

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy,
Circuit Court Judge

Appellate Case No. 2025-002323

Thomas H. Morgan,

Respondent,

v.

John L. Gilbert, Stuart L. Fred, Bella Vista
Partnership, A Texas General Partnership,
Bomasada Group, Inc., A Texas Corporation,
Bomasada Investment Group II, LLC, A Texas
Limited Liability Company, Lauralis Management,
Inc., A Texas Corporation, and 150 Bee Street,
LLC, A South Carolina Limited Liability
Company,

Defendants,

of which, Stuart L. Fred, Bella Vista Partnership,
A Texas General Partnership, Bomasada Group,
Inc., A Texas Corporation, Bomasada Investment
Group II, LLC, A Texas Limited Liability
Company, Lauralis Management, Inc., A Texas
Corporation, and 150 Bee Street, LLC, A South
Carolina Limited Liability Company are the

Appellants.

**RESPONDENT'S MOTION TO DISMISS APPEAL
FOR LACK OF SUBJECT MATTER JURISDICTION
AND SUPPORTING MEMORANDUM**

Respondent Thomas H. Morgan, by and through undersigned counsel, respectfully moves this Honorable Court to dismiss the above-captioned appeal for lack of subject matter jurisdiction pursuant to Rule 240, SCACR. This motion is based upon the grounds that: (1) the Transcripts of Judgment identified in the Notice of Appeal are ministerial clerk documents, not appealable orders; and (2) to the extent the October 14, 2025 Form 4 Order was appealable, Appellants' Notice of Appeal filed on November 17, 2025 was untimely, having been served more than thirty (30) days after electronic service of written notice of entry of that order, thereby divesting this Court of subject matter jurisdiction.

STATEMENT OF RELEVANT FACTS

On June 19, 2023, the arbitration panel in this matter issued its Arbitration Award in favor of Respondent and against Appellants. On February 6, 2024, the Honorable Bentley D. Price entered an Order confirming the Arbitration Award. This Order constituted the final, appealable judgment in this case.

On October 14, 2025, the Honorable Jennifer B. McCoy entered an SCRCF Form 4 Order for the purpose of docketing the February 6, 2024 Order, determining that the date of judgment enrollment was February 6, 2024. This Form 4 Order was electronically filed at 2:20 PM on October 14, 2025.

The Court's electronic filing system automatically generated and transmitted a Notice of Electronic Filing ("NEF") to all counsel of record on October 14, 2025 at 2:20 PM. The Certificate of Electronic Notification attached to the filing reflects that notification was transmitted to Appellants' counsel, including Henry Grimball, Michael DeHart, Matthew Tillman, and Morris Ellison, on October 14, 2025. The NEF specifically identified the document as an "Order/Awarding Arbitration Form 4."

Subsequently, the Clerk of Court for Charleston County issued two Transcripts of Judgment: (1) an original Transcript of Judgment filed on October 17, 2025, and (2) an Amended

Transcript of Judgment filed on November 13, 2025. These Transcripts are ministerial documents prepared by the Clerk's office to memorialize the judgment for docketing and collection purposes.

On November 17, 2025—thirty-four (34) days after electronic service of written notice of entry of the October 14, 2025 Form 4 Order—Appellants filed their Notice of Appeal, purportedly appealing the Amended Transcript of Judgment, the original Transcript of Judgment, and the Form 4 Order.

ARGUMENT

I. THE TRANSCRIPTS OF JUDGMENT ARE NOT APPEALABLE ORDERS

A Transcript of Judgment is a ministerial document prepared by the Clerk of Court pursuant to SCCA Form 250. As the South Carolina Supreme Court has explained, the Transcript of Judgment form "was developed to assist parties who request help in drafting a transcript of judgment" and serves solely to memorialize an existing judgment for purposes of docketing and enforcement. *See* Order Re: Transcript of Judgment Form (SCCA Form 250), S.C. Sup. Ct. (June 2015). A Transcript of Judgment does not constitute a judicial order or decree; it is simply a certified document issued by the Clerk's office reflecting the existence of a previously entered judgment.

Rule 203(b)(1), SCACR, permits appeals from "the order or judgment" of the lower court. Ministerial actions by the Clerk of Court are not judicial orders from which an appeal may be taken. The Transcripts of Judgment issued on October 17, 2025 and November 13, 2025 are not orders or judgments; they are merely ministerial certifications of the previously-entered February 6, 2024 Order confirming the arbitration award, as enrolled by the October 14, 2025 Form 4 Order.

Accordingly, to the extent Appellants' Notice of Appeal seeks to appeal the Transcripts of Judgment, that portion of the appeal must be dismissed for failure to identify an appealable order or judgment.

II. THE APPEAL OF THE OCTOBER 14, 2025 FORM 4 ORDER IS UNTIMELY

The only potentially appealable document identified in Appellants' Notice of Appeal is the October 14, 2025 Form 4 Order entered by Judge McCoy. However, the appeal of this order is untimely, and this Court lacks subject matter jurisdiction to hear it.

A. The 30-Day Appeal Deadline

Rule 203(b)(1), SCACR, requires that "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 211, 214-15, 810 S.E.2d 856, 858 (2018)(an e-mail that provides written notice of entry of an order or judgment, if sent from a court, an attorney of record, or a party, triggers the time for serving a notice of appeal for purposes of Rule 203(b)(1)).

Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served. *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)

B. Electronic Service Was Complete on October 14, 2025

Under Section 4(e)(3) of the South Carolina Electronic Filing Policies and Guidelines (SCEF), "[s]ervice of a pleading, motion, or other paper by NEF subsequent to the summons and complaint or other filing initiating a case is complete at the time of the submission of the pleading, motion, or other paper for E-Filing, provided an NEF is transmitted by the E-Filing System." Section 6 of the SCEF further provides that "[i]mmediately upon the electronic entry of an order or judgment, the E-Filing System will transmit an NEF to all Authorized E-Filers in the case. Transmission of the NEF constitutes the notice required under Rule 77(d), SCRCP."

The October 14, 2025 Form 4 Order was electronically filed at 2:20 PM. The Certificate of Electronic Notification confirms that notification was transmitted to all counsel of record, including Appellants' counsel, at that time. This NEF constituted written notice of entry of the

order. *See Wells Fargo Bank*, 422 S.C. at 213, 810 S.E.2d at 857 (an email that provides written notice of entry of an order or judgment triggers the time for serving a notice of appeal for purposes of Rule 203(b)(1)).

C. The Five-Day Extension Under Rule 6(e), SCRCP, Does Not Apply to Appellate Deadlines

Appellants may contend that five additional days should be added to the appeal deadline by reason of electronic service. Any such argument is without merit.

Rule 263(a), SCACR, governs the computation of time under the South Carolina Appellate Court Rules. That Rule explicitly provides:

No additional time shall be allowed after service by mail or upon a statutory agent. Rule 6(e), SCRCP, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail or upon a statutory agent.

Rule 263(a), SCACR (emphasis added).

The Supreme Court's Order Regarding Service by E-Mail in the Trial Courts, Appellate Case No. 2022-000029, expressly limits the five-day extension to proceedings governed by the South Carolina Rules of Civil Procedure: "In any action governed by the South Carolina Rules of Civil Procedure (SCRCP), computation of the time for a response after service by e-mail is governed by Rule 6, SCRCP. In accordance with Rule 6(e), SCRCP, service by e-mail will be treated the same as service by U.S. Mail for purposes of determining the time to respond; therefore, five days shall be added to the prescribed period to respond."

This five-day extension applies only to proceedings governed by the SCRCP—not to appeal deadlines governed by the SCACR. Rule 263, SCACR, explicitly excludes the application of Rule 6(e), SCRCP, to appellate time computations. Therefore, no additional time is added to the thirty-day appeal period by reason of electronic service.

D. The Appeal Is Four Days Late

Electronic service of written notice of entry of the October 14, 2025 Form 4 Order was complete on October 14, 2025. Thirty days from October 14, 2025 is November 13, 2025. Appellants did not file their Notice of Appeal until November 17, 2025—four days after the jurisdictional deadline had expired.

Because the Notice of Appeal was not served within thirty days after receipt of written notice of entry of the order, this Court lacks subject matter jurisdiction over the appeal. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal under Rules 203 and 243* may be extended or shortened by the appellate court.") (emphasis added). The appeal deadline cannot be extended by this Court and is therefore absolute.

III. DISMISSAL IS REQUIRED FOR LACK OF SUBJECT MATTER JURISDICTION

Subject matter jurisdiction cannot be waived and may be raised at any time. The untimely filing of Appellants' Notice of Appeal has divested this Court of subject matter jurisdiction over the appeal, and dismissal is mandatory.

CONCLUSION

For the foregoing reasons, Respondent Thomas H. Morgan respectfully requests that this Honorable Court dismiss the above-captioned appeal for lack of subject matter jurisdiction.

Respectfully submitted,

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