

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

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

CIVIL ACTION NO. 2008-CP-23-3665

Plaintiffs,)

ORDER TO PRODUCE RECORDS

vs.)

Capital Investment Funding, LLC, and)
Arthur M. Field,)

Defendants:)
_____)

This matter came before the Court for the Receiver's motion to compel Arthur M. Field ("Field") to produce his computer. The motion was filed on May 6, 2015 and heard by the Court on December 8, 2016. The motion requests that the Court order Field to produce his computer to James P. Perry, forensic examiner, to produce a privilege log identifying information he asserts is privileged as attorney-client matters, and to provide an *in camera* review of such items.

During a previous hearing before the Court in 2013, Field testified that he maintained files relating to Capital Investment Funding, LLC, ("CIF") on a personal computer. At that hearing, Field was ordered to produce that computer. Field delivered the computer to his attorney of record at that time, Bradford Martin. However, Field maintained the computer contained attorney-client information¹ that he could not release to the Receiver. The parties could not agree as to the method for producing the computer and preserve the integrity of the data while protecting the assertion of attorney-client materials. So the Receiver filed the current motion to have the Court

¹At the time of the previous hearing in 2013, Field was licensed to practice law in the states of Connecticut and New Jersey. He has never been licensed to practice law by the State Bar of South Carolina, where Field has lived since the mid-1990s. He currently is not licensed to practice law in any state.

review the files *in camera*.

At the hearing on December 8, 2016, Mr. Field was represented by Attorney Brad Martin. Attorney Gwendolyn Martin of Bradford Martin's office appeared on Mr. Martin's behalf regarding this motion and represented to the Court that their law firm has been in possession of Field's personal computer for more than three (3) years. She further represented that no one has accessed that computer since it was delivered to her law office in 2013. She represented, and the Receiver's attorney confirmed, that the parties had agreed to use Jim Perry as the expert to "mirror" Field's personal computer. She also requested protection for Mr. Martin for December 19th through December 26th for a vacation. Counsel for CIF did not object to this request for protection.

Field testified that three (3) computers have information containing information related to Capital Investment Funding: the one at Brad Martin's office and two (2) others at his home. Field was not certain if other computers may contain information related to CIF or any related entity.

Given the importance of preserving all information in Field's possession, custody or control that relates to CIF and all entities that transacted business with CIF (or its related companies), including information and data contained within computers that Field has accessed which may contain CIF-related data, the Court hereby orders the following:

The Receiver (Jerry T. Saad) or his attorneys will retain James P. Perry, a qualified professional computer data recovery expert ("Expert"), who will make a duplicate copy ("mirror") of Arthur M. Field's computer data. As soon as administratively possible, but no later than two (2) days of entry of this order, Field and/or his attorneys will deliver all computers identified at the hearing to the Expert to obtain a mirror of Field's computer hard drives. **Field has been strongly admonished not to access, to alter, or to delete any file on any of these computers until the**

Expert obtains the mirrored copy of the following:

1. The three (3) computers that Arthur M. Field identified as being in his home, which include a notebook computer, a computer that he uses for his entertainment business, and his wife's computer;
2. The computer currently in the possession of Attorney Martin.
3. Any backup records, external disc, flash drives, or any other device which holds electronic information that in any form or fashion can be construed as information that could be beneficial to the Receiver in executing his duties as such.

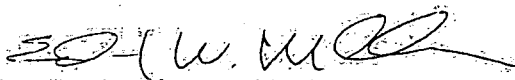
Field shall not alter, tamper, move or delete any records on these computers or devices or materials until after the Expert has certified that he has completed the work ordered. Field shall fully cooperate with the Expert in obtaining mirrored copies of all electronic data, including but not limited to, providing any and all passwords to the Expert needed or requested by the Expert. The Expert shall not disclose these passwords to anyone until further order from this Court.

After these materials have been copied by the Expert, for the computer currently in the possession of Attorney Martin, Attorney Brad Martin shall deliver to the Court (with a copy to the Receiver's counsel) a signed privilege log pursuant to Rule 26(b)(5) of the South Carolina Rule of Civil Procedure no later than 5:00 p.m. on the seventh (7th) day following the day the Expert completes his copy. In the event the seventh (7th) day falls within a day for which Attorney Brad Martin has sought protection, the deadline shall be extended to the next business day following his return (i.e., December 27, 2016). If no privilege log is delivered to this Court by that time and date, any assertion of privilege shall be deemed waived and no information shall be considered privileged. The log shall specifically identify each file and set forth in detail the basis for claiming attorney client privilege or attorney work product. No privilege or claim may be made as to any work Field may have performed on behalf of CIF.

With regard to all other computers and devices, Arthur M. Field shall deliver to this Court (with a copy to the Receiver's counsel) a signed privilege log pursuant to Rule 26(b)(5) of the South Carolina Rule of Civil Procedure no later than 5:00 p.m. on the fourteenth (14th) day following the day the Expert begins the work ordered. If no privilege log is delivered to this Court by that time and date, any assertion of privilege shall be deemed waived and no information shall be considered privileged. The log shall specifically identify each file and set forth in detail the basis for claiming attorney client privilege or attorney work product. No privilege or claim may be made as to any work Field may have performed on behalf of CIF.

Upon receipt of the privilege log(s), pursuant to Rule 26(b)(5) of the South Carolina Rule of Civil Procedure, this Court shall perform an *in camera* review of the information which Field asserts as privilege and shall make a determination as to the validity thereof at such time. Any objection by counsel for the Receiver to any assertion of privilege contained within the logs served by Field shall be made within seven (7) days of receipt of the logs. Objections shall be filed with the Court and served upon Mr. Field's counsel.

IT IS SO ORDERED on this 14th day of December, 2016.



Edward M. Miller
Presiding Circuit Court Judge