

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

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SC Court of Appeals

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 Arthur M. Field is the Appellant,
And Capital Investment Funding, LLC is a Respondent.

APPENDIX TO RECORD ON APPEAL

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February 29, 2016

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Transcript

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Capital Investment)
Funding)

) SPECIAL MEETING
) 2008-CP-23-35514

December 14, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

- Jerald Saad, Esquire
Appointed Receiver
- Creighton Waters, Esquire
Assistant Attorney General
- Stanley Case, Esquire
Class Action Counsel
- Gene Covington, Esquire
Class Action Counsel

CAROLINE HISKELL
Circuit Court Reporter

Capital Investment Funding Special Meeting

1 person that are working with them, and you may be
2 introduced to some of them or may know some of them as
3 well, have done an extraordinary job. And it is -- I will
4 just tell you some of the most complex dodging and weaving
5 shell game type stuff that I've seen and I've been
6 involved in, when I was a lawyer for 25 years I was a
7 defense lawyer and I've seen quite a few, but this is as
8 sophisticated a shell game as I've seen.

9 In any event, what we will do today is I'm
10 going to ask Mr. Saad to come up so that I guess -- Jerry,
11 if you want to come up here? Would you be comfortable up
12 here? He's going to give you some idea about some of the
13 things that have gone on.

14 Now, I want to tell you and I know that y'all
15 are interested in the bottom line. I want to tell you
16 that there is no disbursement that's going to be made
17 today. Mr. Saad is going to post on the Internet, January
18 15th it will be up and available, a balance sheet so to
19 speak. And I want to tell you that there are a number of
20 things that we can not tell you. You might say, why?
21 We're members of the class. Well, although each of you
22 would like to know all the information but I think that
23 you will understand and trust each of you to have to
24 ability to invest. You are intelligent folks and you can
25 understand, even though you might not like it, you can

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1 status or the existence of any investigation. What I can
2 tell you that is that in any case where there are
3 allegations of criminal activity, the Attorney General's
4 Office takes that very seriously. I understand that's
5 probably a very unsatisfying answer for many of you but
6 because of the lack of detail, but again, these are
7 statutory rules that exist to protect the integrity of the
8 process and I'm not at liberty to violate those even if
9 they are frustrating. I ask you to understand that that's
10 the best I can offer you.

11 I'll be here after the proceedings have
12 concluded. If anybody wants to approach you, I'd be glad
13 to talk with you, but, again, I'm not going to be able to
14 offer any specifics because of those rules.

15 THE COURT: Thank you very much.

16 Let me just say this, ladies and gentlemen,
17 he can't talk with you about and he can't talk with me
18 about it. That's how stringent these rules are and y'all
19 ought to be very thankful in the big picture we have
20 persons with kind of integrity who follow the rules
21 exactly as they are written. So it ought to restore some
22 faith that you have in our system. And I will tell you
23 that Mr. Saad is cooperating with any appropriate persons
24 with whom he needs to cooperate with.

25 And the other thing I would point out to you

1 is the fact that Mr. Waters is here and you all just have
2 to make a reasonable inference about that. I think that
3 about covers that.

4 Jerry, would you tell us a little bit about
5 the IRA issue without giving any advice.

6 MR. SAAID: I understand through the process
7 having received email and calls from several note holders
8 that several note holders --

9 THE COURT: Is that on?

10 MR. SAAID: Is this better? I'm not used to
11 this. I'll give you some of the background information.
12 The records that I have shows that there was about 141
13 note holders that had their investments in IRAs and the
14 IRAs have their own set of patch rules and part of the
15 problem that I know was coming up is people were getting
16 letters and notices about 1099s issued to the Internal
17 Revenue Service reporting taxable income from these
18 distribution of the notes coming out of the IRAs to the
19 individuals named directed. So I contacted a company that
20 was holding predominantly all of this IRA accounts which
21 was called Physeve(ph) which later changed their name of
22 Lincoln Trust Company and became familiar with what was
23 going on so I'll give you a broad stroke background.

24 In 2008 there was approximately 30 note
25 holders who notified the custodian that they wanted to

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1 could just pick up and look and see. It took extensive
2 amount of digging, looking through records, traveling to
3 Georgia looking at opposing counsel records down there to
4 understand how all this could have occurred. And this is
5 not the only time -- I believe this is not the only time
6 this type of thing has occurred in this case and that's
7 why we are spending time to go search, seek, and recover
8 whatever we can.

9 THE COURT: Having heard that and I've heard
10 it three or four times and I still do not have a complete
11 understanding of it. When I say shell game, a lot of
12 these people are connected in other matters and it's
13 moving around and it's hard to keep up with which cup has
14 got the pea under it. And what they have done in the last
15 two years -- this is what your receiver has done. He has
16 uncovered information, try and trace the funds and where
17 they went, what happened to them and I just want to --
18 there is no way to sugar coat the thing. There is no pot
19 of gold out there.

20 All the 38 million dollars we're trying to
21 find it, but ladies and gentlemen, we don't know where it
22 all went. We know eighteen million is up in New Jersey.
23 There are a lot of things we can not tell you because it
24 might impair our ability to pursue some of this stuff, but
25 I wanted Jerry to give you an idea the flavor of what he's

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1 even have access to some of this information and some of
2 the confidential documents, but does the AG have access to
3 that information if they wanted to have access, if there
4 was an investigation?

5 THE COURT: I don't know if you all remember
6 but we sat in this courtroom when we settled this matter
7 in '09 and that was how we were able to get an agreement
8 was that Mr. Field refused to give up his Fifth Amendment
9 Rights. If he's innocent, I don't know why he would need
10 those but that was written into the agreement and we got
11 into -- well, I was kind of in a pickle because of the law
12 with respect to the State Grand Jury and there's a
13 specific judge who -- it's a long story, but the bottom
14 line is there is no Fifth Amendment Right for a
15 corporation and these were corporate documents and I will
16 say that the -- I think I said before that Mr. Saad will
17 continue to cooperate with any appropriate person in
18 pursuit of all relevant issues surrounding the failure of
19 CIF.

20 MR. MAULMAN: Part of the settlement was
21 there was no agreement not to sue Author Field.

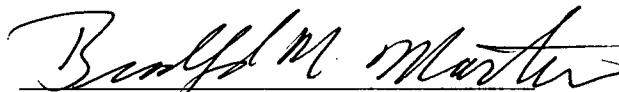
22 THE COURT: Hang on a second. I will read
23 from Page 9 of the settlement order. "In consideration of
24 Dr. Field being dismissed without prejudice in the above
25 actions, he agrees to forego the severance pay allegedly

Certification of Counsel

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The undersigned hereby certifies that the Appendix to Record on Appeal contains the additional material approved to be included by order of the Court of Appeals filed February 19, 2016 and not any other material.

MAR 02 2016
SC COURT OF APPEALS



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Dated: February 29, 2016

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