

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

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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.

Petition for Writ of Supersedeas

Reply to Respondent's Return

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. On July 16, 2018, this Court requested that any Return to the Appellant's original Petition be submitted by Wednesday, July 18, 2018, and that the Appellant submit its reply by Friday, July 20, 2018. The Appellant was not served with any Return by Respondents, but, in an abundance of caution, the

Appellant submits this Reply based on the Respondent's Return to the Appellant's Circuit Court Motion to Set Appellate Bond.

On Wednesday, July 18, 2018, the lower court contacted counsel for the Appellant about setting a hearing for its Motion to Set an Appellate Bond. After a flurry of coordination, the lower court agreed to hold a hearing to consider the Appellant's Motion to Set an Appellate Bond on Thursday, July 19, 2018, at 2:00 PM in Greenville County. Hours before the hearing, Respondents filed a Return to Defendant's Motion to Set Appellate Bond in the lower court, but it was unclear to Appellant whether the Respondents had submitted those arguments to this Court as a Return to the Petition for Writ of Supersedeas. Nonetheless, in the lower court hearing, the Appellant presented its arguments and the Respondents argued in opposition to Appellant's Motion. Judge W. Edward Miller announced from the bench that he was taking all arguments under advisement and he did not rule on the motion.

In the interest of protecting the rights and interests of the Appellant, the undersigned counsel, as attorney for Appellant, submits this Reply.

Arguments

Appellant submits that Respondents did not have standing to present arguments in opposition to an appeal bond. The lower court order on appeal is one sanctioning Appellant for direct criminal contempt of court. The lower court order was issued *sua sponte* by that Court, on the basis of its perception that the Appellant had defied or disrespected that court's ability to administer justice. As a criminal contempt issue, Respondents suffered no harm or injury and were otherwise in the same place that they had been prior to the judge's *sua sponte* inquisition into the alleged misconduct or contempt act.

Moreover, Respondents efforts to oppose the Appellant's Motion directly contravened the express written agreement that was memorialized in the Global Settlement Agreement ("GSA") of this case that had been approved by the lower court on December 1, 2017. The GSA provides 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.
(emphasis added).

A primary reason for Appellant to settle all matters in 2017 was to insulate himself from any 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. It is clear that this is not at issue and that the GSA has not been complied with by the Respondents. Critical to the attempted settlement to the Appellant were the assurances that the Judge, who is the subject of a Motion to Recuse in the 2013 appeal, would not sanction him. Unfortunately, this fundamental bargained-for term of the GSA, has not been realized by Appellant due to the lower court holding the matter open to consider sanctions. Respondents, in opposing Appellant's Motion and, perhaps, its Petition to this Court, undermine and contravene the approved GSA and should not be considered by this Court.

In the alternative, turning to the other arguments raised in Respondent's Return, it appears that Respondents want this Court to view Appellant's continued compliance with instructions of the South Carolina Department of Parole, Probation and Pardon Services ("PPP") and his turning himself into the Greenville County Detention Center, per the lower court's order of July 2, 2018, as indicia that Appellant is a risk of flight who might escape the reach of our justice system. To be sure, there were unexpected complications in his surrender, but after all of the administrative processes were sorted out by the Greenville County Sheriff's Department, the Appellant delivered himself to law enforcement and is incarcerated in the South Carolina Department of Corrections.

In its Return, Respondents purport to color Appellant's actions after the lower court's July 2, 2018, criminal contempt order as nefarious. Respondent's Return is predicated on unsworn hearsay statements that should not be taken seriously by this Court, but, in an effort to inject truth into Respondent's otherwise-mistaken narrative, Appellant offers the following account of his surrender, pursuant to the July 2, 2018, criminal contempt order by the lower court. The Appellant presented himself at the Greenville County Detention Center shortly before noon on July 3, 2018. On arrival, Appellant was told that there was no record of any order or other paperwork in their electronic system that would permit the sheriff's department to take him into custody. Appellant was sent to multiple different offices within the detention center and at each location, Appellant was told that he was not 'in the system.' Appellant, after discussing the matter fully with a Sheriff's Deputy, Corporal Hall, left the detention center in the afternoon of July 3, 2018. Appellant returned to the Greenville County Detention Center later in the evening of July 3, 2018, and at approximately 10:30 PM was told by Deputy Sheriff M. Nunez that they did not have the paperwork in their system to take Appellant into custody and that Appellant

should go home and await a phone call for further instruction. Appellant did not receive any phone call from law enforcement on July 4, 2018. On the morning of July 5, 2018, Appellant was contacted by PPP, asked to come to their office, and Appellant complied. Appellant was taken into custody at that time and transferred to the appropriate detention center authorities.

The Appellant appeared where he was instructed to report and—whether by miscommunication, mistake, neglect, or other misunderstanding—the Greenville County Detention Center was unable to process him. Respondents attempt to find malice where there is none. Appellant’s conduct shows that he will comply with court orders, even where he must undertake multiple efforts to do so successfully. Appellant is not a flight risk, nor is he a risk of escape. In fact, Appellant remains under the supervision of PPP, at this time; Appellant would remain under PPP supervision if this Court should grant relief.

Additionally, it is important that this Court be reminded that the lower court’s order at issue here relates to statements allegedly made in court and in a chaotic insurance agency office—which were, undisputedly, all made before the December 1, 2017, approval of the GSA— in the face of Respondents’ own evidence that contravenes their theory of the case. For example, in Exhibit 4 of Respondent’s filing with this court there is an email from the Appellant dated on June 1, 2017 (predating any concerns raised by Respondent’s Receiver about insurance issues) asking what Appellant was to do with the proceeds of the insurance money. Respondents, who have possession of all insurance monies, suggest that Appellant was engaged in a diabolical scheme to defraud them despite written records to the contrary.

Lastly, Appellant entered into the GSA with a Motion to Recuse the lower court judge pending on appeal. As noted, Appellant’s purpose of giving his assent to the GSA was to make sure he would not be sanctioned by the judge subject to the Motion to Recuse. This Court

dismissed that appeal on the rounds that all issues were resolved and that the GSA would properly be enforced. It is clear that that has not happened. Appellant now begs this Court for assistance.

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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