

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 16 2014

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

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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**MOTION FOR RECONSIDERATION OF THIS COURT'S ORDER FILED  
JUNE 9, 2014 REGARDING APPELLANT'S  
MOTION TO COMPEL COMPLETION AND CORRECTION OF THE  
TRIAL TRANSCRIPT ET AL.**

**OR, IN THE ALTERNATIVE, FOR ADDITIONS AND CORRECTIONS  
TO THE TRIAL TRANSCRIPT AND SANCTIONS**

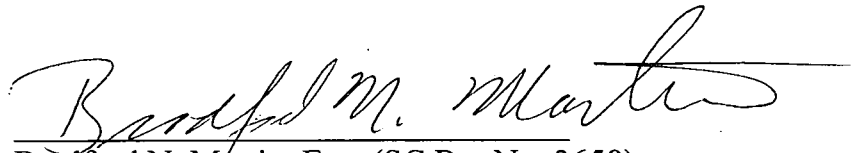
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Appellant respectfully requests this Court to reconsider its Order of June 9, 2014, or in the alternative, issue an Order allowing additions and corrections to the trial transcript, and sanctions. Appellant respectfully submits that going forward with the current transcript will affect the reviewability of the lower court's Order due to omissions in the transcript, and errors in transcription.

Appellant further requests an appropriate adjustment to the briefing schedule until the transcript issues are resolved.

Respectfully submitted,

June 12, 2014

A handwritten signature in cursive script, reading "Bradford N. Martin", written over a horizontal line.

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)

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RECONSIDERATION OF THIS COURT'S ORDER FILED  
JUNE 9, 2014 REGARDING APPELLANT'S  
MOTION TO COMPEL COMPLETION AND CORRECTION OF THE  
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Appellant submits this Memorandum in Support of its Motion to  
Reconsider and would respectfully show the following:

**1. Factual Background**

Appellant filed its Motion to Compel Completion and Correction of the  
Trial Transcript on March 31, 2014. This Court filed its Order on May 16, 2014

granting the Motion in part. The Order required the Court Reporter to arrange for the tapes in the case to be received by South Carolina Court Administration within fifteen days of the Order (May 31, 2014.) The Order also allowed Appellant's Counsel to review the tapes in the Calhoun Building by contacting Desiree Allen with Court Administration.

Appellant's Counsel contacted Desiree Allen and discovered that the tapes were never produced by the Court Reporter. Then, on June 11, 2014, Appellant's Counsel received a copy of this Court's June 9, 2014 Order, and found out for the first time that the Court Reporter had notified the Court the tapes were destroyed "pursuant to Rule 607, SCACR". To this day, Appellant's counsel has not received any notification from the Court Reporter that the tapes were destroyed.

The June 9<sup>th</sup> Order requires Appellant to serve and file his Initial Brief and Designation in the matter within thirty days of the Order unless a showing is made that "the current transcript has rendered this appeal unreviewable."

Appellant respectfully requests the Court to reconsider its Order, since the tapes were destroyed in violation of Rule 607. Appellant also requests the Court to reconsider its Order in that a review would be more effective if Affidavits are allowed to describe the substance of the hearing that is missing at the beginning of the transcript. Further, Appellant respectfully requests the Court to reconsider and order the 68 errors that Appellant pointed out to the Court Reporter in October 2013 be made.

2. Rule 607 Has Been Violated

First, Rule 101, SCACR provides:

a. **Scope.** These Rules are divided into six parts... Part II governs practice and procedure in appeals, petitions and motions in the Supreme Court and the Court of Appeals. ... Part VI contains rules governing judicial administration.

Therefore, these Rules set forth the procedure for the benefit of the Bar as to what procedures must be followed in dealing with appeals and judicial administration.

Rule 607(i) SCACR provides:

**(i) Retention of Tapes.** . . . 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.** (emphasis added)

The facts set forth in Appellant's Memorandum in Support of its original Motion are uncontested:

1. The Court Reporter delivered a hard copy of the transcript on October 14, 2013;
2. Appellant's Counsel challenged the accuracy on October 18, 2013. This is within the thirty day period;
3. The Court Reporter wrote on October 25, 2013 that she would not make any further changes; and
4. Appellant's Counsel wrote her within thirty days (November 12<sup>th</sup>)

requesting a complete and corrected transcript and that the tapes be preserved.

Since the proceeding was transcribed, Appellant had 30 days from October 14<sup>th</sup> to challenge. Appellant did so within 4 days. When the Court Reporter refused to correct the transcript on October 25<sup>th</sup>, Appellant again challenged 18 days later. It is undisputed that these challenges were timely, and in accordance with Rule 607(i).

Appellant's Counsel has received a copy of a letter addressed to the Deputy Clerk of this Court from Desiree Allen, Court Reporter Manager, dated June 10, 2014. This letter claims that the Court Reporter "properly disposed of the tapes in this matter, pursuant to Rule 607". The letter relies upon an apparent procedure "set out in the Court Reporter Manual." However, this Court Reporter Manual cannot trump Rule 607, as Rule 101 makes clear that the Appellate Rules govern the practice and procedure in appeals and judicial administration. Further, Appellant's Counsel was not made aware of this Manual or additional procedure by the Court Reporter.

Rule 607(j) provides that the willful failure of a court reporter to comply with the provisions of the Rule shall constitute contempt of court enforceable by Order of the Supreme Court. Appellant respectfully submits that the Court Reporter knew, well within thirty days, that the transcript was not complete, and it contained 68 specific errors. After the Court Reporter declined to make the changes, she was then requested, well within thirty days, to retain the primary and

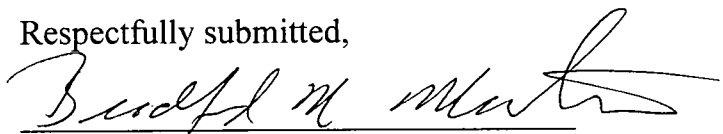
backup tapes so that a proper review could be done so this Court could have an accurate transcript of the proceedings below. Therefore, Appellant respectfully requests attorney's fees and costs incurred as a result of the need for these Motions. If granted, Appellant will submit an Affidavit upon the Court's request.

**3. Additions and Corrections to the Transcript**

Appellant respectfully requests the Court to allow it to submit an Affidavit of the Defendant in order to summarize the beginning comments of the trial court at the hearing. The transcript does not start with the trial judge calling the case for hearing and identifying it by case number. The Court's comments at that time are also missing from the transcript. Since one of the issues on appeal is the comments of the trial judge, a description of his comments are necessary for this Court to properly review the Order. Finally, Appellant requests the Court to order the 68 corrections to the transcript as set forth in Exhibit C of his previously filed Memorandum.<sup>1</sup>

June 12, 2014

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)

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<sup>1</sup> Appellant received an initial preliminary transcript from the Court Reporter on October 14, 2013. Appellant's letter pointing out the corrections referred to the line and page numbers of that transcript. The final transcript received on October 25, 2013 was re-numbered. Therefore, for example, "p. 17, line 6" in the letter now refers to "p. 17 line 7" in the final version.

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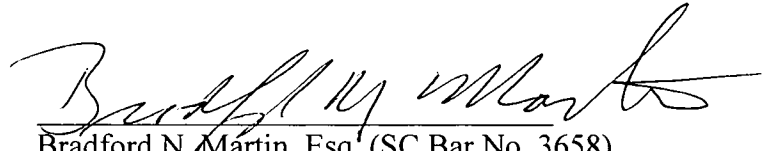
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**PROOF OF SERVICE**

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I certify that I have served the Motion for Reconsideration of This Court's Order Filed June 9, 2014 Regarding Appellant's Motion to Compel Completion and Correction of the Trial Transcript et al., or, In the Alternative, for Additions and Corrections to the Trial Transcript and Sanctions and Memorandum in Support by depositing a copy in the U.S. Mail, Postage Prepaid, on June 12, 2014, addressed to George Brandt, III, Esq., Henderson Brandt & Vieth, P.A., 360 E. Henry Street, Spartanburg, SC 29302 and Caroline Hiskell, 32 Duxbury Lane, Easley, SC 29642.

June 12, 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.

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

864.552.9992 (facsimile)

# 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

June 12, 2014

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

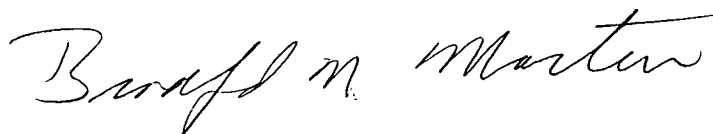
Re: *William F. Tomz v. Capital Funding, et al*  
C/A No.: 2008-CP-23-3665  
Tracking No. 2013-002676

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of copy of the Motion for Reconsideration of This Court's Order Filed June 9, 2014 Regarding Appellant's Motion to Compel Completion and Correction of the Trial Transcript et al., or, In the Alternative, for Additions and Corrections to the Trial Transcript and Sanctions and a Proof of Service in the above matter.

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

Sincerely,



Bradford N. Martin

/pm  
Enclosures

cc: George Brandt, Esc  
Caroline Hiskell

*awaiting  
filing fee*  
~~\_\_\_\_\_~~  
*TC-6/30/14-*

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SC Court of Appeals

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BRADFORD NEAL MARTIN & ASSOCIATES, PA  
201 WEST MCBEE AVE., SUITE 302  
P.O. BOX 10410 (29603)  
GREENVILLE, SC 29601

TO:

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

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