

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-3665

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

v.

Capital Investment Funding, LLC, and Arthur M. Field, Defendants, Of Whom Capital
Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, is a Respondent,
and Arthur M. Field is the Appellant.

RESPONDENTS' FINAL BRIEF

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January 26, 2016

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TABLE OF CONTENTS

Table of Contents	i
Table of Cases	ii
Treatises and Legal Encyclopedias	ii
Statutes and Regulations	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Arguments:	
I. THE CIRCUIT COURT PROPERLY FOUND APPELLANT TO BE IN CONTEMPT OF THE MEDIATED GLOBAL SETTLEMENT AGREEMENT AND ORDER APPROVING THE SETTLEMENT, WHICH APPOINTED A RECEIVER, AND THE PRIOR ORDERS OF THE COURT	4
II. THE CIRCUIT COURT PROPERLY FOUND THAT IT HAD PERSONAL AND SUBJECT MATTER JURISDICTION IN CONNECTION WITH THE HEARING ON THE RULE TO SHOW CAUSE UNDER SOUTH CAROLINA LAW	16
III. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RECUSAL MADE AT THE HEARING ON THE RULE TO SHOW CAUSE.	19
IV. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION BY ISSUING AN ORDER SETTLING THE RECORD WHICH EXCLUDED APPELLANT'S PROFFERED AFFIDAVITS FROM THE RECORD ON APPEAL.	20
Conclusion	23
Attorney Certification [Rule 211(b) SCACR]	25

TABLE OF CASES

<i>Reading v. Ball</i> , 291 S.C. 492, 354 S.E.2d 397 (S.C. App. 1987)	20
<i>BB&T v. Taylor</i> , 369 S.C. 548, 633 S.E.2d 501(2006)	16
<i>Ex parte Cannon</i> , 385 S.C. 643, 685 S.E.2d 814 (S.C. App. 2009)	4, 19
<i>Hoile v. National Surety Corporation</i> , 204 S.C. 110, 28 S.E.2d 638 (1944)	18
<i>McEachern v. Black</i> , 329 S.C. 642, 496 S.E.2d 659 (S.C. App. 1998)	19
<i>Miller v. Miller</i> , 375 S.C. 443, 652 S.E.2d 754 (S.C. App. 2007)	4, 19
<i>Moore v. Simpson</i> , 322 S.C. 518, 473 S.E.2d 64 (S.C. App. 1996)	16
<i>National Cash Register Company v. Burns</i> , 217 S.C. 310, 60 S.E.2d 615 (1950) .	18
<i>Patel v. Southern Brokers, Ltd.</i> , 277 S.C. 490, 289 S.E.2d 642 (1982)	16
<i>Payne v. Holiday Towers, Inc.</i> , 283 S.C. 210, 321 S.E.2d 179 (S.C. App. 1984) ..	20
Treatises and Legal Encyclopedias	
62(b) Am. Jur. 2d Process §190 (2005)	16
Statutes and Regulations	
Rule 33, Code of Judicial Conduct, Rules of Practice of the South Carolina Supreme Court	20

STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY FIND APPELLANT TO BE IN CONTEMPT OF THE MEDIATED GLOBAL SETTLEMENT AGREEMENT AND ORDER APPROVING THE SETTLEMENT, WHICH APPOINTED A RECEIVER, AND THE PRIOR ORDERS OF THE COURT? (Response to Appellant's Arguments I, II, III, IV, V, and XI, XII, XIII, and XIV)
- II. DID THE CIRCUIT COURT PROPERLY FIND THAT IT HAD PERSONAL AND SUBJECT MATTER JURISDICTION IN CONNECTION WITH THE HEARING ON THE RULE TO SHOW CAUSE UNDER SOUTH CAROLINA LAW? (Response to Appellant's Arguments VI, VII, VIII, IX, X, XV, XVI, XVII, XVIII)
- III. DID THE CIRCUIT COURT PROPERLY EXERCISE ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RECUSAL MADE AT THE HEARING ON THE RULE TO SHOW CAUSE? (Response to Appellant's Argument XIX)
- IV. DID THE CIRCUIT COURT PROPERLY EXERCISE ITS DISCRETION BY ISSUING AN ORDER SETTLING THE RECORD WHICH EXCLUDED APPELLANT'S PROFFERED AFFIDAVITS FROM THE RECORD ON APPEAL? (Response to Appellant's Argument XX)

STATEMENT OF THE CASE

On August 24, 2009, The Honorable Edward W. Miller, Judge, Thirteenth Judicial Circuit, executed a Mediated Global Settlement Agreement and Order Approving Settlement in the case styled William F. Tomz and Francis W. Tomz, Individually and as Class Representatives, Plaintiffs, vs. Capital Investment Funding, LLC, and Arthur M. Field, Defendants. The Mediated Global Settlement Agreement and Order Approving Settlement involved four (4) lawsuits which had been brought against Capital Investment Funding, LLC, Arthur M. Field and others. As a part of the settlement, and pursuant to the Order Approving Settlement, Jerry T. Saad, CPA, was appointed Receiver of Capital Investment Funding, LLC, to continue winding up the affairs of Capital Investment Funding, LLC, in accordance with the South Carolina Limited Liability Company Act, and to exercise all the rights, duties and responsibilities vested in a Receiver, pursuant to the Law of South Carolina.

The Mediated Global Settlement Agreement and Order Approving Settlement also ordered Capital Investment Funding, LLC, to record a Confession of Judgment to the class Plaintiffs in the amount of \$38,491,321.92 upon approval of the agreement.

Following the entry of the Mediated Global Settlement Agreement and Order Approving Settlement, the Receiver, Jerry T. Saad, entered into his duties as Receiver and began to marshal the assets of Capital Investment Funding, LLC.

On August 19, 2013, The Honorable Edward W. Miller issued an Order and Rule to Show Cause directed to Arthur M. Field based upon an Affidavit of Jerry T. Saad, Receiver for Capital Investment Funding, LLC. See Order and Rule to Show Cause dated August 19, 2013 with the Affidavit of Jerry T. Saad, Receiver for Capital Investment Funding, LLC (R. p. 53). The Order was based upon asserted violations of the Orders of the Court of

Common Pleas including, specifically:

- (i) The Order dated August 24, 2009 (“Global Settlement Order”) appointing Jerry T. Saad as Receiver (“the Receiver”) for Capital Investment Funding, LLC (“CIF”) and empowering him to take actions as such, including obtain records and information;
- (ii) The Order dated June 29, 2010 (“Production Order”) elaborating on the Mediated Global Settlement Order by specifying the obligation to produce records, property and information;
- (iii) The Order dated October 10, 2011 (“Privilege Order”) clarifying the Receiver’s authority to waive attorney/client privilege on behalf of certain entities.

A hearing on the Rule to Show Cause was held on September 17, 2013 and, based on the testimony at the hearing and the record, The Honorable Edward W. Miller found Arthur M. Field to be in contempt of the prior Orders issued by the Court.

On October 1, 2013, the Court issued its written Order confirming that Arthur M. Field was in contempt of the prior Orders issued by the Court. Subsequently, on November 7, 2013, the Appellant, Arthur M. Field, filed a Motion to Alter or Amend. On October 14, 2013, the Motion to Alter or Amend was denied.

On December 9, 2013, Appellant Arthur M. Field filed an appeal, which is presently pending before the Court of Appeals.

ARGUMENT

- I. THE CIRCUIT COURT PROPERLY FOUND APPELLANT TO BE IN CONTEMPT OF THE MEDIATED GLOBAL SETTLEMENT AGREEMENT AND ORDER APPROVING THE SETTLEMENT, WHICH APPOINTED A RECEIVER, AND THE PRIOR ORDERS OF THE COURT. (Response to Appellant's Arguments I, II, III, IV, V, XI, XII, XIII, and XIV.)

The Order and Rule to Show Cause which scheduled the hearing on September 17, 2013, was dated and filed August 19, 2013. Attached to the Order was an Affidavit of Jerry T. Saad, Receiver for Capital Investment Funding, LLC, which was a detailed affidavit that set forth the specific instances in which Field had not complied with the Global Settlement Order dated August 24, 2009, and the prior Orders of the Court. See Order and Rule to Show Cause with Affidavit of Jerry T. Saad (R. p. 53).

Additionally, Mr. Saad provided testimony at the hearing and testimony was also received from Attorney Christopher Westrick, who had represented the receiver in actions in the State of New Jersey.

Under South Carolina law, once the moving party has made out a *prima facie* case for contempt, the burden then shifts to the respondent to establish his defense and inability to comply with the Order. See *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (S.C. App. 2009); *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (S.C. App. 2007).

In this case, the Honorable Edward W. Miller properly found that Arthur Field had not met his burden of demonstrating compliance with the Court's Orders and he was, accordingly, held in contempt. The Court properly found that Field's testimony at the hearing "generally misconstrued and misstated facts to benefit his

position”. The Court also properly found that Field “is not credible and that his testimony cannot be relied upon”.

The Honorable Edward W. Miller took judicial notice of the criminal proceedings involving Arthur Field and his plea of guilty to the charges set forth in Indictment #2012-GS-47-0008, which related 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. See Plea Agreement of Arthur Field, executed and filed May 6, 2013, in Case No. 2012-GS-47-0008 (R. p.114).

Based upon the record in the case, including the testimony of the Receiver Saad, and Attorney Christopher Westrick, there was ample evidence to support the Court’s finding that Field had not produced all of the records of Capital Investment Funding, LLC, in his possession to the Receiver. The Court correctly found, based upon the Receiver’s testimony, that such records had not been produced despite repeated requests and the Receiver’s formal demand, which was made in the form of a Request for Production of Records. The record also supported the court’s finding that Field had not produced records in his possession relating to a malpractice lawsuit of Capital Investment Funding against Attorney F. Scott Pfeiffer, and had not produced records in his possession relating to a loan outstanding from Trazom, LLC, which was a corporation set up by Field. The above-referenced findings are supported by Mr. Saad’s filed Affidavit, and by his oral testimony, which evidence is summarized below.

The receiver Jerry Saad's direct testimony commences at page 28 of the transcript of the September 17, 2013 hearing. He stated that he prepared and signed the sworn affidavit in support of the Rule to Show Cause, which is attached to the Order and Rule to Show Cause filed on August 19, 2013, and he testified at the hearing with regard to the substance of the affidavit. See Order and Rule to Show Cause (R. p. 53) and transcript of September 17, 2013 hearing, (R. p. 555, line 22 through p. 643, line 4). The receiver's testimony pertaining to the above matters was summarized as follows in his affidavit in support of the Rule to Show Cause:

"4. On June 29, 2010, Judge Miller issued an order ("Production Order") elaborating on the Global Settlement Order by specifying the obligation to produce records, property, and information. The Production Order was not appealed.

5. On October 10, 2011, after Scott Pfeiffer ("Pfeiffer") asserted attorney client privilege in a deposition related to SD Trust, LLC, Judge Miller issued an order ("Privilege Order") clarifying my authority as receiver of CIF to waive attorney client privilege on behalf of CIF and certain other affiliated entities. The Privilege Order was not appealed.

6. After the Initial Production, on several occasions I needed CIF information which I could not find in the records included in the Initial Production. In 2009, 2010, and the first three quarters of 2011 where appropriate I called Field, and he generally was responsive to my requests and provided me emails or other information.

7. On November 28, 2011 at a meeting in my offices, Curtis Stodghill served a Request for Production of Records on Field to obtain all records related to CIF in Field's possession and control.

8. On the morning of November 29, 2011, by email Field forwarded to me approximately 74 emails related to CIF, including copies of emails sent or received by Field in 2006, 2007 and 2008. In the afternoon of November 29, 2011, Field called me and told me his computer caught on fire and became inoperative. Field subsequently produced selected computerized documents which were applicable to periods before November 29, 2011.

9. Field did not and has not produced the paper records he previously informed me were in his possession or control.

10. As of this date Field has not produced all of the records in his possession or control, despite my repeated requests and my formal demand in the Request for Production of Records.

11. In 2011, in a malpractice lawsuit CIF filed against Pfeiffer and his associates who provided services to CIF prior to the Global Settlement Order, counsel for the defendants responded to discovery requests with statements that files held by the law firm related to CIF/Cosimo, a subsidiary of CIF, were previously tendered to Field. As of this date Field has not produced all of these records.

12. Field's failure to produce the requested documents has delayed and obstructed my ability to perform my directives as receiver. The following are two examples:

a. Records related to the loan outstanding from Trazom, LLC ("Trazom"), an affiliate of Field, have not been delivered to me by Field. There is presently a dispute over Trazom, LLC's failure to comply with payment terms under its loan obligations to CIF. In January 2012, after determining that I did not have CIF's file or original documents related to the Trazom loan, I requested Field provide me with the Trazom files and documents. After an exchange of emails between me and Field and between Field and my counsel, Curtis Stodghill, in January 2012, Field delivered to me copies of several Trazom documents, which he noted in his emails as being in his possession. However, Field has never provided me with either an original file or an electronic computer file of CIF's Trazom loan file. Furthermore, on April 6, 2012, Field's son, Davyd Field, delivered to me a copy of a purported "Modification Agreement" dated June 2009 which was not mentioned in any of the more than 350 Trazom related emails or other documents I received since 2009. The purported Modification Agreement, if valid and enforceable, would materially and adversely affect CIF. Field has never mentioned to me the existence or consideration of the purported Modification Agreement."

(R. pp. 57-68)

In his direct testimony at the September 17, 2013 hearing, the Receiver Jerry Saad gave the following testimony concerning Field's refusal to deliver required documents:

By Mr. Case:

“Q. If you would refer to the booklet in front of you ... what was the date for the request for production?

A. It is No. 5 in the book and it's dated November 28, 2011 so it's a request for production.

Q. What generally was taking place in November of 2011 with regard to your need for documentation from Mr. Field?

A. We had some legal matters coming up and then there was an issue about Trazom which was a company that had acquired a piece of property through Capital Investment Funding and it was going through refinancing and I was searching and could not find the files and that was part of what I'm saying. When I looked at the flash driver, there's not even a file, an electronic version, of the Trazom file on the flash drive. So I'm getting back to the original point of what I have I can't tell you what I don't have because I don't have it. I can tell you a few things I don't have and that's the note holder files and Trazom file.

Mr. Field has told me several times talked about he had a video tape of a board meeting with the parent company Lancaster Resources, Inc. I never got that video tape file.

During this process at some point he started delivering to me a bunch of emails and then that afternoon he called and said his computer burned up and he couldn't deliver me any more emails but yet subsequently he sent me other emails so obviously he still has a lot of records. He has computer records that I don't have. He has a computer that the company bought and paid for that I don't have. So that's where we are. I don't have everything.

Q. Chronologically for the help of the Court and to address some of the issues raised, was there, I'm looking at your affidavit on Paragraph 7, was there on November 28, 2011, a meeting in your office where your counsel, Curtis Stodghill, served a request for production of documents, request for production of records on Field to obtain all records related to CIF in Field's possession and control?

A. Yes.

Q. At that time, were there a number of records that you did not have?

A. Yes.

Q. And so basically what were the general types of records you were looking for and did you receive those records?

A. Well, there were some loan files and some other document files, documentation. I don't recall exactly right no which other files we were looking for.

Q. So what transpired after the service of the request for production?

A. With regard to the request for production I believe Mr. Field that's when he started sending me some emails.

Q. I believe you referred to that in Paragraph 8 of your affidavit?

A. Yes. That's when he sent me approximately 74 emails which to me proved he still had the computer and the records that I didn't have and then he told me that afternoon, he called and said his computer was not working any more and subsequently to that days and weeks later I did receive email from him.

Q. He said his computer had caught fire and became inoperative?

A. Yes.

Q. So he (*sic*) said subsequently he did produce selective computerized documents?

A. Yes.

Q. Did he ever produce to you the paper records that he informed you he was in possession of?

A. No.

Q. As to this date has he produced all the records in his possession or control?

A. No.”

(R. p. 559, line 16 through R. P. 562, line 14)

Further, the Honorable Edward W. Miller correctly found that records had not been produced which related to over twenty million dollars of delinquent and defaulted loans due from Lancaster Resources, Inc., and others, which were involved with loan transactions in the State of New Jersey. These findings were supported by the following statements in the record of Mr. Saad and Mr. Westrick. Receiver Saad’s statements in his affidavit and testimony in the record referred to Field’s non-production of documents and obstruction of Mr. Saad’s directives as receiver in connection with the New Jersey action to marshal the assets of CIF. His statements included the following examples of non-delivery of documentation and lack of cooperation by Field:

“b. Records, including a check made payable to CIF in the amount of \$305,778.63 dated October 2008, related to the 457 Carlton Road Property, were not delivered to me by Field until November and December 2011, twenty three (23) months after the property was sold to an unrelated third party without notice to me and without my knowledge or consent. There is presently a matter pending in New Jersey state court regarding the sale of the property and related matters.

c. Records related to over \$20 million of delinquent and defaulted loans due from Lancaster Resources, Inc., Bradford Financial Group, LLC, Lancaster Mortgage Bankers, LLC, Lion Financial, LLC, Monmouth Financial Group, LLC, York Funding, LLC, and others have not been delivered to me by Field.”

(R. p. 58)

Attorney Westrick testified at length at the hearing regarding Field’s obstructionist techniques in the New Jersey litigation.

The Order of Judge Miller, which held Field in contempt, made certain specific findings which were labeled “Additional Findings of Fact”, which were based on the testimony of Mr. Westrick. These findings are set forth below:

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.

(R. pp. 70-72)

These findings are supported by the sworn statement and testimony by Mr. Saad and by the testimony of Attorney Westrick, which commences at page 119 of the transcript of the September 17, 2013 hearing (R. p. 646, line 20 through R. p. 662, line 22).

Attorney Westrick's testimony includes the following examples of Field's non production of documents, non cooperation, and obstruction of the receiver's efforts in the State of New Jersey:

By Mr. Brandt:

“Q. Did he make representations regarding this Court retaining jurisdiction or not retaining jurisdiction?

A. Yes, he made representations in the context of a motion to dismiss the case and to disqualify counsel. I spoke about the disqualification part. On the dismissal part, Mr. Martin claimed it was dismissed because it was meritless, that's false. The Court's dismissal was based primarily upon res judicata and collateral estoppel. Mr. Field argued that those theories were based upon the global mediated settlement agreement and he misrepresented numerous times in his original motion which is Tab 6 in the binder and in his affidavit in support of the motion which is Tab 7 in the binder as well as an oral argument.

He misrepresented the content and the scope of the global mediated settlement order. He perpetuated the notion in front of the New Jersey court that the global mediated settlement order disposed of any and all claims that CIF ever had or ever could have against Arthur Field.

He misrepresented to the New Jersey court and

perpetuated the notion for that court that the global mediated settlement order by way of the global mediated settlement that Your Honor retained jurisdiction, not only to ensure compliance with the order which is how it is written, but jurisdiction over any future claim that CIF might bring against him.

Q. Thereby denying CIF the opportunity to bring action in another jurisdiction?

Mr. Martin: Objection, leading.

The Witness: That's absolutely the position that he took and we've cited the affidavit of Mr. Saad that cite the specific instances that support that.

By Mr. Brandt:

Q. As a result of this behavior by Mr. Field in this litigation and these filings, have you and your staff at your law firm had to expend tremendous numbers of hours to defend this matter?

Mr. Martin: Objection, leading, Your Honor.

The Witness: We have spent hundreds of hours everyone combined responding to the incredibly voluminous motions filed by Mr. Field. His motion to dismiss, he filed a motion seeking leave to file a third-party complaint that was mentioned a few minutes ago that contains all kinds of ridiculous allegations including the paramour allegation, claims against myself, against Mr. Saad, against Mr. Stodghill. As I said, he has a right to defend himself because we sued him, but he doesn't have a right to invent fact and misrepresent things to the court.

By Mr. Brandt:

Q. What is your estimation to a reasonable degree of certainty to the amount of funds that CIF has had to expend to defend these motions and allegations filed by Mr. Field in this case?

A. I've started the analysis but I haven't completed it

so if the Court wishes me to submit something later, I can.

Mr. Martin: We would object to all of this testimony.

The Court: Go ahead.

The Witness: Thank you. My best estimation right now is that it probably cost CIF at least \$75,000 and that's carving out some of the work that arguably would be legitimate.

By Mr. Brandt:

Q. In compliance with the terms and conditions of the global settlement agreement, did Mr. Field ever cooperate at all in the litigation to help CIF recover the \$305,000 that CIF sued for in this litigation?

Mr. Martin: Leading, Your Honor.

The Witness: No, he's done everything possible to obstruct and try to fire me as well. He sent me a letter on January 17th of this year, Tab 9 in the binder, this is shortly after the motion to dismiss, we were in the process of preparing our opposition. Mr. Field sent me a letter that's quoted in Paragraph 13c of the affidavit where he purports to discharge me as counsel of CIF and the discharge Jerry Saad as he put it acting manager of CIF. Not only did he do that, he copied on his letter the presiding judge in New Jersey clearly in an effort to undermine what we were trying to do."

(R. p. 650, line 6 through p. 653, line 13)

From the foregoing, it can be seen that the record, including the affidavit of Mr. Saad, and the testimony of Mr. Saad and Attorney Westrick, amply supports the court's findings with regard to Arthur Field's willful failure to comply with the global settlement order and the prior orders of the court.

II. THE CIRCUIT COURT PROPERLY FOUND THAT IT HAD PERSONAL AND SUBJECT MATTER JURISDICTION IN CONNECTION WITH THE HEARING ON THE RULE TO SHOW CAUSE UNDER SOUTH CAROLINA LAW. (Response to Appellant's Arguments VI, VII, VIII, IX, X, XV, XVI, XVII, XVIII.)

The Honorable Edward W. Miller correctly ruled that he had personal and subject jurisdiction to hear this matter and to issue his Order which found that Arthur M. Field (hereinafter "Appellant" or "Field") was in contempt of the prior Orders of the court.

The record demonstrates that appropriate personal service of the Order and Rule to Show Cause was made upon Field on August 22, 2013, at his residence.

At the hearing in this matter, the process server, Michelle Murphy, testified that she knew Field, having served him previously, and that she observed him on August 22, 2013, at his residence, at which time she saw him in his garage, and he would not accept the papers. Michelle Murphy advised him "You have been duly served", and she put the papers inside his garage. She later also affixed the papers to his door (R. p. 537, line 1 through R. P. 540, Line 21).

The Supreme Court of South Carolina and the Court of Appeals have recognized on numerous occasions that exacting compliance with the rules is not required to effect service of process, rather, a court must inquire whether the Plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the Defendant and the Defendant has notice of the proceedings. See *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501(2006), *Patel v. Southern Brokers, Ltd.*, 277 S.C. 490, 289 S.E.2d 642 (1982), and *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (S.C. App. 1996).

As stated in 62(b) Am. Jur. 2d Process §190 (2005), a process server is not required to ram the documents down a Defendant's throat, and personal service of process "should

not become a game of wiles and tricks”. The process server personally saw Field and advised him that he was served and the service was sufficient under S.C. law.

Field had notice of the contempt hearing, and the parties were properly before the Court, with counsel. Judge Miller properly ruled that personal service of the Rule to Show Cause had been achieved and that the court had personal jurisdiction over Arthur M. Field.

The court also clearly had subject matter jurisdiction in connection with the Rule to Show Cause hearing, and the issuance of the Order dated October 1, 2013.

The Honorable Edward W. Miller correctly concluded that the clear terms of the Global Settlement Order issued in the case provided continuing personal jurisdiction over Field and subject matter jurisdiction with regard the issues pertaining to the Order and Rule to Show Cause. Without reiterating all of the language of the Global Settlement Agreement and Order Approving Settlement which bears upon the issue of personal and subject matter jurisdiction over Field, the August 24, 2009 Order specifically provided:

“Arthur Field shall also offer truthful testimony, shall agree to cooperate in any proceeding in state or federal court, to include bankruptcy court, and such cooperation shall include testimony and/or depositions”.....

“Field agrees that he . . . shall provide copies of all records, e-mails, reports, letters, documents, mortgages, notes and any other materials which shall support the receiver’s right to collect from any individual or corporation which has been loaned any monies by Capital Investment Funding, LLC, or its related companies.”.....

“The court, by approving this settlement agreement does Order Arthur Field and Capital Investment Funding to turn over all records, including all documents, e-mails, computer records, mortgages, and the like, to the receiver within ten (10) days of the approval of this agreement.”.....

“The Honorable Edward W. Miller retains jurisdiction over this matter to insure compliance with this Order.”.....

“I find that the Orders regarding the documents contained herein are in the best interest of the class because the Receiver must have the documents as soon as is possible so that he may begin marshaling the assets of Capital Investment Funding, LLC.”.....

“Jerry Saad, CPA, will be appointed Receiver of Capital Investment Funding to continue winding up the affairs of Capital Investment Funding in accordance with the SC Limited Liability Company Act, and exercising all the rights, duties and responsibilities vested in a receiver pursuant to the law of South Carolina. Without limited any of the foregoing, the receiver shall take all actions necessary and prudent to collect the assets of Capital Investment Funding, LLC, prosecute and defend lawsuits on behalf of Capital Investment Funding, LLC.”.....

“Arthur Field and any and all employees of Capital Investment Funding agree to immediately turn over any and all funds due to Capital Investment Funding which are sent to them after the approval of the receivership. Such funds shall be forwarded to the receiver within 48 hours of receipt by Field. Further, a complete listing of any and all real property shall be provided to the receiver at this address to include any and all notes, mortgages and other assets of any value to include records as to whether or not taxes have been paid on the aforementioned properties, to include receipts for those tax payments and the Company will deliver its files on all properties, notes and mortgages at such time and to such reasonable place as the Receiver shall direct at Capital Investment Funding’s expense.”

See Global Settlement Agreement and Order Approving Settlement (R. pp. 1 - 19).

Under South Carolina law, 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 S.C. 310, 60 S.E.2d 615 (1950). Also, under South Carolina law, 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. *Hoile v. National Surety Corporation*, 204 S.C. 110, 28 S.E.2d 638 (1944).

As has been stated on numerous occasions, by the South Carolina Supreme Court and the Court of Appeals, that all courts have the inherent power to punish for contempt, which is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. See *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (2009), *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (S.C. App. 2007), and *McEachern v. Black*, 329 S.C. 642, 496 S.E.2d 659 (S.C. App. 1998).

The Appellant improperly attempted at his contempt hearing and again in his Brief before this court to construct an argument that certain discovery rules in the South Carolina Rules of Civil Procedure, including Rules 34, 37 and 45, which are involved with pre-trial matters in general civil litigation, entitle him to a finding by the court that it lacks personal and subject matter jurisdiction. However, The Honorable Edward W. Miller properly ruled that the service and issuance of the Rule to Show Cause, the specific terms of the court's prior orders and South Carolina law dealing with the court's authority over receivership proceedings and inherent authority to enforce its own orders provided ample personal and subject matter jurisdiction over the issues involved with the hearing on the Order and Rule to Show Cause held September 17, 2013, and the court's subsequent Order dated October 1, 2013.

III. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RECUSAL MADE AT THE HEARING ON THE RULE TO SHOW CAUSE. (Response to Appellant's Argument XIX)

The Honorable Edward W. Miller appropriately denied the improper request of Field that the he should recuse himself from the hearing in this matter. The court acted properly

under the Code of Judicial Conduct, Rule 33, Rules of Practice of The Supreme Court with regard to the decision to deny the Motion for Recusal. There is no evidence in the record that the court had any personal interest in the case or any personal bias or prejudice concerning Field. Any statements and rulings by the court were based on what Judge Miller had learned from his participation in the case over the years and on matters of public record in the Courts of the State. The Motion for Recusal was properly denied under South Carolina law. *See Reading v. Ball*, 291 S.C. 492, 354 S.E.2d 397 (S.C. App. 1987), *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 321 S.E.2d 179 (S.C. App. 1984).

IV. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION BY ISSUING AN ORDER SETTLING THE RECORD WHICH EXCLUDED APPELLANT'S PROFFERED AFFIDAVITS FROM THE RECORD ON APPEAL. (Response to Appellant's Argument XX)

On October 1, 2013, The Honorable Edward W. Miller found the Appellant, Arthur M. Field, to be in contempt of the Mediated Global Settlement Agreement, the Order approving the settlement and appointing a receiver, and the prior Orders of the Court.

Following the appeal of that Order to the South Carolina Court of Appeals, Appellant Field filed a Motion which the Court of Appeals construed as a Motion to Remand to reconstruct the record because Appellant Field contended that the current transcript had rendered his appeal unreviewable.

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, and that hearing was held on October 27, 2014.

The Appellant, Field, attempted to include certain Affidavits in the record, namely the Affidavit of Angie Orfanedes, the Affidavit of Henry Van Dyke, the Affidavit of Richard

Lackey, and the Affidavit of Arthur M. Field.

The Appellant contends that the lower Court should have included these Affidavits in the record which he contends support his position that the Order of the lower Court should be reversed on the grounds that The Honorable Edward W. Miller should have recused himself. However, Judge Miller properly found that the tendered Affidavits merely make reference to a question which is contained at Page 7 of the Transcript of the September 17, 2013 hearing. The transcript indicates that the Court asked Mr. Martin a question, which is contained in the record as follows:

“So, let me get this straight, your client stole forty million dollars and now he’s the victim?”

(R. p. 534, lines 7-9).

It should be pointed out that 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. See Plea Agreement of Arthur Field, executed and filed May 6, 2013, in Case No. 2012-GS-47-0008 (R. p. 114). 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. The Mediated Global Settlement Agreement and Order Approving Settlement, dated August 24, 2009, which appointed Jerry T. Saad as receiver for Capital Investment Funding, LLC, indicates that the class members in this action, as a group, lost in excess of \$38,000,000.00 as a result of the activities of the Appellant, Arthur M. Field, and the entities which he controlled. In view of the prior proceedings involving the Appellant, Arthur M. Field, in the Criminal and Civil Courts of South Carolina, the history of the litigation and the receivership, and the Appellant’s numerous objections presented at his contempt hearing, the Court’s question was

understandable and justified.

The Honorable Edward W. Miller properly concluded that the tendered Affidavits, which contained personal commentary about the demeanor of the Court, do not claim that the trial transcript is in any way inaccurate or incomplete. The proposed Affidavits do not state that the transcript fails to include any particular testimony or statements.

The Honorable Edward W. Miller correctly found that the proposed Affidavits should be disallowed and found that they were self-serving and included an attempt to introduce into the record things that were not part of the record at the hearing on the Rule to Show Cause. The Appellant did not make an effort to provide testimony in keeping with the proposed Affidavits at the hearing, and the proposed Affidavits were properly disallowed.

CONCLUSION

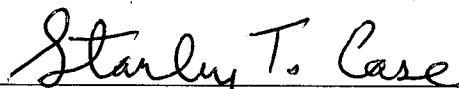
Accordingly, the Respondents in this matter, William F. Tomz and Francis W. Tomz, Individually, and as Class Representatives, and Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, request the Court to affirm the Order of The Honorable Edward W. Miller, dated October 1, 2013, in its entirety.

The Honorable Edward W. Miller properly ruled that the service and issuance of the Rule to Show Cause, the specific terms of the Court's prior Orders and South Carolina Law dealing with the Court's authority over receivership proceedings and inherent authority to enforce its own Orders provided ample personal and subject matter jurisdiction over the issues involved with the hearing on the Order and Rule to Show Cause, which was held September 17, 2013.

Further, the record in this case, including the testimony of Jerry T. Saad, Receiver, and attorney Christopher Westrick, amply support the Court's findings with regard to Arthur's M. Field's willful failure to comply with the Mediated Global Settlement Agreement and Order Approving Settlement and the prior Orders of the Court.

The Honorable Edward W. Miller was correct in all of his rulings issued in connection with this matter and his Orders should be affirmed in their entirety.

Respectfully submitted,



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January 26, 2016

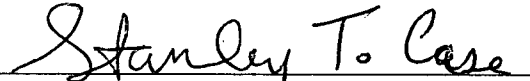
ATTORNEY CERTIFICATION

The undersigned, attorneys for Respondents, hereby certify that this Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

RECEIVED

JAN 28 2016

SC Court of Appeals



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