

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2303665

William F Tomz

Frances W Tomz

FILED: CLERK OF COURT
GREENVILLE
PAUL E WICK
NUMBER

Capital Funding Llc

2013 OCT -1 P 4:31

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

10/1/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA)
2013 OCT - 1) P 4: 16 IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

William F. Tomz and Francis W. Tomz,)
Individually and as Class Representatives,)

CIVIL ACTION NO. 2008-CP-23-3665

Plaintiffs,)

ORDER

vs.)

Capital Investment Funding, LLC, and)
Arthur M. Field,)

Defendants.)

The above referenced matter came before me on September 17, 2013 based upon an Order and Rule to Show Cause which was issued by the Court on August 19, 2013.

The Order and Rule to Show Cause was based upon asserted violations of Orders of this Court by Arthur M. Field. The Order made reference to the Order dated August 24, 2009 ("Global Settlement Order") which appointed Jerry T. Saad as Receiver ("The Receiver") for Capital Investment Funding, LLC ("CIF"), and empowered him to take actions as Receiver, including the obtainment of records and information. The Court had also issued an Order dated June 29, 2010 ("Production Order") which elaborated on the Global Settlement Order by specifying the obligation to produce records, property and information; and had issued an Order dated October 10, 2011 entitled The Privilege Order ("Privilege Order") which clarified the Receiver's authority to waive the attorney/client privilege on behalf of certain entities.

It was noted in the Order and Rule to Show Cause that a Request for Production of Records was served on Arthur M. Field by the Receiver, by and through his counsel, Curtis

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EW

Stodghill, and counsel for the Class Action Plaintiffs, Stanley T. Case, on or about November 28, 2011.

Based upon an Affidavit of the Receiver, Jerry T. Saad, it was asserted to the Court that Arthur M. Field had failed to comply with the Request for Production of Records and the Orders of the Court. The Affidavit of the Receiver, Jerry T. Saad, was attached to the Order and Rule to Show Cause and is a part of the record.

The Order of the Court dated August 19, 2013 required Arthur M. Field to appear and show cause why he had not produced the records requested, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure and the aforementioned Global Settlement Order and the other Orders of the Court, and required him to show cause why he should not be held in contempt of the aforementioned Court Orders. An Order was further requested by the Receiver compelling production of the requested documents and materials, and requiring continued adherence to the previous Orders of the Court, and an Order was requested restraining Defendant Arthur M. Field from violating the spirit and rule of said Orders.

The matter came on for hearing in Greenville County, South Carolina, on September 17, 2013, and Defendant Arthur M. Field appeared with his attorney, Bradford N. Martin.

Based upon filings of Bradford M. Martin on behalf of Arthur M. Field, which included a Motion to Quash the Rule to Show Cause and a Motion for Continuance of the matter, the Court dealt with several preliminary matters at the commencement of the hearing.

The Motion for Continuance was filed on or about September 12, 2013 and sought a continuance of the hearing scheduled for September 17, 2013. An Affidavit was filed with the Court at the hearing which indicated that Arthur M. Field was served with the Order and Rule to

Show Cause on August 22, 2013. Also, the record in the case indicates that a prior Order and Rule to Show Cause was served upon Arthur M. Field and a Rule to Show Cause hearing, which was previously scheduled at approximately the time that Arthur M. Field pled guilty to criminal charges, was cancelled by the Court. The issue of Arthur M. Field's compliance with the Court's Orders for cooperation and production of documents has been an issue for an extended period of time and the parties were properly before the Court with counsel. Accordingly, based upon the record, the Motion for Continuance was denied by the Court at the hearing on September 17, 2013.

The Court received testimony at the hearing related to the Motion to Quash the Rule to Show Cause based upon the asserted lack of personal service. The Process Server, Michelle Murphy, testified in Court that she knew Mr. Field, having served him previously, and she observed him on August 22, 2013 at his residence at which time he would not accept the papers. Michelle Murphy advised him, "Mr. Field, you have been duly served" and put the papers inside his garage. She later affixed the papers to the door.

There is no evidence in the record which would give rise to an inference that Mr. Field was not properly served. He was present in Court on the day of the hearing and did not personally dispute the testimony of the Process Server. Accordingly, the Court determined at the hearing that the service of process on Arthur M. Field was effective and complete under South Carolina Law.

Additionally, there were arguments made in connection with the Motion to Quash relating to an alleged lack of subject matter jurisdiction. Based upon arguments of counsel at the hearing and the record in this matter, specifically including the clear terms of the Global

Settlement Order issued in this case, the Court determined that it has personal jurisdiction and subject matter jurisdiction of the issues pertaining to the Order and Rule to Show Cause under the specific terms of the Court's prior Orders. Additionally, under South Carolina Law, the Court has jurisdiction over the matter. The law in South Carolina is clear that a Court which creates a Receivership draws to itself jurisdiction over all controversies concerning the assets and liabilities of the Debtor in Receivership. See National Cash Register Company v. Burns, 217 SC 310, 60 S.E.2d 615. Also, it is clear under South Carolina Law that a Court of Equity, by taking jurisdiction over a matter and appointing a Receiver, draws to it the right to hear and determine all claims involving the Receiver and to completely adjudicate the Receivership. Based on the foregoing and the record, the Court denied the Motion to Quash the Rule to Show Cause made by Arthur M. Field at the hearing held on September 17, 2013 insofar as it related to all issues of jurisdiction.

A Motion for Recusal was also made at the hearing on the Rule to Show Cause by the attorney for Arthur M. Field. The Court carefully considered all arguments of counsel and determined, based upon the record in the case, that an Order of Recusal was not appropriate and the Court denied the Motion.

At the hearing, testimony was received from Jerry T. Saad, the Receiver, attorney Christopher Westrick, who represented the Receiver in actions in the State of New Jersey, and Arthur M. Field, who testified in response to the Order and Rule to Show Cause.

Based upon the record, the Court finds that Arthur M. Field has not produced all of the records of Capital Investment Funding, LLC in his possession to the Receiver. I find that Arthur M. Field has not produced certain paper records that he informed the Receiver were in his

possession and control. I also find that Arthur M. Field has not produced all of the records in his possession or control, despite the Receiver's repeated requests and the Receiver's formal demand, which was made in the form of a Request for Production of Records. These include, but are not limited to, records relating to a malpractice lawsuit of Capital Investment Funding, LLC against attorney F. Scott Pfeiffer and his law firm, and also include records relating to a loan outstanding from Trazom, LLC, which is an affiliate of Arthur M. Field. Additionally, records have not been produced which relate to over \$20,000,000 of delinquent and defaulted loans due from Lancaster Resources, Inc. and others, which are involved with loan transactions in the State of New Jersey.

The Court also finds that Arthur M. Field has taken actions which have delayed and obstructed the Receiver's ability to perform his directives as Receiver. I find that Defendant Field's actions are in conflict with and are contrary to the duties of Arthur M. Field under the Court's prior Orders, including the Global Settlement Order.

Based upon the testimony of Jerry T. Saad, the Receiver, and attorney Christopher Westrick, The Court makes the following additional Findings of Fact:

1. Arthur M. Field has misrepresented the terms of the Global Settlement Order in the following respects:
 - a. Arthur Field has misrepresented to other Courts that the Global Settlement Order disposed of all claims that were or could be brought by Capital Investment Funding, LLC against Arthur M. Field.
 - b. Arthur M. Field has misrepresented to other Courts that the Global Settlement Order specifically included any dispute regarding a certain piece of real property in Wyckoff, New Jersey.
 - c. Arthur M. Field has misrepresented to other Courts that this Court

retained jurisdiction over any and all claims Capital Investment Funding, LLC could have against Arthur M. Field at any time, and that any future claim by Capital Investment Funding, LLC against Arthur M. Field must be brought before this Court.

2. By misrepresenting the terms of the Global Settlement Order, Arthur M. Field has violated his duty to cooperate under the Global Settlement Order.
3. Arthur M. Field has asserted authority over Capital Investment Funding, LLC and attempted to make decisions on its behalf in the following respects:
 - a. Arthur M. Field wrote to Capital Investment Funding, LLC's New Jersey counsel purporting to exercise control over Capital Investment Funding, LLC, to discharge New Jersey counsel, and to discharge Jerry Saad as "acting manager".
 - b. Arthur M. Field has attempted to file legal claims that can only belong to Capital Investment Funding, LLC and/or its noteholders.
 - c. Arthur M. Field has specifically misrepresented to the New Jersey Court the scope of Jerry Saad's authority as Receiver under the Global Settlement Order.
4. Arthur M. Field's assertions of authority over Capital Investment Funding, LLC and efforts to make decisions on its behalf having directly interfered with the ability of Capital Investment Funding, LLC's Receiver to execute his responsibilities.
5. Arthur M. Field has taken other actions specifically designed to interfere with Jerry Saad's ability to perform his duties as Receiver, including participating in attempts to file frivolous legal claims against Mr. Saad and numerous attorneys retained by Capital Investment Funding, LLC, accusing these individuals of illegal and conspiratorial conduct associated with the execution of their professional responsibilities.
6. Arthur M. Field's interference with the Receiver's execution of his responsibilities has caused Capital Investment Funding, LLC to expend substantial sums of money unnecessarily.
7. Arthur M. Field made misrepresentations of fact to a New Jersey Court designed to disqualify Capital Investment Funding, LLC's New Jersey counsel and, therefore, frustrate the purposes of Capital Investment

Funding, LLC's Receiver, including:

- a. Misrepresenting that counsel for Capital Investment Funding, LLC also represented Arthur M. Field personally.
 - b. Misrepresenting that counsel for Capital Investment Funding, LLC performed services that he did not perform.
8. Arthur M. Field's misrepresentations concerning Capital Investment Funding, LLC's New Jersey counsel have caused Capital Investment Funding, LLC to expend substantial sums of money unnecessarily.

At the hearing on September 17, 2013, the Court received into evidence Plaintiff's Exhibit No. 1, which included documentation relating to a case entitled Capital Investment Funding, LLC, Plaintiff, vs. Calvary Asset Management, LLC, et al, Defendants. That case was filed in the Superior Court of New Jersey, Law Division: Bergen County, Docket No. L-3790-12.

The Court also received testimony of attorney Christopher Westrick who represented Capital Investment Funding, LLC, and the Findings of Fact referred to above, which deal with the New Jersey litigation are based, in part, upon the proceeding involving Calvary Asset Management, LLC, et al.

The Court finds that Arthur M. Field's testimony at the hearing generally misconstrued and misstated facts to benefit his position. The Court also finds that Arthur M. Field is not credible and that his testimony cannot be relied upon.

Additionally, the Court takes judicial notice of the criminal proceedings involving Arthur M. Field and his plea of guilty to the charges set forth in Indictment No. 2012-GS-47-08, which relate to Securities Fraud Crimes and State Crimes relating to Securities that Arthur M. Field committed through the offer or sale of Securities while a manager or member of Capital Investment Funding, LLC.

Based on the foregoing and the entire record in this matter, the Court found on September 17, 2013 that Arthur M. Field was in contempt of the prior Orders issued by the Court.

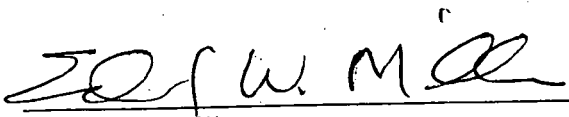
At the conclusion of the hearing, an oral Order was issued requiring Arthur M. Field to deliver all records in his possession and/or control which had been requested by the Receiver which include, but are not limited to, paper records, computer records, back-up tapes, video tapes, photographs, written documents, and other documents related to Capital Investment Funding, LLC and all related companies. The Order included all electronic media in his possession and/or control, and Arthur M. Field was ordered to deliver the material to the office of the Receiver, Jerry T. Saad, by 5:00 p.m. on Friday, September 20, 2013.

The Receiver requested leave to submit an Affidavit relating to the costs and attorneys' fees associated with the preparation of the Order and Rule to Show Cause, and the preparation for the Rule to Show Cause hearing and participation in the hearing. The Court will allow the Receiver to submit an Affidavit relating to the attorneys' fees and costs incurred by the Receiver in connection with the Order and Rule to Show Cause and Hearing for future consideration. Also, testimony was received at the hearing concerning attorney's fees incurred by the Receiver due to improper interference by Arthur Field in actions filed in New Jersey, which were handled by attorney Christopher Westrick. While the Court finds Christopher Westrick's testimony credible on the issue of fees unnecessarily incurred in New Jersey as a result of Arthur Field's actions, the Court believes the issue of the assessment of fees against Arthur Field involved with the New Jersey actions should be resolved by the Courts in New Jersey.

At the hearing, the Receiver requested the Court to leave the hearing open in order that appropriate Orders might be issued which will enforce the provisions of this Order and the prior

Orders of the Court. Accordingly, the Hearing and the record is left open in order that the Receiver may submit a report to the Court following his examination of the records produced by Arthur M. Field and the Court will make such further Orders as are deemed just and proper.

IT IS, SO, ORDERED on this 1 day of October, 2013.



Edward M. Miller
Judge, 13th Judicial Circuit of South Carolina