

BRADFORD NEAL MARTIN & ASSOCIATES, PA

ATTORNEYS AT LAW

201 West McBee Avenue, Suite 302
Post Office Box 10410 (29603)
Greenville, South Carolina 29601

bmartin@bnmlaw.com
Phone: (864) 552-9990
FAX: (864) 552-9992

March 6, 2014

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *William F. Tomz v. Capital Funding, et al*
C/A No.: 2008-CP-23-3665
Tracking No. 2013-002676

Dear Ms. Kitchings:

This firm represents the Appellant, Arthur Field, in the above matter. This letter is to provide the Court with an update of the status of the transcript of the hearing. Copies of the referenced correspondence have been provided to the Court via our letter of January 2, 2014.

The hearing that is the subject of this Appeal was held on September 17, 2013. Our client requested the transcript within 10 days and it was received in our office on October 10, 2013. On October 11, 2013, our office contacted the Court Reporter, Ms. Caroline Hiskell, via email informing her that the transcript appeared to stop abruptly and asking her to check the recording and her records for additional testimony. Ms. Hiskell responded that she had trouble with her computer system, that she would be sending the transcript later in the day, and noted only one correction necessary.

On Monday, October 14th, Ms. Hiskell delivered a hard copy of the transcript. We emailed Ms. Hiskell on October 14th and noted that the transcript that was emailed to us contained 163 pages, but the hard copy that was received contained 171 pages. We subsequently went through each and every page of the transcript, and on October 18, 2013 (within 7 days of receiving the transcript), we wrote Ms. Hiskell with a detail of the revisions that needed to be made and brought to her attention that a portion of the hearing did not appear in the transcript.

Ms. Hiskell wrote back on October 25th and stated that she was providing another copy of the transcript to us and noted that she "reviewed her notes" but does not say that she reviewed them against the tapes. Ms. Hiskell also stated that our receipt of this transcript would serve as the conclusion of her involvement in this case. In a careful review of the transcript, we discovered that the clarifications requested were not made.

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On November 12, 2013 (within 18 days of receiving Ms. Hiskell's response), we again wrote Ms. Hiskell requesting the complete and corrected transcript and copies of the tapes. We did not receive any response to either of those requests. We followed up again on December 5th when we did not hear back from Ms. Hiskell, and requested a copy of the tapes again.

On January 2, 2014, we wrote to Court Administration requesting their assistance in obtaining a corrected transcript and the tapes.

On February 21, 2014, our office contacted Court Administration to follow up on the status of our request for assistance. Ms. Desiree Allen informed us that Court Administration would not take any further action unless permission is granted by the presiding Judge.

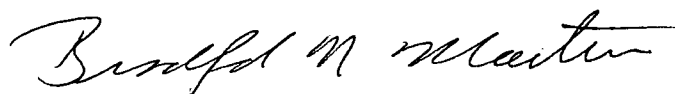
Pursuant to SCRAP 207 and Rule 607, we have taken all the necessary steps in obtaining the transcript and challenging its completeness and accuracy. On February 28th, Court Administration responded to our letter and stated that there is no provision for providing us with the tapes. We have responded to Ms. Allen's letter (copy attached), and will update you when we receive a response.

It is essential that we have access to the tapes for an independent review, especially in regard to the opening discourse in the case, which is not contained in the transcript. We would ask that an independent review of the tapes be allowed to verify the transcript.

There is currently a Motion for Extension of Time pending before your Court, requesting an extension to serve the Initial Brief until the issues regarding the transcript are resolved.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Respectfully,



Bradford N. Martin

/pm

Enclosures

cc: George Brandt, Esq.

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Ms. Desiree Allen
Manager, Court Reporting and Court Interpreters
South Carolina Supreme Court
Court Administration
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201-3739

Re: *William F. Tomz v. Capital Funding, et al*
C/A No.: 2008-CP-23-3665
SC Court of Appeals Tracking No. 2013-002676

Dear Ms. Allen:

This is in response to your letter of February 28, 2014 in regard to the above matter. We are representing Mr. Field in the appeal of a September 17, 2013 ruling of a Rule to Show Cause. We request your assistance in obtaining a complete, corrected transcript as well as copies of the tapes of the hearing in order to proceed with the appeal.

As you are aware, on October 11, 2013, we received a partial copy of the transcript of the hearing held on September 17, 2013. On Monday, October 14th Ms. Hiskell delivered a hard copy of the transcript. We emailed Ms. Hiskell on October 14th and noted that the transcript that was emailed to us contained 163 pages, but the hard copy that was received contained 171 pages. We subsequently went through each and every page of the transcript, and on October 18, 2013 (within 7 days of receiving the transcript), we wrote Ms. Hiskell with a detail of the revisions that needed to be made and brought to her attention that a portion of the hearing did not appear in the transcript.

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Ms. Desiree Allen
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An appeal was filed on December 9, 2013 of the Order of The Hon. Edward Miller and an accurate and complete copy of the transcript is needed for the appeal. We understand that Ms. Hiskell is busy with other matters and that her job is very demanding. SCACR Rule 607 – Court Reporter Transcripts and Tapes, states:

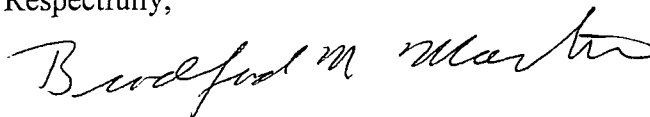
(i) Retention of Tapes. Except as provided below, a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial. In any proceeding which has been transcribed, the court reporter shall retain the primary and backup tapes which have been transcribed for a period of at least thirty (30) days after the original transcript is sent to the requesting party, to allow any party to challenge the accuracy of the transcription. If no challenge is received by the court reporter within the thirty (30) day period, the tapes may be reused or destroyed.

The Court of Appeals Rules do not require that we have the permission of the presiding Judge before having access to the tapes in order to confirm the accuracy of the transcript. Ms. Hiskell does not say that she has listened to the tapes of the hearing, only that she reviewed her “notes.” Because we received the transcript once with the beginning and ending portions missing and again with a portion of the opening discourse missing, a review of the tapes is necessary to verify that the transcript is complete.

The announcement of the case number and caption and the Court’s comments following the designation of the case are clearly absent from the transcript. Additionally, many of the corrections requested in our October 18th letter are substantive. These are corrections that were evident from the transcript we received. Given the multiple errors and missing portions of the transcript, there may be additional portions to which we object.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Respectfully,



Bradford N. Martin

/pm

cc: The Honorable Jenny Abbott Kitchings, South Carolina Court of Appeals
Ms. Caroline Hiskell

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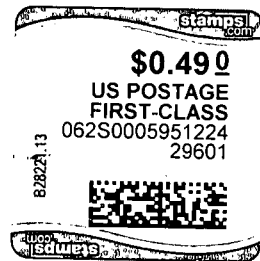
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