

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF COMMON PLEAS
5th Judicial Circuit

Daniel Coble, Circuit Court Judge

CASE NO.: 2021-CP-40-03542

Appellate Case No. 2023-000788

Logan Saunders,

Appellant,

v.

Beta Upsilon Chi Fraternity, Inc., a/k/a Beta
Upsilon Chi, Michael Vinzani, Graham
Harmon, and Walker Wood,

Respondents.

WESLEY D. FEW, LLC

s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565

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MOTION TO REINSTATE APPEAL BY APPELLANT LOGAN SAUNDERS

Appellant Logan Saunders (“Saunders”), pursuant to Rules 240 and 260,¹ by and through his undersigned attorneys, hereby respectfully moves for an order reinstating this appeal. As grounds for this motion, Appellant would respectfully state as follows:

¹ Rule 260, SCACR (amended on May 1, 2018) appears to have replaced the former Rule 231, SCACR. Accordingly, the undersigned can find no cases interpreting the “good cause” standard under Rule 260.

On May 4, 2023, the lower court issued its order granting Defendant / Respondent Beta Upsilon Chi Fraternity, Inc., a/k/a Beta Upsilon Chi's (hereafter "BYX") motion for relief from default. Included in that order, the lower court required BYX to accept service and answer the Complaint.

On May 11, 2023, the undersigned filed his Notice of Appeal. As noted in the order dismissing this appeal, filed November 14, 2023, Appellant was sent a letter dated May 18, 2023, advising of Appellant's deficiency and failure to pay the required appellate filing fee. As a remedy to the deficiency letter, Appellant's staff hand delivered check number 10203 from my firm's Operating Account ending in '7557 the week of May 15th to May 19th, 2023. As of the filing of this motion, this check has not cleared the undersigned's Operating Account. Until the undersigned had time to review the motion to dismiss and / or the order of dismissal, Appellant believed the filing fee deficiency was cured in May of 2023.

On June 2, 2023, counsel to BYX filed its Notice of Removal to remove this case from the South Carolina state courts to federal court. On June 16, 2023, this Court sent a letter to counsel of record on this appeal, stating,

Dear Counsel:

The Court has received respondent's notice of removal. We will hold this appeal in abeyance due to the notice of removal to federal court. Counsel for the respondent Beta Upsilon Chi Fraternity, Inc., must provide a status update² every sixty (60) days.

Id.

On November 6, 2023, the district court issued its order remanding this case. On November 7, 2023, Respondent BYX filed its motion to dismiss the appeal.

² On August 15, 2023, counsel to BYX provided this Court with its first status update letter. A second such letter was sent to this Court on October 13, 2023.

On November 20, 2023, the undersigned filed a motion to extend the deadline to respond to the Respondent's motion to dismiss. In the motion to extend the deadline to respond to the motion to dismiss the appeal, the undersigned stated, "The reason this extension request is being made is due to one federal trial and post-trial motion deadlines, a trial in Greenville County and the upcoming holidays." *Id.* To be more specific, the undersigned was in a three day jury trial in district court in Greenville, South Carolina from November 14 to 16, 2023. The undersigned had recently filed an Initial Brief of Appellant with this Court on Nov. 6, 2023, in Case No. 2023-001087. The response brief was due to this Court on Dec. 6, 2023, in Case No. 2023-001087. On November 27, 2023, the undersigned was scheduled first up for trial in the Court of Common Pleas in Greenville, South Carolina, for a date-certain trial, such that I took no Thanksgiving vacation with my family³ and, instead stayed home to prepare that case for trial. The reality is we did not even have time to read the substance of the respondent's motion to dismiss filed on Nov. 7, 2023, until after the Court issued its order dismissing this appeal on Nov. 21, 2023.⁴

As further set forth above, all the time that this case was removed to federal court (from June 2 to Nov. 6, 2023), the undersigned believed the deficiency letter of May 18, 2023, had been cured by the presentation of check no. 10203 by hand delivery. Appellant will provide another check in the amount of \$250.00 for the filing fee and a check for \$50.00 for this motion via hand delivery concurrent with the filing / e-filing of this motion.

For the reasons set forth herein, Appellant respectfully submits the circumstances presented were extraordinary and constitute "good cause" to reinstate the appeal, and to allow the filing of this

³ My wife and daughter went to New Orleans to visit my oldest son, and I did not use the ticket we had purchased prior to receiving notice that the 2019-CP-2301522 case would move from no. 2 (back up date certain) to *certain* date certain.

⁴ As noted above, On November 21, 2023, this Court issued its order dismissing the appeal for failure to pay the filing fee.

motion outside of the 15-day time period provided for in Rule 260. *See e.g., Lovette v. Sonoco Prods. Co.*, 2004 S.C. App. Unpub. LEXIS 218, *12 (Ct. App. 2004) (stating, “This court may allow late filing of a notice of appeal if timely service has been accomplished for good cause shown.” (citing Rules 203(d)(3), 231, & 234(b), SCACR)). Appellant requests this appeal be re-instated, and a briefing scheduled provided, as this matter presents an important issue to be resolved regarding the “sufficiency”⁵ of proof of service under Rule 4(d)(8), SCRCF, for which clarity is needed within the bar.

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ATTORNEYS FOR APPELLANT LOGAN SAUNDERS

Greenville, South Carolina
December 13, 2023

⁵ The order granting Respondent BYX relief from default does not find that Appellant failed to provide proof of service under Rule 4(d)(8), but instead states in footnote 1, “the record lacks a sufficient certified mail return receipt for default to be procedurally proper.” *Id.*

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ATTORNEYS FOR RESPONDENT

/s/Cassy Young
Cassy Young

December 13, 2023
Columbia, South Carolina

RECEIVED

Dec 13 2023

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PROOF OF SERVICE

On behalf of Appellant Logan Saunders, the undersigned hereby certifies that on December 13, 2023, the **Appellant's Motion to Reinstate Appeal** was served on all counsel of record and the Court of Appeals Clerk of Court via E-File and/ or Email and **check number 10262** via Hand-Delivery (12/14/23), as follows:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals – Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211
ctappfilings@sccourts.org

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(via E-File / NEF)

ATTORNEYS FOR RESPONDENT

/s/Cassy Young
Cassy Young

December 13, 2023
Columbia, South Carolina

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RECEIVED

Dec 13 2023

SC Court of Appeals

December 13, 2023

Via E-File:

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211
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RE: Logan Saunders v. Beta Upsilon Chi Fraternity, Inc., a/k/a Beta Upsilon Chi, Michael Vinzani, Graham Harmon, and Walker Wood
Case No.: 2021-CP-40-03542
Appellate Case No. 2023-000788
Our File No.: 00272-001

Dear Ms. Kitchings:

Enclosed for filing is Appellant Logan Saunders's Motion to Reinstate Appeal, check number 10262 in the amount of \$300.00 (motion filing fee and appeal filing fee) and proof of service for same.

If you have any questions or need anything further, please do not hesitate to contact me (cell #864-527-5906).

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/cgy

CC: Matthew G. Gerrald, Esquire (*Via E-File*)
Curtis W. Dowling, Esquire (*Via E-File*)
Matthew Abee, Esquire (*Via E-File*)
Tyler L. Walker, Esquire (*Via E-File*)
Client (*Via email*)