

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  
Appellate Case No.: 2018-000766

**RECEIVED**  
MAY 16 2018  
SC Court of Appeals

Lashonda Middleton .....Respondent,

v.

TBONZ Management, Inc. ....Appellant.

**RESPONDENT’S REPLY TO APPELLANT’S RETURN TO  
RESPONDENT’S MOTION TO DISMISS APPELLANT’S APPEAL**

Respondent Lashonda Middleton (hereinafter “Respondent”) submits this Reply to Appellant’s Return to Respondent’s Motion to Dismiss filed pursuant to Rule 240, SCACR.

This appeal arises from the Circuit Court’s denial of Appellant’s Motion to Set Aside Entry of Default and Order of Default (hereinafter “Motion to Set Aside”) and subsequent Motion to Reconsider. No final judgment has been issued in this case. In its Return, Appellant acknowledges that “*the weight of authority is that an order denying relief from the entry of default pursuant to Rule 55(c), SCRCF is not appealable prior to 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).

Appellant attempts to distinguish its appeal by noting the Circuit Court's reference to Rules 55(c) and 60(b) in its order denying Appellant's Motion to Set Aside. The Court's reference to both rules was in response to Appellant citing Rules 55(c) and 60(b) in its Motion to Set Aside. In denying Appellant's Motion for Reconsideration, the Circuit Court stated that "*the denial of Appellant's Motion to Set Aside Entry of Default was primarily based upon Defendant's failure to show good cause pursuant to Rule 55(c).*"

*"It is a well-recognized legal concept in South Carolina that motions should be treated based on substance and affect as opposed to how they are styled by the moving party."* See Mickle v. Blackmon, 255 S.C. 136, 140, 177 S.E.2d 548, 549 (1970). "*The Court must examine the relief sought and understand the true nature of the pleading.*" See Standard Federal Savings & Loan Association, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App.1991). "*It is the substance of the relief sought that matters 'regardless of the form in which the request or relief was framed'.*"

It is well settled that "*Rule 55(c) allows the Circuit Court to set aside an entry of default for good cause shown,*" Ateyeh v. United of Omaha Life Ins. Co., 293 S.C. 436, 361 S.E.2d 340, (Ct.App.1987). Rule 60(b) allows the Court to grant relief from a final judgment. As no final judgment has been entered, Appellant's motions were governed by Rule 55(c). Until the issuance of a final judgment, Appellant's appeal is premature and should be dismissed.

May 15, 2018



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

*Attorney for Respondent*

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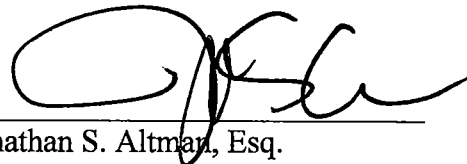
v.

TBONZ Management, Inc. ....Appellant.

**PROOF OF SERVICE**

I certify that I have served Respondent's Reply to Appellant's Return to Respondent's Motion to Dismiss Appellant's Appeal, by depositing a copy of it in the United States Mail, postage prepaid, on May 15, 2018, properly addressed to Appellant's attorneys, Kevin W. Mims, Esquire and Randell C. Stoney, III, Esquire, of Luzuriaga Mims, LLP, 50 Immigration Street, Suite 200, Charleston, South Carolina 29403 and John McCants, Esquire of Rogers Lewis, Attorneys at Law, 1900 Main Street, Suite 1200, Columbia, South Carolina 29201.

May 15, 2018



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

*Attorney for Respondent*

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D E R F N E R  
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May 15, 2018

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

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SC Court of Appeals

RE: Lashonda Middleton v. TBONZ Management, Inc.  
Case No.: 2017-CP-10-01603  
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Dear Madam Clerk:

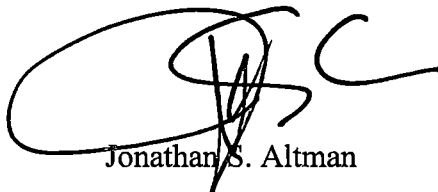
Please find enclosed an original and seven copies of the following in accordance with Rule 240, SCACR:

1. Respondent's Reply to Appellant's Return to Respondent's Motion to Dismiss Appellant's Appeal; and
2. Proof of Service.

Please file the originals and return a filed copy to me in the enclosed self-addressed stamped envelope. Please contact me with any questions.

Yours Very Truly,

DERFNER & ALTMAN, LLC



Jonathan S. Altman

JSA/rs

Enclosures

cc: John McCants, Esq.  
Randell C. Stoney, III, Esq.  
Kevin W. Mims, Esq.

ARMAND DERFNER | SAMUEL H. ALTMAN | JONATHAN S. ALTMAN

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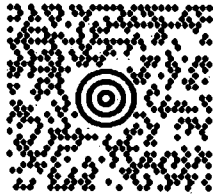
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SC Court of Appeals



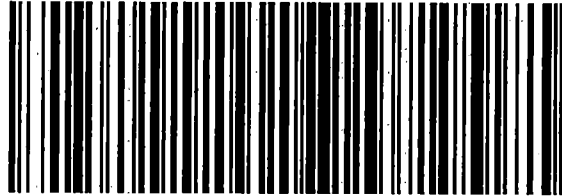
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