

**FORM 13  
BRIEF OF APPELLANT\***

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

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Appellate Case No. 2025-001033  
Case No. 2024-CP-26-04912  
Magistrate Case No. 2023CV261093929

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Sunshine Rental Properties,

Respondent,

v.

Chunyan Gu,

Appellant.

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[INITIAL] BRIEF OF APPELLANT

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Chunyan Gu  
16 Marlborough Rd  
Highland Park, NJ 08904  
(848) 228-9758

\* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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STATUTES

Rule 203 SCACR (strict 30-day appeal deadline)

Rule 263 SCACR – allows the appellate court to relieve a party of a procedural default in limited situations “in the interest of justice.”

## STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court erred in concluding that Appellant's notice of appeal was untimely, despite undisputed proof that the notice was mailed within the 30-day period required by Rule 203(b)(1), SCACR.
2. Whether the Circuit Court erred in ruling that Appellant's factual defenses had already been presented and considered in the Magistrate Court, when Appellant did not appear at the hearing and had not submitted any evidence or argument beyond a general denial.
3. Whether the Circuit Court abused its discretion by refusing to consider evidence and arguments offered by Appellant for the first time on appeal from Magistrate Court, when those matters had not been litigated below.

## STATEMENT OF THE CASE

This case arises from a civil dispute between a property owner (Appellant, me) and a property management company (Respondent) regarding responsibility for the cost of painting a rental home. The Magistrate Court ruled against Appellant in her absence. Appellant appealed to the Circuit Court, where the court declined to consider newly presented evidence, ruling that the factual matters had already been presented in the Magistrate Court. The Circuit Court also found the notice of appeal to be untimely, based on the date it was file-stamped, despite Appellant mailing it well within the 30-day deadline. Appellant now seeks review in the South Carolina Court of Appeals.

## STANDARD OF REVIEW

The Court of Appeals reviews legal rulings by the Circuit Court de novo, including whether an appeal was timely filed. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006).

Factual findings are reviewed for clear error, and discretionary decisions, such as refusing to consider new evidence, are reviewed for abuse of discretion. *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006).

## ARGUMENTS

### I. Timeliness of Notice of Appeal: The Notice of Appeal Should Be Deemed Timely Based on Equitable Considerations and Appellant's Good Faith Effort to Comply with Rule 203(b)(1), SCACR

Appellant respectfully contends that the Circuit Court erred in finding the notice of appeal untimely under Rule 203(b)(1) of the South Carolina Appellate Court Rules (SCACR). Although the Clerk of the Magistrate Court file-stamped the notice of appeal on July 19, 2024, which was more than thirty (30) days after Appellant received the judgment—Appellant mailed the notice of appeal on June 27, 2024, just twelve (12) days after receiving notice of judgment on June 15, 2024.

While Rule 203(b)(1), SCACR, requires that the notice of appeal be "served on all respondents and filed with the clerk of the lower court within thirty (30) days after receipt of written notice of entry of the order or judgment," Appellant, acting pro se, made a good faith effort to comply by mailing the notice well within the 30-day deadline. Appellant reasonably believed that timely mailing would constitute timely filing, especially given that the appeal was not being handled electronically and Appellant had no in-person access to the court at the time of mailing.

South Carolina courts have traditionally interpreted Rule 203(b)(1) strictly, recognizing that appellate deadlines are jurisdictional. However, South Carolina courts have also acknowledged the possibility of equitable relief in extraordinary circumstances. In *Hollins*

*v. Hollins*, 310 S.C. 236, 423 S.E.2d 548 (Ct. App. 1992), the court noted that while filing deadlines are jurisdictional, dismissal of an appeal may not be appropriate where the appellant clearly intended to appeal, acted in good faith, and the delay did not prejudice the opposing party.

Here, Appellant did not delay for tactical advantage, and Respondent has suffered no prejudice from the short delay between the date of mailing and the date of filing. In fact, the appeal was substantively ready for filing well within the required timeframe. Appellant has retained proof of mailing, including certificate of mail postmarked June 27, 2024. Any delay in actual docketing could be due to postal delivery time--factor outside Appellant's control.

Moreover, Appellant is not a lawyer and was navigating the appeals process without legal representation. Courts have long held that pro se litigants are entitled to reasonable leniency, particularly when they have acted diligently and made honest efforts to comply with procedural rules. See *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 368 S.E.2d 687 (Ct. App. 1988) ("While pro se litigants are bound by the same rules as attorneys, courts may consider their status in applying procedural requirements in a fair and just manner.").

To dismiss this appeal solely because the Clerk received the notice a few days after the mailing date despite Appellant's timely action—would elevate form over substance and deprive Appellant of access to meaningful appellate review. This result is particularly inequitable given that the underlying judgment was issued without Appellant's

participation in the trial and that the Circuit Court refused to consider Appellant's newly submitted evidence.

For these reasons, the Court should find that Appellant's notice of appeal was timely in substance, and that equity demands the appeal be allowed to proceed despite the technical filing delay.

II. The Circuit Court Erred in Concluding That the Factual Matters Had Already Been Presented in the Magistrate Court.

The Circuit Court erred as a matter of fact and law by concluding that Appellant's factual defenses had already been presented and considered by the Magistrate Court. The record clearly shows that Appellant did not appear at the Magistrate Court hearing, and that no substantive evidence or argument was offered by Appellant at that stage.

While Appellant submitted a short written brief before the Magistrate hearing, it consisted solely of a general denial, stating that Appellant did not authorize the painting of the rental property. That brief did not include any supporting documentation, legal arguments, email records, or references to the nature of the agreement between Appellant and the Respondent. As such, none of the actual factual matters in dispute — including the parties' email exchange, the failure to provide price details, and the unilateral decision to proceed with billing — were ever presented or litigated before the Magistrate.

Despite this, the Circuit Court ruled that Appellant's factual arguments had "already been presented," based on the statement from the attorney of the respondent only, and therefore declined to consider the evidence Appellant submitted during the appeal. This was a mischaracterization of the record and a clear error of law.

Under South Carolina law, an issue is considered "adjudicated" only if it was actually litigated and necessarily decided in the lower court. In *Carolina Renewal, Inc. v. South Carolina Dep't of Transp.*, 385 S.C. 550, 685 S.E.2d 202 (Ct. App. 2009), the Court held that collateral estoppel (or preclusion of an issue) applies only when a factual or legal matter was (1) actually raised, (2) actually litigated, and (3) essential to the judgment. None of those conditions were met in the present case.

Furthermore, the Circuit Court accepted additional materials from Appellant during the appeal, yet paradoxically ruled that those facts had already been addressed in Magistrate Court. If the Circuit Court accepted the new evidence for review, it should have analyzed it on the merits. If it declined to review the evidence on procedural grounds, then it should not have concluded that the factual issues were already litigated below. The practical result is that Appellant's version of events — including key documentary evidence — has never been evaluated by any court. Denying consideration of that evidence on the grounds that it was already presented is both legally and factually incorrect and constitutes a denial of Appellant's right to be heard.

Therefore, the Circuit Court's refusal to consider Appellant's evidence was based on a

clearly erroneous factual finding and a misapplication of South Carolina law on issue preclusion and appeal review. The decision should be reversed, and the case remanded for proper consideration of the factual defenses.

### III. The Circuit Court Abused Its Discretion by Refusing to Consider New Evidence That Had Not Been Litigated in Magistrate Court

The Circuit Court further erred by refusing to consider new evidence submitted by Appellant on the basis that “these factual matters had already been presented” in the Magistrate Court. In reality, Appellant’s evidence — including email exchanges, billing communications, and documentation regarding the painting charges — had never been introduced or considered in the Magistrate Court. By refusing to consider these materials without proper justification, the Circuit Court abused its discretion and denied Appellant a fair appellate review.

#### 1. Appeals from Magistrate Court Are Heard De Novo in Circuit Court

Under South Carolina law, appeals from Magistrate Court to Circuit Court are generally heard de novo on the record — but this “record” may be very limited or even non-existent when, as here, the appellant did not appear at trial. Importantly, South Carolina courts have recognized the Circuit Court’s authority to allow the record to be supplemented when necessary to ensure that justice is done.

In *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006), the Court held that “a reviewing court must carefully assess whether the record is sufficient to support a fair determination of the issues.”

In this case, the Magistrate Court hearing occurred in Appellant’s absence, and the only document submitted prior to trial was a brief denial without exhibits or evidence. The Magistrate made no findings of fact and entered judgment for the Respondent without the benefit of Appellant’s side of the case. In appealing that decision, Appellant submitted, for the first time, detailed email exchanges showing:

That Appellant did not approve the painting,

That Respondent initially stated the tenant would pay most of the cost,

That Appellant explicitly asked for a price breakdown before agreeing, and

That Respondent went ahead unilaterally without final confirmation.

These facts go directly to the central dispute — who was responsible for the cost of the painting — and were not before the Magistrate Court.

## 2. The Circuit Court Improperly Rejected This New Evidence Based on a Factual Misunderstanding

Despite allowing appellant to present evidences, the Circuit Court declined to consider them, stating that “these matters had already been presented.” This conclusion was factually incorrect and procedurally improper. The court had the authority — and obligation — to examine whether this evidence had ever been part of the lower court record. It failed to do so.

In truth, the evidence was newly submitted and had never been adjudicated, meaning the Circuit Court had discretion to consider it. By refusing to evaluate this evidence, the Circuit Court failed to conduct a meaningful review and treated the appeal as if it were a rehearing, rather than a first opportunity to assess the merits of Appellant's claims.

### 3. Denying Review of Unconsidered Evidence Was Fundamentally Unfair

The practical result of the Circuit Court's refusal to consider new evidence is that Appellant's factual defenses have never been reviewed by any court. If the Court of Appeals affirms on these grounds, Appellant will have been held liable without ever being given a fair opportunity to present evidence or be heard on the merits.

This result is contrary to fundamental principles of due process, which guarantee each litigant the opportunity to present their case and have it considered by a neutral decision-maker. See *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006) (due process requires meaningful notice and opportunity to be heard).

## CONCLUSION

For the reasons stated above, Appellant respectfully requests that the Court reverse the

order of the Circuit Court, find that the notice of appeal was timely, and remand the case for proper consideration of the factual issues and evidence that were not addressed in the Magistrate Court. In the alternative, Appellant requests that the Court exercise its equitable authority to allow the appeal to proceed in the interest of justice.

Respectfully submitted,

Sept. 18, 2025

/s/ Chunyan Gu

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Chunyan Gu

16 Marlborough Rd

Highland Park, NJ 08904

(848) 228-9758

**FORM 14**

**DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM Horry COUNTY  
Court of Common Pleas

Michael G. Nettles, Circuit

Court Judge

---

Appellate Case No. 2025-001033

Case No. 2024-CP-26-04912

Magistrate Case No. 2023CV261093929

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Sunshine Rental Properties, Respondent,

v.

Chunyan Gu, Appellant.

**DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

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Appellant proposes the following be included in the Record on Appeal:

1. Circuit Court Order being appealed
2. Transcript of Proceedings pp.4-8
3. Notice of Appeal dated June 27, 2024
4. US Postal Service Certified Mail Receipt and postage paid receipt as  
Proof of mailing,
5. Email correspondence with property management
6. Certificate of Mail of copies of Email correspondence with property  
management sent to Horry County Court of Appeals

I certify that this designation contains no matter which is irrelevant to this appeal.

Sept. 18, 2025

/s/ Chunyan Gu

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Chunyan Gu

16 Marlborough Rd

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(848) 228-9758

APPELLATE CASE NO. 2025-001033

FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

MICHAEL G. NETTLES, Circuit Court Judge

Case No. 2024-CP-26-04912

CHUNYAN GU

Appellant/Respondent,

SUNSHINE RENTAL PROPERTIES

v.

Appellant/Respondent.

PROOF OF SERVICE

<sup>of</sup>  
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a copy of it in the United States Mail, postage prepaid, on SEPT. 19, 2025, addressed to,  
(Date)  
DOUGLAS M. ZAYICEK, ESQUIRE, PO BOX 357  
MYRTLE BEACH, SC 29578

Date: SEPT. 19, 2025

s/ CG  
Address: CHUNYAN GU  
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HIGHLAND PARK, NJ 08904

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