

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Michael S. Holt
Circuit Court Judge

Appellate Case No. 2024-000280
Marlboro County Case No. 2021-CP-34-00228

Synchrony Bank, **Appellant,**

v.

Michael Hudson..... **Respondent**

MOTION TO DISMISS

Respondent, pursuant to Rule 240, SCACR, moves¹ to dismiss this appeal for want of jurisdiction. The Marlboro County Circuit Court entered the order on appeal on January 23, 2024. The Appellant filed a notice of appeal with South Carolina’s Circuit Court E-Filing System on February 19, 2024. Attached to the February 19, 2024, notice of appeal is a certificate of service certifying the notice was served on Respondent’s counsel “by the eFlex System, pursuant to the South Carolina E-Filing

¹ Because this is a dispositive motion, Respondent files it without consultation with the opposing party. Respondent also reserves the right to assert other grounds for dismissal as they become apparent, such as failure to timely order a transcript.

Policies and Guidelines Rule(e)(2) [sic]...” Respondent filed this notice of appeal with this Court on February 29, 2024.

On March 4, 2024, the Deputy Clerk of Court issued a deficiency letter containing the following request:

You must file a proof of service that complies with Rule 262(c), SCACR. Specifically, you must serve counsel for Respondent via hand delivery, US mail, or email. If you serve counsel by email, you must provide a copy of the sent email showing service.

On March 12, 2024, Appellant’s counsel emailed the notice of appeal to Respondent’s counsel. Later the same day, the Appellant filed proof of service certifying that the notice of appeal was served on Respondent via email on March 12, 2024.²

South Carolina’s appellate court rules require the notice of appeal be served on all respondents “within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR. Thus, Appellant must have served Respondent with the notice of appeal by February 22, 2024. Appellant’s March 12, 2024, email service was effected well outside of the Rule 203 deadline.

Further, the February 19, 2024, filing with the Circuit Court E-Filing System does not constitute service of the notice of appeal. Service, as it pertains to a notice of appeal, is defined by Rule 262, which allows service “by electronic means in a manner provided by order of the Supreme Court of South Carolina.” Rule 262(a)(3), SCACR; Rule 262(c)(3), SCACR; Rule 203(a), SCACR. The Supreme Court order relevant to Rule 262 provides for electronic service via Microsoft OneDrive, email, or facsimile.

² Appellant has not been copied on any of Respondent’s correspondence with this Court.

In re Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), No. 2020-000447 (S.C. Sup. Ct. Order dated May 6, 2022). This order does not provide for electronic service in appellate cases via South Carolina’s Circuit Court E-Filing System. This omission appears intentional, because the Supreme Court’s order governing electronic service in trial courts (issued the same day as the order governing appellate courts) includes South Carolina’s Circuit Court E-Filing System as an accepted manner of service. *See In re Service by E-Mail in the Trial Courts*, No. 2022-000029 (S.C. Sup.Ct. Order dated May 6, 2022).

The timely service of the notice of appeal is a jurisdictional requirement, and without it appellate courts lack the authority to hear and decide cases. *See, e.g., Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Consequently, Appellant’s untimely service of the February 19, 2024, notice of appeal leaves this Court without jurisdiction over this matter.

CONCLUSION

This appeal must be dismissed.

Dated: 03/26/2024

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v.

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CERTIFICATE OF SERVICE

I certify that on March 26, 2024, I emailed the Motion to Dismiss to scfilings@sessomslaw.com and wddail@sessomslaw.com.

Dated: 03/26/2024

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