

# The South Carolina Court of Appeals

Fenwick Commons Homeowners Association, Inc.,  
Respondent,

v.

D.R. Horton, Inc., JJA Construction, Inc., d/b/a JJA Framing, JJA Construction, Inc. d/b/a JJA Framing Company, Jose Castillo d/b/a JJA Framing, Jose Castillo d/b/a JJA Framing Company, United Siding Specialists, Inc., Heritage Construction Consultants, Inc., Robert H. Yarnall d/b/a Heritage Construction Consultants, Inc., Built Right Construction, LLC, Alfonso Villavicencio d/b/a Alfonso's Painting, Alfonso Painting & Drywall, Inc., Diria Tawi Painting, Inc., 84 Lumber Company, Builders FirstSource - Southeast Group, LLC, Americo Roofing Concepts f/k/a Americo Roofing Concepts Enterprises, Inc., Americo Roofing Concepts, Inc. f/k/a American Roofing Concepts, Archer Exteriors, Inc. and Professional Exteriors, LLC, Luciano Dias Gomes d/b/a Prestige Home Construction, Geraldo Da Cunha, Pablo Rojas Franco, Charles Gunter, Henry A. Palmer, Julio C. Crespo, Brasilican Contracting, LLC, Charles Bowser d/b/a CWB Services, Jose Geraldo Dos Reis, Leandro De Paulo Araujo, Helio A. De Rezende, Vinicius Araujo De Freitas a/k/a Vinicius Araujo, Robert M. Huges d/b/a Robert's Vinyl Siding, Lucas Rodrigues Barcelos a/k/a Lucas Rodriguez Barcelos, Karla Bezerra, Rodrigo B. Vasconcelos, Rondinely G. Da Silva, Marcio Nunes Da Silva, W&M Vinyl Siding, LLC, and Donald Lee d/b/a Vinyl Siding Specialists, Defendants,

of which Builders FirstSource - Southeast Group, LLC is  
the Appellant.

Appellate Case No. 2024-001424

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ORDER

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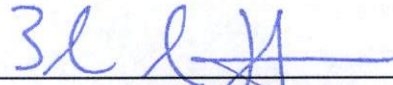
On August 9, 2024, Appellant filed a notice of appeal from an order issued by the special referee on August 5, 2024, and an order denying a motion to reconsider the August 5 order. The special referee granted Appellant's motion for summary judgment "solely as to units [Appellant] only installed window screens." The order required the parties to "work together collectively to agree on which units [Appellant] only installed window screens on." Further, the order provided that Respondent's counsel "stipulated that it [was] not bringing any claims as it pertains to [Appellant]'s trusses supplied at the Portrait units."

On December 4, 2024, Respondent filed a motion to dismiss the appeal, arguing the orders on appeal are interlocutory and not immediately appealable. According to Respondent, the special referee (1) granted Appellant's motion for summary judgment "only as to units wherein Appellant solely installed window screens" and denied Appellant's motion for summary judgment "regarding its installation of windows, flashing[,] and weather barriers." Respondent requests this court dismiss the appeal because (1) regarding the portion of the order denying summary judgment, "[i]t is well established law that an order denying summary judgment is not appealable" and (2) regarding the portion of the order granting summary judgment, it does not involve the merits or affect a substantial right. Respondent also disputed Appellant's assertion that the grant of summary judgment was contingent on Respondent's consent.

On December 16, 2024, Appellant filed a return, arguing the order granting its motion for summary judgment "is immediately appealable because it involves the merits as it finally determines substantial matters forming part of the causes of action and the defenses," "ends the case for certain townhomes," and substantially affected Appellant's rights by allowing claims to proceed where Respondent lacked standing. Further, Appellant asserted the special referee's order "ma[de] summary judgment contingent on [Respondent]'s consent." If this court determined the order was not immediately appealable, Appellant asked this court to "allow this appeal to proceed as it has done in other appeals" to "avoid unnecessary litigation."

On December 20, 2024, Respondent filed a reply, reiterating its argument that an order denying a motion for summary judgment is not immediately appealable and asking to be awarded attorney's fees and costs.<sup>1</sup>

After careful consideration, we dismiss this appeal because the orders on appeal are interlocutory and not immediately appealable. *See* S.C. Code Ann. § 14-3-330 (2017) (defining appellate jurisdiction); *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final."); *Ballenger v. Bowen*, 313 S.C. 476, 476-77, 443 S.E.2d 379, 379 (1994) (holding "the denial of summary judgment is not directly appealable"); Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."). Remittitur will issue as provided in Rule 221(b) of the South Carolina Appellate Court Rules.



FOR THE COURT

Columbia, South Carolina

**FILED**  
**Jan 27 2025**

cc:

William Hewitt Cox, III, Esquire  
Thomas Allan Bendle, Jr., Esquire  
John T. Chakeris, Esquire  
Alicia Denise Pullano, Esquire  
Phillip Ward Segui, Jr., Esquire

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<sup>1</sup> Respondent moved for attorney's fees and costs in its reply to the return to the motion to dismiss. We deny the motion as premature. *See* Rule 222(d), SCACR ("A party desiring costs to be taxed shall, within fifteen (15) days of issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule.").