

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

Appellate Case No. 2013-002676

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FEB 12 2018
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.

**RESPONSE TO RESPONDENTS'
MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT**

The undersigned, as attorneys for Appellant, hereby files this Response to Respondents' Motion to Dismiss Appeal.

This Appeal arose out of the denial of a Motion to Recuse the lower court judge dating back to September of 2013. Appellant entered into a subsequent Global Settlement Agreement (printed on February 24, 2017), during the pendency of this appeal in an attempt to end all pending actions, including this appeal. Due to the nature of the pending appeal, it was paramount to Appellant's interests that the lower court judge could not sanction him. Therefore, the carefully drafted 16-page Agreement made this clear. Now, Respondents, in an attempt to pick the fruit from the Global Settlement Agreement, but still sanction Appellant, attempt to

dismiss the pending issue of recusal by filing this Motion. Justice requires that this Motion be denied.

Paragraph 9 of the Global Settlement Agreement makes it clear that Appellant was willing to participate and be bound by the terms of the Agreement "... upon all such matters being dismissed in accordance with the motion to which the parties have agreed..." Paragraph 9 further requires Appellant to file a motion with the court seeking dismissal of all pending matters and that the Respondents "will consent to the relief sought by [Appellant] in such motion." Instead, Respondents have filed a Motion for sanctions, alleging violations of the GSA during the time period before the lower court approved it. The GSA release language bars consideration of such claims.

Paragraph 10 makes it clear that in the event a court issues an Order or imposes sanctions or penalties upon Appellant, then the Agreement shall become immediately null and void.¹ Finally, the sole condition to avoid finality of the Agreement is contained in paragraph 14(I)(ii) which is if Appellant made material misrepresentations on his financial statement.

Respondents have effectively reaped the benefits of the new settlement Agreement and have continued to seek sanctions and attorney's fees against Appellant in violation of the clear meaning of the Agreement. The lower court judge has continued to schedule hearings, and has indicated that he will hold a hearing in the future even during the legislative session². Thus, this one sided application of the Agreement to the detriment of the Appellant does not support dismissing the appeal when the very judge whose recusal is at issue is the author of these orders. Therefore, Appellant respectfully requests the Motion be denied.

¹ ¶10, while prohibiting the lower court from imposing sanctions or penalties, does allow the lower court to make sure Appellant "fulfill[s] his obligations of this Agreement..."

² If it was true that the only issues left relate to the enforcement of the GSA, the proper course would be to dismiss the underlying case in the lower court, and bring a separate proceeding to enforce the GSA; but neither of the pending cases have been dismissed, contrary to the language of the GSA.

Respectfully submitted,

Date 8 February 2015



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FIELD**

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Appellate Case No. 2013-002676

PROOF OF SERVICE

I, Renique K. Robinson, assistant to attorney for Appellant, certify that I have served a copy of Appellant's Response to Respondent's Motion to Dismiss Appeal and Memorandum in Support, by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on February 8, 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

February 8, 2018



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February 8, 2018

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

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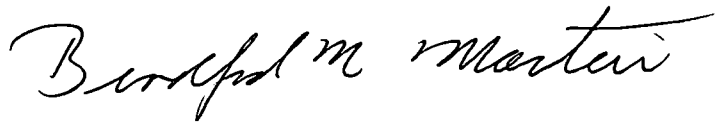
Re: *William F. Tomz v. Capital Funding, et al*
C/A No.: 2008-CP-23-3665
Appellate Case No. 2013-002676

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of copy of the Response to Respondents' Motion to Dismiss Appeal 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.