 46 On or about February 9, 2009, Defendant placed 320 St James on the market for sale
- 47 On July 31, 2009, Plaintiff filed a *lis pendens* against 320 St James (a copy of which is attached as **Exhibit A**) but did not provide notice of the *lis pendens* to Defendant
- 48 At the time he filed the *lis pendens*, Plaintiff had no interest in or claim against 320 St James
- 49 Upon information and belief, Plaintiff's purpose in filing the *lis pendens* was to prevent the closing of the sale of 320 St James under the contract of sale that had been entered into between Defendant and her purchaser
- 50 On August 18, 2009, Plaintiff filed the complaint in this action but did not serve Defendant The complaint alleges no interest of Plaintiff in 320 St James
- 51 On or about August 19, 2009, Plaintiff communicated with the closing attorneys for Defendant's purchaser under the contract of sale for 320 St James, stating that he would cancel the *lis pendens* if Defendant's purchaser would instead buy his house at 1609 Catawba Street, Columbia, SC, 29205, provided Plaintiff could purchase 320 St James
- 52 Plaintiff also communicated to the purchaser's closing attorneys the false information that the pool at 320 St James had a current leak
- 53 On or about July 25, 2009, Defendant entered into a contract to purchase the real estate located at 421 River Club Road in Lexington County, SC ("421 River Club") The closing was contingent on Defendant's consummation of the sale of 320 St James because Defendant was to use the proceeds from that sale to fund the purchase of 421 River Club
- 54 Upon information and belief, after Plaintiff became aware of Defendant's contract of sale to purchase 421 River Club, Plaintiff and/or his agent contacted Defendant's seller and offered to purchase 421 River Club for more than Defendant's contract price
- 55 Because of Plaintiff's interference, including but not limited to his filing of the *lis pendens* and the complaint, Defendant's original contract of sale with her purchaser

failed. Eventually, Defendant was able to sell 320 St. James to her purchaser on August 20, 2009, but on significantly less favorable terms than the original contract of sale.

56 On information and belief, sometime after Defendant purchased 421 River Club, Plaintiff began negotiating to purchase real estate in the same neighborhood as, and right down the street from, Defendant's new home at 421 River Club, and Plaintiff has now consummated that purchase.

57 On or about September 8, 2009, Plaintiff served the complaint on Defendant.

58 Plaintiff's actions caused and continue to cause Defendant to sustain severe emotional distress as well as financial loss.

FIRST COUNTERCLAIM (SLANDER OF TITLE)

59 Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

60 Plaintiff published false statements about Defendant's title to 320 St. James by filing the *lis pendens* and the complaint and/or making other false statements that Plaintiff had a claim to or interest in 320 St. James.

61 Upon information and belief, Plaintiff's false statements were made with malice for the purpose of preventing the closing of the sale of 320 St. James and to harass Defendant.

62 Plaintiff's false statements were derogatory to Defendant's title to 320 St. James and caused the original contract of sale to fail.

63 Plaintiff's false statements caused special damages to Defendant in the form of the lost sale of the property and the diminution of its sales price.

64 Plaintiff's false statements diminished the value of Defendant's property interest in 320 St. James.

65 Plaintiff's false statements constituted a slander of Defendant's title to 320 St. James for which Defendant is entitled to recover actual and punitive damages from Plaintiff.

SECOND COUNTERCLAIM (TORTIOUS INTERFERENCE WITH AN EXISTING CONTRACTUAL RELATIONSHIP)

66 Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant.

67 On information and belief, Plaintiff was aware of Defendant's contract to sell 320 St.

James

- 68 Upon information and belief, Plaintiff through his actions, including but not limited to his false statements, intended to cause the breach of Defendant's original contract to sell 320 St James
- 69 Plaintiff had no justification for his actions because he had no interest in 320 St James
- 70 Plaintiff's actions constituted a tortious interference with Defendant's existing contractual relationship
- 71 Plaintiff's tortious interference with Defendant's existing contractual relationship caused damage to Defendant as set forth above for which Defendant is entitled to recover actual and consequential damages from Plaintiff

THIRD COUNTERCLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE)

- 72 Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant
- 73 Through his conduct, Plaintiff intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct
- 74 Plaintiff's conduct was so extreme and outrageous as to exceed all possible bounds of decency and was atrocious and utterly intolerable in a civilized community
- 75 Plaintiff's actions caused Defendant emotional distress for which Defendant is entitled to recover actual and punitive damages from the Plaintiff
- 76 Defendant's emotional distress was so severe that no reasonable person could be expected to endure it, entitling her to judgment against the Plaintiff for damages as set forth above

FOURTH COUNTERCLAIM
(ABUSE OF PROCESS)

- 77 Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant
- 78 Upon information and belief, Plaintiff had an ulterior purpose in bringing this action to harass Defendant and to prevent the Defendant from selling 320 St James and from purchasing 421 River Club
- 79 Plaintiff's willful actions in the use of process was not proper in the regular conduct

of proceedings and was intended to gain an objective not legitimate in the use of process

- 80 Defendant suffered damages as a result of Plaintiff's abuse of process for which Defendant is entitled to recover actual and punitive damages from the Plaintiff

**FIFTH COUNTERCLAIM
(INVASION OF PRIVACY/WRONGFUL INTRUSION
AS TO CONTRACTS TO SELL AND PURCHASE)**

- 81 Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant
- 82 Plaintiff intruded into Defendant's private contractual arrangements involving the sale of 320 St James and the purchase of 421 River Club
- 83 Plaintiff intruded into Defendant's private contractual arrangements for which she had normal expectation to be free from exposure to Plaintiff
- 84 Plaintiff's intrusion caused emotional distress to Defendant and was a blatant and shocking disregard of her rights
- 85 Plaintiff's course of conduct was intentional
- 86 Defendant suffered damage as a result of Plaintiff's invasion of Defendant's privacy for which Defendant is entitled to recover actual and punitive damages from the Plaintiff

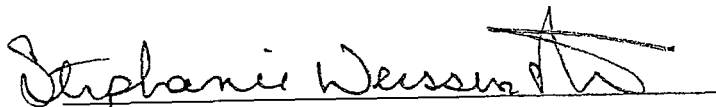
**SIXTH COUNTERCLAIM
(MALICIOUS PROSECUTION)**

- 87 Defendant repeats and re-alleges the allegations of paragraphs set forth above to the extent such paragraphs are relevant
- 88 The filing of this action by Plaintiff was filed with malice in instituting the proceedings, without probable cause
- 89 On information and belief, Plaintiff's claims will be resolved in favor of Defendant
- 90 Defendant has suffered injuries and damages as set forth above as the result of the actions of the plaintiff as described herein

WHEREFORE, Defendant prays for judgment against Plaintiff as follows

A Dismissing the amended complaint in its entirety,

- B For actual and punitive damages on the counterclaims set forth above,
- C For the costs of this action and prejudgment interest as permitted by law,
- D For such other and further relief as may be appropriate



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ATTORNEYS FOR DEFENDANT

November 19, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Howard Hammer,

Petitioner,

vs

Shuley Hammer AKA Shirley Grace Hightower,

Respondent.

LIS PENDENS

JEANETTE W. MCBRIDE
Clerk of Court

2009 JUL 31 PM 4:42

RICHLAND COUNTY
FILED

NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced by the above-named Petitioner against the above-named Respondents concerning among other things and matters the property described as follows

All that certain piece, parcel, or lot of land, together with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being shown and designated as Lot 6, Block A, on a plat prepared for Carolina Research and Development Foundation by McNair, Gordon, Johnson & Karasiewicz, dated May 1, 1981, and recorded in the Office of the RMC for Richland County in Plat Book Z at pages 363 and 363-A. Being more specifically shown and delineated on a plat prepared for Howard Hammer by Cox and Dinkins, Inc., dated June 20, 1985. Said lot is bounded and measures as follows: On the Southwest by St James Street, whereon it fronts and measures first in a curved line the chord distance of 696 feet, and then in a straight line the distance of 7109 feet, on the Northwest by Lot 7, Block A, whereon it measures 6973 feet, on the North by Lot 8, Block A, whereon it measures 3933 feet, on the East by Lot 10, Block A, whereon it measures 7337 feet, and on the Southeast by Lot 5, Block A, whereon it measures 4416 feet. Be all measurements a little more or less.

This being the same property conveyed to Howard Hammer by deed of Will H. Byrd Jr., dated July 25, 1985, and recorded July 26, 1985, in Deed Book D751 Page, 584, with an undivided one half interest in said property thereafter being conveyed to Shirley Hightower Hammer by

deed of Howard Hammer dated February 23rd, 2004 and recorded on February 27th, 2004 in Deed Book/Page 00906 – 3447, the remaining undivided one half interest of Howard Hammer being conveyed to Shirley Hammer by deed of Howard Hammer dated May 20th, 2008 and recorded June 18th, 2008 in Deed Book/Page 1439 – 1279 for which reference to each of deeds is hereby incorporated herein

Said conveyance having been made is subject to existing easements and to covenants, conditions, restrictions and easements of record, including, but not limited to any shown on recorded plats

TMS# 11307-09-16

The action will sound inter alia in causes for breach of contract and tort

Respectfully Submitted,



Howard Hammer, Petitioner

Pro-Se

July 30, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Howard Hammer,)
Plaintiff,)
vs)
Shirley Hammer, a/k/a)
Shirley Grace Hightower,)
Defendant)

IN THE COURT OF COMMON PLEAS

Case No 2009-CP-40 05911

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

Defendant Shirley Hammer ("Defendant" or "Mrs Hammer"), by and through her undersigned attorney, submits this memorandum of law in support of her motion to dismiss for lack of subject matter jurisdiction.

I PRELIMINARY STATEMENT

This action was initiated by Plaintiff, Howard Hammer, ("Plaintiff" or "Mr Hammer") as an attempt to circumvent and renege on two family court settlements, incorporated into family court orders that were voluntarily entered into by Plaintiff, with the advice and assistance of competent domestic counsel. By amended complaint dated November 4, 2009, Plaintiff seeks a

declaratory judgment and relief in connection with *a certain contract* entered between the parties in May 2008 ("*May, 2008 Contract*"), which contract involves, among other matters property located at 320 St James Street, Columbia, South Carolina and Plaintiff's retirement (IRA) accounts

Amended Complaint for Declaratory Judgment and/or In The Alternative for Damages (the "Amended Complaint"), Paragraph 7 (emphasis added)

The characterization of the May 2008 contract as a "certain contract" is patently misleading as Mr Hammer failed to disclose that the May 2008 Contract was a partial

settlement of family court litigation that has been pending since September 2, 2005, and, more significantly, that the Family Court expressly "adopted, approved, incorporated into, merged, integrated with and made" the May 2008 Contract a court order *Hammer v Hammer*, C A NO 2005 DR-40-2871 (Order of Judge Dorothy Mobley Jones at page 4, paragraph 1 (May 12, 2008) (the "May 2008 Order") Moreover, the Family Court expressly retained "jurisdiction to issue any orders necessary to effectuate the terms of the Agreement" *Id* at 4, ¶ 2 (A copy of the May 2008 Order is attached as Exhibit "A")

Mr Hammer's amended complaint is an improper collateral attack on a valid, final, and binding order of the Family Court, which has exclusive jurisdiction over parties and their claims Consequently, this court must dismiss the amended complaint for lack of subject matter jurisdiction

II FACTUAL BACKGROUND

Mrs Hammer invoked the jurisdiction of the Family Court on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief She filed a Second Amended Complaint on December 6, 2007, seeking a divorce and other relief

This Family Court litigation was settled in two phases First, the divorce and property settlements were agreed to in May 2008 and made Orders by Judge Jones on May 12, 2008 Second, on June 23, 2009, the parties settled issues relating to child custody, visitation, and related issues The Family Court entered its Orders approving this Settlement Agreement and Ending the Action on August 19, 2009 (A copy of these Orders are attached as Exhibit "B")

Beginning in May 2009, Mr. Hammer mounted at least four attacks on the 2008 and 2009 Settlement Agreements and Family Court Orders.

First, on May 4, 2009, Mr. Hammer sought to amend, modify, void, and set aside the May 12, 2008 Order and requested a new trial under Rule 60(b). By Order of Judge Jones entered September 1, 2009, this motion was dismissed with prejudice in view of the August 19, 2009 Order (A copy of this Order is attached as Exhibit "C").

Second, Mr. Hammer, *pro se*, filed a motion to withdraw, rescind, and repudiate his consent to the June 23, 2009, Settlement Agreement. That motion was denied by Order of the Family Court (Judge Rucker) on January 27, 2010 (A copy of this Order is attached as Exhibit "D").

Third, September 4, 2009, Mr. Hammer filed a Motion to Reconsider, Amend, Alter, Modify and/or For a New Trial and Stay of the following four family court orders, each dated August 19, 2009: (1) Order for Transfer of Individual Retirement Account, (2) Order Sealing Record, (3) Order Approving Settlement Agreement, and (4) Order (Ending Action). This omnibus motion was denied by Order of Judge Rucker on January 27, 2010 (A copy of which is attached as Exhibit "E").

Mr. Hammer's final attack is his ill-conceived and fundamentally flawed collateral attack on the Family Court's May 2008 Order in this declaratory judgment action. In her First Amended Answer, Motion to Dismiss, and Counterclaims to his Complaint, Mrs. Hammer asserted three affirmative defenses: (1) lack of subject matter jurisdiction (Rule 12(b)(1), SCRCF), (2) failure to state facts sufficient to constitute a cause of action (Rule 12(b)(6), SCRCF), and (3) *res judicata* (Rule 8(c), SCRCF).

III ARGUMENT

A The Family Court Has Exclusive Jurisdiction over the Issues Raised in the Amended Complaint.

In relevant part S C Code Ann § 63-3-50 provides

(A) The family court has exclusive jurisdiction

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings,

(25) to modify or vacate and order issued by the court,

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury, however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such prohibition,

(B) Notwithstanding another provision of law, the family court and the probate court have concurrent jurisdiction to hear and determine matters relating to paternity, common-law marriage, and interpretation of marital agreement, except that the concurrent jurisdiction of the probate court extends only to matters dealing with the estate, trust and guardianship and conservatorship actions before the probate court

Moreover, S C Code Ann § 20-3-690 provides that "[t]he family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts " S C Code Ann § 20-3-690 (emphasis added) This article refers to Divorce and settlement agreements in South Carolina.

Plainly, each claim and related issues raised in this circuit court complaint has already been heard and determined by the Family Court, which had exclusive subject-matter jurisdiction under S C Code Ann § 63-3 50(2)(25) & (30), and under § 20-3-690 S C Code Ann (1976, as amended)

The First and Fourth Causes of Action for a Declaratory Judgment in Mr Hammer's complaint declare the May 2008 Family Court Order void as against public policy. These issues were heard by the Family Court and rejected by orders of January 27, 2010. As described above, these orders (Exhibits D and E) rejected Mr Hammer's post trial attack on the June 2009 Settlement Agreement and August 19th order approving the settlement agreement and order ending the action (Exhibit B). The August 19, 2009 Order ending the action expressly reaffirmed the May 12, 2008, Order as later modified by the August 19, 2009 Order. Consequently, the May 2008 and the August 19, 2009, orders are both indivisible and indistinguishable.

Accordingly, the public policy attack was already heard, determined, and rejected by the Family Court as follows:

Defendant argues the agreement is contrary to public policy, and makes other general allegations of material misrepresentations by Plaintiff. Settlement agreements in Family Court are not contrary to public policy, in fact, they are encouraged. Upon careful review of the agreement approved by this Court, there are no provisions which cause this Court public policy concerns. Defendant presented no credible or independent support for his allegations regarding material misrepresentations.

Family Court Order Regarding Defendant's *Pro Se* Motion, January 27, 2010, at 4 (Exhibit D)

The Second, Third, Fifth, and Sixth causes of action in Mr Hammer's complaint to this circuit court complaint all relate to disposition of the marital home, to transfer of

Mr Hammer's IRA account, and to other matters intrinsically related to the domestic relations litigation within the exclusive jurisdiction of the family court

All of the property settlements in the May 2008 and June 2009 Settlement Agreements are in connection with the divorce proceeding. The law in this State expressly grants subject matter jurisdiction to the family court over the construction and enforcement of all these contracts. S C Code Ann § 20-3-690

B This Court Does Not Have Concurrent Jurisdiction Over Claims Asserted in the Amended Complaint.

S C Code Ann § 63-3-50(B), quoted above, plainly demonstrates that when the legislature grants concurrent jurisdiction, it does so explicitly. This provision provides for concurrent jurisdiction by the family and probate courts to hear and determine matters relating to paternity, common-law marriage, and marital agreements only if these matters are relevant to pending probate court actions involving estate, trust, guardianship, and conservator matters.

Significantly, there is no similar provision for concurrent jurisdiction in the circuit court over the claims raised by the amended complaint.

C. Unless a Settlement Agreement Unambiguously Denies Continuing Jurisdiction, a Family Court Can Modify and Enforce Its Order by Contempt

In the seminal case of *Moseley v Mosier*, 279 S C 348, 306 S E 2d 624 (1983), our Supreme Court, reversing and clarifying ambiguous and inconsistent prior authority, expressly held that once a settlement agreement is approved by the Family Court, it may be enforced by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction. *Id.* at 353, 306 S E 2d at 627 ("With the court's approval, the terms become a part of the decree and are binding on the parties and the

court. However, unless the agreement unambiguously denies the court jurisdiction, the terms will be modifiable by the court and enforceable by contempt.”)

Both the 2008 and 2009 Settlement Agreements and related Family Court orders expressly and unambiguously vested with the Family Court jurisdiction to enforce the orders and agreements. See May 2008 Order at 4, ¶ 2 (Exhibit A), 2009 Order Ending Action at 8, ¶¶ 7 and 9 (Exhibit B).

Accordingly, under *Moseley*, the Family Court, and only the Family Court, has continuing subject matter jurisdiction over the claims raised by the Amended Complaint. See also, *Swentor v Swentor*, 336 S C 472, 478-79, 520 S E 2d 330, 334 (1999) (holding that, even in the face of an agreement to arbitrate, the Family Court does not lose jurisdiction).

D Even Under Pre-Moseley Law, When the Circuit Court Could Have Concurrent Jurisdiction Over Domestic Settlements, the Family Court Would Have Had Exclusive Jurisdiction

It is well-settled in South Carolina law that, when courts have concurrent jurisdiction, the subject matter jurisdiction of the court first acquiring jurisdiction is exclusive. *McDonald v McDonald*, 276 S C 573, 281 S E 2d 109 (1981). In affirming a circuit court order dismissing a complaint for lack of subject matter jurisdiction, the Supreme Court held

Here, action involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction. *The family court acquired jurisdiction first, therefore, it acquired exclusive jurisdiction to hear all further proceedings in the case.* See *Tucker v Tucker*, 264 S C 172, 177, 213 S E 2d 588 (1965) (emphasis added).

Id. at 575, 281 S E 2d at 110. Accordingly, even if this court had concurrent jurisdiction, which it plainly does not under current law, the family court would have exclusive

subject matter jurisdiction because it acquired jurisdiction on September 2, 2005, almost four years before Mr Hammer filed his complaint in this case

E Both the Law of the Case and Res Judicata Doctrines Require Dismissal of Plaintiff's Complaint and Amended Complaint

It is firmly settled in South Carolina law that, under the law of the case doctrine, a judge may not overrule the unappealed order of a prior judge See *Judy v Martin*, 381 S C 455, 458-59, 674 S E 2d 151, 153 (2009), *Bakala v Bakala*, 352 S C 612, 631, 576 S E 2d 156, 166 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become the law of this case)

Mr Hammer's Rule 60(b) motion for relief from the May 2008 Order was dismissed with prejudice on September 1, 2009 (Exhibit C) Previously, the parties agreed to the withdrawal of the Rule 60(b) motion with prejudice, and with no right of appeal (Order Ending Action, dated August 19, 2009 at 8, ¶ 3) Under the recent authority of *Judy* and *Bakala*, *supra*, the September 1st decision is the law of the case and it cannot be reviewed by this Court

Moreover, (i) the September 1, 2009, Order denying, with prejudice, Mr Hammer's Rule 60(b) motion, (ii) the August 9, 2009, Order Ending the Action, and (iii) the May 2008 Settlement Order, which is collaterally attacked here, constitute a bar to this litigation under the doctrine of *res judicata* Collectively, the Family Court Orders concern the same parties' in litigation and concern the same claims and issues, all of which were adversely determined against Mr Hammer Accordingly, he is barred from relitigating those claims and issues here See generally JAMES F FLANAGAN, SOUTH CAROLINA CIVIL PROC 642 *et seq* (2d ed 1996)

Mr Hammer's *pro se* motion to withdraw his consent to the June 2009 Settlement Agreement claimed that the filing of this action in circuit court divested the family court of jurisdiction. Judge Rucker rejected this argument as follows:

As part of his argument regarding subject matter jurisdiction, Defendant alleges the filing by him of an action in the Circuit Court prior to the entry of the August 19, 2009 Order, in which action he challenges the validity of the May 12, 2008, Order issued by this Court, in some way divested this Court of subject matter jurisdiction. No such divestment of jurisdiction occurred nor is there any authority that would have transferred jurisdiction over the parties or the subject matter to the circuit court in the way suggested. To the extent Defendant elected to file a lawsuit in the Circuit Court ostensibly challenging an agreement he previously entered, and which was previously approved by this Court, and for which he withdrew all challenges (See the August 19, 2009, order (Ending Action)), such circumstances do not constitute a basis to deny this Court jurisdiction for the matter addressed on June 23, 2009, and reflected in the Order issued from that hearing.

See January 28, 2010, Order (Exhibit D) at page 5, n5. Judge Rucker's decision rejection is the law of the case on the issue of whether the family court was divested of jurisdiction when this circuit court action was filed.

By attacking the 2008 family court order as violating public policy, Mr Hammer engages in hypocrisy. He insisted on, and received, the benefits of that 2008 order,¹ which he now wants to disavow. Further, more than one year after the 2008 settlement and family court order that he now attacks, Mr Hammer entered into another settlement, which was incorporated into a family court order of June 2009. That agreement once again called for the dismissal of additional criminal charges that were pending against him. Thus, in 2009, he continued to participate in the very same settlement behavior –

¹ For example, pursuant to the 2008 family court order, he insisted that Mrs Hammer convey certain real estate to him, which he then sold to a third party.

insisting on the dismissal of criminal charges against him — that he claims is inappropriate and against public policy under the 2008 order

Perhaps more egregious, two months *after* he initiated this lawsuit, Mr Hammer, his attorney, and an assistant solicitor signed a document (attached as Exhibit F) dated October 19, 2009, which stated that the criminal charges against him were dismissed pursuant to the June 2009 family court order and settlement² Thus, even while he was claiming in this court that the May 2008 family court order was invalid for public policy reasons because it included a recommendation that criminal charges against him be dismissed, he was insisting on and acting upon the very same provision in the June 2009 family court order and settlement

According to Mr Hammer, the family court orders are valid and do not violate public policy while he is receiving his benefits under those orders, however, once he has obtained those benefits, he claims those Orders are invalid so that he does not have to perform his obligations³

To allow this egregious and bad faith attack on the 2008 family court order, on which he has, himself, relied to his benefit, would be to open a Pandora's box for all family court litigants No family court order would be final or could be relied on Instead, any litigant could receive the benefits of the order, but when it came time for the litigant to perform his or her obligations under the order, he or she could then run to the

² The 2009 family court order confirmed the 2008 family court order and partial settlement agreement, except to the extent the 2009 order modified it The October 19, 2009 document contains a misrepresentation about the position of Mrs Medlin, a victim, who was not represented in the creation or execution of that document

³ For example, he has failed to transfer a portion of his retirement account to Mrs Hammer despite being ordered to do so in the 2008 and 2009 family court orders

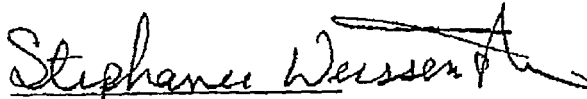
circuit court and attempt to overturn the family court. If Mr. Hammer is allowed to do this now, every litigant in family court will have a roadmap to disrupt the entire family court system. That is precisely why the legislature made family court jurisdiction exclusive in S.C. Code Ann. § 63-3-50.

IV CONCLUSION

For all the foregoing reasons, the Defendant requests this Court to enter an Order

- 1) Dismissing the Complaint and Amended Complaint for lack of subject matter jurisdiction,
- 2) Imposing sanctions under Rule 11, SCRPC, against Plaintiff, in part because there was no basis for asserting circuit court subject matter jurisdiction over claims exclusively within the jurisdiction of the family court,
- 3) Ordering that the parties be realigned and that jurisdiction over Defendant's counterclaims be retained by this Court as a complaint because they assert tort and related claims which are independent of the family court action, and
- 4) For such further or different relief as the court deems just and proper.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
February 24, 2010

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF COMMON PLEAS
09-CP-40-05911

3

4 Howard Hammer,)
5 Plaintiff,)
6 vs) TRANSCRIPT OF RECORD
7 Shirley Hammer,)
8 Defendant)

9 March 2, 2010
10 Columbia, South Carolina

11

12

13 B E F O R E

14 THE HONORABLE L CASEY MANNING, JUDGE

15

16

17 A P P E A R A N C E S

18 SUSAN B LIPSCOMB, ESQ
Attorney for the Plaintiff

19

20 DESA BALLARD, ESQ
STEPHANIE WEISSENSTEIN, ESQ
Attorneys for the Defendant

21

22

23

24

25

DEBORAH M McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings)

MARCH 2, 2010

MS BALLARD Desa Ballard and Stephanie
Weissenstein for the Defendant, Shirley Hammer We
filed a motion to dismiss

THE COURT Is everybody ready? Ms Ballard,
I think this is your motion, is that correct?

MS BALLARD Yes, Your Honor It is actually
two of my motions, Your Honor I represent Shirley
Hammer

This is an action that was brought in August
of '09 We filed a motion to dismiss an answer
The pleadings were amended in November '09 And we
filed another motion to dismiss

And I think the Court had scheduled both
motions to dismiss, one at 3 45 and one at
4 00 o'clock, but there really is just one motion
to dismiss

THE COURT All right

MS BALLARD This complaint, Your Honor,
relates exclusively to matters that have been
litigated and argued in the Family Court

Based on the documents that we have provided
with our memorandum of law, you will see that the
Family Court proceeding between Howard Hammer and
Shirley Hammer began in September of 2005

1 And there have been lots of orders issued,
2 lots of agreements entered into, and there has been
3 lots of litigation still going on

4 THE COURT And there have even been some lots
5 involved?

6 MS BALLARD I'm sorry?

7 THE COURT And there have even been some lots
8 involved?

9 MS BALLARD There have been, actually

10 THE COURT Yes

11 MS BALLARD Some criminal charges There
12 has been a whole lot of different things involved

13 This action is a declaratory action to declare
14 that the May 2008 agreement, which was reduced to
15 an order of the Family Court, is void as against
16 public policy

17 We have made a motion --

18 THE COURT And Judge Jones' order is void?

19 MS BALLARD That is the allegation, Your
20 Honor

21 Our motion to dismiss is based exclusively on
22 subject matter jurisdiction

23 MS LIPSCOMB May it please the Court?

24 Excuse me, I don't want to interrupt, but we --

25 THE COURT But you have

1 MS LIPSCOMB I know, but I don't want her to
2 go on without raising this if it is an issue the
3 Court would be interested in entertaining

4 THE COURT Let me help you out I'll give
5 her a chance to say anything she wants, I'll give
6 you a chance to say anything you want

7 MS LIPSCOMB Fine, Your Honor I'm sorry

8 THE COURT All right You may continue,
9 Ms Ballard

10 MS BALLARD Thank you, Your Honor

11 The motion to dismiss addresses the first
12 cause of action, which is declaratory judgment, the
13 second, which is breach of contract, the third,
14 which is breach of contract with fraudulent act,
15 the fourth, in which the Plaintiff alleges that the
16 May 2008 agreement is contrary to public policy

17 And there is a conversion claim for an alleged
18 incident where Ms Hammer went into premises in
19 December of '07, all of which was being litigated
20 in Family Court

21 And then on breach of a covenant of good faith
22 and fair dealing, again relating to the May 2008
23 agreement, which was reduced to an order of the
24 Court

25 THE COURT All right

1 MS BALLARD Since the May '08 order and
2 subsequent June '09 order, the two orders together
3 resolved all of the issues in the Family Court, or
4 so they thought

5 There have been numerous motions for
6 reconsideration filed And as of yesterday I
7 learned that there was a motion filed about a week
8 ago in Family Court, yet another motion to
9 reconsider, raising issues related to the same
10 public policy grounds that have been raised here

11 In the exhibits to the memorandum that I
12 handed -- that we mailed in last week pursuant to
13 the judge's instructions --

14 THE COURT Judge Barber?

15 MS BALLARD I'm sorry?

16 THE COURT To Judge Barber or --

17 MS BALLARD We mailed it to Your Honor, I
18 believe The notice of hearing said that we needed
19 to send our memos a week before the hearing, so we
20 sent it to Your Honor

21 THE COURT All right, that's fine

22 MS BALLARD Okay

23 THE COURT That is Judge Barber

24 MS BALLARD I think he spoke on your behalf
25 and asked for a memorandum, so we submitted a

1 memorandum

2 THE COURT I was once married for a long
3 time I'm used to people speaking for me

4 MS BALLARD Your Honor, we have attached
5 Exhibits A through F to our memorandum

6 What I did in attaching A through F is -- let
7 me give Susan a copy -- behind Exhibit A, Your
8 Honor, there is an orange tab that I have marked
9 for Your Honor, which is the --

10 THE COURT I appreciate that color

11 MS BALLARD Oh, sorry, I didn't think about
12 that I used green for the other

13 THE COURT That's all right

14 MS BALLARD Where I marked the agreement
15 that is subject of this Circuit Court action

16 THE COURT Exhibit A?

17 MS BALLARD Exhibit A

18 THE COURT Exhibit A

19 MS BALLARD Right This is an order where
20 the May 2008 agreement was reduced to an order of
21 the Family Court

22 In Exhibit B, I have marked with green tabs
23 two different areas where the Court again made
24 reference to the May order approving the settlement
25 and incorporating it into yet a subsequent Family

1 Court order

2 There is two yellow tabs in Exhibit 2 where
3 the May 2008 agreement and order are again
4 affirmed

5 Behind Exhibit D, Your Honor, is an order
6 where in the Family Court again Mr Hammer argued
7 that one of the agreements was contrary to public
8 policy, which is the same argument that he is
9 arguing here in this litigation

10 There is also a footnote on the next page in
11 which Mr Hammer argued in the Family Court that
12 his filing of this action in the Circuit Court
13 divested the Family Court of jurisdiction over the
14 issues related to the May 2008 order

15 And the Family Court of course has already
16 ruled on that issue and said, hogwash, you can't
17 divest the Family Court of jurisdiction over an
18 agreement related to marital property simply by
19 filing another action in Circuit Court

20 And the last thing I included behind Tab E is
21 the January 27th, 2010 order from the Family Court,
22 and I have put a green tab on Page 5 of that where
23 Mr Hammer, who is the Defendant in that action,
24 continues to argue public policy issues regarding
25 the May 12th, 2008 order

1 And I learned that last week or the week
2 before, Mr Hammer had filed another motion for
3 reconsideration in the Family Court, and that
4 motion is scheduled for hearing on May 11th of this
5 year

6 This action, Your Honor, is an attempt to
7 question the validity of the May 2008 agreement,
8 which obviously is exclusively within the
9 jurisdiction of the Family Court

10 We have cited too, and I would hand up to Your
11 Honor, two statutes that address this issue

12 (Complies)

13 MS BALLARD Your Honor, the Title 63 statute
14 is the one that was formerly Title 20 when they
15 realigned all of the statutes related to Family
16 Court

17 In 63-3-530 the Family Court has exclusive
18 jurisdiction, (a)(2), to hear and determine actions
19 related to marital litigation between the parties,
20 et cetera, et cetera

21 Pursuant to the Supreme Court's decision
22 authored by Justice Finney in 1992, Terry versus
23 Lee, matters related to marital property fall
24 specifically within the provision of
25 63-3-530(a)(2), that is litigation regarding

1 marital property

2 So whether or not this May 2008 agreement or
3 order or whatever it is is voided against public
4 policy has already been litigated in the Family
5 Court and can only be litigated in the Family
6 Court

7 So we have made a motion to dismiss for lack
8 of jurisdiction on that basis

9 There is one cause of action, Your Honor, a
10 conversion cause of action, in which Mr Hammer
11 alleges that Ms Hammer entered into his premises
12 in December of '07 And he is alleging conversion
13 of some personal property

14 Again, I would refer Your Honor to the statute
15 that says that those issues are exclusively within
16 the jurisdiction of the Family Court

17 Those premises, those items of personal
18 property were all within the jurisdiction of the
19 Family Court at the time the alleged incident
20 happened, so they are exclusively within the
21 jurisdiction of Family Court

22 The other statute I wanted to refer Your Honor
23 to is 20-3-690, which I handed up, which
24 specifically says the Family Courts have subject
25 matter jurisdiction over contracts related to

1 property involved in a domestic action

2 So, Your Honor, we believe that all of the
3 causes of action that have been asserted against
4 Ms Hammer in this Circuit Court action are
5 exclusively within the jurisdiction of the Family
6 Court They have been litigated in the Family
7 Court But we're not here on the res judicata or
8 collateral estoppel issues, we are here totally on
9 the fact that this Court lacks subject matter
10 jurisdiction --

11 THE COURT You are here to say that you
12 shouldn't be here?

13 MS BALLARD I'm here to say that we
14 shouldn't be here And Your Honor knows we have
15 jurisdiction to determine subject matter
16 jurisdiction

17 Thank you, Your Honor

18 THE COURT Thank you ma'am

19 MR HAMMER Your Honor, we can split the
20 argument and I will get to talk for just a minute,
21 if Your Honor will allow me And I have entered a
22 Pro Se appearance on this

23 So as to the first issue or first -- just for
24 the record, we would note an objection We never
25 received any formal motion I don't know whether

1 there is any in the file, but when I was practicing
2 law I always got a motion that said, the
3 Plaintiff -- please take notice that ten days
4 hereafter the Plaintiff will move on such and such
5 a ground or the Defendant will move on such a
6 ground for dismissal, et cetera We have got no
7 such motion I don't think there is any --

8 THE COURT Some things have changed

9 MR HAMMER Okay Well, if they have
10 changed, they have changed

11 Rule 7 does say that you should file a motion,
12 and she hasn't complied with that

13 Your Honor, the issue is being clouded This
14 is really -- this is -- there are two separate
15 tracks here One, this Court is being faced with a
16 declaratory judgment issue, not a jurisdictional
17 issue, but the first issue is a declaratory
18 judgment action

19 And that action comes into this court, which
20 is a proper jurisdiction, and says, Judge, we ask
21 that a certain contract -- not in an order -- but
22 that a certain contract be declared void because it
23 is against public policy

24 Now, as she said and everybody in the
25 courthouse knows -- or I don't know whether

1 everybody in the courthouse knows or not, but our
2 evidence will prove at the time of trial on a
3 declaratory judgment matter that this contract was
4 issued, certain payments were made in return for
5 the dropping of certain criminal charges, and in
6 return for an agreement to have a protective order
7 issued against the Plaintiff for no other reason --
8 for no reason against the Plaintiff -- against the
9 Plaintiff -- to keep the Plaintiff -- to protect
10 the Defendant's sister, who had no -- who was not a
11 party to the Family Court action

12 THE COURT When you say Plaintiff you
13 actually mean Defendant?

14 MR HAMMER I'm talking about me

15 THE COURT Okay

16 MR HAMMER I was the Plaintiff Against
17 Howard The contract that you have before you is
18 twofold One, it has to do with money Two, the
19 evidence that will be presented to Your Honor when
20 this matter is properly heard, which we urge that
21 it is not properly heard on a motion to -- because
22 this amounts to a motion to dismiss on the
23 pleadings And I'm giving a little bit of the
24 factual background, Ms Lipscomb will go into the
25 law in detail

1 THE COURT All right

2 MR HAMMER But essentially the issue is a
3 declaratory judgment action

4 If Your Honor comes in and says, look, it is
5 against the law of South Carolina, it is against
6 the public policy of South Carolina to have a
7 contract that a person pays money in return for the
8 dropping of criminal charges, that contract is void
9 ab initio, void from the beginning

10 And if it was void from the beginning, there
11 is no jurisdiction in the Family Court It is a
12 nullity There was never any jurisdiction in the
13 Family Court on a contract that was void ab initio

14 So that is what we are here asking Your Honor
15 in the first instance to decide

16 And so we would respectfully urge that her
17 motion on jurisdiction because of intent or because
18 of whatever in the Family Court is premature We
19 would object to any of her attachments to the -- to
20 her memorandum because they are not evidence They
21 are merely her --

22 THE COURT Well, there are some orders from
23 the Family Court that I'm required to take notice
24 of

25 MR HAMMER Some of them are, but, for

1 instance, this action was filed on August 18th of
2 2009 Filed on August 18th Jurisdiction attached
3 in this court on August 18th of 2009

4 What she forgot to tell you is then they
5 argued Their own argument is that once
6 jurisdiction attaches in one court -- in one of
7 their memorandums -- once jurisdiction attaches,
8 another court doesn't have jurisdiction

9 Well, jurisdiction attached when this
10 motion -- when this court took jurisdiction until
11 it dismissed that

12 THE COURT Well, in what way, Mr Hammer, did
13 this Court assume jurisdiction of this matter,
14 because something was filed?

15 MR HAMMER At the time of the filing
16 until -- it is my understanding of the law, at the
17 time of a filing the Court has jurisdiction over
18 the matter until it is dismissed In other words,
19 jurisdiction is in this court until it is
20 dismissed

21 THE COURT So if I went over across the
22 street, that is west of Assembly, and filed an
23 action with Joe Anderson, regardless of what was
24 going on here, then because it is filed across the
25 street the Federal Courts have jurisdiction of it?

1 MR HAMMER According to what -- I'm only --
2 I am relating back to what they say

3 THE COURT All right Go ahead

4 MR HAMMER And what they say is, once
5 jurisdiction attaches, once the Court takes an
6 action --

7 THE COURT But what I'm hearing you say is
8 once something has been filed, that court has
9 jurisdiction That is not what you are saying?

10 MR HAMMER No, sir I'm saying once it is
11 filed, if Your Honor determines that it has
12 jurisdiction, then it relates back to that time

13 THE COURT Okay

14 MR HAMMER And so if it relates back to
15 July 18th -- August 18th, that is one day before
16 any of these other orders that -- and we wouldn't
17 have to argue about them

18 And so -- and the jurisdictional issue,
19 though, is something that I'm saying -- also I'm
20 urging -- is not yet before the Court because there
21 is no question but that this Court has jurisdiction
22 to decide an action for declaratory judgment That
23 is -- there is no question about that

24 And there is no question that if this Court
25 decides in the first instance that the contract was

1 void because it was against public policy, because
2 it involved the trading of money for the dropping
3 of criminal charges and was therefore not a legal
4 contract, not a proper contract against public
5 policy and void, there is no jurisdiction in the
6 Family Court because there is no contract

7 So if the Court makes that decision in the
8 first instance, and so the first instance that the
9 Court, we would respectfully urge, the first matter
10 that the Court has to determine is the question of
11 the declaratory judgment And the only way to
12 determine the question of the declaratory judgment
13 is through trial and evidence for Your Honor to
14 hear Was this a case that -- just because Howard
15 says it or just because the Defendant says it is
16 not, that is not what makes your determination
17 Your determination is made by the evidence that
18 would be presented And we will present evidence
19 that will show at the appropriate time that the
20 contract was made for the payment of money and the
21 dropping of charges

22 The Defendant --

23 THE COURT Well, wouldn't, Mr Hammer, the
24 Family Court have at least concurrent jurisdiction
25 on this issue? Couldn't it be either place?

1 Assuming that you are right, why wouldn't Family
2 Court be just as good as a forum to hear this
3 argument as the Circuit Court?

4 MR HAMMER It may be, but we have chosen to
5 bring this into this court

6 THE COURT But because you selected the forum
7 it doesn't mean that is the proper forum, that is
8 what you selected and hoped to be it

9 MR HAMMER But it doesn't mean that it is
10 the improper forum

11 THE COURT I'm not saying that it is a proper
12 one either

13 MR HAMMER Well, it is a proper one if it is
14 void

15 THE COURT All right

16 MR HAMMER If Your Honor decides that this
17 is a void contract, then it is a proper forum If
18 Your Honor decides it is not a void contract, then
19 Your Honor has to go on to the second issue

20 And the second issue is, does this Court have
21 the jurisdiction to decide an issue having to do
22 with a contract in the Family Court

23 And it does under the cases that they have
24 cited, Mosier versus Mosely And Ms Lipscomb
25 will talk about that case a little more, but that

1 case says that the plain language of the contract
2 says that the -- contract shows that there is an
3 intent that the parties intended that the -- that
4 other courts may have jurisdiction, then the other
5 courts may have jurisdiction

6 If you will look -- and with due respect, Your
7 Honor, I'm sorry to point -- if you will look at --
8 I had a judge caution me about pointing one time

9 THE COURT So have I

10 MR HAMMER If you will look, Your Honor, at
11 Paragraph 15 of the contract that she handed up

12 THE COURT Which one is that?

13 MR HAMMER Exhibit A

14 MS BALLARD Page 9 The orange tab, Your
15 Honor

16 MR HAMMER The orange tab

17 THE COURT Orange tab Page 9 All right
18 I see a place for signatures Is that it?

19 MR HAMILTON Yes, sir

20 THE COURT Mark Taylor, Shirley Hammer,
21 Howard Hammer Is that the one you want me to look
22 at?

23 MR HAMMER Yes, sir

24 THE COURT What does that tell me?

25 MR HAMMER Right above it there are two

1 sentences One says that -- the first sentence
2 says, when the settlement is approved it shall be
3 enforceable through the contempt powers of the
4 Family Court

5 They could have stopped right there and that
6 would have ended it But the Mosier case -- and
7 I'm not arguing jurisdiction, but I'm just pointing
8 out as a side light to the argument that this Court
9 has the right to decide it

10 And the issue is whether or not, in the first
11 instance, that the issue is whether or not the
12 contract is void, because if it is void there is no
13 jurisdiction in the Family Court, whatever Court
14 decides that, and this Court certainly has the
15 right to decide that

16 But in the second instance, even assuming --
17 even assuming that this had to be heard -- that
18 even assuming that initially this would have to be
19 heard in the Family Court, the Mosier case says it
20 doesn't always have to be heard in Family Court
21 The Mosier case says if there is a plain intent
22 that it not be heard in the Family Court, then it
23 doesn't have to be heard in the Family Court

24 THE COURT Well, can you show me something
25 where there is a plain intent that it not be heard

1 in Family Court?

2 MR HAMMER Yes, sir, I can show you two
3 things The very next sentence This agreement is
4 a binding contract

5 That is unnecessary language if the intent was
6 it to be heard in Family Court because the Family
7 Court hears it by a matter of contempt A binding
8 contract and as such is enforceable as such under
9 law

10 THE COURT Well, in that case why can't we
11 take this to the United States District Court in
12 Charlotte or someplace?

13 MR HAMMER Because we are both citizens of
14 Columbia and they wouldn't have -- they wouldn't
15 have -- and couldn't -- same reason why we couldn't
16 take it in any Federal Court

17 But it can -- but the question is, can it be
18 taken to the Circuit Court And it can be taken
19 into the Circuit Court because it says, as a matter
20 of law And a law -- a matter of law are issues
21 that are decided by a jury In Family Court you
22 don't have any issues decided by a jury

23 There are other issues in this For instance,
24 it says that, this contract enures to the benefit
25 of the heirs and assigns

1 Now, the heirs and the assigns -- for
2 instance, if Ms Hammer assigned her rights to the
3 money that was involved here -- there is no use to
4 put -- that is in the contract, and I'm not going
5 to go into what it is, but if she assigns her right
6 and I did not perform whatever I was supposed to
7 perform, those assigns would not have any standing
8 in Family Court

9 If she assigns to General Motors, for
10 instance, General Motors can't go into Family
11 Court, General Motors has to come into your court,
12 into the Circuit Court to enforce this

13 So there is enough -- there is other evidence
14 that the intent was that this contract, under
15 motion, that the plain intent that this contract
16 was not exclusively limited And that is the
17 question, is it exclusively limited to the Family
18 Court No, it is not exclusively limited to the
19 Family Court Family Court may have jurisdiction,
20 but not exclusively limited

21 THE COURT All right

22 MR HAMMER And there are two examples
23 There are other things in that contract, for
24 instance That contract brings in another third
25 party, a Mr Allen Medlin That contract -- this

1 contract requires that releases be given to Mr
2 Allen Medlin Whether Mr Allen Medlin is sued
3 should not satisfy whether a release is given to
4 him He can't come into Family Court

5 THE COURT Why not?

6 MR HAMMER Because he has no standing
7 Family Court --

8 THE COURT Wouldn't the order provide him
9 with standing? Wouldn't the contract provide him
10 with standing?

11 MR HAMMER That is the very problem The
12 contract would not provide him with standing
13 because the law does not provide --

14 THE COURT But you are talking about if's and
15 but's, and that is not before me It is not before
16 the Family Court That is an assumption Maybe,
17 but, if, what if the You can't cross-examine them
18 so --

19 MR HAMMER Right But the contract gives
20 him a right And the question is -- the question
21 is, is -- if you got to the Mosier case --

22 THE COURT But if it were Mr Medlin,
23 Professor Medlin, and he was raising an issue, that
24 might have some validity, but you are arguing on
25 behalf of a party that is not involved in this

1 matter here

2 MR HAMMER But he is involved in the
3 contract

4 THE COURT Well --

5 MR HAMMER And the question is --

6 THE COURT But wouldn't Mr Medlin be the
7 only one that can raise the issue?

8 MR HAMMER No, sir The question is this
9 The question is intent The question is, is there
10 in the contract --

11 THE COURT A possibility maybe?

12 MR HAMMER Is there -- does the contract
13 show that it can be brought in another action, not
14 that it has to be, but that it can be brought in
15 another jurisdiction

16 THE COURT So just because it can be brought
17 in another forum, let's say --

18 MR HAMMER Yes, sir

19 THE COURT You are saying that it should be
20 brought in another forum?

21 MR HAMMER I'm saying that --

22 THE COURT You are saying that the Family
23 Court or the Circuit Court can hear it?

24 MR HAMMER I'm saying that --

25 THE COURT Are you conceding that much?

1 MR HAMMER That it is not exclusive -- and I
2 think you and I -- I think I'm saying the same
3 thing, but let me say it in a way --

4 THE COURT Go ahead

5 MR HAMMER I think that I'm saying the same
6 thing

7 THE COURT It is all right

8 MR HAMMER The question is whether or not,
9 as they have argued, whether or not it is the
10 exclusive right of the Family Court to hear it

11 THE COURT Either place, as long as the
12 parties have a fair hearing, it doesn't really
13 matter, does it?

14 MR HAMMER As long as -- the party who
15 chooses the forum would have a right not to bring
16 it in the Family Court, they would have a right, as
17 we have done, to bring it in the Circuit Court It
18 is not exclusive to the Family Court It is not
19 exclusive to the Family Court

20 But that goes back to the initial issue,
21 because the initial issue is, okay, let's say that
22 all these orders are, you know, have some bearing

23 Well, there is a line of law that essentially
24 what they are saying is these orders estop the
25 person bringing the action from bringing it in

1 another place because that is essentially what he
2 is saying, the Family Court has heard this and so
3 you are estopped from bringing it

4 Well, the law in this state -- the law in this
5 state -- and I am going to leave -- that is what my
6 lawyer is here for -- the law in this state is --
7 to quote the law -- but the law in this state is
8 that if it is -- that estoppel does not apply to a
9 contract that is void on account of -- that is void
10 and deemed against public policy

11 So the main issue, the first issue that Your
12 Honor has to decide is a declaratory judgment
13 question And that is not decided on the issue of
14 jurisdiction, that is decided on the issue of
15 whether or not the contract is void

16 If Your Honor decides that it is void because
17 it violates public policy, then there is no
18 jurisdiction in the Family Court, that everything
19 the Family Court has done in connection with this
20 is null and void, because there was no contract to
21 begin with

22 THE COURT So that means -- does that mean
23 you and your wife would still be married, you and
24 your ex-wife would still be married?

25 MR HAMMER That issue wasn't -- we didn't

1 raise that

2 THE COURT Well, I'm asking you that

3 MR HAMMER No, sir

4 THE COURT Is that not a fair question? If
5 everything was void that has happened so far in the
6 Family Court, can I assume, based on your argument,
7 that you and your wife are still married --
8 ex-wife?

9 MR HAMMER There is no contract There is
10 no contract We're only talking in terms of the
11 contract, Your Honor

12 THE COURT Okay, Mr Hammer

13 MR HAMMER And so in terms of the
14 contract -- if that were part of the contract, yes,
15 but that is not part --

16 THE COURT I haven't read the contract I
17 don't know if it is part of it or not

18 MR HAMMER The contract --

19 THE COURT I will have to read it

20 MR HAMMER The contract has to do with
21 money, Your Honor

22 THE COURT The light of your argument
23 suggests that perhaps you are still married?

24 MR HAMMER No, sir, because the contract --

25 THE COURT Well --

1 MR HAMMER Well, you know, there was an
2 issue because the -- as a matter of fact I will
3 bring -- I will mention to Your Honor that at the
4 time that the amended complaint for the marriage
5 was -- that the -- that my former wife filed an
6 amended complaint asking for a divorce, there was a
7 stay order And Judge Mobley-Jones had said
8 nothing can be issued in the Family Court at that
9 time

10 Now, the divorce was based upon a amended
11 complaint issued during the time of the stay order
12 We haven't raised that issue

13 THE COURT Do you want to raise it now?

14 MR HAMMER No, sir, I'm not interested in
15 raising that now All we're raising -- all we're
16 raising is the contract issue

17 And to answer your question, no, sir, we --
18 under what we are raising here, it doesn't raise
19 the issue of whether or not the marriage -- we're
20 raising --

21 THE COURT I don't want to go back to the --
22 I'm not trying to put anybody back to the position
23 that we were in before we got here

24 MR HAMMER I understand But the only issue
25 that we are raising is the contract

1 THE COURT The contract And that it was
2 void

3 MR HAMMER Yes

4 THE COURT Because you gave money not to
5 prosecute?

6 MR HAMMER That's essentially it And if
7 Your Honor decides that it is void, there wasn't
8 any jurisdiction And whatever happened afterwards
9 is null and void And void ab initio And --

10 THE COURT So somebody says, you broke into
11 my house, but I tell you what, if you pay for my
12 door, my window, I'll drop the charge That
13 happens every day in Circuit Court, Court of
14 General Sessions So should all those restitution
15 matters be void, all those restitution orders be
16 void?

17 MR HAMMER If it is in terms of a contract

18 THE COURT How does the Family Court do that?

19 MR HAMMER Then if the issues are raised
20 according to the law of our state, yes, sir If
21 the issue is raised that a contract was against
22 public policy, it is void

23 I'm going to let counsel hand up the cases and
24 argue those cases, but there are cases that go back
25 to I think the early 1900's and there have been a

1 continuing line of cases as late as 606 and 666,
2 whatever that is, so that has been the last five or
3 ten years

4 THE COURT 666?

5 MR HAMMER 606 S E 2d

6 THE COURT But you said 666?

7 MR HAMMER And 666 There are two cases
8 There are two cases of recent origin that say that
9 a contract that is against public policy is void

10 If the Solicitor entered into it or the
11 Solicitor agreed to it, it doesn't matter If the
12 Court says it is against public policy -- and one
13 of these contracts have to do with just this same
14 sort of similar issue where money was paid --

15 THE COURT Mr Hammer, you are cutting into
16 Ms Lipscomb's time

17 MR HAMMER So my -- basically what I'm
18 saying, Your Honor, is that the first issue that
19 Your Honor has to decide is not the jurisdictional
20 issue, but Your Honor has to decide whether this is
21 a void contract or whether it is not a void
22 contract And that is not to be decided --

23 THE COURT How can I decide whether or not I
24 have jurisdiction? Like the chicken and the egg?

25 MR HAMMER No, sir You do have

1 jurisdiction

2 THE COURT Why, because you filed something
3 over here?

4 MR HAMMER Because -- because -- because --
5 because this Court, because it is non-exclusive
6 jurisdiction in the Family Court to decide whether
7 or not a contract is void

8 There is nowhere -- nowhere in any statute
9 that says only the Family Court can determine
10 whether a contract is void because of it being
11 against public policy There is nowhere There is
12 not a statute that says that

13 There is case law that says that if the
14 contract -- if you want to argue about the
15 contract, whether or not to bring it outside of the
16 Family Court, to argue about it, whether Family
17 Court has exclusive jurisdiction depends on all of
18 these issues that we have talked about, the intent,
19 whether other people can bring it in, whether the
20 intent is that it is exclusive

21 Well, that may become part of the issue when
22 Your Honor goes to determine -- if Your Honor does
23 decide to determine that -- that may become an
24 issue at that time as to whether or not this -- the
25 intent was to bring it outside

1 And all of these matters about Mr Medlin and
2 Ms Medlin and the heirs and this last paragraph
3 thing that it is at law, that may become an issue
4 at that time, but right now that is not the issue

5 The issue is for Your Honor to first hear
6 whether or not there is evidence as to whether this
7 contract is void

8 THE COURT Mr Hammer, that is your position?

9 MR HAMMER Yes, sir, that is what we are
10 urging

11 THE COURT Thank you, sir

12 MR HAMMER And I think --

13 THE COURT She has a right to respond to what
14 you just said before we go forward

15 MS BALLARD I just wanted to ask briefly if
16 I could make a couple of points

17 THE COURT We will allow you to do that

18 MS BALLARD Thank you, Your Honor
19 Mr Hammer is arguing that somehow this Court
20 acquires exclusive jurisdiction over the public
21 policy argument when he filed a lawsuit in this
22 matter on August 18th, '09

23 What is interesting about that, Your Honor, is
24 he did file this lawsuit on August 18th, '09, but
25 he didn't serve Ms Hammer with it until sometime

1 in September And of course Rule 3 says an action
2 is not commenced until it is filed and served

3 THE COURT All right

4 MS BALLARD When he filed this action on
5 August 18th of '09, he then the next day filed his
6 motion to reconsider August 19th, '09, in the
7 Family Court, in which he said on Page 4 of his
8 motion, that the contract that he is now arguing
9 before this Court is void and against public policy
10 and argues an issue of subject matter jurisdiction

11 THE COURT So this very issue has been raised
12 in the Family Court?

13 MS BALLARD Yes, sir, it has from the
14 beginning

15 THE COURT All right

16 MS BALLARD And it is still being litigated
17 in the Family Court

18 The only other point I wanted to make, Your
19 Honor, is that the exclusive jurisdiction issue
20 about -- this issue has in fact been decided, as I
21 said earlier, in the Terry case That was a case
22 in which the parties' domestic litigation was
23 completely over, the case was resolved That is
24 not the case here, because they are still
25 litigating on this But in that case, it was over

1 with and an issue arose some years later as to
2 whether or not wife was entitled to a share of the
3 husband's military retirement

4 And the Court analyzed the exclusive
5 jurisdiction language that is now Title 63, and it
6 said anything between the parties, i.e., former
7 spouses, that relates to their former union as
8 husband and wife has exclusive jurisdiction in the
9 Family Court

10 And the last point I want to make, Your Honor,
11 is that I was curious about that are they still
12 married issue too

13 Under his argument -- and I asked that
14 question in a request to admit that I served on the
15 Plaintiff on, looks like it was November, and I
16 asked --

17 THE COURT Of?

18 MS BALLARD Of '09 I said, admit, the
19 Plaintiff and the Defendant are now divorced from
20 one another And I'm not going to read you the
21 whole page

22 THE COURT Thank you

23 MS BALLARD Of the response But it says,
24 the Plaintiff denies so much of Request 2 as can be
25 construed to mean the Plaintiff and the Defendant

1 are completely divorced

2 So I'm not sure I think the issue of divorce
3 under that argument, they are saying maybe they are
4 not divorced So obviously we have to go back to
5 Family Court

6 Thank you, Your Honor

7 THE COURT Ms Lipscomb?

8 MS LIPSCOMB May it please the Court? Your
9 Honor, there is a case, and I did not bring -- I
10 brought three cases, copies of everything else, and
11 but there is a 2009 case that by implication --

12 THE COURT Well, stop

13 MS LIPSCOMB I'm sorry, the name of it is --

14 THE COURT No, no, no, stop Hand it up
15 I'll have it copied right now for everyone That
16 is the easiest thing to do We have the rest of
17 our lives Just relax We will take a little
18 break while we do that

19 (Pause)

20 MS LIPSCOMB Your Honor, the case I handed
21 up is Shaquille O'Neal It is not directly on
22 point, but the reason I hand it up is there is a
23 discussion on Page 2 where the Court explained
24 that --

25 THE COURT What paragraph?

1 MS LIPSCOMB It is right under law analysis
2 THE COURT Okay The initial question?

3 MS LIPSCOMB Right The question was
4 whether -- the State had raised the question that
5 the Family Court did not have jurisdiction to hear
6 this particular matter

7 And basically the Court found that the Family
8 Court had jurisdiction, but so did the Court of
9 Common Pleas, and referred to the Hazel case where
10 the parties had raised the issue of the Family
11 Court -- the Court of Common Pleas did not have
12 jurisdiction to make certain determinations, that
13 it had to go to the Court of General Sessions

14 And the Supreme Court or Court of Appeals
15 held, no, this court does have that jurisdiction
16 And that just goes to the concurrent jurisdiction
17 issue

18 And, Your Honor, what was raised below in the
19 Family Court with regard to --

20 THE COURT Criminal matters are not exclusive
21 jurisdiction of Family Court

22 MS LIPSCOMB No, I know And neither are
23 certain contract matters

24 THE COURT All right

25 MS LIPSCOMB And that is what the Shaquille

1 case is for

2 The Defendant raised that the argument about
3 public policy was raised below The public policy
4 argument raised below was that settlement
5 agreements in Family Court are not contrary to
6 public policy In fact, they are encouraged

7 What we are here about is the agreement that
8 was reached between Mr and Ms Hammer was
9 basically a quid pro quo And the courts have held
10 that such contracts do violate public policy --

11 THE COURT Let me jump ahead a little bit
12 So if I agree with you, then Mr Hammer can then be
13 prosecuted criminally Is that what you are
14 saying?

15 MS LIPSCOMB No It --

16 THE COURT Stop Let me finish And I'm
17 going to let you talk as long as you want, but, you
18 know, I didn't invite this case, I just got stuck
19 with it this afternoon

20 If what you are saying is true, then
21 everything is void and the Solicitor's Office can
22 then go back and prosecute him criminally If the
23 agreement was, you give me money, I won't prosecute
24 you So if it is void, then it goes back to the
25 beginning and the criminal charges that might have

1 been pending, they raise up again Is that what
2 you are saying?

3 MS LIPSCOMB The decision about what happens
4 to -- the ultimate decision about what happens to
5 those charges is made by the Solicitor

6 THE COURT Maybe so, but under the Victim's
7 Bill of Rights Act I think the victim would have a
8 lot of say-so too

9 MS LIPSCOMB Yes, Your Honor

10 THE COURT That is neither here nor there
11 I'm sorry for stopping you

12 MS LIPSCOMB That's okay I appreciate Your
13 Honor's comments

14 THE COURT So you could be married and you
15 could be prosecuted since you want me to agree with
16 you?

17 MS LIPSCOMB No There were actually
18 separate agreements

19 THE COURT Okay

20 MS LIPSCOMB And the agreement did not --
21 there was never an agreement to get divorced And
22 the divorce decree does not even deal with the
23 agreement at all

24 THE COURT All right

25 MS LIPSCOMB Your Honor, I just, in support

1 of our position, which is void ab initio, I would
2 like to hand up Liberty Mutual

3 And basically the established law of the State
4 and everywhere, as far as I know, and I don't know,
5 is that agreements to compromise or stifle public
6 prosecution and similar agreements tending to
7 obstruct or interfere with the administration of
8 justice are void as being contrary to public
9 policy And good faith does not change the rule

10 In addition, the South Carolina Supreme Court
11 has held it is void as against public policy and it
12 cannot be rendered valid by estoppel

13 THE COURT Does the contract say what you are
14 arguing? Is there plain language in the contract
15 to resolve all these issues that if you drop those
16 charges -- give me money and I'll drop the charges?

17 MS LIPSCOMB The -- in fact --

18 THE COURT Or is it a matter of
19 interpretation?

20 MS LIPSCOMB No, no, no It is in there
21 It says -- one of the things on Page 6 of the
22 agreement, Paragraph 8(a) is an agreement for an
23 order of protection

24 The other is Howard and Shirley shall execute
25 full releases in favor of each other except in

1 preserving their remedies -- no -- preserving their
2 respective rights and the issues remaining for
3 adjudication in the Family Court litigation Their
4 release shall be in the form of the document
5 attached as Exhibit A

6 And Exhibit A provides that for the sum of --
7 well, the release is attached And you'll see that
8 it says, this is a release filed by Allen Medlin,
9 Florence Medlin -- I don't see where the Shirley
10 Medlin one is attached

11 MS BALLARD There is no such person as
12 Shirley Medlin

13 MS LIPSCOMB I'm sorry, Shirley Hammer, I
14 apologize

15 THE COURT Well, there could be, but not
16 involved in this case Shirley Medlin is surely
17 somewhere out there

18 MS BALLARD All this is behind my Tab A,
19 Your Honor

20 (Pause)

21 THE COURT If you find it let me know

22 (Pause)

23 MS LIPSCOMB It is under Tab B of the August
24 19th hearing -- file date of a June 23 hearing, and
25 it is on Page 4 It says -- Paragraph 9 -- during

1 pendency --

2 THE COURT Page 4, Paragraph 9 During the
3 pendency of this action

4 MS BALLARD Your Honor, while they are
5 looking, may I make one quick point?

6 THE COURT Sure

7 MS BALLARD I would point out that Exhibit F
8 with the memorandum is a dismissal of criminal
9 charges that Mr Hammer moved for before the Court
10 of General Sessions and that he consented to And
11 it does make reference to an agreement regarding
12 dismissal of criminal charges

13 So this agreement that Mr Hammer argues is
14 against public policy has already been enforced
15 So when it gets back to Family Court and they are
16 arguing the public policy issue, he'll have to deal
17 with that as well

18 MS LIPSCOMB Your Honor, Exhibit F does show
19 that there was a quid pro --

20 THE COURT Quo

21 MS LIPSCOMB -- quo Anyway, Your Honor, I
22 believe that those references to the various, as
23 you stated, typically you would not say, we are
24 doing a quid pro quo in a settlement agreement,
25 that is why we want a trial to show the

1 circumstances reflect that and produce evidence
2 from Mr Hammer's attorney that that was what was
3 in fact going on

4 The Adams and the Jones case I think that I
5 handed --

6 THE COURT Do you have an affidavit from the
7 attorney that says that is what happened?

8 MS LIPSCOMB We --

9 THE COURT Was that Mark Taylor? Who
10 represented Mr Hammer?

11 MS LIPSCOMB No Mr Gasser Johnny
12 Gasser He is willing to come testify actually if
13 we call him

14 THE COURT Well, he might, but he won't be in
15 front of me this afternoon

16 MS LIPSCOMB Well, Your Honor, and we're
17 here on the pleadings only And under -- you know,
18 I know this is just black letter law, but under
19 Carolina Care Plans, Inc , the second page under
20 motions, any kind of 12(b)(6) motion --

21 THE COURT Wait a minute, Henry McKellar was
22 affirmed? I'm sorry, go ahead

23 MS LIPSCOMB Under 12(b)(6) motions, the
24 second paragraph, it says, the ruling of a 12(b)(6)
25 motion must be based solely on the allegations set

1 forth in the complaint The motion should not be
2 granted if the facts alleged and inferences
3 reasonably are deducible therein would entitle the
4 Plaintiff to any relief on any theory of the case
5 And the complaint should not be dismissed merely
6 because the Court cast doubt or doubts the
7 Plaintiff will prevail

8 Your Honor, I believe that under our pleadings
9 we do -- the pleadings as filed and served -- it
10 does state a justiciable controversy It does --

11 THE COURT It can be heard in the Circuit
12 Court, but not exclusively heard in the Circuit
13 Court, is that fair enough?

14 MS LIPSCOMB Yes, Your Honor But I think
15 that it is certainly a litigant's right to choose
16 where he wants his day in court

17 THE COURT That is the Court's decision to
18 say whether or not you made the right decision

19 MS LIPSCOMB Yes, Your Honor

20 THE COURT I understand I am on the same
21 page as everybody I am going to let you do your
22 job It makes it easier for me to do mine --
23 maybe, and maybe not

24 MS LIPSCOMB I just wanted to re-allege or
25 restate a little bit of what Mr Hammer said

1 THE COURT Go ahead

2 MS LIPSCOMB And that is under the Mosley
3 case, the Family Court has exclusive jurisdiction
4 if the agreement states it has exclusive
5 jurisdiction And the --

6 THE COURT What about the statute?

7 MS LIPSCOMB Well, the statute, it was not
8 passed until 2008 And the Terry versus Lee
9 case --

10 THE COURT You know, I used to practice law a
11 long time ago I started off in Dillon, South
12 Carolina I always thought, even back in those
13 days, the Family Court had exclusive jurisdiction
14 over marriage, children, everything involving
15 family

16 MS LIPSCOMB The statute -- if I can find my
17 copy of it

18 THE COURT I think your father actually made
19 that argument in a case, Mr Hammer

20 MR HAMMER He was one --

21 MS BALLARD Your Honor -- Your Honor, I have
22 a problem arguing against two lawyers at one time

23 THE COURT Okay, relax

24 MS BALLARD Thank you, Your Honor

25 THE COURT I'll sort it out And he was just

1 saying something parenthetically

2 MR HAMMER Yes, sir

3 THE COURT But I can understand her concern
4 so -- all right, I'm sorry That is my fault, not
5 his

6 MS BALLARD I'm sorry

7 THE COURT Relax You know, lawyers get up
8 on their hind heels That is what you are supposed
9 to do I mean, sometimes you get emotional I
10 understand So relax

11 Go ahead, Ms Lipscomb

12 MS LIPSCOMB I was just going to state that
13 under the -- you asked about the statute

14 THE COURT Yes, ma'am

15 MS LIPSCOMB Well, the Statute 63-3-530 was
16 post Terry versus Lee, but it was relied on by
17 Ms --

18 THE COURT Ballard

19 MS LIPSCOMB -- Ballard The statute
20 provides on Page -- let's see, 63-3-530 at
21 Subsection 30, that it had exclusive jurisdiction
22 to make any order necessary to carry out and
23 enforce the provisions of this title and to herein
24 determine any questions of support, custody,
25 separation, or any other matter over which the

1 jurisdiction -- the Court has jurisdiction
2 Exclusive jurisdiction, however, which is discussed
3 in Mosley, is not envisioned in this particular
4 agreement

5 THE COURT Okay

6 MS LIPSCOMB As explained, it talks about
7 there being -- it being enforceable at law, it
8 talks about it inuring to the benefit of the heirs,
9 successors and assigns It envisions that there
10 will be a no contact order

11 And so, Your Honor, those parties would and
12 these provisions would necessarily indicate that
13 they did not intend for it to be exclusively
14 enforced in Family Court

15 THE COURT All right, that's your position
16 I think theirs differs

17 Yes, Ms Ballard?

18 MS BALLARD Just a couple of brief issues,
19 Your Honor Title 63 of course wasn't enacted
20 until 2008, but it was a recodification of Title
21 20

22 THE COURT Going back to the common law

23 MS BALLARD Well, in the Terry case it cites
24 20-7-420, which was a Family Court jurisdiction
25 statute which is identical on the relevant issues

1 here

2 The second point I wanted to make, Your Honor,
3 is that the agreement itself that he is attempting
4 to set aside in Circuit Court has already been set
5 aside in Family Court

6 THE COURT Is pending -- the same matter is
7 pending in Family Court, as you earlier said?

8 MS BALLARD It is Yes, sir But the
9 agreement he is trying to set aside says on Page 7,
10 this shall remain in full force and effect unless
11 terminated by a subsequently issued order of the
12 Family Court

13 THE COURT Uh-huh

14 MS BALLARD There is just no --

15 THE COURT So you are saying that he agreed
16 to be bound by what he is trying to get out of?

17 MS BALLARD , And acted on it as well, Your
18 Honor

19 THE COURT That's fine That's fine

20 MS BALLARD Thank you, Your Honor

21 THE COURT They are relative positions
22 Anything further?

23 MS BALLARD Yes, Your Honor

24 THE COURT I think I provided enough time and
25 opportunity for everybody to say anything they

1 want If there is anything additional y'all want
2 to add, I will be happy to hear it this afternoon

3 MS BALLARD The only other issue, Your
4 Honor, is I have a motion to quash a subpoena that
5 has been served on Ms Hammer's elderly mother I
6 would simply ask that Your Honor order that that
7 deposition not occur until we have Your Honor's
8 ruling

9 THE COURT That is fair enough

10 MS BALLARD Thank you, Your Honor

11 MS LIPSCOMB And I just want to point out
12 that the decision about whether or not this
13 contract is void ab initio because of the quid pro
14 quo is not being determined in the Family Court
15 It is not raised in the Family Court in any of the
16 pleadings or any of the motions

17 THE COURT All right Now, let me help y'all
18 out logistically Do y'all want to submit proposed
19 orders or what? How do you want to do it?

20 MS BALLARD Yes, sir, Your Honor

21 THE COURT Okay How much time do y'all
22 want?

23 MS BALLARD Ten days

24 THE COURT Is that good enough?

25 MS LIPSCOMB That's fine, Your Honor

1 THE COURT Ten days Exchange with each
2 other On the tenth day you send me yours and you
3 send me yours I'll look at them And it won't
4 take me long to decide the matter

5 MS BALLARD Thank you, Your Honor

6 THE COURT But I will be as fair as I can
7 You know, this is part of the job You present
8 your side and you present your side If y'all
9 agreed with each other we wouldn't be here

10 Thank you all so very much for your lively
11 presentation

12 MS BALLARD Thank you, Your Honor

13 MS LIPSCOMB Thank you, Your Honor

14 THE COURT It is always a pleasure to see
15 everyone

16 (WHEREUPON, the proceedings were concluded)

17

18

19

20

21

22

23

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25

(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

SHIRLEY HAMMER,)

C A NO 2005-DR-40 2871

Plaintiff,)

ORDER
(Ending Action)

VS)

HOWARD HAMMER,)

Defendant)

Date of Hearing

June 24, 2009

Hearing Judge

John M Rucker

Plaintiff's Attorney

Timothy E Madden

J Mark Taylor

Defendant's Attorney

James T McLaren

C. Dixon Lee, III

Court Reporter

Dayton Grainger

2009 AUG 19 PM 4 51
FILED
RICHLAND COUNTY
CLERK OF COURT
STEPHEN McBRIDE

A hearing was held before me on June 24, 2009 Plaintiff ("Mother") was present with her counsel, Timothy E Madden of the firm Nelson Mullins Riley & Scarborough LLP and J Mark Taylor of the firm Moore Taylor & Thomas, PA Defendant ("Father") was also present with his counsel, James T McLaren of the firm McLaren & Lee

Based upon the pleadings, testimony, financial declarations, other evidence and applicable law, the Court makes the following findings of fact and conclusions of law

JURISDICTION AND VENUE

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action The issues raised in this action are among those described in S C Code § 63-3-530 (1976, as amended)

The parties were previously married to one another and were divorced by the Divorce Decree of this Court dated May 12, 2008 The parties have two (2) children from their

marriage These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002

This Court has subject matter and personal jurisdiction Richland County is the proper venue for this action

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*

PROCEDURAL HISTORY

Settlement

On May 9, 2008 the parties entered into a written partial settlement agreement, titled "Partial Settlement of Outstanding Issues " On May 12, 2008, the undersigned held a hearing to consider approval of the partial settlement as an Order of the Court At the conclusion of the hearing, the Court ruled the parties' partial settlement should be approved and merged, and entered a written Order adopting and incorporating the parties' partial settlement agreement (the "May 12, 2008 Order") The May 12, 2008 Order also allowed this civil action to remain on the active roster of cases " for the sole and limited purpose of allowing the parties to resolve or the Family Court to address the issues of custody, visitation and future attorney fees related to custody and visitation issues

Post-Settlement Filings

Each party filed numerous requests for relief from the Court beginning in late 2008, and these filings are listed below When a response was made to a filing, it is listed with the description of the original filing

Mother served her Emergency Motion for Temporary Suspension of Visitation or Alternatively for Supervised Visitation, Additional Restraining Order and for Fees and Costs dated November 21, 2008

Mother served a Contempt Complaint dated Nov 21, 2008 (Rule to Show Cause signed Nov 24, 2008), relating to allegations of harassment

Father served a Motion for Supplemental *Pendente Lite* Relief dated December 31, 2008 relating to his request for reduction in child support and fees and costs Mother served a Return dated May 4, 2009

Mother served an Amended Motion for Suspension of Visitation (Alternatively, Supervised Visitation) Additional Restraining Order to Prevent Defendant from any Contact or Communication with Plaintiff and/or Coming within 500 Feet of Plaintiff, and Fees and Costs dated February 17, 2008

Mother served a Contempt Complaint dated March 2 2009 (Rule to Show Cause signed March 5 2009), relating to harassment/violation of Order of Protection, failure to transfer funds, failure to pay child support, and fees and costs

Father served the first Contempt Complaint dated March 13 (Rule to Show Cause signed March 16), alleging the denial of visitation and refusal to communicate Mother served a Return dated May 4, 2009 and Father served a Reply dated June 8 2009

Father served the second Contempt Complaint dated March 13 (Rule to Show Cause signed March 20), alleging the failure to transfer property Mother served a Return dated May 4, 2009

Father served a Motion to Dismiss dated March 13 2009 seeking to dismiss all filings made since the May 12 2008 Order Mother served a Return dated April 1, 2009

Mother served the Motion for Protective Order, and to Quash Subpoenas *Duces Tecum* Issued to CellCo Partnership and Mary Taylor dated March 25, 2009

Mother served the Motion for Sanctions and Attorneys' Fees and Costs dated April 1, 2009

Mother served the Motion to Dismiss and/or for Judgment on the Pleadings and/or to Strike dated April 1, 2009, relating to Father's March 13, 2009 contempt complaint

Father served the Motion to Compel as to Paul Van Wyke, dated April 1, 2009, relating to counseling records

Father served the Motion to Compel as to Florence Medlin/CellCo Partnership, dated April 1, 2009, relating to cell phone records

Father served the Motion to Compel as to Mary Taylor, dated April 1, 2009, relating to housekeeping/babysitting information

Mother served the Amended Motion for Protective Order, and to Quash Subpoenas and Subpoenas *Duces Tecum*, dated May 11, 2009

Father served the Motion under Rule 15(b), SCRCF dated May 27, 2009

Father served ten (10) motions to compel subpoena responses dated May 28, 2009, relating to third party subpoenas

Mother served the Motion for Production of Records, dated May 28, 2009

Mother served the Written Objection to Subpoena *Duces Tecum* and Motion to Quash dated June 8, 2009

Father served the Motion to Strike (relating to Mother's May 4 Return to Father's first Contempt Complaint), dated June 8, 2009

Father served the Motion to Make More Definite and/or Certain (regarding Mother's May 4 Return to Father's first Contempt Complaint), dated June 8, 2009

Father served the Motion for Supplemental *Pendente Lite* Relief, dated June 12, 2009, related to visitation with the minor children and parenting guidelines/restraining orders

The Rule 60 Motion and Hearing

Father filed a Motion to Amend, Modify, Set Aside, and/or for a New Trial pursuant to Rule 60, SCRCF, dated March 13, 2009. This motion sought relief due to the alleged actions/inactions of Mother with regard to two real properties and a transfer due to Mother from Father of retirement assets, and claimed the parties' previously approved partial settlement was outside the bounds of reasonableness.

On May 4, 2009, Father served the Amended Motion under Rules 50, 52, 59, and 60, SCRCF dated May 3, 2009 (the "Amended Motion"), along with several supporting affidavits. The Amended Motion "specifically withdraws all grounds of [the] original Motion dated March 13, 2009," and sought to amend, modify, void and/or set aside the May 12, 2008 Order, and obtain a new trial.

Mother served a Return dated May 11, 2009, denying Father's entitlement to relief and requesting Father pay all of Mother's attorney's fees and costs incurred in connection with the defense of the Amended Motion.

Father served a Reply and additional affidavits on May 14, 2009, and the Court held a hearing on May 14, 2009 to consider the respective positions of the parties. The Court, Judge Dorothy Mobley Jones, denied the Amended Motion from the bench. The written Order adjudicating the Amended Motion has not yet been entered.

June 23 and 24, 2009

The parties were scheduled for two days of trials and hearings on June 23 and 24, 2009 regarding the outstanding motions and contempt actions detailed above. At the call of the case the parties announced to the Court that they were in the process of settlement negotiations.

On June 23, 2009, the Court accepted the parties' agreement regarding custody and visitation, and a separate order which approves this agreement will be issued by the undersigned from this hearing.

On June 24, 2009, the parties appeared before the Court to announce an agreement to resolve all other issues and end the civil action, as detailed in this Order.

THE AGREEMENT

The parties' agreement as presented to the Court at the June 24, 2009, hearing, is as follows:

1 The May 12, 2008 Order approving the parties' partial settlement agreement is reaffirmed except as specifically modified by the Order issued from the June 23, 2009 hearing (approving the custody and visitation settlement) or as modified by the terms of this Order.

2 Certain provisions of the Partial Settlement of Outstanding Issues, as approved by the May 12, 2008 Order, are implemented as follows:

a Paragraph 3 C (b) (pp 2-3) and Paragraph 4 (pp 4-5) of the Partial Settlement of Outstanding Issues - Father shall transfer Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) cash by qualified IRA transfer order to Mother by no later than July 24, 2009. This transfer shall take place simultaneously with the building/LLC transfer, detailed immediately below. Father shall not make any distributions from the \$750,000.00 after June 24, 2009, prior to the distribution to Mother.

b Paragraph 3 D (a) (p 3) of the Partial Settlement of Outstanding Issues - Mother shall transfer to Father the building housing Father's law office and the related LLC Bob Young or another mutually agreeable person shall prepare the paperwork to effectuate this transfer Father and Mother will cooperate as necessary to make this transfer This transfer is to take place no later than July 24, 2009 and shall take place simultaneously with the IRA transfer detailed immediately above

c Paragraph 3 D (j) (p 4) of the Partial Settlement of Outstanding Issues - Mother shall sign and deliver the vehicle titles and related documents for the Mercedes and Porsche vehicles through counsel by no later than July 24, 2009 Father shall receive the vehicles "as is" Mother is not required to pay any taxes on these vehicles Both parties shall cooperate in signing any and all documents to transfer the tags to Father

d Paragraph 3 D (i) (p 4) of the Partial Settlement of Outstanding Issues - Father shall receive the personal property awarded to him by the May 12, 2008 Order Father shall have the opportunity to perform one "walk through" of Mother's home, escorted by his counsel and Mother's counsel, by no later than July 24, 2009

e Paragraph 5 (p 5) of the Partial Settlement of Outstanding Issues - Beginning July 1, 2009, Father's child support obligation will be One Thousand and 00/100 Dollars (\$1,000 00) per month This child support is to be paid by the first day of each month directly to Mother If Father is ever more than five (5) days late with this support, Mother may file an affidavit with Family Court requiring Husband's child support obligation to be paid through the Clerk of Court, together with the fee imposed by the Clerk of Court At the first to occur of Father's license to practice law being restored, or December 31, 2009, the issue of child support shall be automatically reviewed

3 The motions, as amended, filed under Rule 60 and Rule 15, SCRCP by Father, together with all responses, shall be withdrawn with prejudice, with no right of appeal. The parties will apprise Judge Dorothy Mobley Jones of this withdrawal, and consent to the issuance of any order(s) (if any) which are necessary to implement the terms of this paragraph.

4 All pending contempt complaints, Rules to Show Cause, motions and any other matters filed by either party not otherwise addressed in this Order but which were pending through June 24, 2009, are dismissed with prejudice.

5 Any and all fees which were or could have been awarded in connection with Father's Amended Motion (pursuant to Rule 60, SCRCP) are waived by the parties.

6 Each party shall pay his or her own attorney fees incurred and owing as of June 24, 2009.

7 The undersigned shall retain jurisdiction over this matter.

8 The parties desire for this case to be sealed and shall submit paperwork to the Court requesting this action.

9 This Court retains jurisdiction to issue any Orders necessary to effectuate the May 12, 2008 Order, the Order issued as a result of the June 23, 2009 hearing, and this Order.

APPROVAL OF THE AGREEMENT

In determining whether or not to approve a settlement agreement this Court must find (1) the existence of an agreement, (2) the agreement was entered into freely and voluntarily, (3) the agreement is fair and equitable from procedural and substantive perspectives and (4) the agreement is in the best interest of the minor children.

An agreement exists between these parties. The terms of the Agreement were presented to this Court at the hearing, and summarized in an exhibit, a copy of which is attached as Attachment 1 to this Order.

There is no indication that either party was forced or under any duress or coercion at the time they entered the Agreement or at the time the Agreement was presented to the Court for approval. Each party represented he or she entered the Agreement and attended the hearing for its approval free of any mind-altering or judgment-impairing substances. Each party possesses the requisite mental capacity and state of mind to commit to the terms of the agreement and to seek approval of this Agreement from the Court, and to be bound by the Agreement as an Order of this Court. Therefore, the Agreement was entered into freely and voluntarily.

The parties negotiated and entered the Agreement with benefit and advice of independent experienced counsel. Each party is satisfied with the representation provided to him or her by his or her attorney.

Substantively, the Agreement reflects a resolution of the legal issues which is within the range of fairness given this Court's experience. The Agreement is the product of compromise and negotiation. As the parties directly affected by this Agreement, Father and Mother are in a better position to judge the fairness of it.

Therefore, the Agreement is fair and equitable from both procedural and substantive perspectives.

The parties' Agreement, identified in this Order should, therefore, be adopted, approved and is hereby incorporated into, merged and made the Order of this Court.

NOW, THEREFORE, IT IS ORDERED as follows

1 The May 12, 2008 Order approving the parties' partial settlement agreement is reaffirmed except as specifically modified by the Order issued from the June 23, 2009 hearing (approving the custody and visitation settlement) or as modified by the terms of this Order

2 Certain provisions of the Partial Settlement of Outstanding Issues, as approved by the May 12, 2008 Order, are implemented as follows

a. Paragraph 3.C (b) (pp 2-3) and Paragraph 4 (pp 4-5) of the Partial Settlement of Outstanding Issues - Father shall transfer Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000 00) cash by qualified IRA transfer order to Mother by no later than July 24, 2009 This transfer shall take place simultaneously with the building/LLC transfer, detailed immediately below Father shall not make any distributions from the \$750,000.00 after June 24, 2009, prior to the distribution to Mother

b Paragraph 3 D (a) (p 3) of the Partial Settlement of Outstanding Issues - Mother shall transfer to Father the building housing Father's law office and the related LLC Bob Young or another mutually agreeable person shall prepare the paperwork to effectuate this transfer Father and Mother will cooperate as necessary to make this transfer This transfer is to take place no later than July 24, 2009 and shall take place simultaneously with the IRA transfer detailed immediately above

c Paragraph 3 D (j) (p 4) of the Partial Settlement of Outstanding Issues - Mother shall sign and deliver the vehicle titles and related documents for the Mercedes and Porsche vehicles through counsel by no later than July 24, 2009 Father shall receive the

vehicles "as is" Mother is not required to pay any taxes on these vehicles Both parties shall cooperate in signing any and all documents to transfer the tags to Father

d Paragraph 3 D (i) (p 4) of the Partial Settlement of Outstanding Issues - Father shall receive the personal property awarded to him by the May 12, 2008 Order Father shall have the opportunity to perform one "walk through" of Mother's home, escorted by his counsel and Mother's counsel, by no later than July 24, 2009

e Paragraph 5 (p 5) of the Partial Settlement of Outstanding Issues - Beginning July 1, 2009, Father's child support obligation will be One Thousand and 00/100 Dollars (\$1,000 00) per month This child support is to be paid by the first day of each month directly to Mother If Father is ever more than five (5) days late with this support, Mother may file an affidavit with Family Court requiring Husband's child support obligation to be paid through the Clerk of Court, together with the fee imposed by the Clerk of Court At the first to occur of Father's license to practice law being restored, or December 31, 2009, the issue of child support shall be automatically reviewed

3 The motions, as amended, filed under Rule 60 and Rule 15, SCRPC by Father, together with all responses, shall be withdrawn with prejudice, with no right of appeal The parties will apprise Judge Dorothy Mobley Jones of this withdrawal, and consent to the issuance of any order(s) (if any) which are necessary to implement the terms of this paragraph

4 All pending contempt complaints, Rules to Show Cause, motions and any other matters filed by either party not otherwise addressed in this Order but which were pending through June 24, 2009, are dismissed with prejudice

5. *Any and all fees which were or could have been awarded in connection with Father's Amended Motion (pursuant to Rule 60, SCRCF) are waived by the parties*

6 *Each party shall pay his or her own attorney fees incurred and owing as of June 24, 2009*

7 *The undersigned retains jurisdiction over this matter, and any subsequently filed matter between these parties in the Family Court*

8 *The undersigned shall issue a separate order addressing the request of the parties to seal the file in this matter*

9 *This Court retains jurisdiction to issue any Orders necessary to effectuate the May 12, 2008 Order, the Order issued as a result of the June 23, 2009 hearing, and this Order*

AND IT IS SO ORDERED


John M. Rucker
Judge of the Family Court

Columbia, South Carolina
Dated, *August 19 2009*

DIRECTIONS FOR PAYMENT OF CHILD SUPPORT OR ALIMONY

Shirley Hammer vs Howard Hammer
C A No 2005 DR-40 2871

- X I Support ordered is NOT to be paid through the Clerk's office remainder of form not applicable.
 II Support payable through Clerk's office complete remainder of form

A Total amount of arrearage, if any \$ _____
 B Payments

CHILD SUPPORT

Base Amount \$ _____
 Arrearage \$ _____
 5% Fee \$ _____

ALIMONY

Base Amount \$ _____
 Arrearage _____
 5% Fee _____

C Frequency (Check one)

_____ weekly _____ semi-monthly (1st and 16th)
 _____ bi-weekly _____ semi monthly (15th and 30th)
 _____ monthly

D Date of first payment _____

E Paid by Name _____

P O Box _____

Street _____

City _____

State _____ Zip _____

SSN _____ Driver's License No _____

Employer _____

Employer Address _____

F Paid to Name _____

P O Box _____

Street _____

City _____

State _____ Zip _____

SSN _____

Driver's License No _____

G Wage Withholding ordered

_____ ordered _____ not ordered _____ required by Code Section 20-7 1315(B)

SCCA/446(4/98)

Prepared by Nelson Mullins Riley & Scarborough LLP

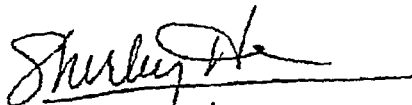
Date August 17 2009

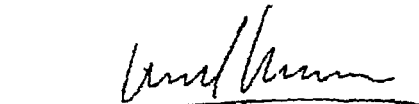
DOB _____
 Height _____
 Weight _____
 Eye Color _____
 Hair Color _____
 Race _____

ATTACHMENT 1

Hammer Terms of Settlement

- 1 Husband shall transfer \$750 000 cash by qualified IRA transfer order to Wife To be done simultaneously with building/LLC transfer, discussed below Husband shall not make any distributions from the \$750 000 prior to distribution to Wife
- 2 Wife shall transfer to Husband building and related LLC Bob Young or other mutually agreeable person to prepare the documents Husband and Wife cooperate as necessary Complete IRA transfer and building/LLC transfer within 30 days of June 24, 2009, simultaneously
- 3 Wife shall sign and deliver the vehicle titles and related documents through counsel Husband takes cars as is, where is Wife not required to pay taxes Any documents necessary to straighten out tags shall be done Documents signed within 30 days
- 4 Husband shall receive personal property awarded under the May 12, 2008 Husband shall have opportunity of a walk through of Wife's home, escorted by his counsel and with Wife's counsel Walk through within 30 days
- 5 Beginning July 1 2009 child support shall be \$1000 per month to be paid by the first day of each month, with five day clause At the first to occur of Husband's license to practice law being restored, or December 31, 2009, the issue of child support shall be automatically reviewed
- 6 Rule 60 and Rule 15 motions, together with responses, withdrawn with prejudice no appeal
- 7 All pending rules, motions, and other matters through June 24 2009 are dismissed with prejudice
- 8 Any Rule 60 fees are waived
- 9 Each party shall pay his or her fees and costs through June 24 2009
- 10 Judge Rucker, as the judge who handled these matters shall retain jurisdiction
- 11 The parties request record be sealed


6/24/09


6/24/09

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
SHIRLEY HAMMER,)
Plaintiff)
vs)
HOWARD HAMMER)
Defendant)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

Docket No 05-DR-40-2871

ORDER APPROVING
SETTLEMENT AGREEMENT

2009 AUG 19 PM 4 51
FAMILY COURT

DATE OF HEARING
TRIAL JUDGE
ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT
GUARDIAN AD LITEM
COURT REPORTER

June 23, 2009
John M Rucker
J Mark Taylor
Timothy E Madden
James T McLaren
Richard G Whiting
DeeAnne Varnadoe

This matter came before the Court on June 23, 2009 for a two (2) hearing in connection with certain Rules to Show Cause and Motions filed by the parties Present and attending the hearing were the parties and their respective counsel and the Guardian ad Litem

The record in this matter reflects that this action was commenced by the filing of a Summons and Complaint on September 2, 2005 seeking an order of separate maintenance and support custody equitable distribution of property and other relief as is more fully set forth in the Complaint Plaintiff filed an Amended Complaint on September 9 2005 Defendant filed an Answer and Counterclaim to the Amended Complaint on January 4 2007 On December 6 2007 Plaintiff filed a Second Amended Complaint seeking a divorce and other relief

On May 9 2008 the parties entered into an agreement entitled Partial Settlement of Outstanding Issues which was approved by Order issued and filed May 12 2008 The Court-approved Agreement resolved certain financial issues between

the parties but reserved for later determination custody and visitation and attorney fees (incurred after May 12 2008) issues The parties were also divorced by Decree of Divorce issued by this Court on May 12, 2008

Both parties have served and filed Financial Declarations in conformity with Rule 20 of the Family Court Rules

At the call of the case on June 23 2009 the parties through counsel requested that the Court allow them additional time to attempt to resolve the custody visitation and related issues scheduled for hearing on that date which the Court allowed After a full day of negotiations the parties are now before the Court requesting approval of their Settlement Agreement

The Settlement Agreement of the parties was presented in open Court Both parties were sworn and testified concerning their understanding of the Settlement Agreement and the facts and circumstances giving rise to the Agreement

After complete review of this matter the Court makes the following findings of salient fact and conclusions of law

1 Plaintiff and Defendant are citizens and residents of the County of Richland State of South Carolina having been citizens and residents of Richland County, South Carolina for more than one (1) year preceding the commencement of this action

2 I find that this Court has *in personam* jurisdiction over the parties has subject matter jurisdiction over this action, and that venue is properly laid in said County and State

3 I find that Plaintiff and Defendant were formerly wife and husband respectively having been lawfully divorced by Decree of Divorce issued by this Court on May 12 2008

4 I find that two (2) children were born of the parties former marriage to-wit David Hammer born July 10 2000 and Michael Hammer, born August 8 2002 I find that no other children were born of their marriage and none are expected

5 I find that by way of Settlement Agreement the parties have resolved all custody and visitation issues between themselves I find that all parties have submitted themselves and the subject matter of this action to the court for adjudication I find that this Court has *in personam* jurisdiction over all parties has jurisdiction over the subject matter of this action, and that venue is proper before this Court

6 I find that Plaintiff and Defendant entered into the Settlement Agreement attached hereto, which is a full and complete agreement of an integrated nature intending to fully resolve all controversies relating to child custody and visitation between the parties

7 I find that there remain pending before the Court certain other Rules to Show Cause and Motions concerning child support and other financial matters which were not addressed or resolved by the Settlement Agreement and which are scheduled to be heard by this Court on June 24 2009

8 This Court has reviewed the Settlement Agreement of the parties dated June 23 2009 and finds as follows

A Both parties entered into the attached Settlement Agreement dated June 23 2009 freely and voluntarily, without duress coercion influence of alcohol or other substances which would impair their respective abilities to understand the Agreement or undue influence,

B Both parties believe that the Agreement is fair and reasonable and in the best interest of both parties and their children

C Both parties have been represented by competent counsel well versed in family law Each of the parties has expressed satisfaction with their respective counsel

D Plaintiff and Defendant acknowledge that Richard G Whiting Esquire of the Richland County Bar was appointed as Guardian ad Litem to represent the interests of Michael and David in the pending Family Court litigation and the parties hereby acknowledge that Mr Whiting has properly performed his duties as Guardian ad Litem and that Mr Whiting shall continue to serve as the Guardian ad Litem for the parties until June 1 2013 all as appears more fully in the Settlement Agreement, and that Mr Whiting has recommended approval of this Agreement

E Both parties are sufficiently aware of their respective legal rights and responsibilities so as to enable the parties to have a true meeting of the minds

F Both parties understand that they have the right to have all issues resolved by the Settlement Agreement adjudicated by the Court and so understanding, desire to have this Agreement approved by the Court

8 I find and conclude that the Settlement Agreement dated June 23 2008 is procedurally and substantively fair and reasonable is in the best interests of the parties minor children and should be approved and adopted as an Order of this Court to be fully enforceable by the contempt powers of this Court

9 During the pendency of this action Plaintiff and Defendant have filed various Complaints Motions and Rules to Show Cause against the other as well as various criminal complaints all of which the parties have agreed to dismiss and end

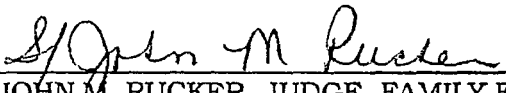
with prejudice. Having reviewed the specific facts and circumstances giving rise to the various incidents, the Court independently finds and concludes that such matters do not rise to the level of contempt and should be dismissed with prejudice and ended. This finding does not, however, address the contempt and other motions directed to the financial issues.

NOW, THEREFORE it is accordingly,

ORDERED that the Settlement Agreement of the parties dated June 23, 2009 attached hereto is hereby approved and adopted as an Order of the Court and all parties are hereby ordered and directed to comply with the terms and conditions thereof.

IT IS FURTHER ORDERED that all non-financial Rules to Show Cause Motions and other matters as described above are dismissed with prejudice and ended.

AND IT IS SO ORDERED



JOHN M. RUCKER JUDGE, FAMILY FOR
THE FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina
Dated August 19, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SETTLEMENT AGREEMENT

RICHLAND COUNTY
FILED
2009 JUN 24 AM 9 43
JEANETTE W McBRIDE
CC-CP GS
& FAMILY COURT

This document is a **SETTLEMENT AGREEMENT** ("Agreement") entered into and between **Howard Hammer**, hereinafter referred to as "Father", and **Shirley Hammer**, hereinafter referred to as "Mother"

EFFECTIVE DATE

The effective date of this Agreement is June 23, 2009

FACTS

1 Father and Mother state and acknowledge the following as true and accurate facts

1 01 Father and Mother were previously married to each other and were divorced by the Order of the Family Court on May 12, 2008

1 02 During the course of their marriage two children were born These children are David, born July 10, 2000, and Michael, born August 8, 2002

1 03 Mother and children currently reside at 320 St. James Street, Columbia, South Carolina. This home is on the market for sale

1 04 Father currently resides at 1609 Carawba Street, Columbia, South Carolina.

1 05 Father and Mother are parties to Civil Action Number 2005-DR-40-2371, which is pending in the Family Court for Richland County, South Carolina, in which certain issues are not resolved (hereinafter referred to as the "Action")

1 06 Mother is represented by J Mark Taylor of the firm Moore, Taylor and Thomas, P.A , and Timothy E Madden, of the firm Nelson Mullins Riley & Scarborough LLP

1 07 Father is represented by James T McLaren of the firm McLaren & Lee

1
H H SH

1 08 The parties now consider it to be in their respective best interests to settle between themselves all matters in issue between them, and have reached a complete agreement and now wish to reduce their agreement to writing and desire that it shall constitute a total agreement between them with respect to the parenting issues regarding their children and to fully and finally resolve the issues raised by certain filings made by each party in the Action.

1 09 Each party recognizes he or she has freely actively and fully taken part in the negotiations leading to this Agreement over a reasonable period of time

1 10 Each party fully accepts the terms and conditions of this Agreement and acknowledges and considers the same to be fair and equitable

1 11 Each party represents and warrants to the other party that he or she is of sound mind, and is fully mentally and emotionally capable of entering this Agreement, and is not under any undue influence or duress as of the execution of this Agreement.

CONSIDERATION

2 In consideration of the mutual and several binding promises covenants and undertakings detailed in this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties freely and voluntarily agree to the following terms and provisions

TERMS AND PROVISIONS

3 Both parties agree that each love and are devoted to their children and are dedicated to their proper upbringing. Mother shall be designated as the sole custodial parent, subject to the following parenting schedules and conditions

The parties shall in good faith consult with each other with respect to any major changes to be made in the children's lives or activities, and with regard to the children's education and religious training, illness and operations (except in

2
H. H. 5/14

emergencies) health, welfare, and other matters of similar importance affecting the children, whose well-being, education and development shall at all times be the paramount consideration of Mother and Father. However, after such consultation, Mother, as the custodial parent, shall have the right to make the final decision.

The parties agree that the consultations between them concerning their children shall mutually take place in the presence of Dr. Martin and shall continue so long as Dr. Martin and the Guardian ad Litem believe it necessary and helpful.

4 Father shall have the following parenting time with the minor children

A Alternating weekends During the school year, Father shall have the children on alternating weekends from Friday at the time school is dismissed (pick up at school) until Monday morning (return to school). Both parties agree that they will endeavor to reside within a thirty minute drive time to their children's school, provided, however, should that change the parties shall confer with the Guardian ad Litem and Dr. Martin to address a possible adjustment to the return time at the conclusion of visitation with their Father for school year weekend visitation. If there is a Friday or Monday holiday from school which is appended to Father's weekend, then Father shall have the children on those holidays and the pick-up or return day and time (as relevant) shall automatically modify to include those holidays. During the summer, Father shall have the children on alternating weekends from Friday at 12:00 p.m. until Monday at 7 p.m., in addition to his exclusive four (4) weeks of extended time during the summer (but not during Mother's three (3) weeks of exclusive time). The weekend which begins Friday, July 3, 2009, shall be Father's first alternating weekend under this schedule.

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B Thursdays During the school year, Father shall have the children on Thursday from the time school is dismissed (pick up at school) until 8 p.m. During the summer (except as stated otherwise below), Father shall have the children on Thursday overnight from 12 00 p.m. until Friday at 12 00 p.m. Thursday, July 2, 2009, shall be the Father's first Thursday

C Summer vacation During the summer vacation from school, Father shall have the children for four (4) weeks (seven (7) days each segment), up to and including two (2) of which may be consecutive. These weeks shall include his regularly scheduled weekends. He shall identify extended weeks in writing no later than April 30th of each year¹. These weeks shall be exercised Sunday to Sunday, beginning and ending at 12 00 P.M. Within fourteen (14) days of the date he identifies these weeks, Mother shall identify three (3) weeks during the summer (which include her regular weekends) during which Father's Thursdays with the children shall not occur.

5 Jewish Upbringing Mother and Father have always agreed and hereby re-affirm their agreement and covenant that the children of the marriage, David Samuel Hammer and Michael Lynn Hammer, are Jewish and will be raised in the Jewish religion in accordance with the Orthodox conversion of their sons as per the parties' prior ^{conversion H.H. SH} Agreement. Mother and Father further agree that David and Michael will be enrolled in and attend religious and Hebrew school in order to prepare for a traditional Jewish Bar Mitzvah at or about age 13.

Each parent agrees that each child shall have a Bar Mitzvah conducted at Beth Shalom Synagogue having complied with the Synagogue standards for

¹ For 2009, Father shall identify these weeks no later than June 30, 2009

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such to take place on or near their 13th birthday. Each parent agrees to work with the children as necessary in preparing for their Bar Mitzvahs. Father shall have the right to work directly with each child in preparation for the Bar Mitzvah and to cooperate so that the Bar Mitzvah is a meaningful religious experience. The parties further agree that the cost of any Bar Mitzvah party shall be borne equally and shall not exceed Five Thousand (\$5,000) Dollars total.

6 Jewish Holidays

(1) In odd-numbered years the children will attend religious services with Father on the first day of Rosh Hashanah, commencing two (2) hours prior to the beginning of Rosh Hashanah, and in even-numbered years observe the first Passover Seder with Father and the second night with Mother. Additionally, in odd-numbered years the children shall celebrate the first, third and sixth night of Chanukah with Father and other nights with Mother. In odd-numbered years the children shall attend the Kol Nidre Yom Kippur service with Father, commencing two (2) hours prior to the beginning of Yom Kippur, and the following day of Yom Kippur with Mother.

(2) In even-numbered years the children will attend religious services with Mother on the first day of Rosh Hashanah, commencing two (2) hours prior to the beginning of Rosh Hashanah, and in odd-numbered years observe the first Passover Seder with Mother and the second night with Father. Additionally in even-numbered years the children shall celebrate the first, third and sixth night of Chanukah with Mother and other nights with Father. In even-numbered years the children shall attend the Kol Nidre Yom Kippur service with Mother, commencing two (2) hours prior to the beginning of Yom Kippur, and the following day of Yom Kippur with Father. The

children shall attend the final Yom Kippur service at the Beth Shalom Synagogue honoring their Grandfather whether with Mother or Father

7 **Other Holidays**

a **Thanksgiving:** In the odd-numbered years, the children shall be with Father during the Thanksgiving school break from the time school dismisses (from school) until the day before school resumes. In even-numbered years, the children shall be with Mother during this period, provided, however, that in the year 2010 the children shall be with Father for the full holiday as makeup time

b **Christmas/December Break:** During odd-numbered years, the children shall be with Father during the first half of Christmas school break, and in even-numbered years the children shall be with Father during the second half of Christmas school break. The children shall be with Mother during the part of Christmas school break not designated for Father. Christmas school break shall be defined to begin on the day on which school is dismissed (from school) and end on the day before school resumes.

c **Spring School Break:** In odd-numbered years, the children shall be with Father during the school break from the time school is dismissed (from school) until return to school on the day before school resumes. In even-numbered years, the children shall be with Mother during this period, provided, however, that in the year 2010 the children shall be with Father for the full holiday as makeup time.

d **School Winter Break:** The children shall be with Father during the school winter break from the time school is dismissed (from school) until

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return to school on the day before school resumes in odd-numbered years. In even-numbered years, the children shall be with Mother during this period.

e Father's Day The children shall spend every Father's Day with Father from 9 00 A M to 7 00 P M

f Mother's Day The children shall spend every Mother's Day with Mother from 9 00 A M to 7 00 P M

7 Interruption of Scheduled Time All Jewish holidays and other holiday visitation listed above shall supersede and override the normal weekend or weekday schedule. After the holiday schedule concludes, the normal weekday and weekend schedule will resume and will not be altered as a result of the holiday.

8 Timeliness Both parties will endeavor to be timely in the pick up and return of their children. Unless arrangements are made in advance, or unless an unforeseen emergency arises, if Father or his representative is thirty (30) minutes or more late picking up the children for his scheduled time, then that scheduled time is deemed forfeited.

9 Access If Father returns either child or the children to Mother for any reason without prior permission during his schedule time with children, the remainder of that time period is deemed to be forfeited for that child or children. Mother shall refrain from, and shall not allow others to entice or distract the children from Father's time with the children.

10 Changes in Schedule By mutual agreement in writing the parties may alter the schedule set forth herein without the necessity of Court Order.

11 Parenting Rules, Restrictions and Conduct

a Both parents shall have reasonable and at all times private

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telephone and e-mail contact with the child/children and the child/children shall be allowed to have reasonable private telephone/e-mail contact with either parent. (E-mail is limited to age appropriate use and ability to use a computer)

b The parties are restrained against having any form of physical or verbal confrontation or allowing another to do so in front of the child/children

c The parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone else to do so in front of the child/children or in any manner whereby the child/children might learn of the same

d The parties shall not discuss with the children any details about the litigation beyond acknowledging the existence of the same. Once an Order is issued the details of it shall not be discussed with the children except to acknowledge it exists and must be complied with. The only exception to this Restraining Order is when the child/children is/are in counseling or under psychological/psychiatric care and the child/children's provider believes it is in the child's therapeutic best interest to discuss the same but this may be done only in that limited context absent a written order to the contrary. This provision is effective until the children reach eighteen (18) years of age.

e Both parties are restrained from having the child/children on an overnight basis in the presence of an adult party of the opposite to whom the parties are not related by blood or marriage, or any lover/paramour, provided however, this provision shall not restrict either party from having a nanny/child care provider of the opposite sex on an overnight basis when necessary. Neither party shall expose the child/children to conditions which imply a relationship

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such as a boyfriend or girlfriend, paramour/lover or some type of improper relationship while the party is still married to another person

f The parties are required to keep the child/children in a moral, safe and healthy environment at all times

g The parties shall endeavor to assist with any and all school-related matters for the children and shall not hinder or obstruct by any act or failure to act the children's ability to accomplish their education requirements and goals. The parties shall cooperate in connection with homework requirements both religious and secular and both parties shall have the right to be included in and take part in the educational process and assistance with homework (during his or her time) and all other activities of the children. Either parent may attend activities of the children that normally involve parental attendance, or see the children at school and participate in school functions when parental attendance is acceptable to the school.

h. The parties are required to see that the child/children in their care receive proper medical attention and appropriately take prescribed medications or reasonably necessary medical treatments and to that end shall ensure that the child/children in their care attend any scheduled medical appointments and shall exchange medications which are to be taken, all as might be reasonable and appropriate and in compliance with their religious beliefs, a specific Court Order or the law. Both Mother and Father shall have the right to attend any doctor or dental appointment. Mother will not schedule appointments that will intentionally conflict with Father's visitation.

i
1 The parties are restrained against conduct detrimental to the child/children of any particular nature relating to the particular needs of a given child/children such as not smoking around a child who is asthmatic

j Both parties shall be entitled to all records regarding the children as they may involve their education, health care, mental health, and otherwise. To the extent releases are required, both parties agree to timely and promptly sign releases and deliver them to the other so that both parents are kept continually advised as to the care and treatment of their children. Each party agrees to in good faith consider the recommendations of Dr. Martin as to whether or not either child is in need of individual counseling, therapy or care.

k Both parties shall be entitled to full information concerning the children and any activities that they engage in or may be registered for. Both parties shall be placed on all school, extra-curricular, religious and other mailing and e-mail lists. To the extent that one (1) but not both parents receive notice of events involving the children, the parent receiving notice shall by way of email give notice to the other parent.

l Father shall have the right to take both of the boys for their haircuts and to be in charge of the scheduling for those haircuts. Father shall schedule the haircuts during his time with the children.

m Mother shall not schedule any activities which interfere with Father's time with the children. While Father understands it will be necessary to schedule activities that may overlap the time that the children spend in the respective homes of the parents, to the extent that such scheduling impinges upon or takes place during Father's time, he must consent. His consent shall not, however, be unreasonably withheld. If transportation for children's

activities becomes a problem, the parents shall consult with the Guardian ad Litem and/or Dr. Martin to resolve any conflict.

n. Each party shall cooperate with the other in providing those items needed by the children so as to allow the children to participate in the activities planned when the child is with the other parent such as "winter coats, 'dress up clothes" and similar items not being maintained by the parent for the child's daily use.

o. The parties acknowledge that the children have received monetary gifts from each extended family. Each parent shall serve as the custodian under the Uniform Gift to Minor Act for any monies or property gifted to the children by his or her family members. Until the children are emancipated, each parent shall provide the other annual statements of the children's accounts. The parties shall cooperate with each other regarding any tax filing or similar requirements.

12 Guardian

- (1) Richard Whiting of the Richland County Bar, was appointed Guardian ad Litem by the orders issued by Judge Berry Mobley dated December 5, 2008, and Judge John Rucker dated May 22, 2009. Mr. Whiting shall continue to serve as Guardian ad Litem for the benefit of the minor children. In the event Mr. Whiting is unwilling or unable to serve, or is removed from service, another mutually agreeable person shall serve as Guardian. If the parties are unable to agree on a successor Guardian, then the Family Court shall appoint a successor Guardian.

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- (2) The Guardian, or his successor shall serve until June 1, 2013 unless dismissed earlier (or extended later) than this date by mutual agreement of the parties, or relieved (or extended) by Order of the Family Court. Neither party shall unilaterally petition the Family Court to remove the required service of the Guardian prior to June 1, 2013
- (3) The Guardian shall monitor (not supervise, but maintain general awareness) care of the children by Mother and Father beginning immediately, and shall have the duties, responsibilities, power, and authority detailed in this Agreement.
- (4) The Guardian shall have full powers and authority of investigation of any issue concerning the best interest and welfare of the children
- (5) The Guardian, in his sole discretion, shall have the authority to temporarily increase, decrease, make up, or suspend the time the children spend with Mother or Father during exigent or emergency circumstances or when fairness or the best interests of the children require any such temporary modification until a hearing can be held before the Family Court. This authority relates to actions, conduct and circumstances occurring after the effective date of this Agreement, and does not give the Guardian the authority to increase, decrease, make up or suspend time for acts or conduct occurring prior to the effective date of this Agreement
- (6) To the extent there are fees due to the Guardian for the service of the Guardian prior to June 24, 2009, each party shall pay fifty

percent of the Guardian's fees and costs Beginning June 24, 2009, each party shall pay for any charges he or she causes to be incurred with the Guardian, subject to the right of either party to seek recovery from the other party or reallocation of such fees in any Family Court proceeding involving issues addressed by or services performed by the Guardian

13 Counseling and Therapy

a The parties and children shall continue in counseling, therapy, and treatment with Dr Tom Martin as required by the Order of Judge Berry Mobley dated December 5, 2008 until such time as the Guardian believes such counseling, therapy or treatment is no longer serving the best interests of the minor children, or until otherwise ordered by the Family Court and discuss such issues with Dr Martin as the parties, the Guardian or Dr Martin may believe appropriate Each party shall pay the charges billed to him or her by Dr Martin prior to the date of this Agreement Beginning June 24, 2009, Mother and Father shall pay the cost and expense of Dr Martin in the same manner as the fees for the Guardian ad Litem

b The Guardian shall always have full and free access to Dr Martin and any professional who counsels with or treats the minor children

14 Relocation The parties acknowledge that this agreement is based upon them both living in the greater Columbia Metropolitan Area and that a move outside that area may require an adjustment or modification to the schedules set out herein The parties agree to address any possible modification or adjustment with Dr Martin and the Guardian ad Litem so as to resolve that issue The parent moving from his or her present residence to such a location must provide the other parent at least sixty (60) days written notice of the planned move along with particulars of said move

15 Pickup/Return If the Father is not picking up or returning the children to school for any period of visitation, the Mother shall deliver the children to Father's home at the beginning of such period with the Father to return the children to the Mother's home at the conclusion of this scheduled time

16 No Entry Neither party shall enter the home of the other unless expressly invited.

17 Contempt and Other Actions The parties stipulate and agree that it is in their and their children's best interests to resolve those issues between them as set forth herein. By this Agreement, all prior and pending actions, complaints, or motions for contempt or other relief filed by Father against Mother or by Mother against Father and resolved herein are dismissed with prejudice and shall serve as a final adjudication as to those incidents and allegations more specifically set out in the Order approving this Agreement. Any contempt actions filed by Father against Mother and those filed by Mother against the Father seeking enforcement of financial issues shall remain pending and are not addressed or affected by this Agreement.

The parties acknowledge that the Father has pending certain motions pursuant to Rule 60 and Rule 15 of the *South Carolina Rules of Civil Procedure*. Any issues addressed herein shall no longer be addressed in Father's Rule 60 and Rule 15 motions

b *Withdrawal of Criminal Complaints* The parties agree that the issues resolved herein are involved not only in this pending Family Court action but in pending criminal proceedings as well. Both parties desire to put an end as to those issues addressed herein and in the criminal proceedings. This Agreement addresses the Rules and Motions outstanding as to custody and visitation issues and the issues of custody and visitation are concluded herein with finality. Mother shall immediately request all prior and pending criminal matters against Father involving herself and/or the Medlins to be withdrawn, dismissed and permanently ended. If so dismissed (1) the parties shall simultaneously execute and exchange mutual releases, and (2) the parties shall seek releases from the Medlins and if received shall execute and deliver to the Medlins releases in favor of the Medlins.

I, Howard Hammer, have read this document in its entirety and, fully understanding its contents, do freely and voluntarily sign it this 23rd day of June, 2009

IN THE PRESENCE OF

Beth E. Berndt
Paul A. Hower

Howard Hammer
Howard Hammer

I, Shirley Hammer, have read this document in its entirety and, fully understanding its contents, do freely and voluntarily sign it this 23rd day of June, 2009

IN THE PRESENCE OF

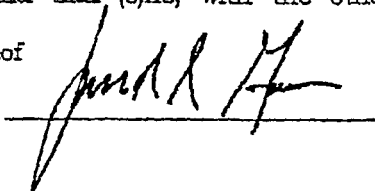
J. Mark Taylor
Dwight E. McCallan

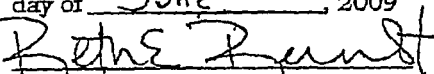
Shirley Hammer
Shirley Hammer

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Howard Hammer sign, seal and as his act and deed deliver the within written Settlement Agreement, and that (s)he, with the other witness subscribed above, witnessed the execution hereof

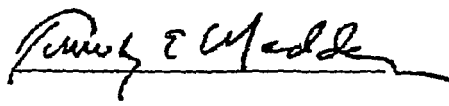


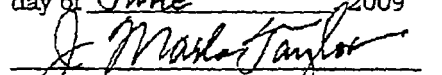
SWORN to before me this 23
day of June, 2009

Notary Public for South Carolina
My Commission Expires 2-22-15

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Shirley Hammer sign, seal and as her act and deed deliver the within written Settlement Agreement, and that (s)he, with the other witness subscribed above, witnessed the execution hereof



SWORN to before me this 23
day of June, 2009

Notary Public for South Carolina
My Commission Expires 2-8-12

FILED

MAY 12 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT **CCCP, GS &
FAMILY COURT**

SHIRLEY HAMMER,
Plaintiff,

C A NO 2005-DR-40-2871

vs

DIVORCE DECREE

HOWARD HAMMER,
Defendant

HEARING DATE
HEARING JUDGE
PLAINTIFF'S ATTORNEY
DEFENDANT'S ATTORNEY
COURT REPORTER

May 12, 2008
Dorothy Mobley Jones
Timothy E Madden
J Mark Taylor
James T McLaren
C Dixon Lee, III
Dayton Grainger

This matter is before me pursuant to a Summons and Complaint filed by Plaintiff (Wife) on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property and other relief as is more fully set forth in the Complaint. Wife filed an Amended Complaint on September 9, 2005. Defendant (Husband) filed an Answer and Counterclaim to the Amended Complaint on January 4, 2007. On December 6, 2007 Wife filed a Second Amended Complaint, seeking a divorce and other relief.

A hearing was held before me on May 12, 2008. Present at the hearing were Wife, represented by J Mark Taylor of the firm Moore, Taylor & Thomas, PA and Husband, represented by James T McLaren, of the firm McLaren & Lee.

Prior to the taking of testimony, this Court inquired of Wife and Husband to determine if reconciliation is possible. Reconciliation is not possible and further efforts in that regard would be unavailing.


1

At the outset of the hearing counsel announced to the Court that the parties had reached an agreement as to certain issues. The agreement was presented to the Court for approval.

Based upon the pleadings, testimony, statements by counsel, financial declarations and applicable law, this Court makes the following findings of fact and conclusions of law.

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action. The issues raised in this action are among those described in S.C. Code §20-7-420 (1976, as amended).

The parties were married to one another on August 4, 1998, in Columbia, South Carolina. Of this marriage two (2) children have been born. These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002. No other children have been born or adopted during the marriage, and no other children are currently expected.

This Court has subject matter and personal jurisdiction. Richland County is the proper venue for this action.

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy.

Wife is fifty-two (52) years of age and is in good physical and mental health. She is currently not employed.

Husband is sixty-two (62) years of age. He is currently self employed as a lawyer.

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*.

A settlement agreement exists between these parties. This agreement is set forth in the document entitled "Partial Settlement of Outstanding Issues" which was signed on May 9, 2008 by both parties and approved by the court on May 12, 2008. This document contains the parties' entire

agreement The parties understand the Agreement is a full and final resolution of all legal issues addressed by it

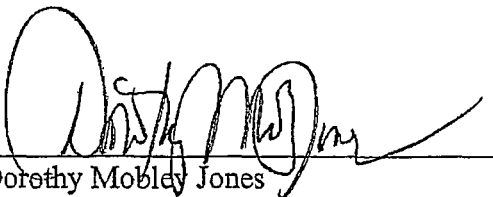
The parties separated on September 2, 2005, and have lived separate and apart continuously since that time This period of separation was corroborated by an independent witness

There is no fraud or collusion between the parties for the purposes of obtaining a divorce

NOW, THEREFORE, IT IS ORDERED as follows

The parties are granted an absolute divorce from each other on the statutory grounds of one year's continuous separation

AND IT IS SO ORDERED



Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated May 12, 2008


3-73

Hammer file

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
SHIRLEY HAMMER,)
Plaintiff,)
vs)
HOWARD HAMMER,)
Defendant)

IN THE FAMILY COURT FOR THE MAY 12 2008
FIFTH JUDICIAL CIRCUIT CCCP, GS &
FAMILY COURT

C A NO 2005-DR-40-2871

ORDER

(Approving Partial Settlement
of Outstanding Issues)

HEARING DATE
HEARING JUDGE
PLAINTIFF'S ATTORNEY
DEFENDANT'S ATTORNEY
COURT REPORTER

May 12, 2008
Dorothy Mobley Jones
Timothy E Madden
J Mark Taylor
James T McLaren
C Dixon Lee, III
Dayton Gramer

This matter is before me pursuant to a Summons and Complaint filed by Plaintiff (Wife) on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property and other relief as is more fully set forth in the Complaint. Wife filed an Amended Complaint on September 9, 2005. Defendant (Husband) filed an Answer and Counterclaim to the Amended Complaint on January 4, 2007. On December 6, 2007 Wife filed a Second Amended Complaint, seeking a divorce and other relief.

A hearing was held before me on May 12, 2008. Present at the hearing were Wife, represented by J Mark Taylor of the firm Moore, Taylor & Thomas, PA and Husband, represented by James T McLaren, of the firm McLaren & Lee.

Prior to the taking of testimony, this Court inquired of Wife and Husband to determine if reconciliation is possible. Reconciliation is not possible and further efforts in that regard would be unavailing.

(Signature)

At the outset of the hearing counsel announced to the Court that the parties had reached an agreement as to certain issues. The agreement was presented to the Court for approval.

Based upon the pleadings, testimony, statements by counsel, financial declarations and applicable law, this Court makes the following findings of fact and conclusions of law.

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action. The issues raised in this action are among those described in S.C. Code §20-7-420 (1976, as amended).

The parties were married to one another on August 4, 1998, in Columbia, South Carolina. Of this marriage two (2) children have been born. These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002. No other children have been born or adopted during the marriage, and no other children are currently expected.

This Court has subject matter and personal jurisdiction. Richland County is the proper venue for this action.

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy.

Wife is fifty-two (52) years of age and is in good physical and mental health. She is currently not employed.

Husband is sixty-two (62) years of age. He is currently self employed as a lawyer.

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*.

Settlements between litigants are encouraged. In determining whether or not to approve a settlement agreement this Court must find (1) the existence of an agreement, (2) the agreement was entered into freely and voluntarily, (3) the agreement is fair and equitable from procedural and substantive perspectives and (4) the agreement is in the best interest of the minor children.


2th

A settlement agreement exists between these parties. This agreement is set forth in the document entitled "Partial Settlement of Outstanding Issues" which was signed on May 9, 2008 by both parties and is attached hereto as Exhibit A (the "Agreement"). This document contains the parties' entire agreement. The parties understand the Agreement is a full and final resolution of all legal issues addressed by it. The Agreement does not address the issue of divorce.

There is no indication that either party was forced or under any duress or coercion at the time they entered the Agreement or at the time the Agreement was presented to the Court for approval. Each party represented he or she entered the Agreement and attended the hearing for its approval free of any mind-altering or judgment-impairing substances. Therefore, the Agreement was entered into freely and voluntarily.

The parties negotiated and entered the Agreement with benefit and advice of independent experienced counsel. Each party is satisfied with the representation provided to him or her by his or her attorney.

Each party represented familiarity with the assets, debts, income, and expenses of the other, thereby enabling each of them to enter the Agreement from an educated perspective. Each party testified he or she fully disclosed all of his or her assets, debts, income and expenses to the other party.

Substantively, the Agreement reflects a resolution of the legal issues which is within the range of fairness given this Court's experience. The Agreement is the product of compromise and negotiation. Upon review of the Equitable Apportionment Act (S.C. Code §20-7-472, et seq (1976, as amended)), the Alimony Statute (S.C. Code §20-3-130, et seq (1990, as amended)), and the Child Support Guidelines, and other applicable law, the parties' Agreement is fair and equitable.

As the parties directly affected by this Agreement, Husband and Wife are in a better position to judge the fairness of it

Therefore, the Agreement is fair and equitable from both procedural and substantive perspectives

The parties' Agreement, identified in this Order should, therefore, be adopted, approved and is hereby incorporated into, merged and made the Order of this Court

NOW, THEREFORE, IT IS ORDERED as follows

1 The Agreement between the parties, set forth in the document entitled "Partial Settlement of Outstanding Issues" (the "Agreement") which was signed on May 9, 2008 by both parties and is attached hereto as Exhibit A, is hereby adopted, approved, incorporated into, merged, integrated with and made the Order of this Court

2 This Court retains jurisdiction to issue any orders necessary to effectuate the terms of the Agreement

3 The Agreement shall be binding on the parties hereto, their heirs, executors, administrators and assigns

4 Each party shall fully indemnify and hold the other harmless with respect to all obligations set forth in the Agreement

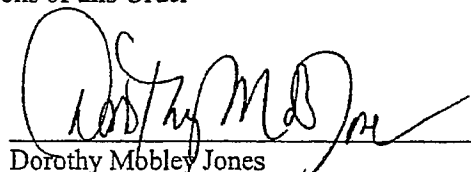
5 Each party shall expeditiously sign all documents and do all things reasonably necessary to effectuate the terms, provisions, and intent of the Agreement

6 This civil action shall remain on the active roster of cases for the sole and limited purpose of allowing the parties to resolve or the Family Court to address the issues of divorce, custody, visitation and future attorney fees related to custody and visitation issues (as detailed in


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the Agreement) Allowing this matter to remain active for this limited purpose shall in no way impact the finality or effect of the terms and provisions of this Order

AND IT IS SO ORDERED


Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated May 12, 2008



PARTIAL SETTLEMENT OF OUTSTANDING ISSUES

The parties agree to the following settlement terms to resolve all issues in the pending Family Court litigation with the exception of the issues of custody, visitation, and attorney's fees and costs related to custody and visitation which are incurred after the date of Court approval of this Agreement. Howard's consent to this partial settlement is confirmed by his signature and the signature of his attorney on this document. Shirley's consent to this partial settlement is confirmed by her signature and the signature of her attorney on this document.

Partial Settlement

1 This partial settlement does not address the issues of custody, visitation, and attorney's fees and costs incurred by Howard and Shirley related to custody and visitation after the date of Court approval of this Agreement. Howard and Shirley shall continue to be parties to the pending Family Court litigation to resolve these issues, and the terms of the Consent Temporary Order shall continue to be in full force and effect regarding the issues of child custody and visitation pending further Order of the Family Court, except as modified and supplanted by this Agreement.

2 This partial settlement fully and permanently resolves all other issues in the pending Family Court litigation, except for the issues of custody, visitation, and attorney's fees and costs incurred by Howard and Shirley related to custody and visitation after the date of Court approval of this Agreement. This partial settlement shall be presented to the Family Court as soon as a hearing may be scheduled to seek adoption, approval and

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incorporation of these terms into a Divorce Decree or other appropriate order. Each party shall do all things reasonably necessary to obtain a hearing to seek the approval of this settlement, and to obtain Family Court approval of this settlement.

3 As equitable apportionment of marital assets and debts and by way of recognition of non-marital assets and debts

A Each party shall keep and retain as his or her separate property (premarital, inherited, etc.) any asset in his or her name, possession or control and Howard shall retain as his separate property any assets in the parties joint names except and unless stated otherwise in this document.

B Each party shall pay any debt incurred by him or her or in his or her name, unless specifically stated otherwise in this document. Each party represents to the other that neither has incurred any debt in the name of the other or for which the other may be held legally responsible except as is specified otherwise in this document.

C Shirley shall receive or retain the following

(a) The home at 320 St James Street, Columbia, South Carolina, free and clear of any debt, lien or encumbrance. As part of the division of assets and debts, and as an incident of non-taxable support for Shirley, Howard shall fully pay and extinguish the debt on this property no later than 5:00 p.m. June 6, 2008. Until this debt is fully extinguished, Howard shall timely pay it. By May 14, 2008, Howard shall execute a general warranty deed conveying all or his interest in this property to Shirley. Shirley shall otherwise be responsible for the expenses related to this property.

(b) The sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) in cash by way of qualified transfer from Howard's retirement assets. This transfer shall be made pursuant to a Qualified Domestic Relations Order (QDRO) (or

Y.2 HH

orders) or other similar devices so that the act of transfer does not create an immediate taxable event for Howard or Shirley. If Shirley withdraws or liquidates the funds after transfer, and any tax or penalty is incurred, Shirley shall pay such tax or penalty.

(c) The sum One Million Two Hundred Sixty-Two Thousand and 00/100 Dollars (\$1,262,000.00) in cash. Howard shall pay this sum to Shirley no later than 12 p.m. on June 6, 2008, by wire transfer into the account of her attorney.

(d) The Sims Street property, subject to the debt or obligations or benefits associated with it.

(e) All furniture and personal property in her possession or control, except Howard's separate furniture and personal property (i.e. that which he brought into the marriage or inherited).

(f) The Toyota vehicle she drives, free and clear of any debt, lien or encumbrance.

D Howard shall receive the following

(a) Any interest of either party in the office building which houses Howard Hammer's law office and the accompanying parking lot, and in any business entity related to this building, subject to any debt, lien or encumbrance associated with this property. This asset has a net value of about \$1,000,000.00. When Howard has fulfilled his obligations under paragraphs 3(C)(a) and 3(C)(c) and 3(D)(b), Shirley shall execute a deed, subject to any lien, debt or encumbrance, and such other documents as are necessary to convey this/these assets to Howard.

(b) The Rice Court property, subject to the debt or obligations or benefits associated with it, which has a net value of \$100,000.00. Howard will do whatever is necessary to remove Shirley from any debt or obligation related to this

p #3 HH

property, including but not limited to obtaining from the lender her release from liability on the note and mortgage

(c) The Seabrook real property, which has a net value of about \$1,500,000 00

(d) The two Chateau deVile rental properties, which have a combined net value of about \$195,000 00

(e) The Woodrow Street rental property, which has a net value of about \$115,000 00

(f) The Hollywood Street rental property, which has a net value of about \$190,000 00

(g) The 57th street property at Isle of Palms, South Carolina, which has a net value of about \$700,000 00 (for the Hammer share)

(h) His law practice, subject to all obligations associated with it

(i) Any furniture or personal property in his possession or control, and the items in the storage unit, together with his separate furniture and personal property (i.e. his pre-marital and/or inherited)

(j) The vehicles he drives (the Porsche and Mercedes), subject to the debt on it

4 Howard shall pay to Shirley rehabilitative non-modifiable alimony in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000 00) This alimony shall be paid in a lump sum, by a qualified transfer from Howard's retirement asset(s) to retirement asset(s) in Shirley's name or control This transfer shall be made pursuant to a Qualified

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Domestic Relations Order (QDRO) (or orders) or other similar devices so that the act of transfer does not create an immediate taxable event for Howard or Shirley. If Shirley withdraws or liquidates the funds after transfer, and any tax or penalty is incurred, Shirley shall pay such tax or penalty. The payment of this rehabilitative alimony shall not be tax-deductible by Howard. The transfer shall occur as expeditiously as possible after the Family Court approves this settlement. Other than this rehabilitative alimony, or except as provided in the following sentence, neither party shall pay alimony or spousal support to other party, past, present or future, *pendente lite* or permanently. If, however, for any reason, this transfer of \$250,000.00 does not occur and/or the transfers of the funds from Howard to Shirley required under the equitable apportionment provisions (totaling \$1,750,000 in cash) of this offer do not occur, then Shirley shall have the right to seek temporary and/or permanent alimony from Howard from the Family Court. In no event shall Howard have the right to seek alimony from Shirley, and any right or claim he has or may have to such support is forever terminated.

5 Beginning June 1, 2008, and no later than the 7th day of each month thereafter, Howard shall pay to Shirley the sum of Two Thousand and 00/100 Dollars (\$2,000.00) per month as child support, provided he is practicing law. If he is not practicing law the amount may be renegotiated or addressed by the Court. This payment shall be made by bank draft from Howard's account to Shirley's account beginning with the month of June, 2008. If Howard ever falls to pay this obligation by the 7th of any month and she gives notice to Howard's brother, Alvin Hammer, of the default, and it is not cured within three (3) days thereafter, Shirley may file an affidavit to obtain an Order requiring all future payments to be paid through the Family Court. The amount of Howard's child support is based on Howard's annual income being approximately \$260,000.00 per year.

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6 Howard shall maintain life insurance on his life with death benefits payable to Shirley in the amount of \$250,000 00 for so long as he has an obligation to pay child support for one or both of the minor children He shall provide Shirley with a copy of the policy and a copy of the designation of beneficiaries establishing proof of his compliance with this requirement These documents shall be delivered no later than 12 p m on June 1, 2008

7 This financial agreement intends to and in fact does satisfy all claims by each party for attorney fees, expert fees, suit money and costs through and including the date of approval of this Agreement by the Court

8 The order approving this settlement shall contain the following language

A This Order is an "Order of Protection" entered pursuant to S C Code §20-4-10 (1976, as amended) et seq

B Pursuant to S C Code § 20-4-60(e) (1976, as amended), the parties consent to this order

C Each party is hereby enjoined and restrained from abusing, threatening to abuse, or molesting the other party, and each party is enjoined and restrained from communicating or attempting to communicate with the other party in any way which would violate the provisions of S C Code 20-4-10 (1976, as amended) et seq

D Each party is enjoined and restrained from entering the residence of the other party, including but not limited to Defendant being enjoined and restrained from entering the residence now in the sole possession of Shirley, 320 St James Street, Columbia, South Carolina

E **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE**

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At

CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS

F This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court

9 The order approving this settlement shall contain the following language, to the extent allowed by applicable law

A This Order is an "Order of Protection" entered pursuant to S C Code §20-4-10 (1976, as amended) et seq

B Pursuant to S C Code § 20-4-60(e) (1976, as amended), the parties consent to this order

C Defendant is hereby enjoined and restrained from abusing, threatening to abuse, or molesting Shirley's sister, Florence Medlin, and is enjoined and restrained from communicating or attempting to communicate with Florence Medlin in any way which would violate the provisions of S C Code 20-4-10 (1976, as amended) et seq

D Defendant is enjoined and restrained from entering the residence of Florence Medlin, including but not limited to being enjoined and restrained from entering the residence of Florence Medlin at 1713 Phelps Street, Columbia, South Carolina, or any other residence she may occupy

E **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS**

F This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court

10 Howard and Shirley shall execute full releases in favor of each other (except and preserving their respective rights in the issues remaining for adjudication in the Family Court litigation) The release shall be in the form of the document attached as Exhibit A The other releases attached at Exhibit A shall also be executed and delivered

11 All Rules to Show Cause shall be dismissed with prejudice All pending motions related to issues other than the children shall be dismissed with prejudice All pending motions related to the children shall be dismissed without prejudice The pleadings shall be amended to properly frame the remaining issues for adjudication (i.e. custody and visitation matters, and attorney fees, suit money and costs associated with custody and visitation issues incurred after the date of Court approval of this Agreement)

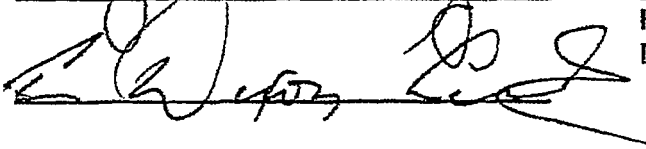
12 The terms and conditions of this Agreement shall be fully binding on and enforceable by the heirs, assigns and successors of the parties, and their estates The obligations of the parties under the terms and conditions of this Agreement shall not be extinguished by bankruptcy or insolvency proceedings or any assignment for the benefit of creditors

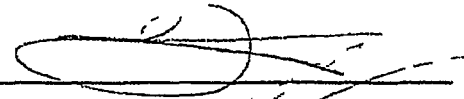
13 Except for the obligations created by this partial settlement, each party hereby releases and relinquishes and by these presents are hereby barred from any and all rights and claims he or she may have or hereafter acquire as a spouse under the present or future laws of any jurisdiction by way of dower, inheritance, descent, distribution, elective share, and all other rights or claims whatsoever, including but not limited to claims in or to the property or estate of the other, whether real, personal or mixed, and whether now owned or hereafter acquired Both parties are aware of their elective share rights and they hereby release and relinquish any right to elective share that he or she may have with the full knowledge of all rights thereto

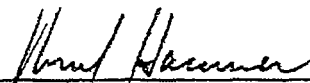
14 When this settlement is approved it shall be enforceable through the contempt powers of the Family Court

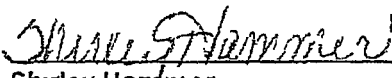
15 This agreement is a binding contract and is enforceable as such under law

WITNESS

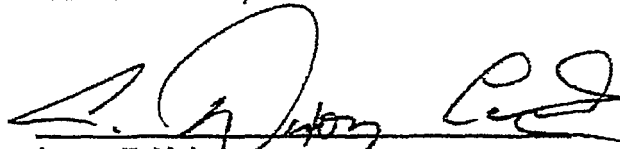







Howard Hammer
Date May 9, 2008


Shirley Hammer
Date May 9, 2008

We confirm this partial settlement.


James T. McLaren
Dixon Lee
Attorneys for Howard Hammer
Date May 9, 2008


J. Mark Taylor
Timothy E. Madden
Attorneys for Shirley Hammer
Date May 9, 2008

Exhibit A

AGREEMENT AND RELEASE OF CLAIMS

This AGREEMENT is made and entered into by and between Howard Hammer and Shirley Hammer who agree to be bound by all of the terms and conditions set forth herein

The parties desire to fully and completely settle and dispose of any claims which either party might have against the other from the beginning of time through and including May __ 2008, the date on which the parties executed a settlement agreement regarding pending litigation in the Richland County Family Court (hereinafter the "Settlement Agreement"), except for the obligations created by the Settlement Agreement Accordingly, the parties agree as follows

1 Consideration

The promises of each of the parties as set forth in the Settlement Agreement signed by each of them form the consideration for this agreement

2 Release of Claims and Covenant Not to Sue

In return for the consideration described in Paragraph 1, each party releases the other, and the other's agents, assigns, and heirs forever, from every legal or equitable claim that he/she has or might have against the other except for the obligations created by the Settlement Agreement The claims released in this agreement include any claims under any local state, or federal constitutions, laws statutes rules, regulations or executive orders, including any amendments thereto The parties further agree that they are releasing any claims that might arise under the common law of any state

The parties agree not to file any lawsuits, complaints or grievances against the other, or any agents assign of the other, with respect to any claim one might have against the other, except for the obligations created by the Settlement Agreement referenced herein

3 Full and Final Settlement

The consideration provided pursuant to this Agreement constitutes a full and final compromise settlement of all claims that either party might have against the other, except for the obligations created by the Settlement Agreement The parties do not waive any rights or claims that might arise as a result of any conduct that occurs after the date of the Settlement Agreement or that arise under the obligations created by the settlement document or any order issued by the Family Court which adopts and approves the Settlement Agreement

4 No Other Promises

The parties agree that the only consideration for the signing of this agreement is that set forth in the agreement and that no other promises or assurances of any kind have been made to either party as an inducement to sign this agreement

5 Complete Defense

This agreement shall be treated as a complete defense to any actions that may be brought instituted or taken by either party against the other relating to the matters addressed in this Agreement

6 Successors, Assigns, and Representatives

This agreement shall inure to and be binding upon the parties hereto their respective heirs, legal representatives successors and assigns

7 Governing Law and Jurisdiction

This agreement shall be construed in accordance with the laws of the state of South Carolina and all applicable federal laws

8 Entire Agreement, Modification

This agreement constitutes the entire understanding of the parties and no representation promise, or inducement not included herein shall be binding upon the parties This agreement may not be changed orally but only by an agreement in writing signed by the parties

9 Review of Agreement Provisions

The parties represent and warrant that each has had ample opportunity to consider this agreement and has been advised in writing to consult an attorney, if desired before executing this agreement

10 Acknowledgement

THE PARTIES AFFIRM THAT THEY

- a POSSESSE SUFFICIENT EDUCATION AND/OR EXPERIENCE TO FULLY UNDERSTAND THIS AGREEMENT,
- b HAVE CAREFULLY READ AND UNDERSTAND THIS ENTIRE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS
- c HAVE HAD A REASONABLE PERIOD OF TIME WITHIN WHICH TO REVIEW AND CONSIDER THIS AGREEMENT
- d HAVE CONSULTED WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT, AND
- e ARE FULLY COMPETENT TO EXECUTE THIS AGREEMENT AND RELEASE OF CLAIMS AND DOES SO VOLUNTARILY AND WITHOUT ANY COERCION UNDUE INFLUENCE THREAT OR INTIMIDATION OF ANY KIND OR TYPE

FOR HOWARD HAMMER

Howard Hammer

Date

SHIRLEY HAMMER

Shirley Hammer

Date

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Alan Medlin, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned Howard Hammer do hereby release, acquit and forever discharge Alan Medlin, his agents, assigns, heirs, and any and all other persons firms or corporations acting at his direction or for his benefit of and from any and all causes of action, claims demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Alan Medlin or against his agents, assigns heirs and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions or failure to act or any other occurrence facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
_____, South Carolina, this _ day of _____, 2008

_____(L S)
Howard Hammer

SIGNED, SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Florence Medlin, the receipt and sufficiency of which is hereby acknowledged, I the undersigned, Howard Hammer, do hereby release acquit and forever discharge Florence Medlin, her agents assigns, heirs and any and all other persons, firms or corporations acting at her direction or for her benefit of and from any and all causes of action, claims demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Florence Medlin or against her agents assigns heirs, and any other person, firm or corporation acting at her direction or for her benefit on account of or resulting from any conduct acts, omissions or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF I have hereunto set my hand and seal at _____
_____ South Carolina this _ day of _____, 2008

_____(L S)
Howard Hammer

SIGNED, SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer the receipt and sufficiency of which is hereby acknowledged, I the undersigned, Alan Medlin, do hereby release, acquit and forever discharge Howard Hammer, his agents assigns heirs and any and all other persons firms or corporations acting at his direction or for his benefit, of and from any and all causes of action claims demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct acts, omissions or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____, South Carolina this _ day of _____, 2008

_____(L S)
Alan Medlin

SIGNED, SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Florence Medlin, do hereby release, acquit and forever discharge Howard Hammer his agents, assigns, heirs, and any and all other persons firms or corporations acting at his direction or for his benefit of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents, assigns, heirs, and any other person firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
_____, South Carolina, this _ day of _____, 2008

_____(L S)
Florence Medlin

SIGNED SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SHIRLEY HAMMER,)

Plaintiff,)

vs)

HOWARD HAMMER,)

Defendant)

IN THE FAMILY COURT FOR THE MAY 12 2008
FIFTH JUDICIAL CIRCUIT CCCP, GS &
FAMILY COURT

C A NO 2005-DR-40-2871

ORDER

HEARING DATE

HEARING JUDGE

PLAINTIFF'S ATTORNEY

DEFENDANT'S ATTORNEY

COURT REPORTER

May 12, 2008

Dorothy Mobley Jones

Timothy E Madden

J Mark Taylor

James T McLaren

C Dixon Lee, III

Dayton Gramer

This matter is before me pursuant to a Summons and Complaint filed by Plaintiff (Wife) on September 2, 2005, seeking an order of separate maintenance and support, custody, equitable distribution of property and other relief as is more fully set forth in the Complaint. Wife filed an Amended Complaint on September 9, 2005. Defendant (Husband) filed an Answer and Counterclaim to the Amended Complaint on January 4, 2007. On December 6, 2007 Wife filed a Second Amended Complaint, seeking a divorce and other relief.

A hearing was held before me on May 12, 2008. Present at the hearing were Wife, represented by J Mark Taylor of the firm Moore, Taylor & Thomas, PA and Husband, represented by James T McLaren, of the firm McLaren & Lee.

Prior to the taking of testimony, this Court inquired of Wife and Husband to determine if reconciliation is possible. Reconciliation is not possible and further efforts in that regard would be unavailing.



At the outset of the hearing counsel announced to the Court that the parties had reached an agreement as to certain issues. The agreement was presented to the Court for approval.

Based upon the pleadings, testimony, statements by counsel, financial declarations and applicable law, this Court makes the following findings of fact and conclusions of law.

The parties are citizens and residents of Richland County, South Carolina and have so resided for more than one (1) year prior to the filing of this action. The issues raised in this action are among those described in S.C. Code §20-7-420 (1976, as amended).

The parties were married to one another on August 4, 1998, in Columbia, South Carolina. Of this marriage two (2) children have been born. These children are David Samuel Hammer, born July 10, 2000, and Michael Lyn Hammer, born August 8, 2002. No other children have been born or adopted during the marriage, and no other children are currently expected.

This Court has subject matter and personal jurisdiction. Richland County is the proper venue for this action.

The social security numbers of each party are known to counsel and are not detailed in this order in the interests of privacy.

Wife is fifty-two (52) years of age and is in good physical and mental health. She is currently not employed.

Husband is sixty-two (62) years of age. He is currently self employed as a lawyer.

Both parties filed financial declarations pursuant to the *South Carolina Family Court Rules*.

Settlements between litigants are encouraged. In determining whether or not to approve a settlement agreement this Court must find (1) the existence of an agreement, (2) the agreement was entered into freely and voluntarily; (3) the agreement is fair and equitable from procedural and substantive perspectives and (4) the agreement is in the best interest of the minor children.


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A settlement agreement exists between these parties. This agreement is set forth in the document entitled "Partial Settlement of Outstanding Issues" which was signed on May 9, 2008 by both parties and is attached hereto as Exhibit A (the "Agreement"). This document contains the parties' entire agreement. The parties understand the Agreement is a full and final resolution of all legal issues addressed by it. The Agreement does not address the issue of divorce.

There is no indication that either party was forced or under any duress or coercion at the time they entered the Agreement or at the time the Agreement was presented to the Court for approval. Each party represented he or she entered the Agreement and attended the hearing for its approval free of any mind-altering or judgment-impairing substances. Therefore, the Agreement was entered into freely and voluntarily.

The parties negotiated and entered the Agreement with benefit and advice of independent experienced counsel. Each party is satisfied with the representation provided to him or her by his or her attorney.

Each party represented familiarity with the assets, debts, income, and expenses of the other, thereby enabling each of them to enter the Agreement from an educated perspective. Each party testified he or she fully disclosed all of his or her assets, debts, income and expenses to the other party.

Substantively, the Agreement reflects a resolution of the legal issues which is within the range of fairness given this Court's experience. The Agreement is the product of compromise and negotiation. Upon review of the Equitable Apportionment Act (S.C. Code §20-7-472, et seq (1976, as amended)), the Alimony Statute (S.C. Code §20-3-130, et seq (1990, as amended)), and the Child Support Guidelines, and other applicable law, the parties' Agreement is fair and equitable.

As the parties directly affected by this Agreement, Husband and Wife are in a better position to judge the fairness of it

Therefore, the Agreement is fair and equitable from both procedural and substantive perspectives

The parties' Agreement, identified in this Order should, therefore, be adopted, approved and is hereby incorporated into, merged and made the Order of this Court

NOW, THEREFORE, IT IS ORDERED as follows

1 The Agreement between the parties, set forth in the document entitled "Partial Settlement of Outstanding Issues" (the "Agreement") which was signed on May 9, 2008 by both parties and is attached hereto as Exhibit A, is hereby adopted, approved, incorporated into, merged, integrated with and made the Order of this Court

2 This Court retains jurisdiction to issue any orders necessary to effectuate the terms of the Agreement.

3 The Agreement shall be binding on the parties hereto, their heirs, executors, administrators and assigns

4 Each party shall fully indemnify and hold the other harmless with respect to all obligations set forth in the Agreement

5 Each party shall expeditiously sign all documents and do all things reasonably necessary to effectuate the terms, provisions, and intent of the Agreement

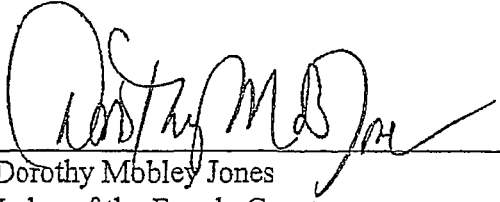
6 This civil action shall remain on the active roster of cases for the sole and limited purpose of allowing the parties to resolve or the Family Court to address the issues of divorce, custody, visitation and future attorney fees related to custody and visitation issues (as detailed in

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the Agreement) Allowing this matter to remain active for this limited purpose shall in no way impact the finality or effect of the terms and provisions of this Order

AND IT IS SO ORDERED


Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated May 12, 2008



PARTIAL SETTLEMENT OF OUTSTANDING ISSUES

The parties agree to the following settlement terms to resolve all issues in the pending Family Court litigation with the exception of the issues of custody, visitation, and attorney's fees and costs related to custody and visitation which are incurred after the date of Court approval of this Agreement. Howard's consent to this partial settlement is confirmed by his signature and the signature of his attorney on this document. Shirley's consent to this partial settlement is confirmed by her signature and the signature of her attorney on this document.

Partial Settlement

1 This partial settlement does not address the issues of custody, visitation, and attorney's fees and costs incurred by Howard and Shirley related to custody and visitation after the date of Court approval of this Agreement. Howard and Shirley shall continue to be parties to the pending Family Court litigation to resolve these issues, and the terms of the Consent Temporary Order shall continue to be in full force and effect regarding the issues of child custody and visitation pending further Order of the Family Court, except as modified and supplanted by this Agreement.

2 This partial settlement fully and permanently resolves all other issues in the pending Family Court litigation, except for the issues of custody, visitation, and attorney's fees and costs incurred by Howard and Shirley related to custody and visitation after the date of Court approval of this Agreement. This partial settlement shall be presented to the Family Court as soon as a hearing may be scheduled to seek adoption, approval and

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111

incorporation of these terms into a Divorce Decree or other appropriate order. Each party shall do all things reasonably necessary to obtain a hearing to seek the approval of this settlement, and to obtain Family Court approval of this settlement.

3 As equitable apportionment of marital assets and debts and by way of recognition of non-marital assets and debts

A Each party shall keep and retain as his or her separate property (premarital, inherited, etc.) any asset in his or her name, possession or control and Howard shall retain as his separate property any assets in the parties joint names except and unless stated otherwise in this document.

B Each party shall pay any debt incurred by him or her or in his or her name, unless specifically stated otherwise in this document. Each party represents to the other that neither has incurred any debt in the name of the other or for which the other may be held legally responsible except as is specified otherwise in this document.

C Shirley shall receive or retain the following

(a) The home at 320 St. James Street, Columbia, South Carolina, free and clear of any debt, lien or encumbrance. As part of the division of assets and debts, and as an incident of non-taxable support for Shirley, Howard shall fully pay and extinguish the debt on this property no later than 5:00 p.m. June 6, 2008. Until this debt is fully extinguished, Howard shall timely pay it. By May 14, 2008, Howard shall execute a general warranty deed conveying all of his interest in this property to Shirley. Shirley shall otherwise be responsible for the expenses related to this property.

(b) The sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) in cash by way of qualified transfer from Howard's retirement assets. This transfer shall be made pursuant to a Qualified Domestic Relations Order (QDRO) (or

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orders) or other similar devices so that the act of transfer does not create an immediate taxable event for Howard or Shirley. If Shirley withdraws or liquidates the funds after transfer, and any tax or penalty is incurred, Shirley shall pay such tax or penalty.

(c) The sum One Million Two Hundred Sixty-Two Thousand and 00/100 Dollars (\$1,262,000.00) in cash. Howard shall pay this sum to Shirley no later than 12 p.m. on June 6, 2008, by wire transfer into the account of her attorney.

(d) The Sims Street property, subject to the debt or obligations or benefits associated with it.

(e) All furniture and personal property in her possession or control, except Howard's separate furniture and personal property (i.e. that which he brought into the marriage or inherited).

(f) The Toyota vehicle she drives, free and clear of any debt, lien or encumbrance.

D Howard shall receive the following:

(a) Any interest of either party in the office building which houses Howard Hammer's law office and the accompanying parking lot, and in any business entity related to this building, subject to any debt, lien or encumbrance associated with this property. This asset has a net value of about \$1,000,000.00. When Howard has fulfilled his obligations under paragraphs 3(C)(a) and 3(C)(c) and 3(D)(b), Shirley shall execute a deed, subject to any lien, debt or encumbrance, and such other documents as are necessary to convey this/these assets to Howard.

(b) The Rice Court property, subject to the debt or obligations or benefits associated with it, which has a net value of \$100,000.00. Howard will do whatever is necessary to remove Shirley from any debt or obligation related to this

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property, including but not limited to obtaining from the lender her release from liability on the note and mortgage

(c) The Seabrook real property, which has a net value of about \$1,500,000 00

(d) The two Chateau deVile rental properties, which have a combined net value of about \$195,000 00

(e) The Woodrow Street rental property, which has a net value of about \$115,000 00

(f) The Hollywood Street rental property, which has a net value of about \$190,000 00

(g) The 57th street property at Isle of Palms, South Carolina, which has a net value of about \$700,000 00 (for the Hammer share)

(h) His law practice, subject to all obligations associated with it

(i) Any furniture or personal property in his possession or control, and the items in the storage unit, together with his separate furniture and personal property (i.e. his pre-marital and/or inherited)

(j) The vehicles he drives (the Porsche and Mercedes), subject to the debt on it

4 Howard shall pay to Shirley rehabilitative non-modifiable alimony in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000 00) This alimony shall be paid in a lump sum, by a qualified transfer from Howard's retirement asset(s) to retirement asset(s) in Shirley's name or control This transfer shall be made pursuant to a Qualified

P. 4 H.A.

Domestic Relations Order (QDRO) (or orders) or other similar devices so that the act of transfer does not create an immediate taxable event for Howard or Shirley. If Shirley withdraws or liquidates the funds after transfer, and any tax or penalty is incurred, Shirley shall pay such tax or penalty. The payment of this rehabilitative alimony shall not be tax-deductible by Howard. The transfer shall occur as expeditiously as possible after the Family Court approves this settlement. Other than this rehabilitative alimony, or except as provided in the following sentence, neither party shall pay alimony or spousal support to other party, past, present or future, *pendente lite* or permanently. If, however, for any reason, this transfer of \$250,000.00 does not occur and/or the transfers of the funds from Howard to Shirley required under the equitable apportionment provisions (totaling \$1,750,000 in cash) of this offer do not occur, then Shirley shall have the right to seek temporary and/or permanent alimony from Howard from the Family Court. In no event shall Howard have the right to seek alimony from Shirley, and any right or claim he has or may have to such support is forever terminated.

5 Beginning June 1, 2008, and no later than the 7th day of each month thereafter, Howard shall pay to Shirley the sum of Two Thousand and 00/100 Dollars (\$2,000.00) per month as child support, provided he is practicing law. If he is not practicing law the amount may be renegotiated or addressed by the Court. This payment shall be made by bank draft from Howard's account to Shirley's account beginning with the month of June, 2008. If Howard ever falls to pay this obligation by the 7th or any month and she gives notice to Howard's brother, Alvin Hammer, of the default, and it is not cured within three (3) days thereafter, Shirley may file an affidavit to obtain an Order requiring all future payments to be paid through the Family Court. The amount of Howard's child support is based on Howard's annual income being approximately \$260,000.00 per year.

PS H H

6 Howard shall maintain life insurance on his life with death benefits payable to Shirley in the amount of \$250,000 00 for so long as he has an obligation to pay child support for one or both of the minor children He shall provide Shirley with a copy of the policy and a copy of the designation of beneficiaries establishing proof of his compliance with this requirement These documents shall be delivered no later than 12 p m on June 1, 2008

7 This financial agreement intends to and in fact does satisfy all claims by each party for attorney fees, expert fees, suit money and costs through and including the date of approval of this Agreement by the Court

8 The order approving this settlement shall contain the following language

A This Order is an "Order of Protection" entered pursuant to S C Code §20-4-10 (1976, as amended) et seq

B Pursuant to S C Code § 20 4-60(e) (1976, as amended), the parties consent to this order

C Each party is hereby enjoined and restrained from abusing, threatening to abuse, or molesting the other party, and each party is enjoined and restrained from communicating or attempting to communicate with the other party in any way which would violate the provisions of S C Code 20-4-10 (1976, as amended) et seq

D Each party is enjoined and restrained from entering the residence of the other party, including but not limited to Defendant being enjoined and restrained from entering the residence now in the sole possession of Shirley, 320 St. James Street, Columbia, South Carolina

E VIOlation OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE

CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS

F This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court

9 The order approving this settlement shall contain the following language, to the extent allowed by applicable law

A This Order is an "Order of Protection" entered pursuant to S C Code §20-4-10 (1976, as amended) et seq

B Pursuant to S C Code § 20-4-60(e) (1976, as amended), the parties consent to this order

C Defendant is hereby enjoined and restrained from abusing, threatening to abuse, or molesting Shirley's sister, Florence Medlin, and is enjoined and restrained from communicating or attempting to communicate with Florence Medlin in any way which would violate the provisions of S C Code 20-4-10 (1976, as amended) et seq

D Defendant is enjoined and restrained from entering the residence of Florence Medlin, including but not limited to being enjoined and restrained from entering the residence of Florence Medlin at 1713 Phelps Street, Columbia, South Carolina, or any other residence she may occupy

E VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS

F This Order shall remain in full force and effect unless terminated by a subsequently issued order of the Family Court

10 Howard and Shirley shall execute full releases in favor of each other (except and preserving their respective rights in the issues remaining for adjudication in the Family Court litigation) The release shall be in the form of the document attached as Exhibit A The other releases attached at Exhibit A shall also be executed and delivered

11 All Rules to Show Cause shall be dismissed with prejudice All pending motions related to issues other than the children shall be dismissed with prejudice All pending motions related to the children shall be dismissed without prejudice The pleadings shall be amended to properly frame the remaining issues for adjudication (i.e. custody and visitation matters, and attorney fees, suit money and costs associated with custody and visitation issues incurred after the date of Court approval of this Agreement)

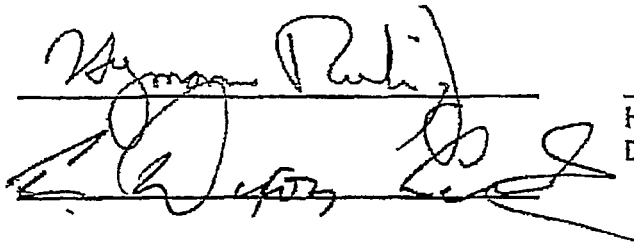
12 The terms and conditions of this Agreement shall be fully binding on and enforceable by the heirs, assigns and successors of the parties, and their estates The obligations of the parties under the terms and conditions of this Agreement shall not be extinguished by bankruptcy or insolvency proceedings or any assignment for the benefit of creditors

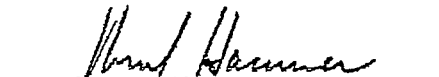
13 Except for the obligations created by this partial settlement, each party hereby releases and relinquishes and by these presents are hereby barred from any and all rights and claims he or she may have or hereafter acquire as a spouse under the present or future laws of any jurisdiction by way of dower, inheritance, descent, distribution, elective share, and all other rights or claims whatsoever, including but not limited to claims in or to the property or estate of the other, whether real, personal or mixed, and whether now owned or hereafter acquired Both parties are aware of their elective share rights and they hereby release and relinquish any right to elective share that he or she may have with the full knowledge of all rights thereto

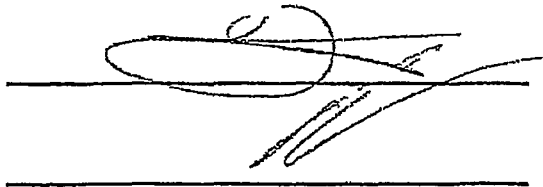
14 When this settlement is approved it shall be enforceable through the contempt powers of the Family Court

15 This agreement is a binding contract and is enforceable as such under law

WITNESS

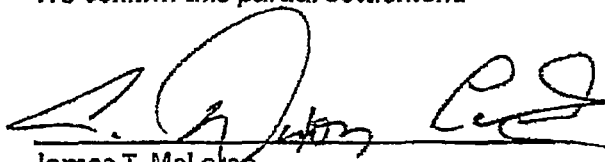

James T. McLaren
Dixon Lee
Attorneys for Howard Hammer


Howard Hammer
Date May 9, 2008


Shirley Hammer
Date May 9, 2008


Shirley Hammer
Date May 9, 2008

We confirm this partial settlement.


James T. McLaren
Dixon Lee
Attorneys for Howard Hammer

Date May 9, 2008


J. Mark Taylor
Timothy E. Madden
Attorneys for Shirley Hammer

Date May 9, 2008

Exhibit A

AGREEMENT AND RELEASE OF CLAIMS

This AGREEMENT is made and entered into by and between Howard Hammer and Shirley Hammer, who agree to be bound by all of the terms and conditions set forth herein

The parties desire to fully and completely settle and dispose of any claims which either party might have against the other from the beginning of time through and including May __, 2008, the date on which the parties executed a settlement agreement regarding pending litigation in the Richland County Family Court (hereinafter the "Settlement Agreement"), except for the obligations created by the Settlement Agreement. Accordingly, the parties agree as follows

1 Consideration

The promises of each of the parties as set forth in the Settlement Agreement signed by each of them form the consideration for this agreement

2 Release of Claims and Covenant Not to Sue

In return for the consideration described in Paragraph 1, each party releases the other, and the other's agents, assigns, and heirs forever, from every legal or equitable claim that he/she has or might have against the other, except for the obligations created by the Settlement Agreement. The claims released in this agreement include any claims under any local, state, or federal constitutions, laws, statutes, rules, regulations or executive orders, including any amendments thereto. The parties further agree that they are releasing any claims that might arise under the common law of any state.

The parties agree not to file any lawsuits, complaints or grievances against the other, or any agents, assign of the other, with respect to any claim one might have against the other, except for the obligations created by the Settlement Agreement referenced herein.

3 Full and Final Settlement

The consideration provided pursuant to this Agreement constitutes a full and final compromise settlement of all claims that either party might have against the other, except for the obligations created by the Settlement Agreement. The parties do not waive any rights or claims that might arise as a result of any conduct that occurs after the date of the Settlement Agreement or that arise under the obligations created by the settlement document or any order issued by the Family Court which adopts and approves the Settlement Agreement.

4 No Other Promises

The parties agree that the only consideration for the signing of this agreement is that set forth in the agreement and that no other promises or assurances of any kind have been made to either party as an inducement to sign this agreement.

5 Complete Defense

This agreement shall be treated as a complete defense to any actions that may be brought, instituted, or taken by either party against the other relating to the matters addressed in this Agreement

6 Successors, Assigns, and Representatives

This agreement shall inure to and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns

7 Governing Law and Jurisdiction

This agreement shall be construed in accordance with the laws of the state of South Carolina and all applicable federal laws

8 Entire Agreement, Modification

This agreement constitutes the entire understanding of the parties, and no representation, promise, or inducement not included herein shall be binding upon the parties. This agreement may not be changed orally, but only by an agreement in writing signed by the parties

9 Review of Agreement Provisions

The parties represent and warrant that each has had ample opportunity to consider this agreement and has been advised in writing to consult an attorney, if desired, before executing this agreement

10 Acknowledgement

THE PARTIES AFFIRM THAT THEY

- a POSSESSE SUFFICIENT EDUCATION AND/OR EXPERIENCE TO FULLY UNDERSTAND THIS AGREEMENT,
- b HAVE CAREFULLY READ AND UNDERSTAND THIS ENTIRE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS,
- c HAVE HAD A REASONABLE PERIOD OF TIME WITHIN WHICH TO REVIEW AND CONSIDER THIS AGREEMENT,
- d. HAVE CONSULTED WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT, AND
- e ARE FULLY COMPETENT TO EXECUTE THIS AGREEMENT AND RELEASE OF CLAIMS AND DOES SO VOLUNTARILY AND WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT, OR INTIMIDATION OF ANY KIND OR TYPE

FOR HOWARD HAMMER

Howard Hammer

Date

SHIRLEY HAMMER

Shirley Hammer

Date

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Florence Medlin, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Howard Hammer, do hereby release, acquit and forever discharge Florence Medlin, her agents, assigns, heirs, and any and all other persons, firms or corporations acting at her direction or for her benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Florence Medlin or against her agents, assigns, heirs, and any other person, firm or corporation acting at her direction or for her benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
_____, South Carolina, this _ day of _____, 2008

_____(L S)
Howard Hammer

SIGNED, SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA

)

RECEIPT AND RELEASE

COUNTY OF RICHLAND

)

)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Alan Medlin, do hereby release, acquit and forever discharge Howard Hammer, his agents, assigns, heirs, and any and all other persons, firms or corporations acting at his direction or for his benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents, assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
_____, South Carolina, this _ day of _____, 2008

_____(L S)
Alan Medlin

SIGNED, SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA)

RECEIPT AND RELEASE

COUNTY OF RICHLAND)

FOR AND IN CONSIDERATION of the sum One Dollar by or on behalf of Howard Hammer, the receipt and sufficiency of which is hereby acknowledged, I, the undersigned, Florence Medlin, do hereby release, acquit and forever discharge Howard Hammer, his agents, assigns, heirs, and any and all other persons, firms or corporations acting at his direction or for his benefit, of and from any and all causes of action, claims, demands, costs and all claims of any nature and kind whatsoever, which I may have or may be entitled to have under the laws of the State of South Carolina or any other jurisdiction against the said Howard Hammer or against his agents, assigns, heirs, and any other person, firm or corporation acting at his direction or for his benefit on account of or resulting from any conduct, acts, omissions, or failure to act or any other occurrence, facts or circumstances occurring from the beginning of time through and including the date of this Release

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____
_____, South Carolina, this _ day of _____, 2008

_____(L S)
Florence Medlin

SIGNED, SEALED & DELIVERED
In The Presence Of

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT
FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Case No. 2010-000000

Howard Hammer,

Plaintiff,

vs

SUMMONS

Shirley Hammer

a/k/a Shirley Hightower

a/k/a Shirley Grace Hightower

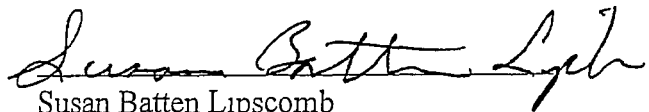
Defendant

2010 AUG 25 PM 4 01

RICHLAND COUNTY
FILED

TO THE DEFENDANT ABOVE-NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscriber at the address shown below within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of Court within a reasonable period of time after service.



Susan Batten Lipscomb

Attorney for the Plaintiff

Lipscomb Law Firm, P A

1634 Main Street, Suite 200

Columbia, South Carolina 29201

Telephone (803)233-6654



Howard Hammer, *Pro Se*

Columbia, South Carolina

August 25, 2010

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT
FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Case No. 14-3-3

Howard Hammer,

Plaintiff,

vs

Shirley Hammer
a/k/a Shirley Hightower
a/k/a Shirley Grace Hightower

Defendant

SUMMONS AND COMPLAINT

2010 AUG 25 PM 4:01
FILED
RICHLAND COUNTY

Plaintiff complaining of Defendant without waiving and reserving all rights in connection with the matters contained herein and with any matters on appeal in connection with the matters contained herein and/or his right to have this matter litigated in a Circuit Court in accord with his previous filing alleges

- 1 That Plaintiff is a resident and citizen of the State of South Carolina, County of Richland
- 2 That Defendant is a resident and citizen of the State of South Carolina
- 3 That the matters giving rise to this action arose and occurred in Richland County, South Carolina
- 4 That Defendant has judicially contended that, (a) the matters contained herein are subject to the jurisdiction of the Richland County Family Court and, (b) that the Richland County Family Court has subject matter jurisdiction of said matters set forth herein below

- 5 That in May 2008, Plaintiff and Defendant, as husband and wife, entered into a contract concerning certain property rights and other matters which contract provided among other things that the said contract was "a binding contract and is enforceable as such under law"
- 6 That upon information and belief, the terms of the said contract were a product of and made by Defendant's domestic attorneys in concert with Defendant and reduced to writing by Defendant's domestic attorneys and thereafter presented to Plaintiff
- 7 That this action involves *inter alia* a request for Declaratory Judgment by this Court that the referenced contract entered into by the parties is invalid as against public policy, and/or that the contract contains provisions obnoxious to, contrary to, and against the principles of this State and that it is repugnant to justice and morality, and further is in contravention of the public policy of this State as found in either the Constitution or the Statutes or judicial decisions by the State and is therefore void and/or in the alternative subject to an action for damages for Plaintiff on account of Defendant's breach of her promises in connection with the aforesaid contract and subject to various other causes of actions as hereinafter set forth

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

- 8 That the allegations of the foregoing Paragraphs are alleged herein as if set forth verbatim
- 9 That beginning in July 2007 through February 2008, Defendant made numerous spurious criminal complaints and caused criminal warrants to be issued against Plaintiff, thereby jeopardizing Plaintiff's law license That the Defendant was aided in the making of the aforesaid spurious criminal complaints by and through the assistance and actions of unknown individuals and/or agents including, upon information and belief, her domestic attorneys who, upon information and belief, acted at her request and/or at their direction with knowledge of and/or acquiescence to her aforesaid actions
- 5/11
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- 10 That Plaintiff without waiving and reserving all rights hereinabove set forth in the preamble hereto seeks declaratory judgment and relief in connection with the contract referenced herein which contract involves certain property rights and other matters between the parties including, but not limited to, property located at 320 St James Street in Columbia, South Carolina and Plaintiff's retirement IRA account
- 11 That as an integral part of the aforesaid agreement Plaintiff was required to consent to an "Order of Protection" for a third person not a party to the contract between Plaintiff and Defendant, which "Order of Protection" had no basis in fact for issuance and gave rise to potential criminal penalties against the Plaintiff without reasonable basis or just cause and a further integral part of the contract was Defendant's agreement to withdraw her spurious criminal complaints the falsity of which had recently been confirmed. Additionally, Plaintiff was required to execute releases in favor of third parties and in favor of unknown agents of Defendant on account of potential claims and causes of actions Plaintiff may have had against said third parties and unknown agents
- 12 That Plaintiff was required to agree to all of the terms hereinabove set forth including payment of substantial sums of money as a prerequisite to Defendant's agreement to withdraw the false criminal charges and that in fact Plaintiff was required to agree to a hearing in the Family Court ratifying the contract simultaneously with Plaintiff's execution of documents agreeing to withdraw criminal charges against the Defendant
- 13 That moreover, Plaintiff was required to agree not to contest a divorce complaint filed in December 2007 notwithstanding that Plaintiff is informed and believes the divorce complaint was invalid under law on account of and by reason of having been filed during a period when the action between the parties was on appeal and all matters including the ability to file a divorce complaint was stayed, and further, on information and belief, on account of the fact that the said divorce complaint was not only filed during the period of the time of the stay, but moreover was invalid on the additional grounds that the filing did not comply with the requirements of law

- 14 That Plaintiff is informed and believes that pursuant to South Carolina law and the express terms of the May 2008 contract this Court has jurisdiction to declare the rights, status, and other relations between Plaintiff and Defendant and to declare the validity of the May 2008 contract
- 15 That Plaintiff is informed and believes that on account of the foregoing he is entitled to a declaratory Judgment Order declaring that the May 2008 contract is against public policy and/or that the May 2008 contract contains provisions obnoxious to, contrary to, against principals of this State, and repugnant to justice and morality, and is further in contravention of the public policy of this State as found in either the Constitution or the Statutes or judicial decisions and that the May 2008 contract is therefore void *ab initio*, and, that all transfers, including but not limited to, the transfer by Plaintiff to Defendant of any and all of his interest in 320 St James Street, Columbia, South Carolina was and is accordingly void *ab initio* and all other terms, provisions, and requirements of the May 2008 contract are invalid, void and unenforceable

FOR A SECOND CAUSE OF ACTION

(Breach of Contract)

- 16 That the allegations of the foregoing paragraphs are realleged herein as if set forth verbatim In the event the Court determines the contract is valid Plaintiff in the alternative, in accord with the provisions of the contract that the same is "a binding contract and enforceable as such under law", pleads as follows
- 17 That Plaintiff has performed all acts required under the above referenced Contract except those acts that Plaintiff has been unable to perform because of impossibility
- 18 That notwithstanding Plaintiff's performance which included payments to Defendant of the sum of over one million dollars cash, the payment of a mortgage on a home located at 320 St James Street, Columbia, South Carolina, jointly owned by the parties in a sum greater than two hundred thousand (\$200,000) dollars, and thereafter the deeding of Plaintiff's interest in said home to Defendant, and on the

further performance of other obligations required of Plaintiff and by Plaintiff, Defendant has failed and refused to perform any of the essential material conditions and requirements of the May 2008 Contract on account of which Plaintiff has been cause to and has suffered a considerable financial loss including but not limited to the loss of monies paid to Defendant, loss of interest on said monies paid to Defendant, loss of any appreciation in value of any properties deeded to Defendant including but not limited to the 320 St James Street, Columbia, South Carolina property referred to hereinabove, loss of use of properties, loss of properties rightfully belonging to Plaintiff which Defendant has refused and continues to refuse to convey to Plaintiff (personal and real properties) and diminution of values of properties real and personal which Defendant has failed to convey to Defendant as required under the terms of said May 2008 Contract

FOR A THIRD CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Intent)

- 1
- 19 The allegations of the foregoing Paragraphs are realleged herein as if set forth verbatim
 - 20 That upon information and belief Defendant made fraudulent and false representations relating to preexisting acts and that Defendant intended to deceive Plaintiff and, that further, Plaintiff had a right to rely upon the representations made by Defendant
 - 21 That upon information and belief the falsity of the representations was known or should have been known to Defendant
 - 22 That upon information and belief the misrepresentations were of material facts
 - 23 That upon information and belief the misrepresentations were made in reckless disregard for their truth or falsity
 - 24 That upon information and belief the Defendant intended that Plaintiff rely on the misrepresentations and that he act in reliance on them, that Plaintiff was ignorant of

the falsity of the misrepresentation and relied upon the truth of the representations, that the Plaintiff had a right to rely on the truth of said representations and that Plaintiff suffered consequential damages and proximate injury as a result of the said misrepresentations of Defendant

25 That Defendant breached the May 2008 Contract, that she had a fraudulent intent relating to the breach, and that the breach was accompanied by a fraudulent act

26 That as direct and proximate consequence of the above, Plaintiff has been damaged as herein set forth

FOR A FOURTH CAUSE OF ACTION
(Against Public Policy)

27 That the allegations of the foregoing Paragraphs are realleged herein as if set forth verbatim

28 That the referenced contract contained provisions obnoxious to, contrary to, against the principles of the common law and statutory enactments and/or constitutional provisions of this state and repugnant to justice and morality and further in contravention to the public policy of the state as found in either the constitution or the statutes or judicial decisions, and, that the contract is therefore void *ab initio*, including but not limited to the provisions relating to the transfer of the 320 St James Street, Columbia, South Carolina property to Defendant hereinabove referred to

29 That as a direct and proximate consequence thereof, Plaintiff has been damaged as herein set forth

WHEREFORE, Plaintiff prays for judgment against Defendant for the following relief

A) For a declaratory judgment declaring that the May, 2008 contract between the parties is void *ab initio* as against public policy,

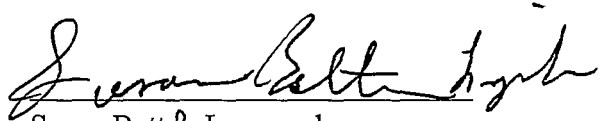
B) For Judgment for actual damages in favor of Plaintiff against Defendant in such amount as may be fair, just and proper on the aforesaid causes of action,

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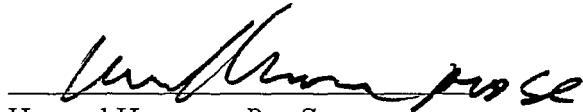
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- C) For an Order requiring Defendant to return to Plaintiff properties, both real and personal, including but not limited to his interest in the 320 St James Street, Columbia, South Carolina and all other properties rightfully belonging to Plaintiff,
- D) For Judgment for punitive damages in favor of Plaintiff against Defendant on the aforesaid appropriate causes of action in such amount as the Court shall deem just and proper,
- E) For an order for attorneys' fees and costs as appropriate in favor of Plaintiff against Defendant, and,
- F) For such other and further relief as may be just and fair

Respectfully Submitted,



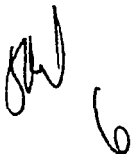
Susan Batton Lipscomb
Attorney for the Plaintiff
Lipscomb Law Firm, P A
1634 Main Street, Ste 200
Columbia, South Carolina 29201
Telephone (803) 233-6654
Fax (803) 233-6663
Email lipscomblaw@gmail.com



Howard Hammer, *Pro Se*

Columbia, South Carolina

August 25, 2010



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
SHIRLEY HAMMER,)
Plaintiff,)
vs)
HOWARD HAMMER,)
Defendant)

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT

ORDER
(Regarding child support being paid
through the Clerk of Court)

DOCKET NO 2005-DR-40-7871

Plaintiff Attorney Timothy E Madden
J Mark Taylor
Defendant Attorney Howard Hammer,
pro se
Guardian Ad Litem Richard G Whiting

Hearing Date October 27, 2009
Judge John M Rucker
Court Reporter ~~Kelly A Flanders~~

This Order addresses Defendant's Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay dated September 22, 2009. Specifically, Defendant moves to reconsider, amend, alter, and/or modify the Order dated September 9, 2009 ("the Order") based on several challenges raised in his written motion and presented at oral argument at the hearing before the Court on October 27, 2009. Defendant's primary challenge to the Order is his allegation that it was improvidently issued *ex parte*, without a hearing, thereby depriving him of due process.

As detailed in other Orders issued in this civil action, this Court has personal jurisdiction and is the appropriate venue for this civil action.

Defendant filed a motion, pursuant to the South Carolina Rules of Civil Procedure, which challenges an Order issued by the undersigned. The motion was timely filed and is properly before this Court. Therefore, this Court has subject matter jurisdiction.

Child support obligations may be discharged by payment through the Clerk of Court, together with a five percent (5%) handling fee imposed by the Clerk, or by direct payment from the payor to the payee. The Family Court has the discretion to determine whether payment should be made directly or through the Clerk of Court. See S C Code §§ 63-3-370 and 63-3-530(21)

On June 24, 2009, the parties appeared before the undersigned and presented an agreement regarding the amount of child support to be paid and the manner in which it was to be paid. This agreement was incorporated into and made the Order (Ending Action) issued August 19, 2009 (see Page 7, Item e and Page 11, Item e). The parties' Agreement also contained a provision providing that if Defendant's child support payment to Plaintiff was more than five days late, he would be required to make future payments through the Clerk of Court.

Subsequent to the issuance of the August 19, 2009 Order (Ending Action), Plaintiff submitted an affidavit to the Court (dated August 28, 2009) which maintained Defendant failed to pay child support within five days as required by the parties' Agreement and the Order (Ending Action). Upon receipt of this affidavit, the Court issued the Order dated September 9, 2009 requiring all future child support payments to be made through the Clerk of Court. Such process is appropriate and clearly permitted by the terms of the August 19, 2009 Order (Ending Action) and applicable law.

Defendant does not claim he timely paid child support (or that he paid child support at all). His contention is he was entitled to a hearing prior to the Court entering an Order requiring future payments to be made through the Clerk of Court. The provisions of the August 19, 2009 Order (Ending Action) do not afford him this opportunity. The Family Court routinely approves agreements to allow parties to make direct payment of child support,

and to provide a mechanism by which future payments will be made through the Clerk of Court if a payment is late or missed Under such circumstances, just as this one, if a payor contends he or she timely made the payment which triggered the obligation to pay through the Court, he or she can seek relief by way of a motion to vacate the order issued as a result of the recipient spouse's affidavit This system and opportunity does not violate due process

NOW, THEREFORE, IT IS ORDERED as follows

Defendant's Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay dated September 22, 2009, regarding the September 9, 2009, Order which requires him to pay child support through the Clerk of Court is hereby denied

AND IT IS SO ORDERED

S/

John M. Rucker
Judge of the Family Court

Newberry, South Carolina
January 27, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
SHIRLEY HAMMER,)
)
Plaintiff,)
)
vs)
)
HOWARD HAMMER,)
)
Defendant)
_____)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

ORDER
(Regarding Defendant's Motion to Reconsider,
Amend, Alter, Modify, and/or for
New Trial and Stay)

DOCKET NO 2005-DR-40-7871

Plaintiff Attorney Timothy E Madden
J Mark Taylor
Defendant Attorney James T McLaren
C Dixon Lee, III
Guardian Ad Litem Richard G Whiting

Hearing Date October 27, 2009

Judge John M Rucker

Court Reporter ~~Kelly A Flanders~~

To the extent not addressed by another Order issued by this Court,¹ this Order addresses Defendant's Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay dated September 4, 2009 (the "Motion") In the Motion, Defendant moves to reconsider, amend, alter, and/or modify the following Orders, each dated August 19, 2009

- 1 Order for Transfer of Individual Retirement Account,
- 2 Order Sealing Record,
- 3 Order Approving Settlement Agreement, and
- 4 Order (Ending Action)

Based on the pleadings, orders, evidence, motions, and applicable law, this Court

¹ By separate orders the undersigned addressed so much of Defendant's motion as relates to the Order for Transfer of Individual Retirement Account Defendant's *pro se* motion and Defendant's motion regarding the payment of child support through the Clerk of Court's office

makes the following findings of fact and issues this Order

As detailed in other Orders issued by the undersigned, this Court has personal jurisdiction and is the appropriate venue for this civil action. Defendant timely filed the Motion which is the subject of this Order. Therefore, this Court has subject matter jurisdiction.

In the Motion and at oral argument held October 27, 2009, Defendant details the grounds for the Motion. These grounds may be summarized as falling into one or more of the following categories:

1 Defendant did not approve the language of the Orders before this Court signed them,

2 The Orders do not include all findings and terms which should be included,

3 The Orders contain terms which were not terms of the parties' agreements,

4 The Orders approved an agreement which contains a mutual mistake,

5 Defendant withdrew his consent to one of the agreements approved by one of the Orders, and/or

6 The Court lacked jurisdiction to issue the Orders.

Some of the grounds for the Motion are also contained in the *pro se* motion Defendant filed. This Court denied Defendant's *pro se* motion by separate Order. It is not necessary to repeat all of the findings and conclusions from that Order hereinbelow. For purposes of this Order, this Court takes judicial notice of the findings and conclusions in the Order issued denying Defendant's *pro se* motion.

On June 23, 2009, the parties signed and entered a Settlement Agreement resolving certain issues. This document was presented to this Court for approval and incorporation into

an Order of this Court at a hearing convened on June 23, 2009

On June 24, 2009, the parties signed a document titled "Terms of Settlement" which details the basic terms agreed upon by them to resolve certain other matters. The parties appeared with counsel and presented their agreement (confirmed and documented by the terms sheet) for approval and incorporation into an Order of this Court at a hearing convened on June 24, 2009.

At each hearing (June 23, 2009 and June 24, 2009), counsel for both parties identified the agreements of the parties, the parties themselves independently identified and acknowledged the agreements, and the Court took testimony from both parties. When an agreement is presented to the Family Court for approval, the Court is required to (i) identify the agreement, (ii) determine if the agreement was entered into freely and voluntarily, (iii) determine if the agreement is fair and equitable from procedural and substantive perspectives, and (iv) determine if the agreement is in the best interests of the minor children. Forsythe v Forsythe, 290 S C 253, 349 S E 2d 405 (Ct App 1986). The transcript from each hearing makes clear the Court received evidence each day as to each agreement and concluded, on the record (i) the parties reached an agreement, (ii) each agreement was entered into freely and voluntarily, (iii) each agreement is fair and equitable, and (iv) each agreement is in the best interest of the parties' minor children. At each hearing, the Court directed counsel to prepare an Order.

After June 24, 2009, counsel for the parties had communications about proposed orders. In late July, 2009, or early August, 2009, Plaintiff's counsel provided the Court with at least one proposed order. After further communication between the Court and counsel for both parties, and additional communication between counsel for the parties, the Court received

proposed orders and executed them on August 19, 2009. Defendant's counsel represented to the Court that in the day or two before the Court executed the proposed orders on August 19, 2009, Defendant's counsel brought it to the attention of Plaintiff's counsel that there were purported errors in the orders that needed to be corrected. When the proposed orders were received by the Court that position was not made known to the Court.

The Orders issued by the undersigned on August 19, 2009, which approve the agreements,² correctly and accurately reflect the procedural history, the authority of the Court to act, the findings which support the conclusions, and the terms of the parties' agreements.

Defendant alleges alternative drafts of the proposed orders were circulated, and the versions of the Orders signed were not approved by Defendant or his counsel. There is no requirement that counsel approve any order issued by this Court before it is signed, and there was no specific requirement or understanding from the parties' agreement which required such approval here. This Court determines the form and content of orders, not the parties. Here, the Court received proposed orders and signed them. The signed Orders do not contain mistakes of fact or law, and they are accurate. Even if counsel for the parties did not agree on all of the content of the Orders, such circumstances are not controlling or a basis to alter or amend the Orders issued.

At the hearing on the motions which are the subject of this Order, Defendant argued about the interpretation of one of the terms of the June 23, 2009, agreement regarding visitation. This argument was presented in support of Defendant's contention of the existence

² There are separate Orders for each agreement. One Order is for the June 23, 2009 hearing and the agreement presented that day. The other Order is for the June 24, 2009 hearing and the agreement presented that day. The Order which seals the file is an extension of and arises out of the June 24, 2009 agreement and Order approving the agreement from that day.

of a mutual mistake. The Court heard extensive argument from both sides, and heard and considered the position of the Guardian *ad Litem*. Upon review of the procedure and agreement itself, there is no basis to alter, amend, or change the June 23, 2009, Order. The parties entered an agreement with the benefit of counsel, and the terms of the agreement are clear. It is not the province of this Court to examine every possible problem which may arise from the language of an agreement. If the parties experience difficulty in interpreting their agreement, there is a forum to resolve any dispute in that regard. Therefore there is no absence of a meeting of the minds or “mutual mistake” as alleged by Defendant, and even if one existed, under the facts presented here such circumstances do not require or allow for the alteration or amendment of the Orders issued by this Court.

One of Defendant’s challenges to the Order (Ending Action) is whether or not the findings presented as Item 1 on page 6 and Item 1 on page 10 of the Order are terms of the parties’ Settlement Agreement. These provisions read as follows, “The May 12, 2008 Order approving the parties’ partial settlement agreement is reaffirmed except as specifically modified by the Order issued from the June 23, 2009 hearing (approving the custody and visitation settlement) or as modified by the terms of this Order.” (Order (Ending Action) dated August 19, 2009, pages 6 and 10). Defendant maintains that reaffirmation of the Settlement Agreement in the May 12, 2008 Order was not a part of the settlement presented to the Court for approval at the June 24, 2009 hearing.

The Court disagrees with Defendant’s contention. At the hearing on June 24, 2009, the parties presented a sheet titled “Terms of Settlement” (a copy of which is appended to the Order (Ending Action) dated August 19, 2009). This terms sheet summarized the agreement of the parties with respect to the resolution of the issues which had not been resolved by the

Settlement Agreement presented to the Court on June 23, 2009 (for which a separate Order had been issued by this Court) These terms were explained to the Court, as evidenced by the transcript from the hearing, and further explained and identified as part of the parties' agreement by testimony presented by each party These terms related to the partial settlement agreement previously entered by the parties in May of 2008, which was adopted and approved by the Order of Judge Dorothy Mobley Jones dated May 12, 2008

The matters in controversy before the Court at the hearing on June 24, 2009, arose out of, among other things, complaints by both parties regarding failure to comply with certain provisions of the May 12, 2008 Order When the parties presented their Settlement Agreement to the Court, they also presented, as an essential term of their settlement, that all challenges to the May 12, 2008 Order then pending were to be withdrawn, with prejudice, and without a right of appeal (Terms of Settlement paragraph 6, as attached to Order (Ending Action))

The arguments of Defendant that he withdrew his consent to the June 23, 2009 agreement, or that this Court was divested of jurisdiction to enter the Order regarding this agreement are addressed by a separate Order It is not necessary, therefore, to repeat herein the findings and conclusions of this Court denying that aspect of the Motion

Therefore, the agreement the parties presented to the Court for approval at the hearing on June 24, 2009 reaffirmed the May 12, 2008 Order approving the partial Settlement Agreement, except as specifically modified by the terms presented to the Court The August 19, 2009 Order (Ending Action) appropriately emphasized that this was the case, properly drew these conclusions, and further detailed the parties' Settlement Agreement in this regard There was no other manner in which the parties could have proceeded other than to withdraw all challenges to the prior Order and to reaffirm it

Before entering this Order, this Court carefully considered all of the arguments raised by Defendant in his written motions, and in the arguments presented on these motions. To the extent the findings above or contained in other Orders issued in this matter do not specifically address an argument or ground raised by Defendant, this Court finds such grounds or arguments do not form a basis to alter, amend or otherwise modify the Orders issued on August 19, 2009.

NOW, THEREFORE, IT IS ORDERED as follows

Defendant's Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay dated September 4, 2009 is hereby denied.

AND IT IS SO ORDERED

S/

John M. Rucker
Judge of the Family Court

Newberry, South Carolina
January 27, 2010

White
NOTE 18/10/08

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
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SHIRLEY HAMMER)
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Plaintiff,)
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vs)
)
HOWARD HAMMER,)
)
Defendant)
_____)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

ORDER
(Correcting scrivener's error - IRA Order)

DOCKET NO 2005-DR-40-7871

Plaintiff Attorney Timothy E Madden
J Mark Taylor
Defendant Attorney James T McLaren
C Dixon Lee, III
Guardian Ad Litem Richard G Whiting

Hearing Date October 27, 2009

Judge John M Rucker

Court Reporter ~~Kelly A Flanders~~

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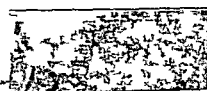
This Order addresses Defendant's Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay dated September 4 2009 Specifically, Defendant moves to reconsider, amend alter, and/or modify the August 19, 2009 Order For Transfer of Individual Retirement Account ("the Order") due to a scrivener's error

Based on the evidentiary record, orders previously issued, and Defendant's motion, and without opposition from Plaintiff, this Court makes the following findings of fact and conclusions of law and issues the following Order

As detailed in other Orders issued by the undersigned, this Court has personal jurisdiction and is the appropriate venue for this civil action Defendant timely filed an appropriate motion to correct the scrivener's error regarding the Order For Transfer of Individual Retirement Account This Court, therefore, has subject matter jurisdiction

This Court finds the aforementioned Order contains a scrivener's error This Order is

Exh 1



This Court finds the aforementioned Order contains a scrivener's error. This Order is issued to correct that scrivener's error.

The error appears in the last sentence of the first paragraph of page two of the Order, which sentence currently reads "[t]his transfer shall take place within ten (10) days after the entry of this order."

The sentence quoted above should be revised to read: This transfer shall take place simultaneously with the building/LLC transfer detailed in paragraphs 2(a) and 2(b) on page ten of the Order (Ending Action) dated August 19, 2009.

NOW, THEREFORE, IT IS ORDERED as follows

The Order For Transfer of Individual Retirement Account dated August 19, 2009, is modified to correct the scrivener's error detailed hereinabove. The last sentence of the first paragraph on page two of that Order is deleted, and the following language is substituted in place of the deleted language: This transfer shall take place simultaneously with the building/LLC transfer detailed in paragraphs 2(a) and 2(b) on page ten of the Order (Ending Action) dated August 19, 2009.

AND IT IS SO ORDERED

S/
John M. Rucker
Judge of the Family Court

Newberry, South Carolina
January 27, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
SHIRLEY HAMMER,)
Plaintiff,)
vs)
HOWARD HAMMER,)
Defendant)

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT

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ORDER
(Regarding Defendant's *Pro Se* Motion
dated August 19, 2009)

DOCKET NO 2005-DR-40-7871

Plaintiff Attorney	Timothy E Madden	Hearing Date	October 27, 2009
	J Mark Taylor	Judge	John M Rucker
Defendant Attorney	Howard Hammer,		
	pro se	Court Reporter	~~Kelly A Flanders~~
Guardian Ad Litem	Richard G Whiting		

This Order addresses Defendant's *Pro Se*¹ Motion to Withdraw, Rescind, and Repudiate his Consent to the Settlement Agreement executed by the parties on June 23, 2009. Based on the pleadings, orders, evidence at the October 27, 2009, hearing, and applicable law, this Court makes the following findings of fact and conclusions of law and issues this Order.

As detailed in other Orders issued in this civil action, this Court maintains personal and subject matter jurisdiction and is the appropriate venue for this civil action and resolution of issues related to the June 23, 2009 agreement. By his motion, Defendant attempts to withdraw

¹ Defendant filed this motion *pro se* despite his representation by counsel in this civil action. In the interest of a full disposition of this matter, this Court is addressing Defendant's motion, although in the strictest sense hybrid representation (acting as one's own attorney while represented by counsel) is not allowed and disfavored. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002). Mr. McLaren's representation is limited to post trial motions directed to the Orders resulting from the June 23 and June 24, 2009 hearings, which motions were filed by Mr. McLaren. Defendant filed his motion to withdraw, Rescind, and Repudiate separate and apart from Mr. McLaren's representation. During the hearing on October 27, 2009, Mr. McLaren made this distinction clear to the Court and he argued the post trial motion while Mr. Hammer argued his motion to Withdraw, Rescind, and Repudiate separately without objection.

his consent to a settlement agreement previously presented to this Court for approval, adoption, and incorporation into an Order of this Court. As such, this Court has subject matter jurisdiction to hear and determine Defendant's motion and to issue this Order.

On June 23, 2009, the parties signed and entered a Settlement Agreement resolving certain issues. This document was presented to this Court at a hearing convened on June 23, 2009. At the hearing, counsel for both parties identified the agreement, the parties themselves independently identified and acknowledged the agreement, and the Court took testimony from both parties. When an agreement is presented to the Family Court for approval, the Court is required to (i) identify the agreement, (ii) determine if the agreement was entered into freely and voluntarily, (iii) determine if the agreement is fair and equitable from procedural and substantive perspectives, and (iv) determine if the agreement is in the best interests of the minor children. Forsythe v. Forsythe, 290 S.C. 253, 349 S.E.2d 405 (Ct. App. 1986). At the hearing on June 23, 2009, the Court received such evidence and concluded, on the record (as evidenced by the transcript) that (i) the parties had reached an agreement, (ii) it was entered into freely and voluntarily, (iii) it is fair and equitable, and (iv) it is in the best interest of the parties' minor children. At that hearing, the Court directed counsel to prepare the Order.

Initially, there is a question as to whether Defendant's motion to withdraw his consent is timely. Defendant's motion, dated August 19, 2009, was filed with this Court on August 19, 2009. It is not clear whether he delivered this document to the Court prior to the entry of the Order which approved the agreement he now challenges, simultaneously therewith, or shortly after the Court entered its Order Approving Settlement Agreement on August 19, 2009 ("the Order"). If Defendant filed his motion after the Court entered the Order, then his attempted "withdrawal" of his consent is clearly null, void and of no effect. If Defendant filed

his motion purporting to withdraw his consent prior to the entry of the Order, as discussed in detail below, Defendant cannot, subsequent to the issuance of the Order, withdraw his consent to an agreement that was presented to the Family Court for approval and incorporated into a court order ²

A period of time passed between the hearing to approve the Agreement and the ultimate issuance of the Order. During this time, neither party had the opportunity to “withdraw” his or her consent to the Agreement which had then been made a part of the Court’s record. See Small v. Small, 286 S.C. 87, 332 S.E.2d 769 (1985), Liles v. Liles, 272 S.C. 511, 252 S.E.2d 886 (1979), Jenkins v. Jenkins, No. 86-MO-013 (S.C. Ct. App. 1986) ³

Defendant argues there was no meeting of the minds and therefore there is no agreement to approve. Based on the evidence presented at the June 23, 2009, hearing, there was a meeting of the minds and an agreement exists. This evidence includes, but is not necessarily limited to, the testimony of each party and the document signed by both parties. When a party testifies in open court that he understands and agrees to the terms of an agreement, he cannot later claim he did not understand the terms of the agreement and use such alleged misunderstanding as a basis for repudiating his consent to the agreement. See Shelton v. Bressant, 312 S.C. 183, 439 S.E.2d 833 (1993). Defendant’s allegations of what

² See Moseley v. Mosier, 279 S.C. 348, 306 S.E.2d 624 (1983) which provides agreements once approved by the Family Court become part of the order of the court. As such, the agreement is no longer simply a contract but rather an order of the court enforceable (and to the extent allowed by law) modifiable by the Family Court.

³ Defendant purports to rely on the opportunity of a party to withdraw consent to a consent order and he points to Farnsworth v. Davis Heating & Air Conditioning, Inc. 367 S.C. 634, 627 S.E.2d 724 (2006) for support. The circumstances addressed in that case are different than those presented here. Here the parties signed the Settlement Agreement and presented it to the Family Court for review and approval. When such an agreement is presented to the Court for approval the Court ratifies the Agreement as part of the record as opposed to reviewing a consent order entered by a party. Therefore Defendant’s reliance on the law that allows withdrawal of consent to a consent order prior to it being signed by the judge is misplaced.

he understood, gave up, thought or believed in entering the agreement do not, in this instance, form a basis for the absence of a meeting of the minds or for finding mutual mistake ⁴

Defendant argues the absence of full disclosure of substantive matters. This allegation is not detailed or credibly supported. Even if it were, in circumstances such as this one (several years of litigation with each party represented by independent counsel) there was no trust or fiduciary relationship between the parties, and therefore no affirmative duty to disclose. See, e.g., Bearden vs. Bearden, 272 S.C. 378, 252 S.E. 2d 128 (1979).

Defendant argues fraud as a basis to rescind his agreement. He does not credibly detail any factual support for this argument and/or for the required nine elements of fraud. Kahn Const. Co. v. South Carolina Nat'l Bank of Charleston, 275 S.C. 381, 271 S.E. 2d 414 (1980).

Defendant argues the agreement is contrary to public policy, and makes other general allegations of material misrepresentations by Plaintiff. Settlement agreements in Family Court are not contrary to public policy, in fact, they are encouraged. Upon careful review of the agreement approved by this Court, there are no provisions which cause this Court public policy concerns. Defendant presented no credible or independent support for his allegations regarding material misrepresentations.

Defendant also challenges the jurisdictional authority of this Court to enter the Order Approving Settlement Agreement dated August 19, 2009. Defendant brings his argument as one of subject matter jurisdiction and relies on a number of arguments in support of this position. This Court had jurisdiction on June 23, 2009, to hear and determine the matters

⁴ Mutual mistake is the only type of mistake which can be used as a basis to seek rescission of an agreement. Unilateral mistake is not by itself sufficient. See Truck South, Inc. v. Patel, 339 S.C. 40, 528 S.E. 2d 424 (2000).

presented, including whether or not to approve the parties' settlement agreement Findings with respect to the jurisdiction of this Court are clearly detailed in the August 19, 2009, Order Approving Settlement Agreement issued by this Court Nothing occurred between June 23, 2009, at the hearing to approve the Agreement, and August 19, 2009, the date the Order Approving the Agreement was signed and filed, to divest this Court of jurisdiction In fact, South Carolina's law is clear that once a matter is presented to a judge for determination, and the judge hears the evidence and makes a decision in open court, that judge retains jurisdiction for the issuance of a written order following the hearing This Court, therefore, maintained and maintains subject matter jurisdiction ⁵

To the extent Defendant raised other claims in his *pro se* motion or in arguing this motion, such claims do not form a basis for this Court to grant relief to Defendant that will allow him to escape the agreement he entered, which was appropriately approved by this Court Generally, a party may not seek rescission of an agreement unless there is fraud, or mutual mistake See, e g , Motley vs Williams, 374 S C 107, 647 S E 2d 244 (Ct App 2007) Here there is no fraud or mutual mistake

⁵ As part of his argument regarding subject matter jurisdiction, Defendant alleges the filing by him of an action in the Circuit Court prior to the entry of the August 19, 2009, Order, in which action he challenges the validity of the May 12, 2008 Order issued by this Court, in some way divested this Court of subject matter jurisdiction No such divestment of jurisdiction occurred nor is there any authority that would have transferred jurisdiction over the parties or the subject matter to the circuit court in the way suggested To the extent Defendant elected to file a lawsuit in the Circuit Court ostensibly challenging an agreement he previously entered, and which was previously approved by this Court, and for which he withdrew all challenges (See the August 19, 2009, Order (Ending Action)), such circumstances do not constitute a basis to deny this Court jurisdiction for the matters addressed on June 23, 2009 and reflected in the Order issued from that hearing

NOW, THEREFORE, IT IS ORDERED Defendant's *Pro Se* Motion to Withdraw, Rescind, and Repudiate his Consent to the Settlement Agreement executed by the parties on June 23, 2009, is hereby denied

AND IT IS SO ORDERED

S/
John M Rucker
Judge of the Family Court

Newberry, South Carolina
January 27, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
SHIRLEY HAMMER,)
)
Plaintiff,)
)
vs)
)
HOWARD HAMMER,)
)
Defendant)
_____)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

ORDER
(Regarding Plaintiff's Motion
for Attorney's Fees and Costs)

DOCKET NO 2005-DR-40-7871

Plaintiff Attorney Timothy E Madden
J Mark Taylor
Defendant Attorney James T McLaren
C Dixon Lee, III
Guardian Ad Litem Richard G Whiting

Hearing Date October 27, 2009

Judge John M Rucker

Court Reporter ~~Kelly A Flanders~~

This Order addresses Plaintiff's Motion for Attorney's Fees and Costs filed October 16, 2009. The undersigned conducted a hearing on this motion on October 27, 2009.

Based on the pleadings, orders previously issued, transcripts, affidavits, arguments of counsel, and applicable law, this Court makes the following findings of fact and conclusions of law and issues this Order.

Plaintiff moved for an award of attorney's fees and costs incident to and related to the various motions filed by Defendant which challenge various Orders issued by this Court. Specifically, these Orders are as follows:

- Order for Transfer of Individual Retirement Account filed August 19, 2009
- Order Sealing Record filed August 19, 2009
- Order Approving Settlement Agreement filed August 19, 2009
- Order (Ending Action) filed August 19, 2009



- Order (Ending Action) filed August 19, 2009
- Order filed September 9, 2009 (requiring child support to be paid through Clerk of Court)

Defendant's motions are as follows

- Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay the August 19, 2009 Orders
- Motion to Reconsider, Amend, Alter, Modify, and/or For New Trial and Stay the September 9, 2009 Order
- Motion to Withdraw, Rescind, and Repudiate Agreement Executed on June 23, 2009

The undersigned has issued or is in the process of issuing separate orders which address the above-described motions. This Court takes judicial notice of the issuance of those Orders, along with the findings in them, in addressing Plaintiff's Motion for Attorney's Fees and Costs and in issuing this Order. All of the findings and conclusions in the Orders issued disposing of the above-referenced motions were considered as part of the determination of Plaintiff's request for attorney's fees and costs.

At the filing of this action and the hearing of this motion, Plaintiff and Defendant were citizens and residents of Richland County, South Carolina, and had so resided for more than one year. The issues pending before this Court are within the jurisdictional authority of this Court by statute and common law. This Court, therefore, has personal and subject matter jurisdiction and is the appropriate venue for this civil action.

Given the Court's authority and discretion, whether or not to award fees and the amount the Court should award depends on a consideration of a variety of factors. First, the Court must consider four factors in deciding whether or not to award attorney's fees. These factors include (1) the party's ability to pay his or her own attorney's fees (2) the beneficial

results obtained by the attorney, (3) the parties' respective financial conditions, and (4) the effect of the attorney's fee on each party's standard of living E D M v T A M 307 S C 471, 415 S E 2d 812 (1992) If the Court decides an attorney s fees award is appropriate after considering these factors, the family court must assess the following factors in determining the amount of attorney's fees to award (1) the nature, extent, and difficulty of the services rendered, (2) the time necessarily devoted to the case, (3) counsel's professional standing, (4) the contingency of compensation, (5) the beneficial results obtained, and (6) the customary legal fees for similar services Deidum v Deidum, 362 S C 47, 65, 606 S E 2d 489, 499 (Ct App 2004)

Each party has the ability to pay his or her attorney's fees and costs The undersigned is aware of and takes judicial notice of the financial declarations filed by the parties in this civil action, and the Orders previously issued in which the assets and debts of the parties are described and apportioned Some of the matters in controversy involve significant assets of the parties, the ownership of which affords each party the ability to pay his or her fees An award of attorney's fees incident to the pending motions will not have a significant impact on either party's standard of living

Plaintiff obtained beneficial results in the matters pending before this Court Defendant obtained beneficial results on one matter, which related to a scrivener s error in an Order prepared by his counsel (but withdrawn prior to execution by the Court of the documents submitted by Plaintiff's Counsel), and which was not contested at the hearing Otherwise, Plaintiff prevailed on all pending motions, and Defendant was unsuccessful in his efforts to change the orders previously entered by this Court

Primarily due to the beneficial results obtained by Plaintiff, it is appropriate to award attorney's fees and costs to Plaintiff from Defendant

The issues presented by Defendant required detailed and painstaking preparation on Plaintiff's counsels' behalf. In most Family Court cases, when parties reach a settlement agreement and that agreement is approved by the Court, the order approving the agreement, and the documents effectuating the agreement, are a routine practice and do not involve motions filed pursuant to Rule 59, SCRCF. In the experience of this Court, it is unusual for a litigant to sign an agreement, participate in a hearing for its approval, and then challenge both the approval of it and the Order issued regarding this approval. As a result, the issues required extraordinary and time-consuming research, preparation and attention to detail. Each of Defendant's motions were voluminous. The hearing itself lasted several hours and included hours of arguments by counsel for both parties.

According to affidavits filed with the Court, Plaintiff's counsel Mr. Madden spent about 13 hours in connection with the motions. Associate attorneys in his firm assisted in research and preparation, and expended around 15 hours. Paralegals provided about 8 hours of assistance. In addition to Mr. Madden's time and that of his staff, Mr. Taylor committed time to the issues before the Court. Defendant's attorney submitted an affidavit describing the time spent by him and his staff since the June, 2009, hearings. The amount of time spent by Defendant's counsel exceeded that spent by Plaintiff's counsel. The amount of time spent by Plaintiff's counsel was reasonable and necessary.

Plaintiff's counsel enjoy a good reputation among the bench and bar, particularly in complex Family Court litigation. The fees charged by Plaintiff's counsel are consistent with

those of similar credentials and experience in similar matters in Richland County, South Carolina

A unique but noteworthy element to the issue of attorney's fees and costs is Defendant's role as his own advocate and (at times) his ability to act *pro se*. Although Defendant was not licensed to practice law at the time of the hearing on the motions, he obviously has a long career as a practicing attorney and has knowledge which enables him to pursue motions and legal process which Plaintiff is required to defend at significant expense.

NOW, THEREFORE, IT IS ORDERED Defendant shall contribute the sum of Nine Thousand and 00/100 (\$9,000 00) Dollars to Plaintiff's attorneys' fees and costs incident to the motions filed by Defendant and for which a hearing was held on October 27, 2009. Defendant shall pay this sum directly to Plaintiff no later than sixty (60) days following the date of the issuance of this Order.

AND IT IS SO ORDERED

S/
John M. Rucker
Judge of the Family Court

Newberry, South Carolina

Oct 27, 2010

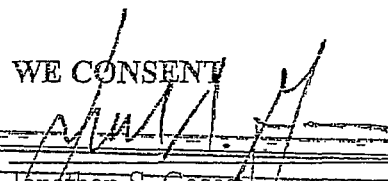
STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	
The State of South Carolina)	
-vs-)	DISMISSAL
HOWARD HAMMER,)	WARRANT NO K373839 & K373840
Defendant)	CHARGES HARASSMENT 1ST DEGREE
)	(TWO COUNTS)

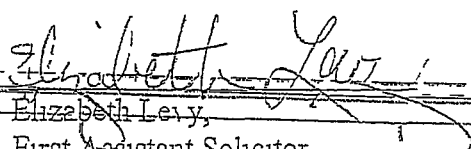
On April 3, 2009 Howard Hammer was arrested and charged with two counts of Harassment in the First Degree as a result of allegations made by Shirley Hammer and Florence Medlin regarding conduct that arose from February 7 through February 13, 2009 Both charges are being handled by the Fifth Circuit Solicitor's Office These charges as well as all other charges brought against Howard Hammer handled in the Fifth Circuit are hereby dismissed with prejudice

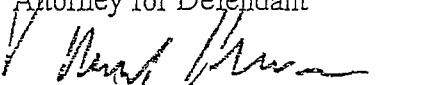
It is the position of Shirley Hammer (see Family Court legal documents filed on June 24, 2009 and August 19, 2009) and Florence Medlin, that the charges against Howard Hammer be nolle prossed Ms Medlin has expressed a desire to have no further contact with Mr Hammer, and both Mr Hammer and Ms Medlin do not wish to be in the presence of one another Mr Hammer has agreed and is not to go onto Phelps Street in the Wheeler Hill subdivision where Ms Medlin resides Phelps Street is a dead end street and Mr Hammer agrees that he has no need to walk or drive a vehicle onto Phelps Street.

The Fifth Circuit Solicitor's Office considers these charges and the charges associated with the May 12, 2008 dismissal document between the parties hereby forever Dismissed with Prejudice

WE CONSENT


Jonathan S. Gasser
Attorney for Defendant


Elizabeth Levy,
First Assistant Solicitor


Howard Hammer Defendant

This 19th day of October, 2009
Columbia South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SHIRLEY HAMMER,)

Plaintiff,)

vs)

HOWARD HAMMER,)

Defendant)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

DOCKET NO 05-DR-40 2871

ORDER SEALING RECORDJEANETTE W. MCBRIDE
CLERK
& FAMILY COURT

2009 AUG 19 PM 4:46

RICHLAND COURT
FILED

The purpose of this Order is to seal the record herein from public inspection on joint Motion of Plaintiff and Defendant pursuant to Rule 41 1, SCRPC

In determining the request by Plaintiff and Defendant to seal the record in this matter, the Court has considered the relevant provisions of Rule 41 1, SCRPC. The Court finds that there is no public or professional significance to this litigation between Plaintiff and Defendant. Neither party is a public official and the press has not expressed any interest in these parties or their private matters. It is clear that these parties correctly perceive that the parties and/or their children could be substantially harmed by public disclosure of the private information herein sealed.

The Court further finds that there is no practical alternative other than sealing the entire record in this matter to protect the legitimate private interests of these parties to safeguard themselves and their children. The Court further finds that the public interest will be served in that the sealing of these private matters promotes the voluntary resolution of family-related issues, particularly where the parties have an expectation of confidentiality and privacy, as these parties do.

Based upon the foregoing, the Court finds and concludes that the joint request of Plaintiff and Defendant to seal the record in this matter is proper and complies with the provisions and intent of Rule 41 1 SCRPC.

NOW, THEREFORE, it is accordingly

ORDERED as follows

1 The Clerk of the Family Court for Richland County, South Carolina, is hereby directed and ordered to immediately and permanently seal the record herein, by affixing the original of this Order to the outside of the file herein, and is hereby directed and ordered to protect this file against inspection by the public at large or any person(s) or entity(ies).

2 The record herein sealed shall not be inspected opened, or otherwise discussed without an appropriate Order allowing any such activity, which shall only be issued after due and proper notice to both Plaintiff and Defendant and after due hearing

3 Notwithstanding the foregoing, both Plaintiff and Defendant, their respective counsel, the Guardian ad Litem and the Court personnel shall be allowed access to this file and the use thereof in this litigation between Plaintiff and Defendant, provided, however, the documentation therein may be used only in connection with this litigation

4 Any person(s) or entity(ies) violating the terms and conditions of this Order Sealing Record shall be subject to a contempt citation by this Court and appropriate punishment

AND IT IS SO ORDERED


JOHN M. RUCKER, PRESIDING JUDGE, FAMILY
COURT FOR THE FIFTH JUDICIAL CIRCUIT

Columbia South Carolina
Dated August 19, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No 2009-CP-40-05911

Howard Hammer,

Plaintiff,

vs

Shirley Hammer, a/k/a
Shirley Grace Hightower,

Defendant

PLAINTIFF'S 59(e) MOTION

2010 APR 28 PM 5 00
JEANETTE W McBRIDE
CLERK OF COURT

FILED
RICHLAND COUNTY

To **Desa Ballard, Esquire, Attorney for Defendant,**

Please take notice that, specifically reserving and not waiving any and all rights in connection with other litigation which is or may be filed in connection with the subject of this suit, plaintiff, *pro se*, and by and through his undersigned attorneys will move 10 days hereafter, at such time and place as the Court may set, for an order altering and/or amending the Order Dismissing Complaint, dated April 14, 2010, and received by the undersigned April 20, 2010 in the above matter on the following grounds

- 1 That the Court erred in finding that the "*certain contract*" entered between the parties in May 2008 was incorporated into a Family Court order, said error being that there was no admissible evidence of record on which the Court of could base such finding
- 2 That the Court erred in finding that the "*certain contract*" entered between the parties in May 2008 was incorporated into a Family Court order, said error being that the Court not only had no admissible evidence of record, but did not and could not have taken judicial notice of any alleged Family Court order by reason of the fact that all orders and other matters regarding any litigation between the parties and the Family Court was subject to a order of sealing
- 3 That the Court erred in finding that the "*certain contract*" entered between the parties in May 2008 was incorporated into a Family Court order, said error being that the Court's such finding was based upon defendant's memorandum, which was not in the form of admissible evidence, but merely argument of defendant
- 4 That the Court erred in finding that the "*certain contract*" entered between the parties in May 2008 was incorporated into a Family Court order, said error being that the

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defendant's memorandum and the information contained therein, even assuming *arguendo* that the same could be relied upon for factual findings under proper circumstances, such proper circumstances did not exist in this case by reason of the fact that the memorandum contained documents and matters of information ordered sealed by the Family Court and further ordered not to be used in other litigation by the Family Court

- 5 That the Court erred in its making all findings of fact in the Order for the reasons set forth hereinabove paragraphs 1 through 4, which are realleged and reiterated as though fully set forth verbatim herein
- 6 That the Court erred in failing to remove or strike the allegations of the defendant's answer regarding any matter or documents pertaining to any family court litigation between the parties *su sponte* and/or by reason of motion to do so, said error being that such matter or documents were prohibited from use or consideration by previous Family Court order sealing the record in that litigation
- 7 That the Court, to the extent its order can be construed as having taken judicial notice of any of the documents or matters from the Family Court litigation, erred in so doing in the absence of proper procedural action by the defendant and/or motion for the Court to take judicial notice
- 8 That the Court erred in basing its conclusions of law on inadmissible findings of fact, said error being that the record contained no admissible evidence for the findings upon which the conclusions of law were based
- 9 That the Court erred in its conclusion of law in dismissing the 2nd, 3rd, 4th, 5th, and 6th causes of action of the plaintiff's complaint, said error being there was no finding of facts by the Court supporting the conclusion that the 2nd, 3rd, 4th, 5th, and 6th causes of action related to "other matters intrinsically related to the domestic relations litigation"
- 10 That the Court erred in its conclusion of law in dismissing the 2nd, 3rd, 4th, 5th, and 6th causes of action of the plaintiff's complaint, said error being there was no evidence of record, from which the Court could make a finding that the 2nd, 3rd, 4th, 5th, and 6th causes of action related to other matters intrinsically related to the domestic relations litigation and, accordingly, the conclusion of law was thereby not based upon any finding of facts required for such conclusion
- 11 That the Court erred in its conclusion of law in dismissing the 2nd, 3rd, 4th, 5th, and 6th causes of action of the plaintiff's complaint, said error being there was no evidence of

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record, from which the Court could make a finding that the 2nd, 3rd, 4th, 5th, and 6th causes of action related to other matters intrinsically related to the domestic relations litigation and, accordingly, the conclusion of law was not based upon any finding of facts from admissible evidence required to support such conclusion of law

- 12 That the Court erred in finding that the case of *Moseley vs Mosier*, 278 S C 348, 306 S E 2d 624(1983) was applicable to deny jurisdiction to this Court, said error being that under the terms of *Moseley vs Mosier* where the parties expressed an intent that the Family Court not have exclusive jurisdiction, as was the case in this matter that jurisdiction may be had in other courts of competent jurisdiction
- 13 That the Court erred in finding that the case of *Moseley vs Mosier*, 279 S C 348, 306 S E 2d, 624 (1983) was applicable to deny jurisdiction to this Court, said error being that under the terms of *Moseley vs Mosier*, assuming *arguendo* that the memorandum was admissible, and further assuming *arguendo* that the order of the Family Court in such memorandum was also admissible, and further assuming *arguendo* that the order was complete, plaintiff asserts, specifically reserving and without waiving his objection to consideration of said order on account of the reasons here and above set forth, that the said contract submitted by defendant was clear in expressing the intent of the parties that the Family Court would not have exclusive jurisdiction by reason, among others, of the following facts
 - a That the contract submitted by defendant at paragraph 15 provided that said contract was a binding one and, as such, enforceable at law
 - b That the contract submitted by defendant provided at paragraph 14 that once the settlement was approved it would be enforceable through the contempt powers of the Family Court, and, under rules of contract construction all provisions of the contract are to be given effect and an interpretation that precludes a party to the contract from enforcing it at law as set forth in paragraph 15 would render that paragraph meaningless, which was clearly not the intent of the parties
 - c That said contract inured to the benefit of the assigns and successes of the parties of whom the Family Court would not necessarily have jurisdiction
 - d That the said contract included releases from and to two (2) parties other than the litigants over whom the Family Court would have no jurisdiction
 - e That the said contract included releases from two (2) parties other than the litigants, which releases if presented as a defense in any litigation, would give rise to the right of a jury trial, which could not be afforded in Family Court

- 14 That the Court erred in its conclusion of law that each claim had already been determined by the Family Court, said error being there was no evidence or basis for such finding for the reasons set forth hereinabove
- 15 That the Court erred in its conclusion of law that the Family Court had exclusive subject matter jurisdiction, said error being there was no admissible evidence or basis in the record, upon which any such conclusion of law could be based
- 16 That the Court erred in concluding that S C Code § 63-3-50(A)(2)(25) and (30) provided that the Family Court had exclusive jurisdiction in the instant matter, said error being that S C Code § 63-3-50(A)(2)(25 and (30) do not so provide
- 17 That the Court erred in concluding that S C Code §20-3-690 and 63-3-50(A)(2)(25) and (30) provided that the Family Court had exclusive jurisdiction in the instant matter, said error being that S C Code § 63-3-50 does not relate to jurisdiction
- 18 That the Court erred in concluding that S C Code §20-3-690 provides that the Family Court has exclusive jurisdiction over all actions relating to contracts, the error being that S C Code §20-3-690 only gives the Family Court jurisdiction over contracts relating to property which is involved in a proceeding under Title 20, but does not contain any wording specifying exclusive jurisdiction, and, therefore the Court's conclusion is contrary to accepted principles of statutory construction over matters to carry out and enforce the provisions of its title only on matters that do not require the intervention of a jury S C Code § 63-3-530(A)(2)(25) and (30)
- 19 That the Court erred in concluding that the law in South Carolina provides that the Family Court has exclusive jurisdiction over all actions relating to contracts, the error being that the law in South Carolina only gives the Family Court jurisdiction over matters to carry out and enforce the provisions of its title only on matters that do not require the intervention of a jury S C Code § 63-3-530(A)(2)(25) and (30)
- 20 That the Court erred in concluding that the law in South Carolina provided exclusive jurisdiction in the instant matter, said error being that the matters and issues, and particularly causes of action 2 through 7, permit and require the intervention of a jury, which right for jury trial had been specifically requested by plaintiff
- 21 That the Court erred in concluding that the law in South Carolina provided exclusive jurisdiction in the instant matter, said error being that the matters and issues, particularly causes of action 2 through 7 of the Amended Complaint, permit and require the intervention of a jury, and the Court's conclusion in effect denies

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plaintiff's right for jury trial, thereby transgressing his federal and state constitutional right to jury trial

- 22 That the Court erred in concluding that the law in South Carolina provided exclusive jurisdiction in the instant matter, said error being that the matters and issues, particularly causes of action 2 through 7 of the Amended Complaint, permit and require the intervention of a jury, and the Court's conclusion in effect denies plaintiff's right for jury trial, thereby transgressing his federal and state constitutional rights to due process
- 23 That the Court erred in concluding that the law in South Carolina provided exclusive jurisdiction in the instant matter, said error being that the matters and issues, particularly causes of action 2 through 7 of the Amended Complaint, permit and require the intervention of a jury, and the Court's interpretation of the statutes in effect causes the statutes to be unconstitutional
- 24 That the Court erred in concluding that a "public policy attack" on that certain contract dated May 2008 had already been heard, determined, and rejected, said error being that the Family Court has never specifically heard, determined, or rejected any public policy attack on that May 2008 contract in issue in this case
- 25 That the Court erred in determining it lacked subject matter jurisdiction, said error being that based upon the case of Hopkins vs Harrell, (2002) 574 S E 2d, 747 (Ct App 2002) where the court held that subject matter jurisdiction is the "power to hear and determine cases of the general class, to which the proceedings in question belong" and that this Court has the power to hear and determine the proceedings in this matter pursuant to S C Code §§15-53-20, 15-53-30, and most notably section 15-53-90 of the Declaratory Judgments Act
- 26 That the Court erred in determining it did not have subject matter jurisdiction for this declaratory judgment action, said error being that S C Code § 15-53-90 of the Declaratory Judgment Acts ensure and preserve the right for jury trials in all Declaratory Judgment Acts and, therefore, only this Court would have subject matter jurisdiction because the plaintiff only has the right to a jury trial in this Court
- 27 That this Court erred in determining it did not have subject matter jurisdiction for this Declaratory Judgment Action, said error being that S C Code § 15-53-90 of the Declaratory Judgment Acts ensure and preserve the right for jury trials in all Declaratory Judgment Acts and, therefore, since the right of jury trial is not granted in Family Court, and can only be granted in this Court, does this Court have the power to hear and determine this matter

- 28 That this Court erred at failing to properly apply S C Code §§ 15-53-20, 15-53-30, and 15-53-90 by failing to invoke its power to declare the rights and particularly the status of the alleged contract, and further, in failing to exercise the power to hear and determine the question of the validity of the contract
- 29 That the Court erred in finding it did not have subject matter jurisdiction, said error being that such finding denied the plaintiff the right to jury trial, which is preserved under the code sections hereinabove cited, and guaranteed under the South Carolina and Federal constitutions and that such error, not only was violative of the laws and statutes in such cases made and provided, but moreover also violative of plaintiff's constitutional right to jury trial guaranteed under the state and federal constitutions
- 30 That the Court erred in failing to *su sponte* remove from the defendant's answer and defendant's memorandum all references to any Family Court proceedings, said error being that any such references were contrary to orders of the Family Court and the law of the case, and that this Court further erred in failing to grant plaintiff's motion to strike or remove any such references and further erred to the extent that any judicial notice was taken of any matters ordered to be sealed by the Family Court, as being contrary to law
- 31 That the Court erred in considering or applying S C Code § 63-3-530(A)(2)(25) and (30) for the reason that the statute violates Const Art 3, §17

Respectfully submitted,


Susan Batten Lipscomb
1634 Main Street, Suite 200
Columbia, SC 29201
(803) 233-6654
Attorney for Plaintiff

ORIGINAL FILED

MAY 12 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT
CCCP, GS 2
FAMILY COURT

SHIRLEY HAMMER,
Plaintiff,

vs

HOWARD HAMMER,
Defendant

C A NO 2005-DR-40-2871

MEMORANDUM ORDER

On May 12, 2008, this Court issued an Order and Divorce Decree in this action. To assist the parties in providing verification of certain terms contained in the aforementioned Order and Divorce Decree, this Court issues this Memorandum Order. Among other provisions, the Order and Divorce Decree dated May 12, 2008, contains the following provisions:

A This Order is an "Order of Protection" entered pursuant to S C Code §20-4-10 (1976, as amended) et seq.

B Pursuant to S C Code § 20-4-60(e) (1976, as amended), the parties consent to this order.

C Each party is hereby enjoined and restrained from abusing, threatening to abuse, or molesting the other party, and each party is enjoined and restrained from communicating or attempting to communicate with the other party in any way which would violate the provisions of S C Code 20-4-10 (1976, as amended) et seq.

D Each party is enjoined and restrained from entering the residence of the other party, including but not limited to Defendant being enjoined and restrained from entering the residence now in the sole possession of Shirley, 320 St. James Street, Columbia, South Carolina.

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**E VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE
PUNISHABLE BY THIRTY DAYS IN JAIL OR A FINE OF TWO HUNDRED DOLLARS OR
MAY CONSTITUTE CONTEMPT OF COURT PUNISHABLE BY UP TO ONE YEAR IN JAIL
AND/OR A FINE NOT TO EXCEED FIFTEEN HUNDRED DOLLARS**

**F This Order shall remain in full force and effect unless
terminated by a subsequently issued order of the Family Court**

The issuance of this Memorandum Order in no way alters or amends the terms and
provisions or validity of the Order and Divorce Decree dated May 12, 2008

AND IT IS SO ORDERED


Dorothy Mobley Jones
Judge of the Family Court
Fifth Judicial Circuit

Columbia, South Carolina

Dated May 12, 2008


2

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Circuit Court

L. Casey Manning, Circuit Court Judge

Case No 2009-CP-40-05911

Howard Hammer

Appellant

v

Shirley Hammer

Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on September 7, 2011, the Record on Appeal was served on counsel of record by causing a copy to be hand delivered addressed as set forth below

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


Susan Batten Lipscomb

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Circuit Court

L Casey Manning, Circuit Court Judge

Case No 2009-CP-40-05911

Howard Hammer

Appellant

v

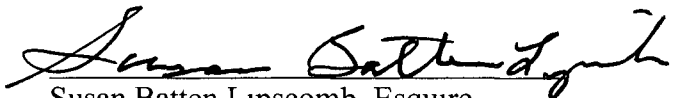
Shirley Hammer

Respondent

Certificate of Counsel

Counsel for Appellant certifies that the Record of Appeal contains all material
proposed to be included by any of the parties and not any other material

RECEIVED
SEP 07 2011
SC Court of Appeals


Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, P A
1634 Main Street, Suite 200
Columbia, SC 29201
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court
L Casey Manning, Circuit Court Judge
Case No 2009-CP-40-05911

Howard Hammer

Appellant

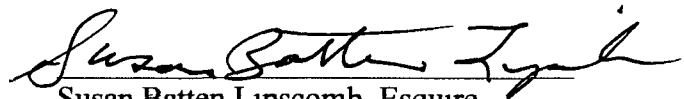
v

Shirley Hammer

Respondent

Certificate of Counsel

Counsel for Appellant certifies that the Record of Appeal contains all material
proposed to be included by any of the parties and not any other material



Susan Batten Lipscomb, Esquire
Lipscomb Law Firm, P A
1634 Main Street, Suite 200
Columbia, SC 29201
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court
L Casey Manning, Circuit Court Judge
Case No 2009-CP-40-05911

Howard Hammer

Appellant

v

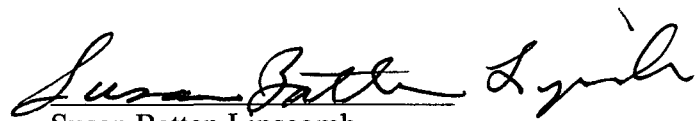
Shirley Hammer

Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on May 20, 2011, the Certificate of Counsel was served on counsel of record by causing a copy to be mailed, postage prepaid in the U S Mail addressed as set forth below

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


Susan Batten Lipscomb

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Circuit Court
L Casey Manning, Circuit Court Judge
Case No 2009-CP-40-05911

Howard Hammer

Appellant

v

Shirley Hammer

Respondent

PROOF OF SERVICE

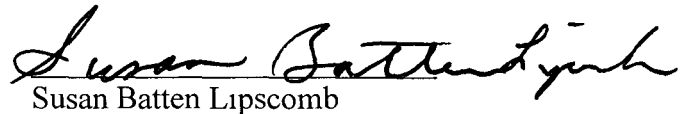
I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on
September 7, 2011, the Certificate of Counsel was served on counsel of record by causing
a copy to be hand delivered addressed as set forth below

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

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SEP 07 2011

SC Court of Appeals


Susan Batten Lipscomb

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY

Circuit Court

L. Casey Manning, Circuit Court Judge

Case No 2009-CP-40-05911

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JUN 14 2011

SC Court of Appeals

Howard Hammer

Appellant

v

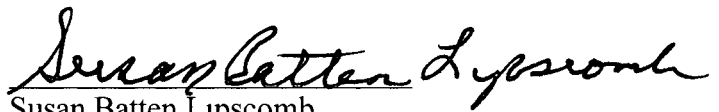
Shirley Hammer

Respondent

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on June 14, 2011, the revised Index and supplemental documents to Record on Appeal was served on counsel of record by causing a copy to be mailed, postage prepaid in the U S Mail addressed as set forth below

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


Susan Batten Lipscomb

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY¹

Circuit Court

L. Casey Manning, Circuit Court Judge

Case No 2009-CP-40-05911

Howard Hammer

Appellant

v

Shirley Hammer

Respondent

PROOF OF SERVICE

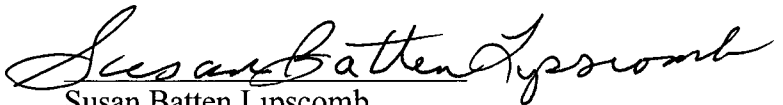
I, Susan Batten Lipscomb, attorney for Appellant, do hereby certify that on August 18, 2011, the Record on Appeal, including a revised Index and supplemental documents to Record on Appeal was served on counsel of record by causing a copy to be hand delivered to them addressed as set forth below

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

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AUG 18 2011

SC Court of Appeals


Susan Batten Lipscomb