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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

v.

Capital Investment Funding, LLC, by and through its
Receiver, Jerry T. Saad, and Arthur M. Field,
Defendants.

Of Which Capital Investment Funding, LLC, by and
Through its Receiver, Jerry T. Saad is a Respondent and
Arthur M. Field is the Appellant.

In Re: Kathryn Taillon, Appellant.

And Capital Investment Funding, LLC, is a Respondent.

Appellate Case No. 2021-000341

The Honorable Jean Hofer Toal
Greenville County
Trial Court Case No. 2008-CP-23-03665

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY RULE THAT THE COURT RETAINED EXCLUSIVE SUBJECT MATTER JURISDICTION REGARDING INTERPRETATION AND ENFORCEMENT OF THE GLOBAL SETTLEMENT AGREEMENT (GSA) AND THE RECEIVER'S MOTION, WHICH SOUGHT AN INTERPRETATION OF THE GSA AS IT RELATES TO THE APPELLANT FIELD'S RESTITUTION? (RESPONSE TO APPELLANT FIELD'S ARGUMENT 1 AND APPELLANT TAILLON'S ARGUMENT B)

II. DID THE CIRCUIT COURT CORRECTLY RULE THAT THE COURT HAD PERSONAL JURISDICTION OVER ARTHUR M. FIELD AND THE ISSUES BEFORE THE COURT? (RESPONSE TO APPELLANT FIELD'S ARGUMENT 2 AND APPELLANT TAILLON'S ARGUMENT A)

III. DID THE CIRCUIT COURT CORRECTLY RULE THAT AN AWARD OF LIQUIDATED DAMAGES TO THE RECEIVER IN THE AMOUNT OF \$250,000 WAS APPLICABLE AND WARRANTED AND WAS THE COURT'S IMPOSITION OF LIQUIDATED DAMAGES AGAINST THE APPELLANT FIELD APPROPRIATE AND PROPER? (RESPONSE TO APPELLANT FIELD'S ARGUMENT 3 AND APPELLANT TAILLON'S ARGUMENT D)

IV. DID THE CIRCUIT COURT CORRECTLY INTERPRET THE GSA IN ACCORDANCE WITH ITS TERMS AND SHOULD ITS ORDER BE AFFIRMED BY THE COURT OF APPEALS? (RESPONSE TO APPELLANT FIELD'S ARGUMENTS 1,2, AND 3 AND APPELLANT TAILLON'S ARGUMENT C)

STATEMENT OF THE CASE

On August 5, 2008, William Tomz and his wife, Frances Tomz filed a class action Complaint against Appellant Arthur Field and his company, Capital Investment Funding, LLC: *Tomz v. Capital Investment Funding, LLC, et al.*, C.A. 2008-CP-23-3665. Eventually, a Class was certified and approved to represent all noteholders (investors) in Capital Investment Funding, LLC (“CIF”). On August 24, 2009, the Court entered an Order approving a global settlement whereby, *inter alia*, CIF confessed a judgment to the noteholder class in the amount of \$38,491,321.92 and all parties agreed to a court-appointed receiver (Jerry Saad, CPA) to oversee the collection and liquidation of CIF’s assets.

By agreement, CIF’s court-appointed receiver commenced efforts to identify, liquidate and collect CIF’s assets. Veteran Circuit Judge Edward Miller was assigned this case and oversaw its administration. Originally, the Honorable John C. Few (then a circuit court judge) was assigned judge. However, in 2009, Appellant Arthur Field filed a grievance against Judge Few and a Motion to Recuse from the *Tomz* case. Judge Miller was assigned to this case thereafter.

For years, the receiver pursued litigation against the responsible parties filing multiple lawsuits in numerous jurisdictions and forums. Ultimately, the parties agreed to a Global Settlement Agreement (“GSA”) which was approved by the Court on December 1, 2017. It took almost a year for the GSA to be approved due to the overlap of issues stemming from Appellant Field’s pending criminal matters. On June 13, 2012, the State of South Carolina indicted Appellant Field (and a co-defendant) on two counts of criminal conspiracy, eleven counts of securities fraud and one count of forgery: *State of South Carolina v. Arthur Field, et. al.* 2012-GS-47-08.

On October 8, 2013, in a criminal case against Arthur M. Field [*State v. Arthur Field*, C.A. No. 12-GS-47-08], the Honorable Cordell Maddox ordered, among other things, the Appellant Arthur M. Field to pay the noteholder/victims, who are members of a class represented by William F. Tomz and Francis W. Tomz, individually and as class representatives in Civil Action 2008-CP-23-3665, which is an ongoing receivership action in the Court of Common Pleas for the County of Greenville, the sum of \$2,877,711.73 in restitution.

On November 1, 2017, the Honorable Cordell Maddox heard Arthur M. Field's Motion to Reconsider Restitution (a motion which had been agreed to in a proposed Global Settlement Agreement, which was under consideration in the Civil Action 2008-CP-23-3665, which was a Receivership Action under the jurisdiction of the Honorable Edward W. Miller, Judge, Thirteenth Judicial Circuit). On November 28, 2017, Judge Maddox entered an order modifying Appellant Arthur M. Field's restitution, which determined that any unpaid balance of restitution at the end of the required probation period would be converted into a civil judgment pursuant to Section 17-25-323 South Carolina Code 1976, as Amended. The Appellant Arthur M. Field, completed his probation in 2018, and an Order of Judgment was filed on November 5, 2018, in the amount of \$1,767,634.71, which represented the remaining unpaid balance of restitution.

The Honorable Edward W. Miller, in the civil case involving the receivership (2008-CP-23-3665), approved a Global Settlement Agreement which acknowledged and approved the Appellant Arthur M. Field's future obligation to continue to pay the restitution ordered by Judge Maddox and provided that "such unpaid balance of restitution may be converted to a civil judgment...". The Global Settlement Agreement approved by Judge Miller incorporated the Appellant Arthur M. Field's future obligation to continue to pay the restitution ordered by Judge Maddox and did not release the right of Capital Investment Funding, LLC, by and through its

Receiver, Jerry T. Saad, to collect the civil judgment. The Appellant Arthur M. Field acknowledged his obligation under the Global Settlement Agreement approved by Judge Miller that any unpaid portion of his restitution would be converted to a civil judgment and would continue to be due and payable as a condition of the Global Settlement Agreement.

Following the entry of the Civil Judgment on the unpaid restitution, the Receiver filed a collection action in Florida to collect on the civil judgment against Arthur M. Field which had been entered on the remaining restitution balance owed by Arthur M. Field. That action is currently pending in the United States District Court in the Middle District of Florida, [*Capital Investment Funding, LLC v. Arthur Field and Kathryn Taillon*, Case No.: 3:19-cv-606-TJC-JRK].

On December 31, 2019, the court-appointed Receiver, Jerry T. Saad, filed a Motion in Civil Action No.: 2208-CP-23-3665, requesting a declaration that the judgment collection action filed against the Appellant Arthur M. Field, currently pending in the United States District Court in the Middle District of Florida, is just and proper under the terms of the Global Settlement Agreement (GSA). The Global Settlement Agreement, as amended, with the addendum executed by Arthur M. Field, was attached to the motion filed on December 31, 2019, and was incorporated as Exhibit "1". Judge Miller's Order Approving the Global Settlement Agreement, with the addendum, was attached as Exhibit "2".

Additionally, based upon the filings and conduct of Appellant Field related to the Florida collection action, Capital Investment Funding, LLC, by and through its receiver, Jerry T. Saad, further requested the court to order Field to pay \$250,000 in liquidated damages which are contemplated and appropriate under the Global Settlement Agreement approved by Judge Miller.

Subsequent to the motion filed by the court appointed Receiver, the Appellant Field filed a Motion to Recuse the presiding judge, the Honorable Edward W. Miller, who had been acting as

the judge in the receivership action. As a result of Defendant Field's Motion to Recuse Judge Miller, the Honorable Donald W. Beatty, Chief Justice of the South Carolina Supreme Court, assigned exclusive jurisdiction of the receivership matter to the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court (Retired) acting as Circuit Court Judge.

On December 17, 2020, the Honorable Jean Hoefer Toal, acting as Circuit Court Judge in the receivership action, issued an Order Granting the Receiver's Motion for Declaratory Relief. (See, Order Granting Receiver's Motion for Declaratory Relief filed on December 17, 2020, CA No.: 2008-CP-23-3665)

On December 18, 2020, the Appellant Arthur M. Field filed a Motion to Re-Consider the Order Granting Declaratory Relief. Also, the Appellant Kathryn Taillon, who was a Defendant in one of the pending cases settled by the GSA (*Capital Investment Funding, LLC v. Arthur Field, et al.*, C.A. No.: 15-CP-23-01263) filed a Motion to Re-Consider on December 21, 2020. The Global Settlement Agreement (GSA) was approved under Civil Action No.: 2008-CP-23-3665 because the original Tomz case was the case in which the Court of Common Pleas had jurisdiction over the Receiver and the Class of Noteholders.

On March 2, 2021, the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court (Retired), acting as Circuit Court Judge in the receivership action, denied the Motions to Re-Consider filed by the Appellant Field and the Appellant Taillon.

The appeal of the Appellant Arthur M. Field and the appeal of the Appellant Kathryn Taillon are currently pending in the South Carolina Court of Appeals as Appellate Case No.: 2021-000341. The appeals are from the March 2, 2021 Order of the Honorable Jean Hoefer Toal, Greenville County, Trial Court Case No.: 2008CP2303665. The Respondents in this appeal are

William F. Tomz and Francis W. Tomz, Individually and as Class Representatives, and Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY RULED THAT THE COURT RETAINED EXCLUSIVE SUBJECT MATTER JURISDICTION REGARDING INTERPRETATION AND ENFORCEMENT OF THE GLOBAL SETTLEMENT AGREEMENT (GSA) AND THE RECEIVER'S MOTION, WHICH SOUGHT AN INTERPRETATION OF THE GSA AS IT RELATES TO THE APPELLANT FIELD'S RESTITUTION. (RESPONSE TO APPELLANT FIELD'S ARGUMENT 1 AND APPELLANT TAILLON'S ARGUMENT B)

The arguments of the Appellants Field and Taillon that the Circuit Court did not have subject matter jurisdiction over the motion of the receiver and the class of noteholders to seek an interpretation of the global settlement agreement as it relates to the civil judgment involving Arthur M. Field's restitution should be rejected by the Court of Appeals.

As the order of the Honorable Jean Hoefler Toal, Chief Justice of the South Carolina Supreme Court (Retired), acting as Circuit Court Judge, states:

By the GSA's terms, this court retains exclusive jurisdiction regarding interpretation and enforcement of the GSA.
See, Page 5, Amended Order of Judge Toal, March 1, 2021
(R. ___)

It is well settled under South Carolina law, that a court which creates a receivership draws to itself jurisdiction over all controversies concerning the assets and liabilities of the debtor in receivership. See, *National Cash Register Company v. Burns*, 217 S.C. 310, 60 S.E.2d 615 (1950). Also, under South Carolina law, a court of equity by taking jurisdiction over a matter and appointing a receiver, draws to it the right to hear and determine all claims involving the receiver and to completely adjudicate the receivership. *Hoile v. National Surety Corporation*, 204 S.C. 110, 28 S.E.2d 638 (1944).

As Judge Toal correctly pointed out, the receiver's motion, which was also a motion of the class of noteholders, "merely seeks to clarify the contents of the GSA which, in essence, is to seek

an interpretation of the GSA as it relates to the restitution”. (See, Order of Judge Toal, March 1, 2021, at Page 5 (R. ___)).

In this matter, the motion of the receiver and the class of noteholders was clearly within the ambit of the Global Settlement Agreement and the exercise by Judge Toal of continuing jurisdiction over the enforcement of the GSA in this equity matter relating to the receivership, was clearly proper and in accordance with South Carolina law. The Appellants’ arguments asserting that a separate lawsuit was required to be served and filed under the South Carolina Uniform Declaratory Judgments Act [S.C. Code o Laws Section 15-3-10, *et. seq.*] was properly rejected by the Circuit Court.

The arguments of the Appellants relating to the lack of jurisdiction of Judge Toal should be rejected by the Court of Appeals. As pointed out by Judge Toal in a footnote in her order dated March 1, 2021:

“Exclusive judicial assignment is the province of the Chief Justice of the South Carolina Supreme Court who retains the power to assign cases to individual judges as needed. When Judge Miller recused himself from this case, he did so after Field moved for his recusal. Chief Justice Beatty assigned the undersigned to replace Judge Miller pursuant to his authority under the constitution and laws of South Carolina.” See, Order of Judge Toal, March 1, 2021, at Page 5 (R. ___)

Accordingly, the Court of Appeals should reject the argument of the Appellants that the Circuit Court did not have jurisdiction to issue its orders entered on December 17, 2020, and March 1, 2021.

II. THE CIRCUIT COURT CORRECTLY RULED THAT THE COURT HAD PERSONAL JURISDICTION OVER ARTHUR M. FIELD AND THE ISSUES BEFORE THE COURT (RESPONSE TO APPELLANT FIELD'S ARGUMENT 2 AND APPELLANT TAILLON'S ARGUMENT A)

The Circuit Court correctly ruled that the court had personal jurisdiction over the Appellant Arthur M. Field and jurisdiction over the issues before the court. The arguments of the Appellant Field and the Appellant Taillon should be rejected by the Court of Appeals.

Judge Toal correctly stated in her order dated March 1, 2021, that the Appellant Arthur M. Field "signed the GSA, including Addendum" and agreed that this court would have sole and exclusive jurisdiction regarding any disputes relating to enforcement, performance, or non-performance. Field thus agreed to this court's exercise of personal jurisdiction over him and Taillon as it relates to the GSA. See, Order of Judge Toal dated March 1, 2021, Page 6 (R. ___).

The order appealed from also stated that:

"Despite the fact that Field misrepresents the timing of his Florida residency to this court, such is irrelevant to the current motion... The receiver's motion seeks to address matters specifically arising from the GSA. Field specifically consented to the jurisdiction of this court. His residency status before and after consenting to the GSA is irrelevant."

It is well settled under South Carolina law that a trial court has inherent jurisdiction to enforce settlement agreements entered before it. *Kumar v. Third Generation, Inc.*, 472 S.E.2d 637 (S.C. App. 1995), citing *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 419 S.E.2d 841 (Ct. App. 1992).

In this matter, the receiver and the class of noteholders made an appropriate motion in the Circuit Court for the interpretation and the enforcement of the Global Settlement Agreement in the receivership action (C.A. No.: 2008-CP-23-3665) and the order approving the GSA. Judge Toal appropriately, acting as Circuit Court Judge with regard to the ongoing receivership, ruled that the

Circuit Court had complete jurisdiction to enter its orders dated December 17, 2020 and March 2, 2021 in the receivership action in which the Global Settlement Agreement was approved and the order approving the Global Settlement Agreement was entered.

Accordingly, the arguments of the Appellants Field and Taillon relating to an asserted lack of personal jurisdiction over the Appellant Arthur M. Field and lack of subject matter jurisdiction over the issues addressed in the Orders of the Circuit Court on December 17, 2020 and March 2, 2021 should be denied by the Court of Appeals.

III. THE CIRCUIT COURT CORRECTLY RULED THAT AN AWARD OF LIQUIDATED DAMAGES TO THE RECEIVER IN THE AMOUNT OF \$250,000 WAS APPLICABLE AND WARRANTED AND THE COURT'S IMPOSITION OF LIQUIDATED DAMAGES AGAINST THE APPELLANT FIELD WAS APPROPRIATE AND PROPER. (RESPONSE TO APPELLANT FIELD'S ARGUMENT 3 AND APPELLANT TAILLON'S ARGUMENT D)

The argument of the Appellant Arthur M. Field and the Appellant Kathryn Taillon to the effect that the Circuit Court erred in awarding liquidated damages against Arthur M. Field in the amount of \$250,000 should also be rejected by the Court of Appeals.

Judge Toal correctly ruled in the orders of December 17, 2020 and March 2, 2021, that the award of liquidated damages to the receiver against Arthur M. Field is applicable and warranted. The arguments of the Appellants in this regard are essentially a request to the Court of Appeals to make an erroneous interpretation and improperly construe the language and purpose of the liquidated damages provision in the Global Settlement Agreement.

Judge Toal correctly ruled that the Global Settlement Agreement included a liquidated damages clause to be imposed against any party who seeks to revoke or disqualify any term of this agreement for any reason. See, Order of Judge Toal March 2, 2021 at Page 7 (R. __).

Judge Toal's order also quoted the liquidated damages clause which is contained in the Global Settlement Agreement, which stated as follows:

“Subsequent to the execution of this Agreement (and its approval by the Court) should any party file any suit or claim wherein he/she/they/it attempt(s) to revoke or disqualify any term of this Agreement for any reason, the parties agree that the prevailing party shall be entitled a minimum of \$250,000 as liquidated damages for defending, responding or enforcing the terms of this Agreement. This figure is based upon and derived from the estimated attorney's fees and expenses past litigation has entailed between/among these parties for addressing issues of similar scope and anticipated magnitude. The Court may award a greater sum upon a proper showing by the prevailing party.”

The Order of Judge Toal included a copy of the signature of Arthur Field and witness, Kelly L. Cox to the liquidated damages clause.

Judge Toal correctly observed that:

“Field's attempt to argue he is no longer obligated to pay restitution per the GSA is an attempt to disqualify the terms of the GSA. Further, Defendant Field's multiple filings within the State of Florida and his repeated efforts to deny this court's jurisdiction and to delay a speedy and just resolution of the matters pending, amply justify the imposition of the \$250,000 liquidated damages assessment.

As to amount, Field specifically agreed to this amount when he negotiated and consented to the terms of the GSA. He cannot now argue that some other value or calculation is required.

As such, the Court finds, as the prevailing party, CIF is entitled to liquidated damages in the amount of \$250,000 against Defendant Field, and that such amount should be amended to any collection proceeding and/or judgment against him currently sought to be collected by Capital Investment Funding.”

See, Order of Judge Toal dated March 2, 2021, Pages 7 and 8. (R. __)

The receiver, in his Memorandum in Opposition to Defendant Arthur Field's Motion to Re-Consider and/or to Alter or Amend the Court's Order of December 17, 2020, detailed the frivolous nature of the litigation efforts made by the Appellant Field to drag out and thwart the efforts of the receiver and the class of noteholders to properly collect the assets available in this receivership action. The frivolous nature of the ongoing efforts of the Appellant Field to thwart a

proper resolution of the receivership proceeding is detailed in Pages 5 – 10 of the receiver’s Memorandum in Opposition to Defendant Arthur Field’s Motion to Re-Consider and/or to Alter or Amend the Court’s Order of December 17, 2020, portions of which are set forth below for the ready reference of the Court of Appeals:

Appellants Field and Taillon improperly challenge the imposition of the liquidated damages provision set forth within the GSA. Field’s filings and the arguments he has raised on appeal are in themselves evidence of the frivolous nature of the on-going litigation Field continues to drag out – which is the specific problem that the GSA’s liquidated damages provision was designed to address. After CIF domesticated the civil judgment and gave notice to Field, Field/Taillon have collectively filed twenty-seven (27) motions and notices, all of which required CIF to respond, in state and federal court. See, Exhibit 1 Receiver’s Memorandum in Opposition to Defendant Arthur Field’s Motion to Reconsider and/or to Alter or Amend the Court’s Order of December 17, 2020. (R.____).

Field filed a motion to dismiss CIF’s collection action in the federal litigation, so the Court there requested guidance from this Court on whether the GSA barred CIF’s collection action. Importantly, in arguments to the Court in Florida, Field deliberately omitted the Addendum which addressed the status of the civil judgment. Nevertheless, the court in Florida was cognizant of the GSA provision that gave Judge Miller and this Court the sole jurisdiction over matters related to enforcement of the GSA.

Thereafter, the Receiver promptly filed a motion for declaratory relief so that the matter could be resolved and the collection action could move forward. Instead of responding to the merits, Field, *pro se*, removed the matter to Federal Court. After that, The Receiver for CIF was

required to file a motion to remand the matter to the State Court and the Federal Court promptly dismissed Field's removal.

Knowing that his counsel has legislative immunity from the docket, with the Receiver's motion still pending in South Carolina, in April of 2020 Field filed a motion to lift the stay in Florida. Then, to further delay and avoid the resolution of the instant motion, rather than filing a substantive response, Field filed a judicial grievance against Judge Miller and promptly filed a motion to recuse Judge Miller from hearing this motion, based upon the grievance Field just filed.

At the November 18, 2020 Public Hearing of the Judiciary Merit Selection Committee, Field repeatedly lied and misrepresented facts in a vain attempt to harm Judge Miller's reappointment. Because Field's grievance was part of his overall strategy to delay justice in this case, the repeated misrepresentations Field made (under oath) at the hearing further support the imposition of liquidated damages.

a. Field lied about his crimes.

CHAIRMAN RANKIN: What did you plead guilty to?

MR. FIELD: I pleaded guilty to omitting three sentences from a prospectus, that led to counts of securities fraud. And the forgery count was for zero dollars, based on my signing a stage name from New York on a checking account that the bank knew was my checking account.

See, Receiver's Memorandum in Opposition to Defendant Arthur Field's Motion to Reconsider and/or to Alter or Amend the Court's Order of December 17, 2020, Page 6 (R.____)

In fact, Field pled guilty to Eleven (11) Counts of Securities Fraud, Two (2) Counts of Criminal Conspiracy and One (1) Count of Forgery. See, Receiver's Memorandum in Opposition to Defendant Arthur Field's Motion to Reconsider and/or to Alter or Amend the Court's Order of December 17, 2020, Page 6 (R.____)

In Field's statement that the forgery account was for "zero dollars, based upon [his] signing a stage name from New York, the bank knew it was my checking account," he omitted the fact that he used these forgeries to conceal from the class of noteholders the payments he received in his business dealings. The relevant excerpt from the indictment of Arthur M. Field demonstrate Field's misrepresentations concerning his hidden interest in "BolingBroke"

On September 27, 2001, an entity was registered with the Wyoming Secretary of State named Bolingbroke United (England) Ltd ("Bolingbroke")... Eventually, the registered agent listed with the Wyoming Secretary of State's Office was "Henry Rex", the supposed president of Bolingbroke... Additionally, a South Carolina Bank of America business investment account was opened on October 18, 2001 with the signatory listed as "H Rex". The Bolingbroke bank account used the PFEIFFER law firm address. For some reason, the bank did not certify the signature. **Ultimately, a number of checks would be issued on this account purportedly signed by "Henry Rex".**

Exhibit 4, pp. 7-8 (emphasis added).

FIELD used the fictitious name "Henry Rex" to conduct business for Bolingbroke, to further conceal FIELD's true ownership interest in Bolingbroke, and thus his interest in Cosimo.

Id. at p. 64

As indicated, Field's forgery was not a "zero dollars" forgery as he testified. The forgery was a vehicle he used to conceal hundreds of thousands of dollars from the class noteholders. See, Receiver's Memorandum in Opposition to Defendant Arthur Field's Motion to Reconsider and/or to Alter or Amend the Court's Order of December 17, 2020, Page 7 (R. ___)

Additionally, Field lied about his personal contributions to the GSA settlement at the November 28, 2020 public hearing of the Judicial Merit Selection Commission involving Judge Miller. See, Receiver's Memorandum in Opposition to Defendant Arthur Field's Motion to Reconsider and/or to Alter or Amend the Court's Order of December 17, 2020, Pages 7-10 (R. ___).

Arthur M. Field's motion to recuse Judge Miller and his motion to dismiss the motion of the receiver seeking a declaration from the court in the receivership action that the judgment collection action filed against Appellant Arthur M. Field is just and proper under the terms of the Global Settlement Agreement (GSA) are the continuation of a lifelong pattern of frivolous litigation tactics. Field specifically consented to have Judge Miller retain jurisdiction over the matters of the GSA. Field agreed to the liquidation damage provision. The receiver appropriately included the request for the enforcement of the liquidated damages provision given Field's lengthy history of lies and frivolous litigation. Judge Toal's order awarding liquidated damages should be affirmed by the Court of Appeals.

IV. THE CIRCUIT COURT CORRECTLY INTERPRETED THE GSA IN ACCORDANCE WITH ITS TERMS AND ITS ORDER SHOULD BE AFFIRMED BY THE COURT OF APPEALS. (RESPONSE TO APPELLANT FIELD'S ARGUMENTS 1, 2, AND 3 AND APPELLANT TAILLON'S ARGUMENT C)

The Appellants Arthur M. Field and Kathryn Taillon have both made arguments which are an effort to have the Court of Appeals make an erroneous interpretation of the provisions of the Global Settlement Agreement insofar as they relate to the receiver's effort to enforce the civil judgment for restitution in the State of Florida. Judge Toal, in her Order filed March 2, 2021, correctly ruled that the Court of Common Pleas for Greenville County in Civil Action No.: 2008-CP-23-3665, which is an ongoing receivership action, had exclusive jurisdiction to interpret the Global Settlement Agreement as it relates to the propriety of the Receiver's action commenced in Florida seeking the enforcement of the Restitution Judgment entered against Arthur M. Field. Judge Toal's order stated as follows:

“Defendant Field argues that the Receiver's motion should be dismissed because it improperly attempts to exercise subject-matter jurisdiction over the Florida Homestead statute. Despite Field's argument, this Court makes

no ruling or comment on the interpretation or application of the Florida Homestead statute to the particular facts of this case. This Court is simply addressing whether the GSA, the terms of which this court has exclusive jurisdiction to interpret and enforce, allows for the action commenced in Florida. Field and Taillon in their response to Receiver's collection action argue the GSA bars the Florida action. This jurisdictional argument requires the interpretation of the GSA by this Court which has exclusive trial jurisdiction to render such. This matter does not require a question of law to be certified to the South Carolina Supreme Court." See, Order of Judge Toal, March 2, 2021, at Pages 5 and 6 (R.____)

The Circuit Court also correctly ruled that the Global Settlement Agreement had not released Defendant Field's liability or obligation due and owing under his criminal restitution.

Judge Toal's order correctly held that the Global Settlement Agreement was approved only with the addendum addressing restitution and the Defendant Field's continuing obligation to satisfy the court ordered restitution, which was converted to a civil judgment. No party to the Global Settlement Agreement appealed the December 1, 2017 Order approving the GSA, as amended by the addendum.

The court also correctly ruled that a civil settlement agreement, particularly one to which the state was not a party, cannot preclude court-ordered restitution. See, *State v. Morgan*, 417 S.C. 338, 343-44, 790 S.E.2d 27,30 (2016). Judge Toal properly rejected the argument of Appellants Field and Taillon relating to a release provision that was in an original proposed GSA, which was not approved by the Court of Common Pleas in the civil receivership action. The Appellants erroneously argue that Arthur M. Field was released from his liability or obligations due and owing under his criminal restitution order.

Judge Toal correctly ruled as follows:

"A civil settlement agreement, particularly one to which the State was not a party, cannot preclude court-ordered restitution. See, *State v. Morgan*, 417 S.C. 338, 343-44, 790 S.E.2d 27,30 (2016)

Field and Taillon argue the release in the GSA (paragraphs 4 and 5) “released” the restitution or any collection thereof.

This cannot be effective as the State was not a party to the agreement. Additionally, the “release” of the obligation of restitution was specifically deleted from the GSA by the addendum.

Additionally, the collection of the judgment is not a “claim” as contemplated by the GSA, but rather it is the enforcement by an action for collection of what was already owed and ordered. The civil judgment credited the Defendant Field for payments already made on the restitution as well as payments received due to the GSA. The court’s order amending the GSA, to which Field and Taillon consented..., clearly did not fulfill the requirements of the criminal restitution.

Accordingly, the GSA did not operate as a release of Field’s obligations due and owing under his criminal restitution.”

See, Order of Judge Toal, March 2, 2021, at Pages 3 and 4 (R. ___)

Judge Toal in a footnote in the order of March 2, 2021, noted as follows:

“While Taillon was not present at the November 27, 2017 hearing to affirmatively consent to the Addendum, Taillon was present and participated in the negotiation of the addendum contents during the restitution modifications hearing on November 1, 2016 in State v. Arthur Fields, C.A. No.: 12-GS-47-00008. Tr. At 75-76. Further, Taillon’s counsel was present at the November 27, 2017 hearing to approve the GSA with the Addendum and raised no objections.”

See, Order of Judge Toal dated March 2, 2021, at Page 4 (R. ___)

Finally, Judge Toal correctly ruled that the receiver is the proper party to collect on the outstanding civil judgment arising from the Defendant Field’s obligations of restitution. Judge Toal correctly noted that the order of judgment was filed with the Clerk for State Grand Jury on November 5, 2018, which converted the remaining balance of restitution owed at the end of Mr. Field’s probation into a civil judgment. The order specifically grants the judgment to receiver, Jerry Saad, as receiver for Capital Investment Funding. S.C. Code Ann. Section 17-25-323(D) and (E) authorizes the judgment creditor (the receiver in this case) to enforce the civil judgment entered pursuant to 17-25-323 as any other civil judgment. In addition to the fact that the receiver

was involved in the GSA, as the criminal restitution judgment creditor, he is authorized to independently enforce and collect the civil judgment arising from Defendant Field's criminal restitution. See, Order of Judge Toal dated March 2, 2021, at Page 4. (R. __)

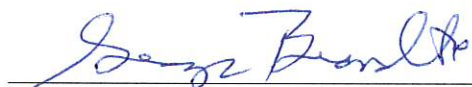
Judge Toal's interpretation of the Global Settlement Agreement as it relates to the civil judgment for restitution which has been filed against Arthur M. Field is entirely proper and correct. The Court of Appeals should reject the arguments of Appellant Field and Taillon which seek an Erroneous interpretation of the Global Settlement Agreement, the equitable proceedings in this matter, and South Carolina law.

CONCLUSION

Accordingly, the Respondents in this matter, Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, and William F. Tomz and Francis W. Tomz, Individually, and as Class Representatives, request the Court Of Appeals to affirm the Order of The Honorable Jean Hofer Toal, filed March 2, 2021, in its entirety.

The Honorable Jean Hofer Toal was correct in all of her rulings issued in connection with this matter and her Order should be affirmed in its entirety.

Respectfully submitted,



George Brandt, III (SC Bar No. 00855)
HENDERSON, BRANDT & VIETH, P.A.

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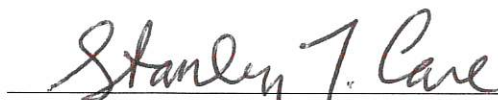
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Nov 01 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

v.

Capital Investment Funding, LLC, by and through its
Receiver, Jerry T. Saad, and Arthur M. Field,
Defendants.

Of Which Capital Investment Funding, LLC, by and
Through its Receiver, Jerry T. Saad is a Respondent and
Arthur M. Field is the Appellant.

In Re: Kathryn Taillon, Appellant.

And Capital Investment Funding, LLC, is a Respondent.

Appellate Case No. 2021-000341

The Honorable Jean Hoefler Toal
Greenville County
Trial Court Case No. 2008-CP-23-03665

PROOF OF SERVICE

I, Stanley T. Case, the undersigned attorney for Respondents, William F. Tomz and Francis W. Tomz, Individually and as Class Representatives, and I, George Brandt, III, the undersigned attorney for Respondent Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad, do hereby certify that we have served the South Carolina Court of Appeals with the Initial Brief of Respondents, by e-mail to the Court system, and have served a copy of the aforementioned Initial of Respondents on the parties listed below:

A. The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201
ctappfilings@sccourts.org

B. Micajah P. Caskey, Esquire
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November 1, 2021

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Attorneys At Law

November 1, 2021

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SC Court of Appeals

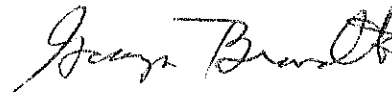
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RE: Appellate Case No. 2021-000341
(Appealed from Greenville County Court of Common Pleas, No. 2008-CP-23-3665)
William F. Tomz and Francis W. Tomz, Individually and as Class Representatives, vs.
Capital Investment Funding, LLC, and Arthur M. Field, of which Capital Investment
Funding, LLC by and Through its Receiver, Jerry T. Saad, is a Respondent, and Arthur
M. Field is the Appellant; In Re: Kathryn Taillon, Appellant

Dear Ms. Kitchings:

Please find attached Respondent Capital Investment Funding, LLC's Initial Brief, along with the Proof of Service regarding the same. If you have any questions, please do not hesitate to contact me.

Very truly yours,



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GB,III/msl

Enclosures

cc: Stanley T. Case, Esquire
Jeffrey P. Dunlaevy, Esquire
Gene McCain Connell, Jr., Esquire
Micajah Pickett Caskey, IV, Esquire