

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Carl E. Pierce, II, Special Referee

APPELLATE CASE NO. 2019-000927

Christopher and Ann Marie May, Respondents

v.

Ferrara Buist LLC, John Does 1-50 and Jane Does 1-50, Appellants.

Ferrara Buist, LLC, Third Party Plaintiff,

v.

MDJ Construction, Inc. Third-Party Defendants.

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APPELLANT'S RESPONSE TO RESPONDENTS'
MOTION TO DISMISS APPEAL

Appellant hereby responds to the Motion to Dismiss filed by Respondents, Christopher May and Ann Marie May. Respondent's motion is based on the grounds that the "Appellant seeks to appeal orders that are interlocutory and not immediately appealable." Respondents' Motion to Dismiss Appeal, p. 4. A complete review of the factual and procedural history, in this case, will establish that the Order being appealed falls within the exception enumerated in the South Carolina Code of Laws §14-3-330.

On April 17, 2018, Judge Hall, signed the Order of Default and Referral to Special Referee Carl E. Pierce, II. The Appellant filed a motion to reconsider the order dated April 17, 2018, but Judge Hall determined that he already issued an order of reference and could not hear the motion to reconsider. Special Referee Carl E. Pierce, II heard the motion to reconsider and denied Appellant's request to reconsider. This appeal followed.

I. **S.C. Code §14-3-330 (2) allows the Appellant to have this Court review the Order of Special Referee Carl E. Pierce, II as it affects the mode of the Appellant's right to a jury trial.**

S.C. Code §14-3-330(2) allows immediate review of the special referees Order denying Appellants motion to set aside the Order of default and Judge Hall's Order of reference because the Appellant's substantial right to a jury trial is impaired.

"[A]n order affects a substantial right and is immediately appealable when it '(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action....' " 1." Hagood v. Sommerville, 362 S. C. 191, 195, 607 S.E.2d 707, 709 (2005)(brackets omitted)(quoting § 14-3-330(2)). It is clear that the mode of trial is a substantial right that falls within S.C. Code 14-3-330(2). See Bateman v. Rouse, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to trial by jury which would otherwise be lost.) In this appeal, Special Referee Carl Pierce, II, effectively denied the Appellant the right to a trial by jury on Respondent's defective construction claim.

Moreover, the improper denial of the Appellant's motion to reconsider effectively denied the Appellant's mode of trial and therefore impeded the Appellant's substantial right to have a

jury trial. The Order dated April 17, 2018, if allowed to stand, will deny the Appellant its right to litigate the defective construction claim before a jury.

Therefore, the Court of Appeals should deny Respondent's motion to dismiss.

Respectfully Submitted,



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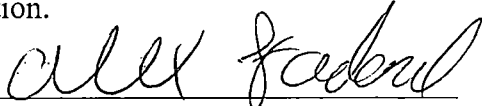
PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

1. That he is an employee in the office of Ferrara Law Firm, attorneys for the Defendant Ferrara Buist, LLC, herein;
2. That on the 26th day of July, 2019 he did via U.S. mail give a true and correct copy of the foregoing Appellant's Response to Respondents' Motion to Dismiss Appeal and by mailing copies to:

V. Claire Allen
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting St., Suite 330
Charleston, SC 29401

3. That he is not a party to this action.



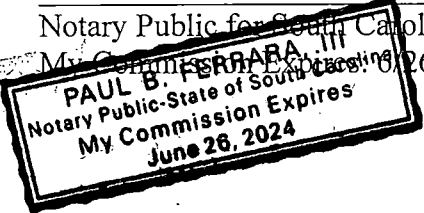
Alex Sami Fadoul

SWORN to before me this 26th
day of July, 2019

(L.S.)

Notary Public for South Carolina

My Commission Expires 6/26/2024



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Paul B. Ferrara, III*
Janel K. Ferrara*
Alex S. Fadoul

**(also Admitted in N.C.)*

July 26, 2019

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South Carolina Court of Appeals
Attn: V. Claire Allen
1220 Senate St.
Columbia, SC 29201

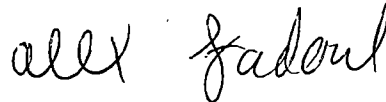
RE: Christopher and Ann Marie May, Respondents v. Ferrara-Buist LLC, Appellants.
Appellate Case No.: 2019-000927
FLF No.: 17-518

Dear Clerk of Court:

Please find Appellant's Response to Respondents' Motion to Dismiss Appeal. I have also enclosed an affidavit of service. Please file the originals and return the copies in the self-addressed stamped envelope.

Thank you for your timely assistance in this matter.

FERRARA LAW FIRM, PLLC



Alex Sami Fadoul, Esq.

cc: John C. Hayes, IV, Esq.

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