

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2018-001264

Common Pleas Case No. 2008-CP-23-3665

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**RECEIVED**  
AUG 13 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 Capital  
Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, is Respondent, and Arthur M.  
Field is the. .... Appellant.

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**RETURN TO APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS**

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Stanley T. Case (SC Bar No. 001158)  
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August 13, 2018

The Respondents, William F. Tomz and Frances W. Tomz, Individually and as Class Representatives, and Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, respectfully request that the Court consider this response to Appellant Arthur M. Field's Petition for Writ of Supersedeas and deny the Petition.

This is the third such request for Writ of Supersedeas filed by Arthur M. Field after the circuit court issued an Order of Criminal Contempt on July 2, 2018. Field filed a Petition for Writ of Supersedeas on July 13, 2018 and on July 20, 2018, and this Court denied those Petitions for Supersedeas. Field then filed a second petition for supersedeas which was identical to the first petition for supersedeas. This Court then wrote a letter to Field's counsel dated August 2, 2018 which stated as follows:

"This 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."

As the result of this Court's letter of August 1, 2018, Field has now filed a third Petition for Writ of Supersedeas. While Field attempts to reargue what was decided in the prior writs for supersedeas, Field's real argument appears to be that the trial court has not addressed his request for an appeal bond. (See letter of Caskey Law Firm dated August 3, 2018.)

Respondents hereby advise the Court of Appeals that on August 13, 2018, The Honorable Edward M. Miller issued and filed his Order denying Defendant Arthur M. Field's Motion to Set Appellate Bond, which was filed in the Greenville County Court of Common Pleas, a copy of which is attached hereto as "Exhibit 1".

The Order of Judge Miller contains a full recitation of the relevant facts and the applicable law which support his Order denying the Defendant Arthur M. Field's Motion to Set Appellate Bond.

Judge Miller's Order sets forth the relevant facts pertaining to his finding that the Appellant Field is a flight risk and that the Defendant Field engaged in a course of conduct in the time period preceding the hearing on July 2, 2018 until his arrest on July 5, 2018, which was clearly intended to thwart the terms and conditions of the Court's Order finding him in criminal contempt of Court.

The Defendant Field poses a flight risk and the Defendant Field poses a danger to the community.

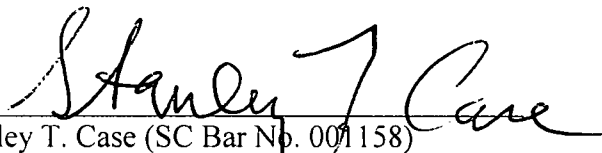
The Court also properly applied applicable South Carolina Law with regard to the Order denying Defendant Arthur M. Field's Motion to Set Appellate Bond. See State v. Taylor, 255 SC 268, 178 S.E.2d 244 (1970), citing State v. Boyle, 342 US 1, 72 S.Ct. 1 (1951).

Respondents would also point out that on July 19, 2018, the Appellant Arthur M. Field personally appeared before the Circuit Court. However, the Appellant Field did not provide testimony, nor evidence, supporting the position that pertained to his version of the events and circumstances surrounding his efforts, but ultimate failure, to properly report for incarceration by noon on July 3, 2018, as required by the Circuit Court's Order of Criminal Contempt. Respondents would point out that the alleged facts contained in Item 9 are not supported in the record before the Circuit Court and do not serve as a sufficient basis for the Court of Appeals to rely upon in considering this Petition for Writ of Supersedeas.

For the foregoing reasons, Respondents respectfully request that the Court of Appeals deny Appellant's Petition for Writ of Supersedeas.

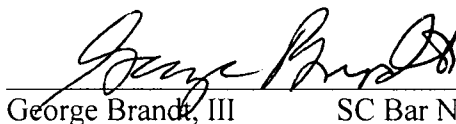
[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,



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Attorney for Respondent, Capital Investment  
Funding, LLC, by and through its Receiver,  
Jerry T. Saad

August 13, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
William F. Tomz and Francis W. Tomz,	)	
Individually and as Class Representatives	)	C.A. No.: 2008-CP-23-3665
Plaintiffs,	)	
	)	
vs.	)	
	)	
Capital Investment Funding, LLC, and	)	ORDER
Arthur M. Field,	)	DENYING DEFENDANT ARTHUR M.
Defendant.	)	FIELD'S MOTION TO SET APPELLATE
	)	BOND
	)	

This matter comes to the Court upon Defendant Arthur M. Field's ("Defendant Field") Motion to Set an Appellate Bond, filed by Defendant Field on July 6, 2018. A hearing was held on this motion on July 19, 2018. Having reviewed the materials submitted by the parties, and considered the arguments by counsel, the Court respectfully denies Defendant's motion for reasons set forth herein.

**Relevant Factual Background and Procedural History**

The immediate motion arises from this Court finding Defendant Field in criminal contempt of court. [See, Order from this Court, July 2, 2018] The hearing on July 2, 2018 was originally set for January 8, 2018, but continued at the request of Defendant Field's counsel. The date for the July 2, 2018 hearing was confirmed by Defendant Field's counsel on May 18, 2018. Despite having notice of the proceedings, Defendant Field, himself, did not attend the July 2, 2018 hearing and his counsel had no knowledge of Defendant Field's whereabouts.<sup>1</sup>

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<sup>1</sup> Contrary to his counsel's assertion that Defendant Field had attended every hearing, this was not the first hearing Defendant Field failed to appear. Previously, when faced with the possibility of sanctions from this Court, Defendant Field did not attend a Rule to Show Cause hearing set for September 28, 2016, because he had voluntarily admitted himself to a mental hospital.

On July 2, 2018, having heard the testimony of the employee of the State Farm agency where Defendant Field did business and having reviewed the extensive documentation presented as evidence, the Court weighed and considered the overwhelming evidence and found Defendant Field to be in criminal contempt of court, sentenced him to six months incarceration or payment of a fine of \$1 million in traceable funds, and ordered him to turn himself in at the Greenville Law Enforcement Center by noon the next day (July 3, 2018) to await transport to the South Carolina Department of Corrections. With Defendant Field being absent from the proceedings, Counsel for Defendant Field requested bond, which request was denied. The written order of this Court was entered later that afternoon. Defendant Field filed his Motion to Set an Appellate Bond on July 6, 2018. The hearing for this motion was held on July 19, 2018.

At the Court's request and on behalf of the Court<sup>2</sup>, Plaintiffs and Capital Investment Funding, LLC ("CIF") filed the Return to Defendant Field's Motion to Set an Appellate Bond on July 19, 2018, to further inform the Court of relevant facts.

The Return informed the Court that Defendant Field's Probation Case Supervisor met with Defendant Field on June 14, 2018, at which time Defendant Field requested permission to leave the jurisdiction of South Carolina for the purpose of conducting his disc jockey business in Charlottesville, Virginia and Asheville, North Carolina from June 26, 2018 through July 4, 2018, and his request was granted. When Defendant Field met with his probation officer in June, 2018, he made plans to be out of state with knowledge of the hearing scheduled on July 2, 2018. Although Defendant Field did not attend the hearing, he apparently was in close proximity because

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<sup>2</sup> At the July 19, 2018 hearing, Counsel for the Plaintiffs and CIF informed the Court that for matters relating to this Court finding Defendant Field in criminal contempt, Plaintiffs had previously requested the South Carolina Attorney General's Office to appear at this hearing, given the fact that the pending matter was criminal, and not civil. Plaintiffs' and CIF's counsel advised the Court that the South Carolina Attorney General's Office declined to appear at this time because the criminal matter arose from the proceedings of a civil case. As the opposing party of record in this case, Plaintiffs and CIF filed the Return to Defendant's Motion to inform the Court about pertinent facts not presented by Defendant Field; however, Plaintiffs and CIF take no position as to the Court's decision regarding criminal matters.

he appeared the next day at the Greenville Law Enforcement Center compound (albeit the wrong place). On Tuesday, July 3, 2018, at 2:22:20 PM, Counsel for the Defendant Field emailed the Court, stating that Defendant Field presented himself to Corporal Hall at the Greenville Detention Center before noon, but that they did not have any paperwork, so Defendant Field left.

Upon this Court's immediate investigation, the Court learned that Defendant Field had reported to the wrong area. At 2:41 PM (within 20 minutes), my office emailed Defendant Field's counsel, advising him that his client did not report to the booking area of the law enforcement center as he clearly should have. The Court confirmed that the law enforcement center did, in fact, have the necessary paperwork, and instructed Defendant Field's counsel to instruct his client to report back to jail. In defiance of this Court's instruction, Defendant Field did not voluntarily report to the proper area of the Law Enforcement Center. On July 5, 2018, at 9:41 AM, Defendant Field's probation officer contacted Defendant Field and advised him to come to the probation office promptly, or otherwise face having a bench warrant issued. When Defendant Field appeared at 1:26 PM that day, the probation office apprehended and arrested Defendant Field. Once in custody, Defendant Field was transported to the Greenville County Law Enforcement Center for booking.

Defendant Field did not provide any testimony or evidence to refute or dispute this information provided in the Plaintiffs' and CIF's Return.

Important for consideration of the motion *sub judice*, Defendant Field embarked on a course of conduct clearly intended to thwart the terms and conditions of this Court's order. In this Court's view, Defendant Field intentionally reported to the wrong place at the law enforcement center to give the appearance of *de minimis* compliance with this Court's directive. Once his ruse was uncovered, he refused to comply with this Court's instruction at 2:41 PM on July 3, 2018, for him to report immediately report back to the booking area of the law enforcement center.

Since then, it has come to the Court's attention that, based upon Defendant Field's criminal contempt, a hearing has been set before the Honorable Cordell Maddox on September 7, 2018 to determine whether Defendant Field's probation should be revoked. This issue has arisen since the July 19, 2018 hearing.

The Court believes this development also provides a significant basis for Defendant Field to be a flight risk. The prospect of having his probation revoked and of returning to jail to serve the full amount of time remaining on his original sentence greatly enhances Defendant Field's motivation to flee the jurisdiction of the Court.

#### Legal Discussion

Decisions for setting bail (both as to whether bail should be permitted, and, if so, for what amount) are left for the discretion of the issuing officer. State v. Taylor, 255 S.C. 268, 178 S.E.2<sup>nd</sup> 244 (1970), *citing*, State v. Boyle, 342 US 1, 72 S.Ct. 1 (1951). The primary concerns are (1) does the defendant pose a flight risk and (2) does the defendant pose a danger to the community. In this case, the Court finds that Defendant Field is a significant flight risk and also finds that he poses a danger to the community, such that his motion requesting bail while his appeal is pending is denied.

#### Defendant Field is a flight risk.

As mentioned above, currently there is a hearing scheduled for September 7, 2018 to determine whether Defendant Field's probation should be revoked such that he should be remanded into custody to serve the remaining time on his original sentence. Defendant Field pled guilty to eleven (11) counts of securities fraud, two (2) counts of criminal conspiracy and one (1) count of forgery. In the event Defendant Field's probation is revoked, he could face years of confinement from his original sentence. Accordingly, Defendant Field has more incentive than ever now to flee, given the possible sentence pending from his original criminal convictions.

Defendant Field poses a danger to the community.

Additionally, the Court finds that Defendant Field poses a danger to the community.

In the ten (10) years of litigation surrounding this defendant through the relentless filings of motions, hearings and orders, Defendant Field has a history of lies, deceit and fraud. The Court has seen substantial evidence that this defendant will lie and deceive to his economic advantage, the most recent example being the events which gave rise to the matter at hand, that event being Defendant Field's actions to redirect insurance proceeds from Plaintiffs and CIF, and then his lies to the Court to conceal those facts from this Court.

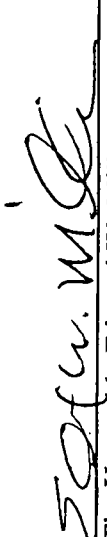
Furthermore, Defendant Field has previously suffered from severe emotional issues including self-admitted intentions of suicide, as set forth in Defendant Field's signed statement he submitted to the United States District Court in the matter of Harold Brooks, Et Al, Plaintiffs v Arthur Field, Scott Pfeiffer, Et Al Defendants (Docket # 6:14-CV-022674-BHH-JDA) on October 31, 2016. Defendant Field appeared at the July 19, 2018 hearing and his physical appearance and demeanor presented a noticeably and markedly pitiful, despondent, and physically and emotionally distressed person. This Court cannot ignore Defendant Field's present condition, given his history of mental health issues, as a sign of potential harm to himself, by suicide, or to the community, by turning his suicidal tendencies to violent acts against others. This Court is not equipped to evaluate such emotional aspects of the Defendant, but the South Carolina Department of Corrections is able to provide necessary mental and physical health care and protection to Defendant Field that he might not otherwise seek if he were released.

To this extent, Defendant Field poses a danger to the community.

Conclusion

For reasons set forth herein, Defendant Field's Motion to Set an Appellate Bond is **DENIED.**

It is so ordered, this 13 day of August, 2018.

  
The Honorable Edward W. Miller  
Presiding Judge, 13<sup>th</sup> Judicial Circuit



STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2018-001264

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Capital Investment Funding, LLC, and Arthur M. Field, Defendants, of Whom Capital  
Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, is Respondent, and Arthur M.  
Field is the ..... Appellant.

**PROOF OF SERVICE OF RETURN TO  
APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS**

The undersigned certifies that on August 13, 2018, via U.S. Postal Service First Class Mail,  
a copy of the Return to Petition for Writ of Supersedeas was served on all parties listed below.

  
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Jerry T. Saad

August 13, 2018

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Attorneys At Law

August 13, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
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Columbia, SC 29211

RECEIVED  
AUG 13 2018  
SC Court of Appeals

Re: William Tomz v. Capital Investment Funding, LLC  
Common Pleas Case No. 2008-CP-23-3665  
Appellate Case No. 2018-001264

Dear Ms. Kitchings:

Please find enclosed the original and six copies for filing with the Court of Respondents' Return to Petition for Writ of Supersedeas in the above captioned matter, along with a Certificate of Service. Also included are three copies of the Return and one copy of the Certificate to be clocked for our records. Thank you, as always, for your assistance. If you need additional information, please do not hesitate to contact my office.

Very truly yours,

George Brandt, III  
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GB,III/msl

Enclosures