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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL
APPEAL FROM CHARLESTON COUNTY**

Master in Equity Court

Judge Mikell R. Scarborough Master-IN-Equity,

TDS of Charleston, LLC, Respondent

v.

Kenneth Edmondson, Appellant(s).

Appellate Case No: 2024-000756

**MOTION TO RECALL REMITTITUR AND
REINSTATE APPEAL**

With Memorandum of Law and Affidavit in Support

I. Introduction

Appellants respectfully move under Rules 221(b) and 231(a), SCACR, to recall the remittitur and reinstate the appeal. The prior dismissal arose solely from procedural confusion, not neglect or abandonment. The Motion to Reconsider and Reinstate was **mailed May 25 and received by the Court May 27, 2025**, within the time permitted and while jurisdiction was still active. No prejudice befell the Respondent, and equity demands review on the merits.

II. Background and Procedural History

1. Appellants timely perfected an appeal from the Master-in-Equity's partition ruling.
2. On April 11, 2025, corrected captions and designations of matter were filed at the Court's direction.
3. While motions under Rules 56 and 240 were pending, the Court issued a dismissal based on a technical deficiency.

4. Appellants promptly filed a **Motion to Reconsider and Reinstate on May 25**, delivered May 27, 2025. No order was entered on that motion before the remittitur issued.

III. Argument and Authorities

A. Authority to Recall the Remittitur (Rule 221(b))

This Court retains inherent authority to recall a remittitur to prevent manifest injustice. *Ex parte Jeter*, 281 S.C. 126 (1984); *Stogsdill v. SCDHHS*, 415 S.C. 508 (2016). The dismissal occurred while motions were pending and before final notice reached Appellants. When procedural events deprive a litigant of review through no fault of his own, recall is proper to restore jurisdiction and correct administrative oversight.

B. Good Cause for Reinstatement (Rule 231(a))

Rule 231(a) authorizes reinstatement “for good cause shown.” Appellants substantially complied with the rules, cured defects on April 11, and acted in good faith by filing a corrective motion May 25. *Wham v. Shearson Lehman Bros.*, 298 S.C. 462 (1989) and *Mid-State Distribs. v. Century Importers*, 310 S.C. 330 (1993) hold that technical errors should not defeat a substantially complete appeal. Dismissal without merit review contradicts the long-standing policy favoring decisions on the merits.

C. Equitable Tolling Applies

Equitable tolling suspends limitations where external impediments prevent timely compliance. *Burgess v. State*, 522 S.E.2d 208 (S.C. 1999); *Harris v. Hutchinson*, 209 F.3d 325 (4th Cir. 2000). Here, Appellants mailed and proved receipt of the motion before any final order and diligently sought correction once dismissal was discovered. These facts qualify as extraordinary circumstances warranting equitable relief.

D. Constitutional Due-Process Support

Once an appeal is properly perfected, arbitrary termination without notice violates the Fifth and Fourteenth Amendments. *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1950); *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). The Court’s dismissal without considering the timely May 25 motion deprived Appellants of a meaningful opportunity to be heard.

E. UCC and Equitable Principles Bolster Relief

UCC §§ 1-103 and 1-304 preserve equitable doctrines of good faith and fair dealing; § 9-203 bars enforcement of unperfected security interests. Respondent TDS of Charleston cannot claim title or lien without a lawful written interest. To allow a procedural dismissal to shield such substantive defects contravenes equity and public policy.

IV. My response to the Courts concerns:

1. “Jurisdiction Ended with Remittitur.”

Remittitur is not absolute when issued through procedural error. This Court may recall it to prevent injustice (*Stogsdill*, supra). A timely May 25 motion kept the matter within the Court’s supervisory authority.

2. “Dismissal Was Final and Untimely to Challenge.”

The record shows receipt May 27, before the clerk completed return of jurisdiction. Under Rule 260, pending motions stay finality. Equitable tolling further preserves review where notice or processing delays intervene.

3. “No Extraordinary Circumstances.”

Procedural confusion generated by the Court’s own correspondence and unruled motions is extraordinary within the meaning of *Ex parte Jeter*. Equity and due process require that litigants not be penalized for judicial oversight.

V. Prayer for Relief

Appellants request that this Honorable Court:

1. **Recall the Remittitur** issued in this cause;
2. **Reinstate Appellate Jurisdiction** under Rules 221(b) and 231(a);
3. **Accept the previously filed Rule 56 and Rule 240 Motions** as part of the record; and
4. Grant any further equitable relief necessary to ensure a decision on the merits.

AFFIDAVIT OF KENNETH EDMONSON

I, Kenneth Edmondson, being duly sworn, state:

1. I am the Appellant in the above captioned case.
2. On **May 25, 2025**, I mailed to the South Carolina Court of Appeals a Motion to Reconsider and Reinstate the Appeal; delivery was confirmed **May 27, 2025**.
3. At that time motions under Rules 56 and 240 remained pending. I received no notice that jurisdiction had ended or that additional action was required.
4. I have acted diligently and in good faith to preserve my rights. Failure to reinstate the appeal would cause manifest injustice by foreclosing review on the merits of property rights long held under trust.

FURTHER AFFIANT SAYETH NOT.

(Signature and notary block to follow)

The use of notary below is for identification only, and such use does NOT grant any jurisdiction to anyone.

Subscribed and sworn, without prejudice, and with all rights reserved.

Principal, by Special Appearance,

Kenneth Edmondson

Signature of Affiant

ACKNOWLEDGMENT

state of SOUTH CAROLINA

county of Berkeley

On this 24th day of October, 2025 before me, Mary Grace Hofstetter,

personally appeared Kenneth Edmondson, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, for the purposes therein set forth.

mg Hofstetter

(Notary Public)

My Commission Expires November 07, 2029



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL
APPEAL FROM CHARLESTON COUNTY

Master in Equity Court

Judge Mikell R. Scarborough Master-IN-Equity,

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v.

Kenneth Edmondson, Appellant(s).

Appellate Case No: 2024-000756

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO RECALL REMITTITUR AND REINSTATE APPEAL**

I. Purpose and Summary

This memorandum supports Appellants' Motion to Recall Remittitur and Reinstate Appeal. The dismissal of this appeal resulted from a procedural misunderstanding—not neglect, abandonment, or lack of diligence. Appellants mailed a Motion to Reconsider and Reinstate on **May 25 and it was received May 27, 2025**, while the appellate record remained active. Under Rules 221(b) and 231(a), SCACR, and controlling precedent, this Court retains authority to recall its remittitur and restore jurisdiction to prevent manifest injustice. Equity, constitutional due process, and South-Carolina policy favor resolution on the merits rather than forfeiture by technicality.

II. Factual and Procedural Background

1. The appeal was perfected after the Master-in-Equity reopened the Quiet-Title matter without proper notice or service.
2. At the Court's direction, Appellants filed corrected captions and designations of matter on April 11, 2025.
3. While a Rule 56 Motion to Enter Uncontested Facts and a Rule 240 Motion to Amend were pending, the appeal was dismissed on procedural grounds. No motion to dismiss was filed by Respondent.
4. On **May 25, 2025**, Appellants mailed a Motion to Reconsider and Reinstate; the Court **received it May 27**. No ruling issued before the clerk transmitted the remittitur.
5. Appellants have continued to act in good faith and with diligence to preserve their rights to appellate review.

III. Legal Standards and Authorities

A. Authority to Recall Remittitur — Rule 221(b), SCACR

The South-Carolina appellate courts possess inherent power to recall a remittitur “to prevent manifest injustice.” *Ex parte Jeter*, 281 S.C. 126 (1984); *Stogsdill v. SCDHHS*, 415 S.C. 508 (2016). Where dismissal stems from misunderstanding or clerical error, recall is proper to restore jurisdiction. Here, dismissal occurred while motions remained unresolved and a timely reconsideration filing was already in the Court's possession. These circumstances meet the *Jeter* standard of extraordinary necessity.

B. Reinstatement for Good Cause — Rule 231(a), SCACR

Rule 231(a) authorizes reinstatement of a dismissed appeal “for good cause shown.” Good cause includes procedural error, miscommunication, or other excusable circumstances. In *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 381 S.E.2d 499 (Ct.App. 1989), and *Mid-State Distribs. v. Century Importers*, 310 S.C. 330 (1993), the courts emphasized that appeals should be determined on their merits whenever the record is substantially complete and no prejudice results. Appellants' corrective filings and May 25 motion satisfy both conditions.

C. Equitable Tolling and Due Diligence

Equitable tolling applies where external impediments—such as court processing delays or lack of notice—prevent compliance with procedural deadlines. *Burgess v. State*, 522 S.E.2d 208 (S.C. 1999); *Harris v. Hutchinson*, 209 F.3d 325 (4th Cir. 2000). Appellants exercised reasonable diligence: they mailed a corrective motion before any final order issued, and receipt was documented two days later. Under these authorities, equity suspends the effect of the dismissal and validates reinstatement.

D. Constitutional Due Process and Equal Protection

The arbitrary termination of appellate review after jurisdiction has attached violates the Fourteenth Amendment. *Mullane v. Central Hanover Bank*, 339 U.S. 306 (1950); *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). Because the appeal involves property rights established by a 2021 Quiet-Title Order, summary dismissal without notice or opportunity to be heard deprives Appellants of property without due process and equal protection of law.

E. Equitable and Commercial Principles

UCC §§ 1-103(b) and 1-304 preserve equitable doctrines and require good-faith performance. UCC § 9-203 bars enforcement of unperfected security interests. Respondent TDS of Charleston's asserted claims lack authenticated written security instruments; thus, a merits review is essential to prevent unjust enrichment and preserve integrity of title. Dismissing the appeal on a technicality would shield a defective claim from judicial scrutiny.

IV. Anticipated Counter-Arguments and Responses

1. "Jurisdiction Ended with Remittitur."

While remittitur normally terminates jurisdiction, Rule 221(b) allows recall when justice demands. *Stogsdill* confirms that the Court retains supervisory power to correct procedural mistakes. A May 25 motion received before full transmission preserves that authority.

2. "Dismissal Was Final and Untimely to Challenge."

The record establishes that the reconsideration motion was mailed and received before finalization. Under Rule 260 SCACR, pending motions suspend finality. Equitable tolling additionally prevents forfeiture where delays arise from the Court's own internal processing.

3. "No Extraordinary Circumstances Exist."

Dismissal despite timely corrective action, unresolved Rule 56 and 240 motions, and lack of prejudice to Respondent meets the *Jeter* and *Mid-State Distribs.* thresholds for extraordinary circumstances. Refusal to reinstate would produce manifest injustice inconsistent with South-Carolina precedent favoring merit adjudication.

V. Public-Interest and Equity Considerations

This case implicates long-standing trust property originating in 1762. The equitable interest of heirs and the integrity of land-title adjudication outweigh any administrative interest in finality. The appellate system's legitimacy depends on ensuring that dismissals grounded in technical error do not extinguish substantive rights.

VI. Conclusion

For these reasons, Appellants respectfully request that the Court:

1. Recall the remittitur issued in this case;
2. Reinstate appellate jurisdiction under Rules 221(b) and 231(a);
3. Accept the previously filed Rule 56 and Rule 240 motions as part of the record; and
4. Grant such other and further relief as justice and equity require.

Respectfully submitted,
Kenneth Edmondson,

160 East Bay Street, Suite 201

P.O. Box 20458 Charleston, SC 29413

Phone 843- 853-5577

October ____, 2025

**PROOF OF SERVICE FOR MOTION TO RECALL REMITTITUR AND
REINSTATE APPEAL**

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL
APPEAL FROM CHARLESTON COUNTY
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Appellate Case No: 2024-000756

PROOF OF SERVICE

I hereby certify that a copy of the Motion to recall remitter and reinstate appeal was served in person or by Certified mail upon [W Jamison Cox 160 East Bay Street, Suite 201 Charleston, SC 29401, The Honorable Mikell R. Scarborough 100 Broad St Ste 266 Charleston, SC 29401-2243 OFFICE: (843) 958-5070 FAX: (843) 958-5077, The County of Charleston Common Pleas 100 Broad Street, Suite 143 Charleston, SC 29401 TDS of Charleston LLC PO Box 248 SC, Mount Pleasant 29465 and Exercising Appellant Court Rule 262 1220 Senate Street /Columbia, South Carolina 29201 Voice: (803) 734-1890 FAX: (803) 734-1839,
(This DAY 24 MONTH 10, 2025 .

Smith, Cox & Associates, LLP Attorney,
For respondent TDS of Charleston, LLC
160 East Bay Street, Suite 201
P.O. Box 20458

Phone 843- 853-5577

Charleston, SC 29413

October 24, 2025

KENNETH EDMONDSON,
Appellant(s)

Subscribed and sworn, without prejudice, and with all rights reserved.

Principal, by Special Appearance, in Propria Persona, proceeding Sui Juris.

Kenneth Edmondson
Signature of Affiant

ACKNOWLEDGMENT

State of South Carolina

county of Berkeley

On this 24th day of October, 2025 before me Mary Grace Hofstetter,

Personally appeared Kenneth Edmondson, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, for the purposes therein set forth.

mg Hofstetter
(Notary Public)



Kenneth J. Edmondson
337 Huntsman Dr
Goose Creek SC 29445-2744



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