

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
AUG 06 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.

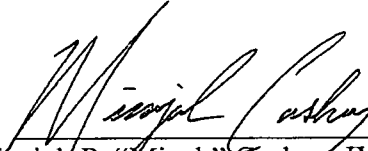
17. Appellant has attempted in good faith to bring this matter to an end. Unfortunately, Respondents continue to seek sanctions and penalties against Appellant, in violation of the terms of the global settlement agreement. The Circuit Court has disregarded this Court's rulings and continued its *sua 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
Phone: (803) 724-3624
Fax: (803) 626-1476
Email: micah@caskeylawfirm.com
Attorney for the Appellant

August 3, 2018

PROOF OF SERVICE

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

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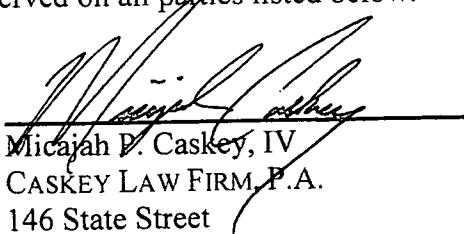
Capital Investment Funding, LLC, and Arthur M. Field, Defendants,

Of whom Arthur M. Field is the Appellant.

**PROOF OF SERVICE OF PETITION FOR
WRIT OF SUPERSEDEAS**

The undersigned certifies that on August 3, 2018, via U.S. Postal Service, a copy of the Petition for Writ of Supersedeas was served on all parties listed below.

August 3, 2018



Micajah P. Caskey, IV
CASKEY LAW FIRM, P.A.
146 State Street
West Columbia, South Carolina 29169
(803) 724-3624
Attorney for Appellant

Other Counsel of Record:

Bradford N. Martin
BRADFORD NEAL MARTIN & ASSOCIATES, PA
P.O. Box 10410
Greenville, South Carolina 29603
(864) 552-9990
Attorney for Appellant

Other Counsel of Record (cont'd):

George "Buck" Brandt, III
HENDERSON, BRANDT & VIETH, PA
360 E. Henry Street
Spartanburg, South Carolina 29302
(864) 583-5144
Attorney for Respondent

Stanley T. Case
BUTLER, MEANS, EVINS & BROWNE, PA
P.O. Box 451
Spartanburg, South Carolina 29304
(864) 582-5630
Attorney for Respondent



Caskey Law Firm, P.A.

August 3, 2018

VIA U.S. Postal Service

South Carolina Court of Appeals
Clerk of Court
PO Box 11629
Columbia, SC 2911

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AUG 06 2018

SC Court of Appeals

Re: *William Tomz v. Capital Investment (4)*
Appellate Case No. 2018-001264

Dear Madame Clerk:

I am in receipt of your letter dated August 2, 2018. In that letter you wrote, "[t]his Court has received your petition for writ of supersedeas, filed August 1, 2018. After review, it appears this is a duplicate of the petition filed on July 13, 2018. . . This Court will take no further action."

It appears that there was a printing mistake by my office and that the earlier version of the petition was sent to this Court and all parties.

This Court's July 20, 2018, order was predicated on an expectation that the lower court would address the appellate bond issue raised in the July 13 petition. Since this Court's order, the lower court has still not acted on Appellant's bond motion. The petition is presented because of the lower court's unreasonable delay.

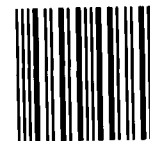
I have enclosed the new petition, as well as my humblest apologies.

CASKEY LAW FIRM, P.A.

Micajah P. "Micah" Caskey, IV (SC Bar No. 100350)
146 State Street
West Columbia, South Carolina 29169
Phone: (803) 724-3624
Fax: (803) 626-1476
Email: micah@caskeylawfirm.com
Attorney for the Appellant



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CASKEY LAW FIRM, P.A.
146 State Street
West Columbia, SC 29169

TO:

Ms. Jenny A. Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals