

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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AUG 03 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.

Petition for Writ of Supersedeas

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 set an appeal bond for Appellant.

This petition is Appellant's second in this case and this motion is made anew because it appears the lower court would rather not take its opportunity to allow the rule of law to operate. Appellant made its first Petition for Supersedeas to this Court on July 13, 2018, and on July 20, 2018, this Court denied Appellant's petition because it found the bond issue as more appropriate for the Circuit Court. This Court pointed to the lower court finally holding a hearing to consider the Appellant's Motion to Set an Appellate Bond on July 19, 2018. Despite having held a hearing on the matter, the lower court has yet to rule on the motion--effectively denying Appellant bond while its appeal is pending. Appellant must turn to this Court for the administration of justice and, consequently, submits this petition for supersedeas to this Court.

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 an 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. 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 the South Carolina Department of Pardon, Parole and Probation (“PPP”) and asked to come to their office. Appellant complied dutifully. 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. Appellant’s conduct demonstrated 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. Appellant is under the supervision of PPP, and, Appellant would remain under PPP supervision if this Court should grant relief.

10. 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.

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

12. On July 6, 2018, Counsel for the Appellant filed a written motion for an appeal bond for the Appellant. On July 13, 2018, Appellant filed a Petition for Supersedeas with this Court. On July 19, 2018, the lower court held a hearing on the matter of setting an appeal and, after hearing from Counsel for Appellant and the Respondents on this issue, announced that it

would take arguments presented under advisement. On July 20, 2018, this Court ruled that it would deny Appellant's Petition for Supersedeas (attached as Exhibit F). However, to date, the lower court has not yet ruled on the motion.

13. 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 31, 2018, the Circuit Court has not ruled on Appellant's motion for an appeal bond.

14. 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. As the maxim goes, justice delayed is justice denied. Appellant now turns to the South Carolina Court of Appeals because of the exigent circumstances presented.

15. 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.

16. 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 grounds 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.

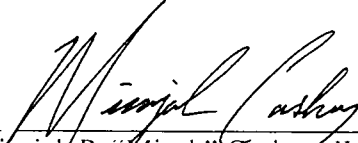
17. Appellant has attempted in good faith to bring this matter to an end. Unfortunately, Respondents continue to seek sanctions and penalties against Appellant, in violation of the terms of the global settlement agreement. The Circuit Court has disregarded this Court's rulings and continued its *sua 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.

SIGNATURE ON FOLLOWING PAGE

CASKEY LAW FIRM, P.A.



Micajah P. "Micah" Caskey, IV (SC Bar No. 100350)

146 State Street

West Columbia, South Carolina 29169

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Fax: (803) 626-1476

Email: micah@caskeylawfirm.com

Attorney for the Appellant


August 3, 2018

Exhibit A

the satisfaction of this Court. Field must turn himself in to the Greenville County Detention Center at noon on July 3, 2018 to await transport to the South Carolina Department of Corrections, if he has not already paid the fine and provided the required source of those funds. Additionally, if Field fails to comply with this order a bench warrant will be issued for his arrest.

IT IS SO ORDERED.

July 2, 2018


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

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SC Court of Appeals

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 Tailon & 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 ~~the~~ Attorney

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SC Court of Appeals

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

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 21, 2018

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The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

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CLERK'S OFFICE

REMITTITUR

Re: William Tomz v. Capital Investment Funding, LLC
Lower Court Case No. 2008CP2303665
Appellate Case No. 2013-002676

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Bradford Neal Martin, Esquire
Laura Wilcox Howle Teer, Esquire
Evan Brook Bristow, Esquire
George Brandt, III, Esquire
Stanley T. Case, Esquire

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AUG 03 2018

SC Court of Appeals

The South Carolina 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,
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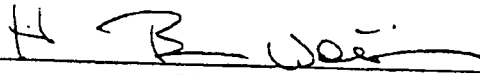
Of Whom Arthur M. Field is the Appellant,

And Capital Investment Funding, LLC, is a Respondent.

Appellate Case No. 2013-002676

ORDER

The Court held this case in abeyance to allow the parties time to pursue approval of the global settlement agreement. Our records reflect the circuit court approved the global settlement agreement on December 1, 2017. The terms of the global settlement agreement "settles all matters, claims[,] 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, and October 1, 2013 orders and rules to show cause; any subsequent rulings; and the pending appeal before this Court (Appellate Case No. 2013-002676). Accordingly, 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, this appeal is dismissed. 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: Bradford Neal Martin, Esquire
Laura Wilcox Howle Teer, Esquire
Evan Brook Bristow, Esquire
George Brandt, III, Esquire
Stanley T. Case, Esquire
The Honorable Edward W. Miller

FILED

March 5, 2018

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

CIVIL ACTION NO. 2008-CP-23-3665

ORDER AND RULE TO SHOW CAUSE

This Order is issued based upon asserted violations of Orders of this Court the Global Settlement Agreement (“GSA”) signed by the parties on February 24, 2017 and approved by order of this Court on December 1, 2017; and, derivatively, the prior orders of this Court compelling Defendant Kirsten White (“Defendant White”) to comply with the GSA – specifically the orders of this Court as they pertain to Defendant White entered on October 27, 2017 and on December 1, 2017.

It has been asserted that Defendant White has failed to comply the GSA and prior orders of this Court (identified above). A copy of the following Affidavit of the Court-Appointed Receiver Jerry Saad (signed June 19, 2018), detailing Defendant White’s non-compliance with the GSA is attached to, and incorporated with, this Order and Rule to Show Cause

Counsel for the Receiver and for the Class Action Plaintiffs have requested the Court to issue this Order and Rule to Show Cause. The Receiver is entitled, pursuant to S.C. Code Ann. § 15-65-10, et seq., Rule 37 of the South Carolina Rules of Civil Procedure, the Global Settlement Order, and the Global Settlement Agreement to a hearing requiring Defendant Kirsten White to show cause why she has not complied with the terms of the Global Settlement Agreement and why White should not be held in contempt of the aforementioned Court Orders; and further, for an Order requiring White to return the insurance funds she improperly converted to her personal use and benefit, and for payment of all outstanding monies otherwise owed under the GSA as

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well as attorney's fees and costs associated with seeking Defendant White's compliance with the same.

IT IS, THEREFORE, ORDERED that Kirsten White APPEAR before the Honorable Edward W. Miller of Greenville County at the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina, in Courtroom 8, on the 2nd day of July, 2018 at 10:30 AM. TO SHOW CAUSE why she should not be held in contempt for her failure to comply with the prior Orders of this Court.

IF YOU DO NOT APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE and/or JAIL SENTENCE.

Edward W. Miller
Circuit Court Judge
Thirteenth Judicial Circuit of South Carolina

Greenville, South Carolina
June 20, 2018

Respectfully submitted,

s/s George Brandt, III

George Brandt, III SC Bar No. 00855
HENDERSON, BRANDT & VIETH, P.A.
360 E. Henry St., Suite 101
Spartanburg, SC 29302
Phone: (864) 583-5144
Fax: (864) 582-2927
Attorney for Jerry T. Saad, Receiver
Date: June 20, 2018

s/s Stanley T. Case

Stanley T. Case SC Bar No.001158
BUTLER, MEANS, EVINS & BROWNE, P.A.
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Attorney for the Class Action Plaintiffs
(William F. Tomz and Francis W. Tomz,
Individually and as Class Representatives)
Date: June 20, 2018

Spartanburg, 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/Rule To Show Cause

So Ordered

s/ Edward W. Miller

Electronically signed on 2018-06-21 10:06:51 page 4 of 4

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AUG 03 2018
SC Court of Appeals

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

Civil Action No. 2008-CP-23-03665

NOTICE OF RECONVENED HEARING
SCHEDULE FOR JULY 2, 2018
AT 10:30 A.M.

TO: MICAJAH P. CASKEY, IV, ESQ., Attorney for Arthur M. Field; THOMAS STEPHENSON, ESQ., Attorney for Kathryn Taillon; and BRUCE BANNISTER, ESQ., attorney for Allyson Field

PLEASE TAKE NOTICE that a RECONVENED HEARING is scheduled and will be held in the above referenced matter before The Honorable Edward W. Miller on July 2, 2018 beginning at 10:30 a.m. at the Greenville County Courthouse, 305 E. North Street, Greenville, SC 29601 in Courtroom 8, at which time the Court will hearing all pending matters in this case, specifically including all outstanding issues pertaining to the compliance of Allyson Field, Kathryn Tallon and Arthur Field with the terms of the Global Settlement Agreement.

NOTICE GIVEN THIS 26TH DAY OF JUNE, 2018.

Respectfully submitted,

BUTLER, MEANS, EVINS & BROWNE, PA

HENDERSON, BRANDT & VIETH, P.A.

By: /s/ Stanley T. Case
 Stanley T. Case, SC Bar No. 001158
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 Co-Counsel for the certified Class of Plaintiffs

By: /s/ George Brandt, III
 George Brandt, III, SC Bar No. 00855
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 Spartanburg, SC 29302
 Office: 864-583-5144
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 Attorney for Jerry Saad, CPA, Court
 Appointed Receiver for Capital
 Investment Funding, LLC

The South Carolina Court of Appeals

William F. Tomz and Francis W. Tomz, Individually and
as Class Representatives, Respondents,

v.

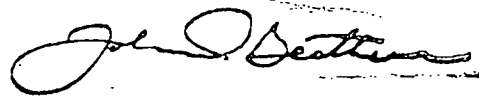
Capital Investment Funding, LLC, and Arthur M Field,
Defendants,

Of whom Arthur M. Field is the Appellant.

Appellate Case No. 2018-001264

ORDER

Appellant has filed a petition for supersedeas, requesting this court to grant Appellant an appeal bond. The parties have informed this court that a there is a pending motion for an appeal bond before the circuit court, the circuit court held a hearing on July 19, 2018, and the circuit court has taken the matter under advisement. This court believes the request for an appeal bond is more appropriate for the circuit court. Accordingly, this court denies Appellant's petition for supersedeas at this time.



FOR THE COURT

Columbia, South Carolina

cc:

Micajah Pickett Caskey, IV, Esquire
Bradford Neal Martin, Esquire
George Brandt, III, Esquire
Stanley T. Case, Esquire
The Honorable Edward W. Miller

FILED

July 20, 2018

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AUG 03 2018

SC Court of Appeals