

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

---

Case No. 2017-CP-10-01603

---

Lashonda Middleton, Respondent,

v.

TBONZ Management, Inc., Appellant

Appellate Case No. 2018-000766

**RECEIVED**  
MAY 14 2018  
SC Court of Appeals

---

**RETURN TO MOTION TO DISMISS**

---

Appellant TBONZ Management, Inc. (“Appellant”) submits this Return to Respondent’s Motion to Dismiss filed pursuant to Rule 240, SCACR.

This is an appeal from the circuit court’s order dated January 8, 2018, denying relief from the entry of default against Appellant (“Order Denying Relief From Default”). The Honorable J.C. Nicholson, Jr., signed a Form 4 on March 13, 2018, denying Appellant’s Motion to Reconsider. (“Order Denying Motion to Reconsider”). Appellant thereafter filed and served a Notice of Appeal on April 12, 2018, to appeal the Order Denying Relief From Default and Order Denying Motion to Reconsider.

The South Carolina Court of Appeals has heard an appeal of an order denying relief from the entry of default pursuant to Rule 55(c), SCRCF prior to a final judgment. See Ricks v. Weinrauch, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987). However, the weight of the authority is that an order denying relief from the entry of a default pursuant to Rule 55(c), SCRCF is not appealable prior to a final judgment. Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988); Thynes v. Lloyd, 294 S.C. 152, 363 S.E.2d 122 (Ct. App. 1987).

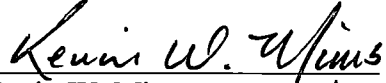
Before the circuit court, Respondent took the position that Rule 60(b), SCRCF should be the basis for the court to decide whether to grant relief from the entry of default against Appellant. (Order Denying Relief From Default pg. 1). In the Order Denying Relief From Default, the circuit court discussed both Rule 60(b), SCRCF and Rule 55(c), SCRCF; and did not hold that Rule 55(c), SCRCF only applied to the court's decision to deny relief to Appellant. (Order Denying Relief From Default pg. 1). In the Order Denying Motion to Reconsider, the circuit court did not hold that Rule 55(c), SCRCF only applied to the court's decision. The South Carolina Court of Appeals has recognized that the denial of a motion under the comparable Rule 60(b), FRCP to set aside a default judgment is immediately appealable. Thynes v. Lloyd, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987). Accordingly, out of an abundance of caution, Appellant filed its Notice of Appeal.

The circuit court relied on Rule 60(b), SCRCF to decide an issue governed by Rule 55(c), SCRCF only. The Appellant should be able to prosecute the appeal at this time.

*(Signature on Next Page)*

*Appellant's Return to Motion to Dismiss*  
*Appellate Case No. 2018-000766*

Respectfully Submitted

  
Kevin W. Mims  
Kevin W. Mims  
Randell C. Stoney, III  
LUZURIAGA MIMS, LLP  
50 Immigration St, Suite 200  
Charleston, SC 29403  
(843) 410-4713  
kmims@lmlawllp.com  
rstoney@lmlawllp.com  
Attorneys for Appellant TBONZ Management, Inc.

May 14, 2018

CERTIFICATE OF SERVICE

I, the undersigned, hereby state that on this date, a copy of the foregoing **TBONZ Management, Inc.'s Return to Motion to Dismiss**, was served upon counsel of record by depositing a copy thereof in the United States mail, first-class postage prepaid and addressed as follows:

Jonathan S. Altman, Esq.  
Derfner & Altman, LLC  
575 King Street, Suite B  
Charleston, SC 29403

This is the 14<sup>th</sup> day of May, 2018



\_\_\_\_\_  
Anne Beaudette  
Rogers Lewis Jackson Mann & Quinn, LLC

**RECEIVED**  
MAY 14 2018  
SC Court of Appeals

**ROGERS ♦ LEWIS**  
— ROGERS LEWIS JACKSON MANN & QUINN, LLC —

P.O. Box 11803 (29211)  
1901 Main Street, Suite 1200  
Columbia, SC 29201  
Phone (803) 978-2834  
jmccants@rogerslewis.com  
www.rogerslewis.com

May 14, 2018

Via Hand Delivery

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Post Office Box 11629  
Columbia, South Carolina 29202

**RECEIVED**  
MAY 14 2018  
SC Court of Appeals

RE: Lashonda Middleton v. TBONZ Management, Inc.  
Civil Action No.: 2017-CP-10-01603  
Appellate Case No. 2018-000766

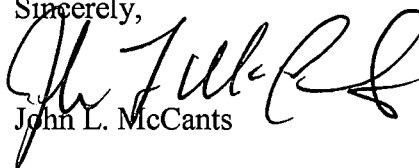
Dear Ms. Kitchings:

Enclosed please an original and seven (7) copies of TBONZ Management, Inc.'s Return to Motion to Dismiss in the above referenced matter. Please file one copy and return a file-stamped copy with the Courier.

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Sincerely,

  
John L. McCants

cc: Jonathan S. Altman, Esq.