

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Richland County  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

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Case No. 2009-CP-40-8717

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QBE Insurance Corporation,

Respondent,

v.

William Fincher, Harrison, Fincher & Associates, LLC,  
and Harrison, Fincher & Associates, Inc.,

Appellants.

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**RESPONDENT'S REPLY IN SUPPORT OF  
MOTION TO DISMISS APPEAL**

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**SC Court of Appeals**

The Respondent, QBE Insurance Corporation, by and through its undersigned counsel, submits this reply in support of its motion to dismiss the above-captioned appeal.

1. **Richardson v. P.V. Inc., 383 S.C. 610, 682 S.E.2d 263 (2009) is unavailing to the Appellants with regard to the issue of appealability, because the issue of appealability was not addressed by the Richardson Court.**

The Appellants' concede that "there is various case law refusing to allow [their] appeal." (Return p. 2.) Nonetheless, the Appellants contend that an appeal from the denial of a motion to set aside an entry of default "is not a novel idea . . . ,"<sup>1</sup> and they cite to Richardson, wherein our Supreme Court heard an appeal from the denial of a motion to set aside an entry of default, arguing it refutes the Respondent's contention that the subject orders are not immediately appealable.

The problem with the Appellants' reliance upon Richardson in this regard is that the issue of appealability was never addressed by the Richardson Court. Accordingly, Richardson is not controlling on the issue of appealability, and is unavailing to the Appellants in response to the instant motion to dismiss. State v. Lockhart, 275 S.C. 160, 161, 267 S.E.2d 720 (1980) (explaining that previous opinions considering unappealable orders are not controlling on the issue of appealability if the appealability issue was

not addressed in those opinions); Wallace v. Interamerican Trust Co., 246 S.C. 563, 569, 144 S.E.2d 813, 816 (1965) (same); Pioneer Assocs., Inc. v. Tigor Title Ins. Co., 300 S.C. 346, 348, 387 S.E.2d 711, 713 n. 2 (Ct. App. 1989) (same); 15 S.C. Jur. Appeal and Error § 70 (West 2012) (“The appellate courts occasionally consider unappealable orders without discussing appealability, but such ‘silent’ considerations are not a ruling that the order is immediately appealable.”).

**2. That “the lower court has already agreed to sign QBE’s proposed Order for Default Judgment,” is unavailing to the Appellants with regard to the issue of appealability.**

While conceding that “the orders that are the subject of this appeal relate to the denial of Fincher’s Motion to Set Aside Entry of Default,” the Appellants note that the lower court has already agreed to sign the Respondent’s proposed Order for Default Judgment as to the factual allegations against the Appellants. (Return p. 3.) “Thus,” the Appellants argue, “the amount of damages to be awarded is the only outstanding issue, and judicial economy and fairness warrants the continuation of the subject appeal on the merits.” (Id.) (emphasis added) (footnote omitted.)

As an initial matter, the Appellants’ reference to the proposed Order for Default Judgment is unavailing because—as the Appellants concede—

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<sup>1</sup> (Id.)

the only orders that are the subject of this appeal relate to the denial of their motion to set aside entry of default.<sup>2</sup> Respectfully, the Appellants' reference to a proposed order—which the circuit court has not entered and, obviously, from which the Appellants have not appealed—is wholly irrelevant to the issue of the appealability of the orders that are actually on appeal.

Besides the fact that it has not been entered, the substance of the proposed order also renders it a non-event from an appealability perspective. According to the Appellants, in light of the proposed order, “the amount of damages to be awarded is the only outstanding issue . . . .” (Return p. 2) (footnote omitted.) This is no different than the typical situation presented by entry of default in an unliquidated damages case. *See Roche v. Young Bros., Inc. of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) (“It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.”). That is, even if the circuit court had entered the proposed Order

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<sup>2</sup> In its motion to dismiss, QBE has already explained that these orders are not immediately appealable. *Thynes v. Lloyd*, 294 S. C. 152, 363 S. E. 2d 122 (Ct. App. 1987) (holding that an order refusing to grant relief from the entry of default is not appealable until after final judgment); *see Jefferson v. Gene’s Used Cars, Inc.*, 295 S. C. 317, 368 S. E. 2d 456 (1988) (approving *Thynes*’ holding and dismissing appeal from order denying motion for leave to file late answer); 15 S.C. *Jur. Appeal and Error* § 21 (West 2012) (“A direct appeal does not lie from an order refusing to set aside an entry of default or from the default judgment itself.”). Indeed, as noted above, the Appellants have conceded that “there is various case law refusing to allow such an appeal.” (Return p. 2.)

for Default Judgment, the situation presented thereby would be no different than the present situation where the truth of the Respondent's allegations has been admitted and liability conceded by the Appellants, leaving damages left to determined.

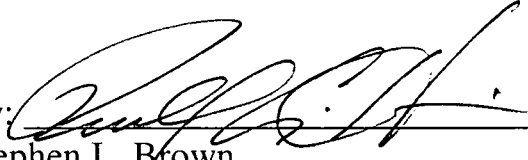
Ultimately, the proposed order was and is unnecessary and redundant in light of legal consequences of the Appellants' default. It has not been pursued by the Respondents. It has no bearing on the appealability of the orders that the Appellants have now appealed to this Court. And, moreover, even if the circuit court had entered the proposed Order of Default Judgment, the same would not constitute a final judgment because, as the Appellants concede, the issue of damages would remain outstanding. *See 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.").

WHEREFORE, the Respondent moves this Honorable Court to dismiss Appellants' appeal and for such other and further relief as it may deem to be just and proper.

**<SIGNED ON THE FOLLOWING PAGE>**

Respectfully submitted,

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Dated: 10/9/12

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**PROOF OF SERVICE**

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I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for the Respondent above named, do hereby certify that I have served the **Respondent's Reply in Support of Motion to Dismiss Appeal** on the above-named Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on October 9, 2012, addressed as follows to their counsel of record:

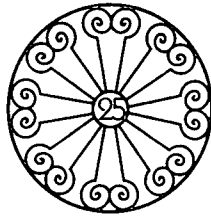
MCNAIR LAW FIRM, P.A.  
Susan Taylor Wall, Esquire  
Amanda C. Williams, Esquire  
100 Calhoun Street, Suite 400  
Charleston, SC 29401

YOUNG CLEMENT RIVERS, LLP

By:  \_\_\_\_\_

Charleston, South Carolina

Dated: 10/9/12



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October 9, 2012

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OCT 11 2012

**SC Court of Appeals**

Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: QBE Insurance Corporation v. William Fincher and Harrison, Fincher & Associates, Inc.  
Case Tracking Number: 2012-211863  
Case No.: 2009-CP-40-8717  
Date of Loss: 6/19/2004  
YCR File: 14272-20091361

Dear Ms. Kitchings:

Enclosed for filing in the above matter please find the original and seven (7) copies of **Respondent's Reply in Support of Motion to Dismiss Appeal** along with the original and two (2) copies of a Proof of Service for the same. Kindly return one (1) stamped copy of each filed document to me in the envelope provided. Please contact our office should you have any questions or concerns regarding this filing.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Russell G. Hines

RGH/jla

Enclosures

cc: Susan Taylor Wall, Esquire  
Amanda Williams, Esquire