

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

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ORDER

JAN 31 2018

SC Court of Appeals

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