

FAX COVER SHEET

TO	The Hon. Jenny Abbott Kitchings South Carolina Court of Appeals
COMPANY	
FAX NUMBER	18037341839
FROM	Jesse Sanchez
DATE	2019-08-06 19:51:16 GMT
RE	Christopher and Anne Marie May, Respondents v. Ferrara Buist, LLC, John Does 1-50, Appellants; Ferrara Buist, LLC, Third Party Plaintiff v. MDJ Construction, Inc., Third-Party Defendant Appellate Case No. 2019-000927

COVER MESSAGE

Dear Ms. Kitchings,

Please find the attached cover letter, Reply, and Proof of Service for the above-captioned case. Please do not hesitate to contact me at 843-814-8181 if you have any questions. Thank you for your time and attention to this matter.

Best regards,

Jesse Sanchez
SC Bar #101906

RECEIVED

AUG 06 2019

SC Court of Appeals

August 6, 2019

VIA US PRIORITY MAIL EXPRESS AND FAX (803) 743-1839

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



AUG 06 2019
SC Court of Appeals

RE: Christopher and Anne Marie May, Respondents v. Ferrara Buist, LLC, John Does 1-50, Appellants; Ferrara Buist, LLC, Third Party Plaintiff v. MDJ Construction, Inc., Third-Party Defendant Appellate Case No. 2019-000927

Dear Ms. Kitchings:

Enclosed for filing, please find the following:

- (1) One (1) original and six (6) copies of Respondents' *Reply to Appellant's Return to Respondent's Motion to Dismiss Appeal*.
- (2) Proof of Service.

As discussed with the case manager, Ms. Sierra Ritchie, Attorneys for Respondent did not receive a copy of Appellant's Return in the mail. Thank you for allowing us until today to mail and serve the Reply. Please do not hesitate to contact me at 843-814-8181 with any questions or concerns.

Sincerely,

Jesse Sanchez (SC Bar #: 101906)
Attorney for Respondents
Christopher and Anne Marie May

cc: Attorneys of Record (Via First Class Mail Only):
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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

RECEIVED
AUG 06 2019
SC Court of Appeals

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.

RESPONDENTS' REPLY TO APPELLANT'S RETURN TO
RESPONDENTS' MOTION TO DISMISS APPEAL

Respondents Christopher and Ann Marie May, through their undersigned counsel, hereby respectfully submit this Reply to Appellant Ferrara Buist, LLC's Return to Respondents' Motion to Dismiss Appeal.

I. Appellant's Return misrepresents or otherwise muddles the procedural history of this case.

For purposes of clarity, the relevant procedural history in this case is as follows:

- On January 17, 2018, Judge Daniel D. Hall issued an *Entry of Default Against Ferrara Buist, LLC and Order of Referral to Special Referee*. Appellant Ferrara Buist did not list or enclose this order in its Notice of Appeal, nor has it filed a separate Notice of Appeal for this order. Appellant's Initial Brief focuses exclusively on this 2018 Circuit Court order.

- On October 4, 2018, Appellant Ferrara Buist, LLC filed a *Notice of Motion and Motion to Vacate Order of Default Against Ferrara Buist, LLC*.
- On December 14, 2018, a hearing on Appellant's *Motion to Vacate Order of Default* was held before Special Referee Carl E. Pierce, II.
- On March 14, 2019, Special Referee Pierce signed the *Order Denying Defendant Ferrara Buist's Motion to Vacate Default* (e-filed on April 22, 2019).
- On April 9, 2019, Appellant Ferrara Buist filed *Defendant Ferrara Buist's Motion to Reconsider*.
- On April 30, 2019, Special Referee Pierce signed the *Order Denying Defendant Ferrara Buist, LLC's Motion to Reconsider* (filed on May 21, 2019).
- There has been no final judgment in this case: the parties have not participated in a damages hearing and the Special Referee has not entered a default judgment against Appellant.
- On May 29, 2019, Appellant filed its Notice of Appeal, stating that it was appealing the two Special Referee orders. However, Appellant's Initial Brief completely ignores these two orders: Appellant's Initial Brief presents no arguments as to the Special Referee's orders or to the reasoning contained therein. It raises no issues as to these orders. The Initial Brief focuses entirely on the earlier April 2018 Circuit Court Order, for which Appellant has not filed a Notice of Appeal.

II. Appellant's Return does not respond to arguments set forth in the Motion to Dismiss Appeal.

Appellant's Return does not respond to the arguments set forth in Sections 1A, 1B, and 1C of Respondent's Motion to Dismiss Appeal. Specifically, Appellant does not address how it can appeal an order, for which it did not file a Notice of Appeal. As noted in Respondents' Motion to Dismiss Appeal, Appellant's Initial Brief focuses exclusively on the April 17, 2018 Circuit Court order entered by Judge Daniel D. Hall. This Circuit Court order was not listed in or enclosed with Appellant's Notice of Appeal as required by Rule 203, SCACR. Appellant's Return cites no rule or case law, which would permit it to ignore the requirements set forth under Rule 203, SCACR. Appellant's Return provides no reason for its failure to file a Notice of Appeal for the 2018 Circuit Court order, which it now seeks to appeal. The Appeal should be dismissed because Appellant did not file a Notice of Appeal for this Circuit Court Order.

Appellant's Return also does not address how this Court can consider either of the Special

Referee orders listed in its Notice of Appeal when Appellant has failed to address these orders in its Initial Brief. Appellant's Initial Brief ignores the Special Referee's orders: It presents no arguments as to these orders or to the reasoning contained therein. Although Appellant's Return now requests that "this Court review the Order of Special Referee Carl E. Pierce, II," Appellant's Initial Brief raises no issues as to these orders. The Initial Brief also makes no reference to the December 14th hearing before the Special Referee. "[I]t is error for the appellant court to consider issues not properly raised to it." *Langehans v. Smith*, 347 S.C. 348, 352, 554 S.E.2d 681 (Ct. App. 2001), citing *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994). See also, *Burris v. Propst Lumber & Logging, Inc.*, 396 S.C. 85, 94, 719 S.E.2d 695, 700 (Ct. App. 2011), citing Rule 2018(b)(1)(B), SCACR, "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." The appeal should be dismissed because Appellant's Initial Brief does not raise any issues as to the only two orders listed in its Notice of Appeal.

III. The Appeal should be dismissed because Appellant seeks to appeal orders that are not immediately appealable.

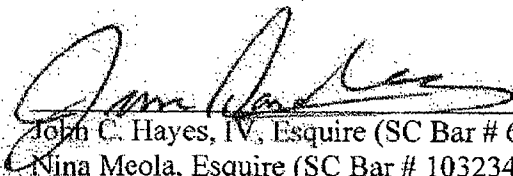
Appellant's initial brief does not address either of the orders listed in its Notice of Appeal. However, even if the Court were to consider the orders listed in the Notice of Appeal, these orders are interlocutory and not immediately appealable. Appellant's Notice of Appeal states that it appeals the Special Referee's April 22, 2019 Order denying its motion to set aside entry of default and the May 21, 2019 Order denying the its Rule 59(e) motion for reconsideration. Less than two months ago, this Court clearly stated that these types of orders are not immediately appealable until after final judgment. "[T]he denial of a motion to set aside an entry of default is not appealable until after final judgment." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, Op. No. 5661 (S.C. Ct. App. Filed June 26, 2019) (Davis Adv. Sh. No. 26 at 50), citing *Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987).

There has been no final judgment in this case: The parties have not participated in a damages hearing and the Special Referee has not entered a default judgment against Appellant. See *Palmetto*, noting, “Appellants appeal from a motion to set aside an entry of default. Furthermore, the parties have not participated in a damages hearing and the master has not entered a default judgment against Appellants. Accordingly, both [orders] are interlocutory and not immediately appealable.” *Id.* As in *Palmetto*, Appellant seeks to appeal an order denying its motion to set aside entry of default before a final judgment has been entered. The Special Referee has not even held a damages hearing at this point in time. The Circuit Court order, which Appellant now seeks to appeal, precedes both Special Referee orders by over a year and is also not a final order or judgment. Accordingly, this Appeal should be dismissed.

CONCLUSION

Respondents respectfully request that the Court dismiss this Appeal. 1) Appellant’s Initial Brief seeks to appeal an order, which it failed to list in its Notice of Appeal. 2) Appellant did not include a copy of the said order in its Notice of Appeal. 3) Appellant has not filed a timely Notice of Appeal for the 2018 Circuit Court Order it now seeks to appeal. 4) Appellant’s Initial Brief does not address the two Special Referee orders listed in its Notice of Appeal: It presents no arguments as to the Special Referee’s orders or to the reasoning contained therein. 5) Appellant seeks to appeal order(s) that are interlocutory and not immediately appealable: The denial of a motion to set aside an entry of default is not appealable until after final judgment. There has been no final judgment in this case. In addition, the parties have not participated in a damages hearing and the Special Referee has not entered a default judgment against Appellant. The Appeal should be dismissed.

Respectfully submitted,



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August ^{6th} 2019
Charleston, South Carolina

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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.

Proof of Service

I, the undersigned, certify that I have served Respondents' *Reply to Appellant's Return to Respondent's Motion to Dismiss Appeal* on Appellant Ferrara Buist, LLC and Third-Party Defendant MDJ Construction, Inc., by depositing copies of it in the United States Mail, postage prepaid, on August 6, 2019, addressed to their respective attorneys:

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