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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

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.

RECEIVED

JAN 25 2018

SC Court of Appeals

Appellate Case No. 2013-002676

MOTION AND MEMORANDUM TO LIFT THE ORDER OF ABEYANCE

The undersigned, as attorneys for Appellant, hereby files this Motion for an Order lifting the order of abeyance of hearing the pending appeal and requests leave to supplement the Record in this matter, and requests oral argument be held on this Motion and the appeal.

The grounds for this Motion are that Appellant's obligation to dismiss this Appeal is conditioned upon a Global Settlement Agreement (GSA) not resulting in any sanctions or penalties against Appellant by any court, including the court below, and the lower court has purported to "approve" the GSA while simultaneously continuing to schedule a hearing to sanction and assess penalties (attorney's fees) against Appellant, in violation of the terms of the GSA and thus, as implemented by the lower court, the GSA has not been settled. This Motion is made in accordance with Rule 240 of the SCACR.

History of the Appeal

This matter was originally appealed on December 12, 2013. Appellant's Initial Brief was filed on June 6, 2015, Respondent's Initial Brief was filed on October 30, 2015, and Appellant's Initial Reply Brief was filed on November 30, 2015.

Appellant's Final Brief was filed on February 4, 2016, Respondent's Final Brief was filed on January 28, 2016 and Appellant's Final Reply Brief was filed on March 2, 2016.

This Court determined that the case was ready for consideration on March 18, 2016, and notified the parties on November 10, 2016 that oral argument may be scheduled for the February 2017 term. This Court once again notified the parties on December 9, 2016 that oral argument was anticipated for the term of March 2017. In a letter dated March 3, 2017, the Court stated that the submission of this appeal would be without oral argument¹.

On August 15, 2017, the Clerk for this Court entered the following Order:

The parties have notified the Court that they are working towards effectuating a settlement of this litigation. Accordingly, the appeal is held in abeyance. The appellant must provide status updates every sixty days from the date of this order or the appeal will be dismissed.

Appellant provided updates as required on October 13, 2017 and December 7, 2017. Those notifications stated that the settlement had not yet been effectuated. This Court sent a letter dated January 11, 2018 requesting an update "within ten days and every thirty days hereafter." Appellant complied with its letter dated January 19, 2018 where he stated the case was not settled. Respondent's attorney wrote on the same date claiming that the case had been settled. Appellant received a letter addressed to all counsel dated January 22, 2018 stating:

The Court received your status update regarding the above named appeal. If you require further relief with regard to the appeal, you must serve and file a motion

¹ Appellant respectfully requests Oral Argument in light of the subsequent actions of the lower court with respect to the implementation of the GSA.

requesting such relief within ten days. The motion must be in compliance with Rule 240, SCACR.

Prior to receiving this Court's letter of January 22nd, Appellant filed a letter in response to Respondent's letter dated January 22, 2018, and Respondent filed a letter in reply dated January 23, 2018. Rather than respond to Respondent's January 23, 2018 letter, in compliance with the Court's January 22nd letter, this Motion and Memorandum are being filed pursuant to SCACR 240.

History of Potential Settlement

Appellant's counsel only represents Appellant in the pending appeal. Micajah P. Caskey represents Appellant in the attempt to settle issues that have been adjudicated in the lower court since the filing of this Appeal.

The history of this case has been lengthy and contentious. This appeal has been pending since 2013. The issue of whether or not the lower court judge should continue to preside over this case or be recused is the gravamen of the appeal, and that issue has been preserved by a reservation of rights as to the recusal issue at every subsequent hearing. The parties, in an attempt to end this matter and other pending legal cases, federal and state, signed an agreement showing a print date of February 24, 2017, in an attempt to settle all issues (the GSA). Respondent would receive additional assets, and Appellant would receive a dismissal of all pending claims, including any opportunity that the lower court would have to order any punitive action against him.

Paragraph 10. of the GSA makes this clear:

10. In the event a court issues an order that denies Arthur Field's request for the modification to his restitution set forth in Paragraph 8 or issues an order that denies Arthur Field's Motion seeking dismissal of the pending matters described in Paragraph 9, and/or otherwise imposes sanctions or penalties upon Arthur Field above and beyond fulfilling his obligations of this Agreement as set forth herein,

then immediately upon the issuance of such order, this Agreement shall become immediately null and void, and all documents and monies previously delivered to be held in trust shall be returned to the parties as provided herein. Until such time of such occurrence, all parties to this Agreement are bound hereunder and may not modify any terms or conditions hereunder, and may not withdraw or terminate his or her or its participation hereunder.

The lower court has held several hearings² with respect to this Global Settlement Agreement, but has not completed its handling of the matter³. Paragraph 10 of the GSA makes it crystal clear that if any sanctions or penalties are imposed upon the Appellant, the agreement shall become immediately null and void. The lower court has not yet issued an order seeking sanctions, but has scheduled two hearings to consider just that, and as recently as January 8, 2018, notified the parties in writing it will schedule yet another hearing⁴.

Critical to the attempted settlement to the Appellant were the assurances that the Judge, who is the subject of the Motion to Recuse now on appeal, would not sanction him. Unfortunately, this fundamental condition of the Global Settlement Agreement, the basis upon which Appellant agreed to the substantial concessions he made in the financial terms of the attempted GSA, have not been met. Therefore, the issues of whether or not the lower court has the right to sit in judgment of the Appellant, which is the subject of the appeal, must now go forward. Therefore, Appellant respectfully requests the Order of Abeyance be lifted and for this Court to hear oral argument on the Appeal and this Motion.

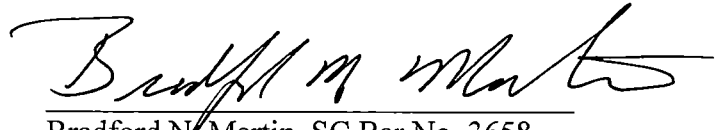
² Hearings were held on September 5, 2017, November 27, 2017 and December 7, 2017. (See Orders; Exs. A & C)

³ Respondents have declared that the Orders of December 1, 2017 and December 21, 2017 are final since no appeal was made. However, interlocutory orders are not appealable (See Order Appellate Case No. 2017-000108 dated January 25, 2017) (Ex B), and the lower court makes it clear in its orders that an additional hearing is required.

⁴ Exhibit E. The lower court's email refers to the Supreme Court's Administrative Order dated May 19, 2017 (Ex D).

Respectfully submitted,

Date 24 January 2018



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**ATTORNEYS FOR APPELLANT ARTHUR M.
FIELD**

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.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2008-CP-23-3665

ORDER

This matter comes before me upon to address several motions and matters currently pending before the Court. By and through its court-appointed receiver ("Receiver"), Capital Investment Funding, LLC ("CIF") has filed the following motions:

1. Plaintiffs' Motion to Approve Class Settlement and ratify the Global Settlement Agreement (GSA) by the Class ("Motion To Approve GSA") dated 3/8/2017;
2. Plaintiffs' Amended Motion to Defendant Arthur Field Compelling Compliance To The Terms of the Global Settlement Agreement ("Motion To Comply-Field (Restitution)"), filed August 18, 2017. This motion alleged that Defendant Field (hereinafter "Defendant Field") has failed to fulfill his obligation under the terms of the GSA to schedule a hearing to modify his restitution and parole terms ("Restitution Hearing") and sought this Court to direct Defendant Field to have the Restitution Hearing promptly, or in the alternative, find that Defendant Field has willfully failed to comply with the material terms of the GSA and sanction him accordingly.
3. Plaintiffs' Motion As To Allyson Field, Kathryn Taillon & Arthur Field To Comply With The Terms of the Global Settlement Agreement ("Motion To Comply-Field (Insurance)"), filed July 26, 2017. This motion alleged the property located at 310 Thornblade Blvd., Greer, South Carolina ("Thornblade Property"), which is a material component of the GSA, incurred damaged from a hail storm that occurred in March 2017, and sought this Court to: (a) declare these parties are responsible for restoring the Thornblade Property to the condition existing at the time the GSA was executed; (b) order repairs to the Thornblade Property be conducted with this Court's oversight to ensure proper conduct, with due haste to minimize any additional consequential damages; (c) order the named parties to immediately deliver all insurance proceeds to CIF counsel, to be held in escrow, and require all receipts and disbursements of insurance proceeds related to such damage and repairs be conducted with this Court's oversight to ensure proper application of funds; and (d) declare that CIF is not

responsible for paying any deductible amount of the insurance policy; and sought appropriate sanctions and attorney fees; and

4. Plaintiffs' Motion to Kirsten White To Comply with the Terms of the Global Settlement Agreement Executed on February 24, 2017 ("Motion To Comply-White"), filed July 26, 2017. This motion sought to compel Kirsten White to comply with the Global Settlement Agreement ("GSA") regarding the insurance, inspection and sale of her residence and sought appropriate sanctions and attorney fees.

Each of these matters were addressed in a hearing held by this Court on November 27, 2017. The following counsel appeared on behalf of the following parties:

Capital Investment Funding:
George Brandt, III, Esq.
Stanley T. Case, Esq.
Rodney F. Pillsbury, Esq.

Arthur M. Field, Jr.:
Micajah P. Caskey, Esq.
Bradford Martin, Esq.

Allyson Field
Luke Burke, Esq.

Kathryn Taillon
Jeffrey P. Dunlaevy, Esq.

Regarding the Motion To Approve GSA

Upon its approval, the GSA settles all matters, claims and litigation recited therein between and among the parties to the agreement. By its terms the GSA also resolves matters pending in this case relate to multiple complaints as to Arthur Field's willful violations of the terms of the original Mediated Global Settlement Agreement, memorialized by order of this Court on August 24, 2009, including:

1. Orders and Rules to Show Cause dated 4/1/2013, 8/19/2013 and 10/1/2013 and rulings thereon, and appeal therefrom pending in the South Carolina Court of Appeals. (Appellate #2013-002676);
2. Order and Rule to Show Cause dated 9/8/2016 and proceedings thereon;
3. Order to Produce Records dated 12/15/2016 and Supplemental Order dated 1/12/2017 and any and all subsequent proceedings thereon; and
4. Defendant Arthur Field's Motion to Dismiss all prior or pending Orders relating to Rules to Show Cause by Defendant Field dated 3/10/2017 and all subsequent proceedings thereon.

Counsel for CIF noted to this Court that a similar hearing on these matters was held by this Court on September 5, 2017. At that time, this Court:

1. Directed Defendant Field to request a hearing to take place on his motion to modify his restitution in the pending criminal case: State of South Carolina v. Arthur M. Field, C.A. 2012-GS-47-08 (Ct of General Sessions, Anderson County, SC);
2. Ordered Defendants Arthur Field, Kathryn Taillon and Allyson Field to complete all requirements regarding the 310 Thornblade Blvd. property; and
3. Ordered Defendant Kirsten White to comply with all outstanding the terms and obligations that pertained to her and her residence at 5 Aldgate Way, Greer, SC.

Counsel for CIF then updated the Court on the status of compliance with the GSA and with previous orders of this Court. The restitution hearing took place before Judge Cordell Maddox on November 1, 2017. The parties to that proceeding reached an agreement that was put on the record. This Court then confirmed that Judge Maddox had this day signed a written order memorializing those terms. Counsel for CIF then proffered an addendum to the GSA that reflects and incorporates the changes to the GSA affected by the matters agreed to in Judge Maddox's order. [Exhibit 1, Addendum] Upon inquiry of this Court, there were no objections to the Addendum.

This Court finds and concludes that, in accordance with the requirements of South Carolina law, the "Addendum to the Global Settlement Agreement" ("Addendum") presented to this Court at the hearing on November 27, 2017, properly incorporates the matters addressed by Judge Maddox in the above-referenced order. This Court further finds that the Addendum modifies the GSA solely to the issue of restitution order to be paid by Arthur Field in the matter: State of South Carolina v. Arthur M. Field, C.A. 2012-GS-47-08 (State Grand Jury of South Carolina), and does not affect any other party to the GSA other than Arthur Field. This Court further finds the amendments to the GSA as set forth in the Addendum are acceptable.

This Court notes that in the hearing of the Motion to Approve the GSA held on March 27, 2017, this Court took the matter under advisement and deferred a decision thereon. Since then, over the course of the last seven months, this Court has reflected and deliberated over the many comments made by Class members, who lost significant sums of money from their investment in CIF, and over the Receiver's testimony and recommendations. With the amendments to the GSA as set forth in the Addendum, this Court now concludes and finds that approval of the GSA is in the best interest of the Class. **Accordingly, this Court hereby approves the GSA as amended by the Addendum, and Orders that all parties to the GSA have been and shall continue to be duty bound to fulfill obligations set forth therein.**

This Court also reminds all parties to the GSA that this Court found and stated, in its Order dated October 25, 2017 the following:

1. The language of the GSA is clear, concise, specific, and unambiguous.
2. Section 14.I.vi. of the GSA specifically binds all parties to cooperate with each other fully, timely and without delay.
3. Section 14.I.vii. states emphatically that **TIME IS OF THE ESSENCE**.

This Court further reminds all parties to the GSA that, pursuant to Section 14.I.ii. of the GSA, this Court retains sole and exclusive jurisdiction relating to all matters of enforcement or non-performance of the GSA. This Court hereby notifies all parties to the GSA that this Court will enforce strict and timely adherence and performance by all parties to the GSA.

This Court further orders that all parties to the GSA sign the Addendum. **Due to the time deadlines set forth within the GSA, the Court directs all parties (or their counsel) to execute an original signature and their initials to the Addendum and to deliver such to CIF Attorney Rodney Pillsbury no later than 5:00 PM (EST) Thursday, November 30, 2017; provided however, that if any party is unable to deliver the original executed Addendum by that date and time, then such party shall scan/email or fax the executed Addendum to CIF Attorney**

Rodney Pillsbury [email: Rodney@pillsburyfirm.law] or [fax: 864-370-0599] by such time and then deliver the original executed Addendum to CIF Attorney Rodney Pillsbury's office: Pillsbury Law Firm, LLC, 25 Mills Ave., Greenville SC 29605 no later than 5:00 PM (EST) Wednesday, December 6, 2017.

Regarding Plaintiffs' Motion To Comply-Field (Restitution)

Counsel for CIF noted that, while this Court heard this Motion on September 5, 2017 and issued its Order on October 25, 2017 mandating Defendant Field to schedule the restitution hearing, this Court did not address Plaintiff's specific requests contained in the Motion seeking sanctions and attorney fees as a result of the Defendant Field's unreasonable delays and failure to timely schedule the restitution hearing as required under the GSA. This Court shall not rule on this request at this time, but rather will continue this matter until a hearing to be held by this Court on December 7, 2017, at which time this Court shall allow the parties to present information, testimony and evidence thereof.

Regarding Plaintiffs' Motion To Comply-Field (Insurance)

Counsel for CIF noted that, while this Court heard this Motion on September 5, 2017 and issued its Order on October 25, 2017 mandating delivery of insurance information to CIF and cooperation between all parties, this Court did not address Plaintiff's specific requests contained in the Motion seeking sanctions and attorney fees as a result of the defendants' unreasonable delays and failure to act as required under the GSA. Counsel for CIF further noted that the matter of the insurance proceeds is still unresolved as the defendants are still holding the insurance proceeds. Upon this Court's inquiry, Mr. Luke Burke, representing defendant Allyson Field, acknowledge that his firm did hold the insurance proceeds in its escrow account and has not delivered these funds to CIF because CIF has not demanded the funds. Counsel for CIF noted that no demands are necessary because the GSA explicitly states that all insurance proceeds are to be paid to CIF.

Upon further inquiry of the insurance matter, Field's counsel voluntarily proffered Defendant Arthur Field to give testimony on the matter.

Once sworn, Defendant Field provided a timeline of events. Other persons present took issue with the sequence and substance of Defendant Field's compliance with section 14 of the GSA as it pertains to naming CIF as an additional insured; his submitting a claim for property damage from a hail storm; his depositing of the insurance proceeds in his own bank account; and his subsequently transferring those funds to Allyson Field's counsel in two separate installments.

The Court is concerned about the veracity of the sworn testimony provided by Arthur Field on this matter. This Court ordered from the bench that the defendants' counsel obtain all of the insurance records from the insurance company and deliver such information to this Court by noon, on Monday, December 4, 2017. This Court shall review this insurance information and compare the information to the testimony provided by Defendant Field. This Court shall not rule on this matter at this time, but rather will continue this matter until a hearing to be held by this Court on December 7, 2017, at which time this Court shall allow the parties to present information, testimony and evidence thereof.

Regarding Plaintiffs' Motion to Compel Kirsten White

On July 26, 2017 Plaintiffs filed a motion to compel Kirsten White to comply with the terms and obligations of the GSA. Since executing the GSA in February 2017, Defendant White has failed to make her home available for inspection and has failed to contract with a real estate agent to list her house for sale, despite her explicit obligations to do so under the terms of the GSA. At the September 5, 2017 hearing, the Court examined Ms. White about her non-compliance. The Court rejected her excuses and explanations and ordered her to comply with the GSA – namely, to make the house available inspection; to provide the Receiver with all documentation related to homeowner's insurance coverage and, if applicable, all documentation related to

insurance claims for repairs; and to execute an agreement to sale the home with a licensed real estate agent of her choosing.

At the hearing on November 27, 2017, counsel for CIF informed the Court that every attempt to contact Defendant White via telephone, email, letter and text have has been ignored. Despite receiving notice of the hearing,¹ Defendant White failed to appear.

As a threshold matter, the Court grants Plaintiffs' motion to compel filed on July 26, 2017. Pursuant to Rule 37(a)(4) of the South Carolina Rules of Civil Procedure, the Court orders that Defendant White shall pay the attorney's fees and costs associated with the filing of Plaintiffs' motion. The Court directs counsel for Plaintiffs to file a petition for fees within ten (10) days of entry of this order, and the court will schedule a hearing at the appropriate time. Any fees and costs awarded shall be deducted from any sums otherwise due to Defendant White from the proceeds of the sale of the 5 Aldgate Way property, as set forth in the GSA.

In addition, based upon the Court's direct inquiry with Defendant White and her deliberate refusal to comply with the terms of the GSA which she freely and voluntarily negotiated and executed on her on accord, the Court finds Defendant White to be in willful contempt of her obligations of the GSA and of the orders of this Court, as memorialized in the order entered October 25, 2017. It should be noted that Defendant White has admitted in a prior hearing that she provided false and misleading deposition testimony regarding to the disappearance of the original noteholder files.

In the September 5, 2017 hearing, Defendant White indicated she would cooperate fully with CIF's counsel to facilitate the inspection and sale of the home. CIF's counsel reports that despite numerous attempts via every means possible, Defendant White has refused to respond, much less cooperate. The Court finds Defendant White to be in willful contempt of this court.

¹Arthur Field testified under oath that he sent a text to Kirsten White on November 26, 2017, reminding her about the hearing held on November 27, 2017.

Section 14 of the GSA addresses the exchanges of title and mortgages among the parties. Under Section 14(D)(viii)(d), Defendant White is scheduled to receive 80% of the net proceeds after satisfying CIF's mortgage and all other liens and expenses identified therein. Defendant White may purge herself of the finding of contempt with the payment of 10% of the net proceeds. Thus, under Section (D)(viii)(d), if Defendant White wishes to clear the finding of contempt, Defendant White will receive 70% of the net proceeds. The remaining 30% will go to CIF.

If Defendant White elects not to dissolve the contempt finding in this matter, or if this obligation is not settled within five (5) business days of the closing, the Court will hold a separate hearing to determine other penalties and/or punishments.

It is so ordered, this ____ day of November, 2017.

The Honorable Edward W. Miller
Presiding Judge, 13th Judicial Circuit



Greenville Common Pleas

Case Caption: William F Tomz , plaintiff, et al vs. Capital Investment Funding Llc ,
defendant, et al
Case Number: 2008CP2303665
Type: Order/Other

So Ordered

s/ Edward W. Miller

The South Carolina Court of Appeals

William F. Tomz and Francis W. Tomz, individually and
as class representatives, Respondents,

v.

Capital Investment Funding, Arthur M. Field, Appellants.

Appellate Case No. 2017-000108

ORDER

This appeal arises out of circuit court orders directing Appellant Arthur M. Field to produce a privilege log regarding documents he claims contain privileged communications. We dismiss this appeal as interlocutory. *See Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003) ("[A]n order compelling discovery does not ordinarily involve the merits of the case and may not be appealed."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.


_____, J.
FOR THE COURT

Columbia, South Carolina

cc:
Micajah Pickett Caskey, IV, Esquire
George Brandt, III, Esquire
Stanley T. Case, Esquire
Bradford Neal Martin, Esquire

FILED

January 25, 2017

counsel for CIF and counsel for Mr. Field reported that the insurance carrier (State Farm) had not produced the requested information.

The Court has directed both parties, as named insureds under the policy, to obtain that information from State Farm as soon as possible. Once obtained, the parties are to provide the Court with unredacted complete copies. The Court will reconvene a hearing at that time, if necessary.

Contempt of Court for Kirsten White

In its December 1, 2017 order, the Court found Ms. White to be in contempt of court for her deliberate refusal to comply with the terms of the GSA. Ms. White appeared at the December 7, 2017 hearing. She acknowledged that she had received notices of the November 27, 2017 hearing. She provided no acceptable excuse for not attending it.

At the December 7, 2017 hearing, she acknowledged that she is obligated to vacate the premises on or before December 31, 2017.

Ms. White has been under obligation to permit CIF to inspect the premises since March 2017. Thus far, she has willfully refused to cooperate in permitting this to happen. At the hearing, these parties agreed that the inspection will occur on December 15, 2017 at 10:00 AM. Should the court learn that Ms. White has in any way obstructed this inspection from moving forward, the Court admonished Ms. White that a sheriff's deputy will be sent to bring her to court to explain why.

CIF stated that the few checks it had received from Ms. White for her monthly payment obligation under the GSA could not be negotiated because Ms. White made them out jointly to CIF and Kathryn Taillon. The Court orders that any amount Ms. White owes for the monthly payment obligations under the GSA will be deducted from her net proceeds she might otherwise be due from the sale of the house (in addition to the attorney's fees and penalties set forth in this

Court's order of December 1, 2017). The Court will address the amount of these fees and costs at its next hearing. CIF is directed to file its petition within ten (10) days of entry of this order.

Miscellaneous Items:

Regarding the entertainment royalty agreement, Arthur Field and CIF presented proposed agreements to each other. As of the hearing, no agreement had been finalized. The Court directs these parties to finalize an agreement on or before December 31, 2017. If additional time is needed, either party may file a request with the Court.

Also, under the terms of the GSA, Arthur Field understands that he is obligated to appear in this Court to testify under oath about the financial statement he has provided to CIF. Mr. Field is responsible for his own expenses and costs associated with traveling to the hearing. If the parties cannot agree to a time and date for this hearing, either party may notify the court about scheduling issues.

Any signatures missing from the Addendum attached to the December 1, 2017 order shall be provided to CIF no later than December 13, 2017. If any signatures have not been received by CIF by that time, CIF is instructed to notify this Court of such so that the matter may be dealt with accordingly.

It is so ordered, this ____ day of December, 2017.

The Honorable Edward W. Miller
Presiding Judge, 13th Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. No.: 2008-CP-23-3665

William F. Tomz and Francis W. Tomz,)
Individually and as Class Representatives)
Plaintiffs,) CERTIFICATION OF CONSULTATION

vs.)

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

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, counsel certifies that consultation would serve no useful purpose.

BUTLER, MEANS, EVINS & BROWN, PA

/s/ Stanley T. Case

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HENDERSON, BRANDT & VIETH, PA.

/s/ George Brandt, III

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Attorney for Plaintiffs

December _____, 2017
Greenville, South Carolina



Greenville Common Pleas

Case Caption: William F Tomz , plaintiff, et al vs. Capital Investment Funding Llc ,
defendant, et al
Case Number: 2008CP2303665
Type: Order/Other

So Ordered

s/ Edward W. Miller



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2017-05-19-01

The Supreme Court of South Carolina

RE: Lawyer-Legislator Protection During the Legislative Session

ADMINISTRATIVE ORDER

On May 18, 2017, an Administrative Order regarding "Lawyer-Legislator Protection during the Legislative Session" was issued. That order is withdrawn and this order is substituted in its place.

This order supersedes the April 21, 2010 and June 21, 2013 orders issued by the Chief Justice concerning lawyers who serve as members of the General Assembly and who at times are unable to appear in any court, deposition, or administrative hearing during the legislative session.

I find that lawyers who serve as members of the General Assembly provide a great service to the citizens of this State and, at times, are unable to appear for trials, hearings, or depositions during the legislative session. I further find that these lawyer-legislators are often threatened with sanctions for their inability to appear when requested.

I further find that the uncertainty of the availability of lawyer-legislators is disruptive to the orderly and efficient use of court time and resources. I further find that the inflexible insistence that lawyer-legislators be available whenever the court or lawyers request their presence is not only detrimental to the clients of the lawyer-legislators but also creates unnecessary angst for all concerned.

Therefore, IT IS ORDERED that lawyers who are members of the General Assembly are granted absolute protection from being called to a deposition, or a trial or hearing in any court of this State or any administrative tribunal of this State from the first Tuesday in January until July 31. This protection extends to those times when the General Assembly votes on vetoes of the General Appropriation bill. Further, lawyer-legislators are similarly protected during any special or called session after the regular session ends. Hearings, trials, or depositions may be scheduled during these time periods if the lawyer-legislator consents to the hearing, deposition, or trial being set and is given proper notice. A decision to waive protection to appear at a particular hearing shall not be interpreted as a general waiver of the absolute protection granted herein for that case or any cases or hearings.

This matter will be continuously monitored for compliance and any necessary adjustments.

This order takes effect immediately and remains in effect unless amended or rescinded by the Chief Justice.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

May 19, 2017
Columbia, South Carolina

From: Miller, Edward W. [mailto:emiller@sccourts.org]
Sent: Monday, January 8, 2018 2:30 PM
To: micah@caskeylawfirm.com
Cc: Jerry Saad <jerrysaad@saadandmanios.com>; Buck Brandt <gbrandt@hbvlaw.com>; 'scase@butlermeans.com' <scase@butlermeans.com>; Rodney Pillsbury (Rodney@PillsburyFirm.law) <Rodney@PillsburyFirm.law>; Bruce Bannister (bbannister@bannisterwyatt.com) <bbannister@bannisterwyatt.com>; Jeff@stephensonmurphy.com; Thomas L. Stephenson (tom@stephensonmurphy.com) <tom@stephensonmurphy.com>; Brad Martin <bmartin@bnmlaw.com>; Miller, Edward W. Law Clerk (Rebecca Jennings) <emillerlc@sccourts.org>
Subject: Tomz v. CIF hearing of 1/8/18

Mr. Caskey and all others copied on this mail,

I have been provided with e-mail exchanges concerning today's aborted hearing in the above matter.

I find it inexcusable that notice of assertion of the blanket protection provided to "Lawyer-Legislators" by the SC Supreme Court Administrative Order, dated May 19, 2017, was not provided until 7:50 a.m. on today's date. It is particularly disturbing in light of the e-mail communications between counsel concerning document exchange, dated December 29, 2017 and January 5, 2018.

The purpose of the Administrative Order is to protect those individuals from court appearances which would conflict with legislative duties. I set the hearing today to avoid any such conflict, the legislature has not been convened for 2018. The Order is intended as a shield and it is not intended to be used to avoid court obligations which do not conflict with the legislative session.

I will monitor the legislative schedule and I will set this hearing during the first week that the legislature is not called to Columbia.

Edward W. Miller

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2008-CP-23-3665

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**RECEIVED**  
JAN 25 2018  
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William. F. Tomz and Francis W. Tomz, Individually and as Class Representatives,  
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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.

Appellate Case No. 2013-002676

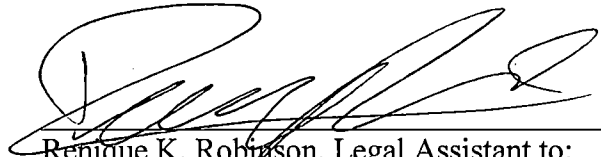
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**PROOF OF SERVICE**

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I, Renique K. Robinson, assistant to attorney for Appellant, certify that I have served a copy of Appellant's Motion and Memorandum to Lift the Abeyance, by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on January 24, 2018, addressed to Respondents' attorneys, Stanley T. Case, Esq., P.O. Drawer 451, Spartanburg, SC 29304 and George Brandt, III, Esq., Henderson Brandt & Vieth, P.A., 360 E. Henry Street, Spartanburg, SC 29302

January 24, 2018



Renique K. Robinson, Legal Assistant to:  
Bradford N. Martin, SC Bar #3658  
Laura W. H. Teer, SC Bar #16698  
**BRADFORD NEAL MARTIN & ASSOCIATES, PA**  
Post Office Box 10410  
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864.552.9990  
Attorneys for Appellant Arthur M. Field

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January 24, 2018

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  
Appellate Case No. 2013-002676

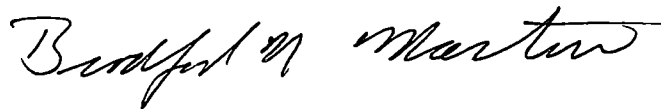
**RECEIVED**  
JAN 25 2018  
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of copy of the Motion and Memorandum to Lift the Abeyance, our firm's check in the amount of \$25.00 for the filing fee, 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.

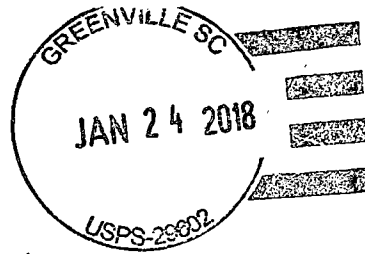
Sincerely,



Bradford N. Martin

/pm  
Enclosures

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



**First Class Mail**



BRADFORD NEAL MARTIN & ASSOCIATES, PA  
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P.O. BOX 10410 (29603)  
GREENVILLE, SC 29601

TO:

The Hon. Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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JAN 25 2018  
SC Court of Appeals