

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY  
Circuit Court

W. Edward Miller, Circuit Court Judge

Appellate Case No. 2018-001264

**RECEIVED**

JUL 16 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.

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**Petition for Writ of Supersedeas**

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Appellant Arthur M. Field, respectfully requests that the Court of Appeals issue a Writ of Supersedeas pursuant to Rule 241 of the South Carolina Appellate Court Rules. Specifically, Appellant requests that the Court direct the Greenville County Circuit Court to stay any execution of the Order of Contempt filed in this matter on July 2, 2018, or any other penalty or sanction, until after the Court of Appeals has issued judgment on the appeal, including specifically directing the court to refrain from issuing any further order for Appellant's arrest or other sanction, and to order an appeal bond be set for Appellant.

## Arguments

Appellant respectfully requests that the Court stay further execution of the Order of Contempt filed in this matter on July 2, 2018, (attached as Exhibit A) and appealed by Appellant on July 3, 2018. Appellant's request is based on the following:

1. After 10 years of litigation, the Circuit Court approved a global settlement agreement on December 1, 2017. The terms of the global settlement agreement "settle[d] all matters, claim[s], and litigation recited therein between and among the parties to the agreement," and "also resolves matters pending in this case," including the April 1, 2013, August 19, 2013, October 1, 2013, September 8, 2016; December 15, 2016, January 12, 2017, and March 10, 2017, orders and rules to show cause, and any subsequent rulings (attached as Exhibit B).

2. The Circuit Court's December 1, 2017, Order also raises, *sua sponte*, concern over the veracity of Appellant's testimony during a November 27, 2017. Appellant's testimony during the hearing related to an undisputed amount of insurance proceeds from a June 2017 claim that were, at the time of the hearing, being held in trust by a co-defendant's attorney, pending the approval of the global settlement agreement.

3. On December 21, 2017, the Circuit Court issued an Order directing parties to obtain records related to an insurance claim and that "[t]he Court will reconvene a hearing at that time, if necessary." On December 29, 2017, and on January 5, 2018, Respondents dumped 616 pages of documents on Appellant. On January 4, 2018, without prior communication with Appellant, Respondents noticed Appellant for a hearing on this matter before the Circuit Court four days later, on January 8, 2018. Counsel for Appellant serves the State of South Carolina as a legislator in its House of Representatives and was unable to attend that hearing.

4. An earlier Appeal in this case had been filed and docketed as Appellate Case No. 2013-002676; that Appeal was held in abeyance to allow the parties time to pursue approval of the global settlement agreement. That Appeal, Appellate Case No. 2013-002676, was addressed by this Court in its Order of March 5, 2018. This Court cited to the global settlement agreement that was approved on December 1, 2017, and dismissed the appeal because, “the approved global settlement agreement and addendum ‘settles with prejudice all claims of every kind and nature which were raised or could have been raised,’ without objection (attached as Exhibit C).

5. On June 21, 2018, the Circuit Court issued an Order for a co-defendant in the case to appear on July 2, 2018, at the Greenville County Courthouse for a Rule to Show Cause hearing. The Appellant was not referenced in the Circuit Court Order of June 21, 2018 (attached as Exhibit D).

6. On June 26, 2018, Respondents filed a Notice of Hearing that purported to revive “all outstanding issues” in the case (attached as Exhibit E)—presumably, for a hearing that would address the issues initially scheduled for the January 8, 2018.

7. On July 2, 2018, the Circuit Court began a proceeding and accepted evidence relating to the insurance claim filed and paid in the Summer of 2017. At the conclusion of the proceeding, the Circuit Court imposed a sentence on Appellant for Direct Criminal Contempt of Court, wherein the Court ordered that Appellant “either be imprisoned in the South Carolina Department of Corrections for a period of six months or pay a fine of \$1 million dollars.”

8. After the Circuit Court announced its sentence, during the same proceeding, the Appellant moved for the Court to set a bond. The Honorable Edward W. Miller denied Appellant’s motion.

9. Appellant filed a Notice of Appeal on July 3, 2018. Generally, serving notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal. *Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997); Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal .... Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal."). However, an order ruling a person in civil contempt is not automatically stayed by filing an appeal. *In Matter of Decker*, 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995); Rule 241, SCAR. The July 2, 2018, contempt order at issue here, however, involved criminal contempt. The lower court's Order, by its own language, was to punish for disobedience of the Court and is explicitly a criminal contempt sanction. *See Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86, (1998). And, pursuant to S.C. Code of Laws Section 18-1-90, this Court may grant bail during the pendency of this appeal.

10. Appellant is now incarcerated in the South Carolina Department of Corrections.

11. On July 6, 2018, Counsel for the Appellant filed a written motion for an appeal bond for the Appellant.

12. Ordinarily, an application for supersedeas must first be made to the lower court; however, unnecessary delay by the lower court constitutes an extraordinary circumstance that obviates reliance on that court for ruling. Rule 241(d)(1), SCAR. As of July 12, 2018, the Circuit Court has not ruled on Appellant's motion for an appeal bond.

13. The Circuit Court's inaction on Appellant's motion for an appeal bond is an unreasonable, unnecessary, and unjust delay that unfairly denies Appellant opportunity to avail himself of legal rights provided under South Carolina law. Appellant, as he sits incarcerated,

continues to suffer immediate and irreparable injury. Appellant now turns to the South Carolina Court of Appeals because of the exigent circumstances presented.

14. A primary reason for Appellant to settle all matters by signing the global settlement agreement in February of 2017 (approved on December 1, 2017), was to insulate himself from adverse action by the lower court against him. The sole exception reserved to the lower court was whether there were misrepresentations in his financial disclosures. The Circuit Court's Order of July 2, 2018, makes clear that that issue was not the basis for its order.

15. Appellant has attempted in good faith to bring this matter to an end. Unfortunately, Respondents continue to seek sanctions and penalties against Appellant, in violation of the terms of the global settlement agreement. The Circuit Court has disregarded this Court's rulings and continued its *sua sponte* inquisition against the Appellant into matters resolved in the global settlement agreement that the lower court approved in its Order of December 1, 2017. The lower court's approach to this matter reflects a troubling disregard for the normal and ordinary operation of the law; the severity of the punishment imposed, when viewed against the totality of the circumstances, is so striking that it raises concerns about personal, unconstitutional animus against the Appellant. Therefore, it is entirely appropriate for this Court to stop further harm and damages to the Appellant.

### **Conclusion**

Based on the foregoing arguments, Appellant respectfully requests that this Court stay the Order of Contempt filed in this matter on July 2, 2018, until after the Court of Appeals has issued judgment on the appeal, and that this Court grant an appeal bond.

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July 13, 2018