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Miller

STATE OF SOUTH CAROLINA  
 COUNTY OF GREENVILLE  
 William F. Tomz and Francis W. Tomz,  
 Individually and as Class Representatives,  
 Plaintiffs,  
 vs.  
 Capital Investment Funding, LLC, and  
 Arthur M. Field,  
 Defendants.

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL D. WICKENS, CLERK  
 COURT OF COMMON PLEAS  
 13<sup>TH</sup> JUDICIAL CIRCUIT  
 2015 FEB 3 PM 3 35

**RECEIVED**  
 APR 24 2015  
 ORDER SC Court of Appeals

Civil Action No. 2008-CP-23-3665

On September 17, 2013, this Court held a hearing regarding a Rule to Show Cause requiring the Defendant, Arthur M. Field, to show why he should not be held in contempt. In an Order entered on October 1, 2013, this Court found Arthur M. Field in contempt.

The Defendant Field appealed the Order of October 1, 2013 to the South Carolina Court of Appeals.

Subsequently, Field filed with the Court of Appeals a Motion which the Court of Appeals construed as a Motion to Remand to reconstruct the record because Appellant Field contended the current transcript had rendered his appeal unreviewable.

By Order dated and filed July 19, 2014, the Court of Appeals remanded the case to the Greenville County Court of Common Pleas for a hearing to address the issues concerning Field's Motion to Remand to reconstruct the record.

The hearing on Field's Motion was held on October 27, 2014. Present at the hearing was Attorney Bradford N. Martin of the Greenville County Bar, who represented Arthur M. Field at the

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hearing on the Rule to Show Cause on September 17, 2013 and is his attorney in connection with the appeal. Also present at the hearing were George Brandt, III of the Spartanburg County Bar, representing Jerry Saad, the Receiver for Capital Investment Funding, LLC, and Stanley T. Case of the Spartanburg County Bar, attorney for the Plaintiffs (the Class).

The Appellant Field contends that the Court made certain comments before the case was called for a hearing and that a description of the comments of the Court is necessary for the purpose of Appellate review. The Appellant has tendered four (4) Affidavits to the Court, which include the Affidavit of Arthur M. Field, the Affidavit of Angie Orfanedes, the Affidavit of Henry Van Dyke and the Affidavit of Richard Lackey. Orfanedes, Van Dyke and Lackey are neighbors of Defendant Field from the Thornblade neighborhood, and testified on behalf of Field at his sentencing hearing.

Prior to the September 17, 2013 hearing, Arthur M. Field had pled guilty to eleven (11) counts of securities fraud, two (2) counts of criminal conspiracy to commit securities fraud, and one (1) count of forgery. Subsequent to the September 17, 2013 hearing, Arthur M. Field was sentenced and ordered to pay the sum of \$2,877,711.72 as restitution.

It appears that the tendered Affidavits make reference to a question that is contained at page 7 of the Transcript of the September 17, 2013 hearing. The transcript indicates that, among other things, the Court asked Mr. Martin a question as follows: "So, let me get this straight, your client stole forty million dollars and now he's the victim?"

It also appears that the tendered Affidavits contain personal commentary about the demeanor of the Court during the hearing. The proposed Affidavits do not claim that the trial transcript is in any way inaccurate or incomplete. The proposed Affidavits do not state that the Affiants have read the transcript. Nor do they state that the transcript does not contain or include any particular

testimony or statements.

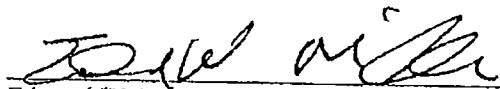
It is the finding and determination of the Court that the proposed Affidavits should be disallowed. The Affidavits are self serving and include an attempt to introduce into the record things that were not part of the record. No effort was made by the Appellant to provide testimony in keeping with the proposed Affidavits at the hearing. Accordingly, the proposed Affidavits are disallowed and will not be included as a part of the record.

An exhibit has been submitted to the Court that relates to the correction of certain scrivener's errors. The Court will allow the correction of the scrivener's errors as proposed, but will not allow any other changes to the transcript of the testimony or additions to the record.

Therefore, it is the finding of this Court that the transcripts of the aforementioned hearing held on September 18, 2013 shall be modified only to reflect the correction of the scrivener's errors that are stated in the exhibit attached to this order, and that no other changes or additions to the record shall be made to the record because no other changes are warranted or proper.

AND, IT IS, SO, ORDERED on this \_\_\_\_ day of ~~December~~, 2014.

2/2/15

  
\_\_\_\_\_  
Edward W. Miller  
Judge for the Court of Common Pleas for  
Greenville County

# BRADFORD NEAL MARTIN & ASSOCIATES, PA

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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:

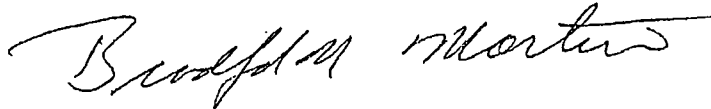
Page 17, line 6 -	The objection made was by Mr. Martin, not Mr. Brandt.
Page 24, line 5 -	"confers" should read "concur"
Page 24, line 7 -	"Author" should read "Arthur"
Page 37, line 5 -	"Pfizer" should read "Pfeiffer"
Page 37, line 6 -	"Pfizer's" should read "Pfeiffer's"
Page 42, line 17 -	"sir" should 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"

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 "Frischia"  
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 printed name.

Bradford N. Martin

/pm

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FAX: (864) 552-9992

April 22, 2015

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

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APR 24 2015

SC Court of Appeals

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

Dear Ms. Allen:

Please be advised that I have not received the corrected transcript from the Court Reporter, Ms. Desiree Allen, by April 21, the date it was due, nor have I received a copy of her request for an extension. Attached is a copy of the request letter of February 20<sup>th</sup> to Ms. Hiskell.

By copy of this letter, we are notifying Ms. Hiskell and the Clerk of the Appellate Court, in accordance with SCACR 207(a)(5).

Thank you for your attention to this matter.

Sincerely,



Bradford N. Martin

BNM/pm  
enclosures

cc: The Hon. Jenny Abbott Kitchings, South Carolina Court of Appeals  
George Brandt, Esq.  
Stan Case, Esq.  
Ms. Caroline Hiskell

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February 20, 2015

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

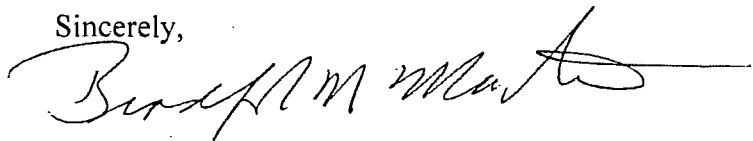
Dear Ms. Hiskell:

Enclosed please find a copy of the Order of Judge Miller of February 2, 2015, as well as our previous letter to you of October 18, 2013, requesting corrections to the transcript of the hearing held on September 17, 2013. The order grants our request for these changes to be made. In making the ordered changes, please note the changes referred to in our October 18, 2013, letter refer to the first transcript we received from you. On your final transcript, delivered to our offices on October 25, 2013, and filed with the Court, the numbered lines are off by one line. For example, the first correction, "Page 17, line 6 – The objection made was by Mr. Martin, not Mr. Brandt," noted in our letter is now "Page 17, line 7" on the final transcript, and so on throughout the scrivener's errors noted.

Please correct these errors to the transcript, referring to the corrected line, and forward a final copy to our office at your earliest convenience.

Thank you for your attention to this matter.

Sincerely,



Bradford N. Martin

BNM/pm  
enclosures

cc: The Hon. Jenny Abbott Kitchings, South Carolina Court of Appeals  
Ms. Desiree Allen, Manager, Court Reporting and Court Interpreters  
George Brandt, Esq.  
Stan Case, Esq.

# BRADFORD NEAL MARTIN & ASSOCIATES, PA

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April 22, 2015

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APR 24 2015

SC Court of Appeals

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

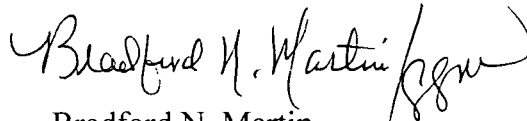
Re: *William F. Tomz v. Capital Funding, et al*  
C/A No.: 2008-CP-23-3665  
Tracking No. 2013-002676

Dear Ms. Kitchings:

As requested by The Hon. John D. Geathers in his Order of July 18, 2014, the following is to provide the Court with the status of the remand in the above matter.

The corrected transcript, which was due on April 21<sup>st</sup>, was not received by the date due. We are today notifying the Office of Court Administration and the Court Reporter by letter, a copy of which is attached, in accordance with SCACR 207(a)(5).

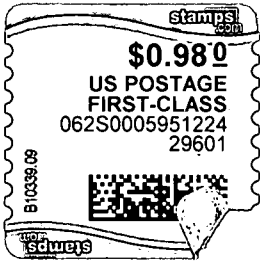
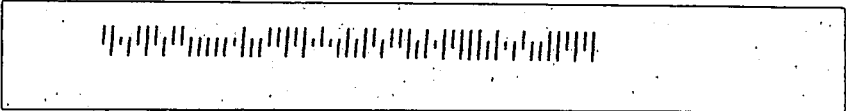
Sincerely,



Bradford N. Martin

BNM/pm

cc: George Brandt, Esq.  
Stan Case, Esq.



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TO:

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

**RECEIVED**  
APR 24 2015  
SC Court of Appeals