

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2008-CP-23-3665

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Capital Funding, LLC and Arthur M. Field, of whom Arthur M. Field is the Appellant . . .  
..... Appellant,

v.

William F. Tomz and Francis W. Tomz, individually and as class representatives . . . . .  
..... Respondents.

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**MEMORANDUM IN SUPPORT OF APPELLANT’S MOTION TO COMPEL  
COMPLETION AND CORRECTION OF THE TRIAL TRANSCRIPT AND  
PRODUCTION OF COPIES OF TAPES AND FOR AN ORDER SETTING  
FORTH A BRIEFING SCHEDULE AFTER THE TRIAL TRANSCRIPT IS  
PROPERLY PROVIDED**

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Appellant submits this Memorandum in Support of his Motion to Compel and would respectfully show the following:

**FACTUAL BACKGROUND**

This Appeal stems from a Rule to Show Cause hearing which took place on September 17, 2013. Following the hearing on September 17, 2013, Appellant requested the trial transcript within ten (10) days and it was received on October 10, 2013. On October 11, 2013, Appellant’s counsel’s office contacted the Court Reporter, informing

her that the transcript appeared to be incomplete.<sup>1</sup> The Court Reporter responded that she had trouble with her computer system, but that she would be sending the transcript later in the day, and noted only one correction necessary.<sup>2</sup>

On October 14, 2013, the Court Reporter delivered a hard copy of the transcript to Appellant's counsel. Counsel's office emailed the Court Reporter the same day and noted that the transcript that was emailed contained only 163 pages, but the hard copy that was received contained 171 pages.<sup>3</sup> On October 18, 2013, Appellant's counsel wrote the Court Reporter, stating that the trial transcript was not complete and detailing the necessary revisions, many of which were substantive.<sup>4</sup> On October 25, 2013, the Court Reporter wrote to Appellant's counsel, stating that she would provide a new copy of the trial transcript, but not make any further changes, and that she felt the matter was concluded.<sup>5</sup> After review of the newly sent transcript, Appellant's counsel found that the requested revisions had not been completed.

On November 12, 2013<sup>6</sup> and December 5, 2013,<sup>7</sup> Appellant's counsel again wrote the Court Reporter requesting a complete and corrected transcript and copies of the tapes of the hearing. However, the Court Reporter did not respond to either request.

This Appeal was filed on December 9, 2013. Appellant's counsel wrote to Court Administration on January 2, 2014, requesting assistance in obtaining the complete and corrected transcript and tapes.<sup>8</sup> On January 6, 2014, Appellant filed a Motion for Extension of Time to File Initial Brief and Designation of Matter due to other case

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<sup>1</sup> Email from Peggy McComb to Caroline Hiskell of October 11, 2013 (Exhibit A).

<sup>2</sup> Email from Caroline Hiskell to Peggy McComb of October 14, 2013 (Exhibit B).

<sup>3</sup> Email from Peggy McComb to Caroline Hiskell of October 14, 2013 (Exhibit C).

<sup>4</sup> Letter from Bradford N. Martin to Caroline Hiskell of October 18, 2013 (Exhibit D).

<sup>5</sup> Letter from Caroline Hiskell to Bradford N. Martin of October 25, 2013 (Exhibit E).

<sup>6</sup> Letter from Bradford N. Martin to Caroline Hiskell of November 12, 2013 (Exhibit F).

<sup>7</sup> Letter from Bradford N. Martin to Caroline Hiskell of December 5, 2013 (Exhibit G).

<sup>8</sup> Letter from Bradford N. Martin to Desiree Allen of January 2, 2014 (Exhibit H).

demands and for not having received a correct and complete version of the Transcript or tapes from the Court Reporter.<sup>9</sup>

On February 21, 2014, Appellant's counsel contacted Court Administration to follow up on the status of the request for assistance. Ms. Desiree Allen informed Appellant's counsel that Court Administration would not take any further action unless permission was granted by the presiding Judge. On February 28, 2014, Ms. Allen wrote to Appellant's counsel informing him of the procedure for challenging the accuracy of a transcript.<sup>10</sup> On March 6, 2014, Appellant's counsel wrote to Ms. Allen<sup>11</sup> and Clerk of Court, Ms. Jenny Abbott Kitchings,<sup>12</sup> regarding the transcript problems and requesting that the Court Reporter issue a complete and corrected transcript and copies of the tapes. As due process of law requires an accurate record below to be reviewed on appeal, Appellant respectfully moves this Court for such an Order compelling production.

### ARGUMENT

**A. Appellant has followed all proper procedures for a grant of a Motion to Compel.**

Rule 207, SCACR states, in pertinent part:

In appeals from the court of common pleas, . . . the transcript must be ordered within ten (10) days after the date of service of the notice of appeal. . . . Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

...

If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted

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<sup>9</sup> Motion for Extension of Time to File Initial Brief and Designation of Matter (Exhibit I).

<sup>10</sup> Letter from Desiree Allen to Bradford N. Martin of February 28, 2014 (Exhibit J)

<sup>11</sup> Letter from Bradford N. Martin to Desiree Allen of March 6, 2014 (Exhibit K).

<sup>12</sup> Letter from Bradford N. Martin to Jenny Abbott Kitchings of March 6, 2014 (Exhibit L).

time, appellant shall notify the Office of Court Administration, the clerk of the appellate court, and the court reporter in writing.

Additionally, Rule 607(g), SCACR provides:

“If the requesting party has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, the requesting party shall notify, in writing, the Office of Court Administration, the court reporter and, if the transcript has been requested for an appeal or other proceeding before the Supreme Court or the Court of Appeals, the Clerk of that Court.”

Finally, as to tape recordings, Rule 607(i), SCACR provides:

“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.”

Appellant has followed the proper procedures for obtaining a complete and correct transcript from the Court Reporter. The transcript was properly requested from the Court Reporter, and when problems were noticed, the Court Reporter was notified. The Court Reporter stated that she would make the necessary revisions to the transcript; she did not, and then ignored repeated requests. Appellant made these requests in the proper time. Appellant then appropriately contacted Court Administration and the Clerk of Court regarding the problems with the Transcript. Thus, as Appellant has properly complied with the procedures for challenging a transcript and for requesting tapes of the

proceeding, this Court now has the ability to order the Court Reporter to produce a complete and corrected transcript, as well as produce tapes of the hearing. See Rule 207(a)(6), SCACR; Rule 607(j), SCACR.

**B. Due Process requires that a complete and correct transcript be provided for Appellant's appeal and for this Court to appropriately review the case.**

A complete and accurate transcript is vital for meaningful appellate review. See Cole v. United States, 478 A.2d 277 (D.C. 1984) (citing United States v. Workcuff, 422 F.2d 700, 701-02 (1970)). It has been stated:

“Because effective appellate review would be substantially hampered if the trial transcript were materially in error, it stands to reason, therefore, that this substantive due process right would be meaningless unless it also embraced the right to a reasonably accurate transcript . . . .”

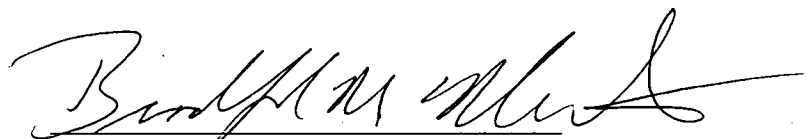
Curro v. Watson, 884 F. Supp. 708, 719 (E.D.N.Y. 1995). Because adequate and effective appellate review is impossible without a complete and accurate transcript, this is why South Carolina courts allow for affidavits of counsel when portions of notes are lost prior to transcription. Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct.App.2012). It is also why a reconstructed record must allow for meaningful appellate review. State v. Ladson, 373 S.C. 320, 321, 644 S.E.2d 271, 271 (Ct.App.2007).

Here, to allow for an incomplete and inaccurate transcript to be utilized for this Appeal would be to violate the due process rights of Appellant. This Court has the authority to compel the Court Reporter to make the appropriate corrections so as to make the trial transcript complete and correct.

CONCLUSION

Thus, Appellant requests this Court to require the Court Reporter to complete the transcript, make the requested typographical and substantive changes, and produce a true, audible, and exact copy of the recording. Once a corrected and complete transcript and copies of the tapes are received by the Appellant and this Court, Appellant requests this Court to issue an Order setting forth an appropriate briefing schedule. Finally, Appellant requests to withdraw his previously filed Motion for Extension of Time to File Initial Brief and Designation of Matter.

Respectfully submitted,



Bradford N. Martin, Esq. (SC Bar No. 3658)  
Laura W. H. Teer, Esq. (SC Bar No. 16698)  
Brook Bristow, Esq. (SC Bar No. 76038)  
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.  
Post Office Box 10410  
Greenville, South Carolina 29603  
864.552.9990  
864.552.9992 (facsimile)

March 28, 2014

## Peggy McComb

---

**From:** Peggy McComb  
**Sent:** Friday, October 11, 2013 11:03 AM  
**To:** 'chiskell@sccourts.org'  
**Cc:** Brad Martin (bmartin@bnmlaw.com); Laura Teer; k.taillon@hotmail.com  
**Subject:** Tomz v. CIF / CA No. 2008-CP-23-3365

**Tracking:**

**Recipient**

**Read**

'chiskell@sccourts.org'

Brad Martin (bmartin@bnmlaw.com)

Laura Teer

Read: 10/11/2013 11:15 AM

k.taillon@hotmail.com

Brad Martin

Read: 10/11/2013 11:08 AM

Ms. Hiskell,

in reviewing the transcript of the hearing on September 17<sup>th</sup>, it appears to stop abruptly on page 170. We would appreciate if you would check the recording and your records for any additional testimony.

Thank you.

*Peggy McComb*

*Legal Assistant*

Bradford Neal Martin & Associates, PA

Post Office Box 10410 (29603)

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**Peggy McComb**

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**From:** Hiskell, Caroline <chiskell@sccourts.org>  
**Sent:** Monday, October 14, 2013 8:58 AM  
**To:** Peggy McComb  
**Subject:** RE: Tomz v. CIF / CA No. 2008-CP-23-3365

Ms. McComb,

I apologize. I really had a lot of trouble with my computer system. Would it be okay if I emailed you the entire transcript instead of mailing it?

Caroline

---

**From:** Peggy McComb [pmccomb@bnmlaw.com]  
**Sent:** Friday, October 11, 2013 11:03 AM  
**To:** Hiskell, Caroline  
**Cc:** Brad Martin; Laura Teer; [k.taillon@hotmail.com](mailto:k.taillon@hotmail.com)  
**Subject:** Tomz v. CIF / CA No. 2008-CP-23-3365

Ms. Hiskell,

in reviewing the transcript of the hearing on September 17th, it appears to stop abruptly on page 170. We would appreciate if you would check the recording and your records for any additional testimony. Thank you.

Peggy McComb  
Legal Assistant  
Bradford Neal Martin & Associates, PA  
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[pmccomb@bnmlaw.com](mailto:pmccomb@bnmlaw.com)<<mailto:pmccomb@bnmlaw.com>>  
[www.bnmlaw.com](https://mail.sccourts.org/owa/UrlBlockedError.aspx)<<https://mail.sccourts.org/owa/UrlBlockedError.aspx>>

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IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific

## Peggy McComb

---

**From:** Peggy McComb  
**Sent:** Monday, October 14, 2013 2:04 PM  
**To:** 'Hiskell, Caroline'  
**Subject:** RE: Tomz v. CIF / CA No. 2008-CP-23-3365  
**Importance:** High

Hi Caroline,

This transcript is 163 pages; the one we have the hard copy of is 171 pages. Would you please send it to me in the format that you gave it to Kate Taillon, so that I can ensure the page numbers are the same.

Thank you.

# BRADFORD NEAL MARTIN & ASSOCIATES, PA

ATTORNEYS AT LAW

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October 18, 2013

Ms. Caroline Hiskell  
32 Duxbury Lane  
Easley, SC 29642

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

Dear Ms. Hiskell:

I am writing to respectfully request certain additions and revisions to the transcript of the hearing held on September 17, 2013, before Judge Miller in the above matter.

First, the transcript does not contain the initial comments by Judge Miller when the case was called. Rather, it starts with my comments. Therefore, I would appreciate the entire comments of the Court prior to my speaking.

Additionally, please make the following corrections:

Page 17, line 6 -	The objection made was by Mr. Martin, not Mr. Brandt.
Page 24, line 5 -	"confers" should read "concur"
Page 24, line 7 -	"Author" should read "Arthur"
Page 37, line 5 -	"Pfizer" should read "Pfeiffer"
Page 37, line 6 -	"Pfizer's" should read "Pfeiffer's"
Page 42, line 17 -	"sir" should read "asserted"
Page 49, line 13 -	"Hand" should read "Hold"
Page 57, line 10 -	"towards" should read "storage"
Page 58, line 6 -	"signing" should read "signatory"
Page 59, line 4 -	"about half" should read "on behalf"
Page 62, line 2 -	"filed" should read "followed the"
Page 75, line 4 -	"his" should read "this"
Page 78, line 16 -	"give," should read "given,"
Page 95, line 25 -	"county" should read "accounting"
Page 98, line 14 -	"asses" should read "access"
Page 109, line 7 -	"every" should read "ever"
Page 111, line 17 -	"Poole" should read "Pohl"
Page 112, line 1 -	"propher" should read "proffer"

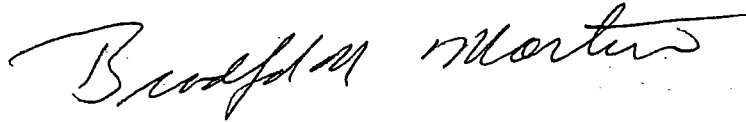
Exhibit D

Page 114, line 25 - "Poole" should read "Pohl"  
 Page 115, line 6 - "Poole" should read "Pohl"  
 Page 115, line 16 - "(inaudible)" should read "Westrick"  
 Page 115, line 17 - "O'Shae" should read "O'Shea"  
 Page 118, line 6 - "appellant" should read "appellate"  
 Page 119, line 4 - "loss" should read "lost"  
 Page 119, line 10 - "it" should read "he"  
 Page 120, line 17 - "around" should read "run"  
 Page 128, line 3 - "Fursella (ph)" should read "Friscia"  
 Page 146, line 7 - "won't" should read "weren't"  
 Page 147, line 1 - "equations" should read "equation"  
 Page 147, line 6 - "loan" should read "long"  
 Page 147, line 6 - "detail" should be excluded  
 Page 147, line 14 - "chosen" should read "chose in"  
 Page 148, line 23 - "rejectment" should read "ejectment"  
 Page 150, line 15 - "me" should read "him"  
 Page 151, line 5 - "bought" should read "brought"  
 Page 151, line 11 - "every" should read "ever"  
 Page 156, line 20 - "non convenience" should read "non conveniens"  
 Page 158, line 11 - "David" should read "Davyd"  
 Page 158, line 11 - "because" should read "became"  
 Page 159, line 11 - "a see" should read "to see"  
 Page 160, line 14 - "You skipped over Cosomo. The Cosomo records were " should  
 read "You skipped over Cosimo. The Cosimo records were"  
 Page 160, line 22 - "Cosomo" should read "Cosimo"  
 Page 160, line 23 - "Cosomo" should read "Cosimo"  
 Page 161, line 24 - "muted" should read "mooted"  
 Page 162, line 7 - "non convenience." should read "non conveniens."  
 Page 162, line 12 - "he not received" should read "he did not receive"  
 Page 163, line 2 - "he could so we" should read "he could so, so we"  
 Page 163, line 7 - "question" should read "questions"  
 Page 163, line 9 - "he" should read "the"  
 Page 163, line 12 - "raise" should read "raised"  
 Page 164, line 5 - "appellant" should read "appellate"  
 Page 164, line 10 - "appellant" should read "appellate"  
 Page 164, line 20 - "obstructionist and" should read "obstructionist behavior and"  
 Page 166, line 5 - "Lobatti" should read "L'Abbate"  
 Page 166, line 14 - "cite" should read "site"  
 Page 168, line 11 - "represented" should read "misrepresented"  
 Page 168, line 18 - "assured" should read "assumed"  
 Page 168, line 19 - "rescended," should read "receiver,"  
 Page 168, line 22 - "I'm not 90 percent" should read "I'm a 90 percent"  
 Page 168, line 23 - "undeclar" should read "declare"  
 Page 170, line 13 - "Ferra" should read "Farrar"  
 Page 174, line 2 - "he" should read "she"  
 Page 176, line 1 - "Cosomo" should read "Cosimo"

Page 178, line 11 - "Appellant" should read "Appellate"  
Page 178, line 12 - "Appellant court and the New Jersey Appellant Court" should read  
"Appellate Court and the New Jersey Appellate Court"  
Page 178, line 19 - "Appellant" should read "Appellate"  
Page 178, line 20 - "Appellant" should read "Appellate"  
Page 178, line 21 - "urgency" should read "emergency"

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

Sincerely,

A handwritten signature in cursive script that reads "Bradford N. Martin". The signature is written in dark ink and is positioned above the typed name.

Bradford N. Martin

/pm

*Caroline Hiskell*

*37 Duxbury Lane  
Easley, South Carolina 29642  
[Chiskell@sccourts.org](mailto:Chiskell@sccourts.org)*

*October 25, 2013*

*Bradford Neal Martin & Associates  
201 West McBee Avenue, Suite 302  
Greenville, SC 29601*

*RE: William F. Tomz v. Capital Funding, et al  
2008-CP-23-3665*

*Dear Mr. Martin,*

*After reviewing my notes, the corrections to the above-referenced transcript have been made and I am providing you with another copy. Also, in reviewing my notes, I do not have any comments that were made by anyone before Judge Miller opens the hearing by saying the word, "Okay."*

*I understand and appreciate the importance this case is to you, your client, and all involved, but please allow the receipt of this corrected transcript to serve as the conclusion of my involvement in this case. It's now time for me to move on to other pressing issues and continue with the production of other transcripts still pending.*

*Thank you for your time and good luck in your future endeavors.*

*Sincerely,*

*Caroline Hiskell  
Thirteenth Circuit Court Reporter*

Exhibit E

BRADFORD NEAL MARTIN & ASSOCIATES, PA

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November 12, 2013

Ms. Caroline Hiskell  
32 Duxbury Lane  
Easley, SC 29642

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

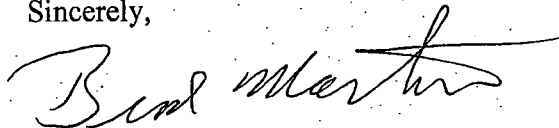
Dear Ms. Hiskell:

I am writing to respectfully request that you preserve the tapes upon which you based your transcript of the hearing held on September 17, 2013 before Judge Miller in the above-referenced matter. I would also respectfully request a copy of the tapes.

A review of the initial and final transcript that you provided reveal several discrepancies which only the tapes can resolve. Thus, preserving and providing a copy of the tapes is necessary.

Thank you in advance for your cooperation. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Bradford N. Martin

BB/pm

Exhibit F

BRADFORD NEAL MARTIN & ASSOCIATES, PA

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FAX: (864) 552-9992

December 5, 2013

Ms. Caroline Hiskell  
32 Duxbury Lane  
Easley, SC 29642

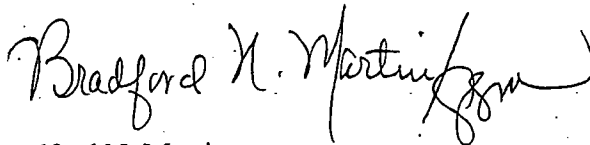
Re: *William F. Tomz v. Capital Funding, et al.*  
C/A No.: 2008-CP-23-3665

Dear Ms. Hiskell:

I am writing to follow up on my October 18, 2013 letter requesting a corrected copy of the transcript of the hearing held on September 17, 2013 before Judge Miller in the above-referenced matter, and my November 12, 2013 letter requesting a copy of the tapes from the same hearing.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,



Bradford N. Martin

BB/pm

Exhibit G

# BRADFORD NEAL MARTIN & ASSOCIATES, PA

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January 2, 2014

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

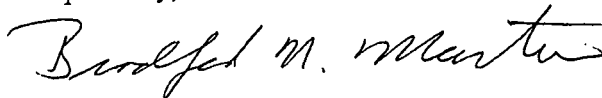
Dear Ms. Allen:

We represent the Appellant, Arthur Field, in the above matter. On October 11, 2013, we received a copy of the transcript of the hearing held on September 17, 2013. The transcript contained many errors, both typographical, and in the text. We wrote to the Court Reporter, Ms. Caroline Hiskell on October 18, 2013 requesting corrections (copy enclosed.) Ms. Hiskell responded on October 25<sup>th</sup> (copy enclosed) stating that the corrections had been made, however, the transcript we received did not contain the corrections. Ms. Hiskell indicated the she would not be taking any further action regarding the transcript.

On November 12, 2013 we wrote to Ms. Hiskell requesting corrections and copies of the tapes of the proceeding (copy enclosed.) On December 5, 2013, we again wrote to Ms. Hiskell requesting copies of the tapes and corrections to the transcript (copy enclosed.) We have not received the tapes or a corrected transcript. 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 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.

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

Exhibit H

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-3665

Capital Funding, LLC and Arthur M. Field, of whom Arthur M. Field is the Appellant .....  
..... Appellant,

v.

William F. Tomz and Francis W. Tomz, individually and as class representatives .....  
..... Respondents.

MOTION FOR EXTENSION OF TIME  
TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER

RECEIVED

JAN 06 2014

SC Court of Appeals

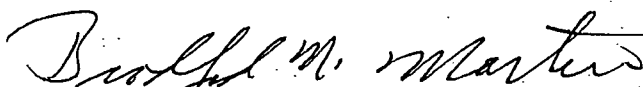
Under Rules 240 and 263(b) of the SCACR, Appellant moves for a thirty (30) day extension of time from receipt of the corrected Transcript from the Court Reporter in which to file his Initial Brief and designation of matter to be included in the record on appeal.

This is Appellant's first request for an extension regarding this brief. This Motion is based on other case demands and work obligations of Appellant's attorneys. Additionally, on October 18, 2013 counsel for the Appellant informed the Court Reporter for the hearing of errors in the Transcript and requested that they be corrected. On November 12, 2013, counsel for the Appellant requested a corrected copy of the Transcript and copies of the tapes of the hearing. On December 5, 2013, counsel for the Appellant again wrote to the Court Reporter requesting a

corrected copy of the Transcript and copies of the tapes. To date, neither a corrected Transcript nor tapes have been received. Therefore, Appellant cannot confirm that references to the Transcript are correct.

Appellant's Brief is currently due on January 8, 2014. Appellant requests an extension of 30 days from the date in which he receives the corrected Transcript from the Court Reporter.

2 January, 2014



Bradford N. Martin, Esq. (SC Bar No. 3658)  
Laura W. H. Teer, Esq. (SC Bar No. 16698)  
Brook Bristow, Esq. (SC Bar No. 76038)  
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Other counsel of record:

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Bruce W. Bannister, Esq.  
BANNISTER & WYATT, LLC  
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Greenville, SC 29603

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OFFICE OF THE SOUTH CAROLINA ATTORNEY GENERAL  
P.O. Box 11549  
Columbia, SC 29211

George Brandt, III, Esq.  
HENDERSON BRANDT & VIETH, P.A.  
360 E. Henry Street  
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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

---

Case No. 2008-CP-23-3665

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Capital Funding, LLC and Arthur M. Field, of whom Arthur M. Field is the Appellant .....  
..... Appellant,

v.

William F. Tomz and Francis W. Tomz, individually and as class representatives .....  
..... Respondents.

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**PROOF OF SERVICE**

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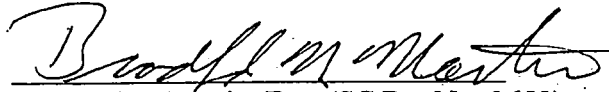
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**SC Court of Appeals**

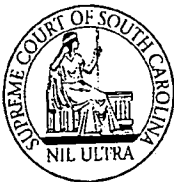
I certify that I have served Appellant's Motion for Extension of Time to File Initial Brief and Designation of Matter by depositing a copy in the U.S. Mail, postage prepaid, on January 2, 2014, addressed to attorneys of record, Stanley T. Case, Esq., Butler, Means, Evins & Browne, P.A., P.O. Box 451, Spartanburg, SC 29304; Bruce W. Bannister, Esq., Bannister & Wyatt, LLC, P.O. Box 10007, Greenville, SC 29603; J. Emory Smith, Esq., Office Of The South Carolina Attorney General, P.O. Box 11549, Columbia, SC 29211; George Brandt, III, Esq., Henderson Brandt & Vieth, P.A., 360 E. Henry Street, Spartanburg, SC 29302; Curtis Warren

Stodghill, Esq., Stodghill Law Firm, P.O. Box 2431, Greenville, SC 29602; William H. Ehlies, Esq., William H. Ehlies, P.A., 310 Mills Avenue, Suite 201, Greenville, SC 29605; Alan Wilson, Esq., Office Of The South Carolina Attorney General, P.O. Box 11549, Columbia, SC 29211; Scott Pfeiffer, Esq., 935 S. Main Street, Suite 203, Greenville, SC 29601; and Gene Connell, Esq., Kelaher Connell & Connor PC, P.O. Drawer 14547, Surfside Beach, SC 29587.

January 2, 2014



Bradford N. Martin, Esq. (SC Bar No. 3658)  
Laura W. H. Teer, Esq. (SC Bar No. 16698)  
Brook Bristow, Esq. (SC Bar No. 76038)  
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.  
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**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN FRIERSON  
DIRECTOR

1015 SUMTER STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-0289

February 28, 2014

**VIA E-Mail and U.S. Mail**

Bradford N. Martin, Esq.  
BRADFORD NEAL MARTIN & ASSOCIATES, PA  
201 West McBee Avenue, Suite 302  
Greenville, SC 29601


Dear Mr. Martin:

This is in response to your letter dated January 2, 2014 and the request from your office on this date that I respond in writing. You have attached to this letter the response received from the court reporter with regard to the challenge to the transcript. For your convenience, I have cut and pasted the procedure for challenging a transcript below:

**"When there is a challenge to the accuracy of a transcript, the court reporter will respond to the challenger in writing. The court reporter will then review the record and report the findings in writing to the challenger, with a copy to all parties and Court Administration. Any inaccuracies will be corrected and the pages forwarded to the challenger at no cost. Further review of the record may be permitted by the presiding judge upon written request with good cause shown. If no challenge is received by the court reporter within the 30-day period the tapes may be reused or destroyed."**

The court reporter, Ms. Hiskell, indicated in the letter dated October 25, 2013, that she had corrected and was providing you with another copy of the transcript. Unfortunately, there is no provision for providing you with a copy of the tapes. I am sorry that I am unable to assist you further.

Sincerely,

  
Desiree R. Allen  
Court Reporter Manager

CC: Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals  
Caroline Hiskell, Official Court Reporter

Exhibit J

# BRADFORD NEAL MARTIN & ASSOCIATES, PA

ATTORNEYS AT LAW

201 West McBee Avenue, Suite 302  
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Phone: (864) 552-9990  
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March 6, 2014

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 14<sup>th</sup> Ms. Hiskell delivered a hard copy of the transcript. We emailed Ms. Hiskell on October 14<sup>th</sup> 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 25<sup>th</sup> 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.

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 5<sup>th</sup> when we did not hear back from Ms. Hiskell, and requested a copy of the tapes again.

Exhibit K

Ms. Desiree Allen

March 6, 2014

Page two

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:

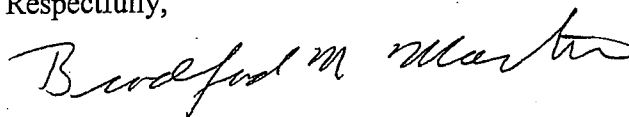
(i) **Retention of Tapes.** Except as provided below, a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period. If the 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 18<sup>th</sup> 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

# BRADFORD NEAL MARTIN & ASSOCIATES, PA

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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 14<sup>th</sup>, Ms. Hiskell delivered a hard copy of the transcript. We emailed Ms. Hiskell on October 14<sup>th</sup> 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 25<sup>th</sup> 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.

Exhibit L

The Honorable Jenny Abbott Kitchings  
March 6, 2014  
Page two

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.

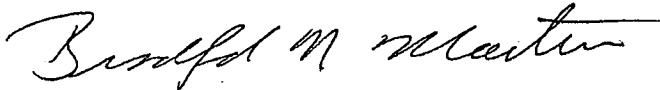
Pursuant to SCRAP 207 and Rule 607, we have taken all the necessary steps in obtaining the transcript and challenging its completeness and accuracy. On February 28th, Court Administration responded to our letter and stated that there is no provision for providing us with the tapes. We have responded 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.