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SC Court of Appeals

**FORM 13
BRIEF OF APPELLANT***

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Sunshine Rental Properties,

Respondent,

v.

Chunyan Gu,

Appellant.

BRIEF OF APPELLANT

Chunyan Gu
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* 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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RULES

Rule 203 SCACR (strict 30-day appeal deadline)1, 3, 4

Rule 263 SCACR – allows the appellate court to relieve a party of a procedural default in limited situations “in the interest of justice.”3, 4

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

Whether an appeal has been timely filed is a **question of law** reviewed **de novo**. *Hughes v. Bank of Am.*, Op. No. 28187 (S.C. Sup. Ct. filed Jan. 17, 2024).

A circuit court's factual findings are reviewed for **clear error**, while its evidentiary and procedural decisions—such as whether to consider additional materials on appeal—are reviewed for **abuse of discretion**. *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 402, 368 S.E.2d 687, 688 (Ct. App. 1988).

To the extent the lower court's ruling affected Appellant's ability to present evidence or to receive a fair hearing on the merits, issues of **due process** are reviewed **de novo**. *Ex parte Capital U-Drive-It, Inc.*, 291 S.C. 448, 450, 354 S.E.2d 30, 31 (Ct. App. 1987).

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

Rule 203(b)(1), SCACR, requires a Notice of Appeal to be served and filed within 30 days of receiving written notice of judgment. Appellant received judgment on **June 15, 2024**, and mailed her Notice of Appeal on **June 27, 2024** (R. at 33), well within the 30-day period. The Notice was not file-stamped until July 19, 2024, due solely to postal delay.

South Carolina courts strictly construe Rule 203, but the Supreme Court has clarified that timeliness is reviewed as a **legal question**. *Hughes v. Bank of Am.*, Op. No. 28187 (S.C. Sup. Ct. filed Jan. 17, 2024).

Although appellate deadlines are jurisdictional, courts retain limited equitable authority under **Rule 263, SCACR** to relieve a party from default “in the interest of justice.”

Appellant acted promptly, in good faith, and without any intent to delay. Respondent suffered no prejudice. The record contains undisputed proof of timely mailing, and Appellant reasonably believed—consistent with common practice for pro se litigants—that mailing within the deadline satisfied filing.

South Carolina courts have recognized leniency where pro se appellants make diligent efforts to comply with rules. *Goodson*, 295 S.C. at 402, 368 S.E.2d at 688; see also

Hooper, 386 S.C. at 114, 687 S.E.2d at 32 (reminding courts that procedural rules should not be mechanically applied when equity demands otherwise).

Because Appellant satisfied the purpose of Rule 203(b)(1) by acting timely and diligently, the Circuit Court erred in deeming the notice untimely and in failing to exercise discretion under Rule 263.

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

The Circuit Court incorrectly stated that Appellant’s factual defenses had already been presented and considered by the Magistrate Court. The record confirms:

1. Appellant **did not appear** at the Magistrate Court hearing.
2. Appellant’s only filing was a **general denial** without evidence.
3. No exhibits, documents, or substantive arguments from Appellant were heard or considered.

Thus, no factual issue was “actually litigated” below. A matter is considered adjudicated only if it was raised, litigated, and necessary to the judgment. *Ex parte Capital U-Drive-It, Inc.*, 291 S.C. at 450, 354 S.E.2d at 31.

The Circuit Court relied solely on Respondent’s assertions—not the record—to conclude otherwise. This was clear error.

The Circuit Court’s refusal to consider new factual materials on the ground that they were

already presented below is both factually incorrect and contrary to South Carolina law governing what constitutes a litigated issue.

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

Appeals from Magistrate Court are conducted on the record, but where the record is incomplete or nonexistent, the Circuit Court has authority to allow supplementation. The Magistrate record here contained no evidence from Appellant.

The Circuit Court allowed Appellant to offer emails and documents showing:

- Appellant never approved the painting;
- Respondent initially said the tenant would be mostly responsible (R. at 25);
- Appellant requested a price breakdown before agreeing (R. at 26, 25); and
- Respondent proceeded unilaterally. This evidence had **never** been before the Magistrate Court.

A refusal to consider this evidence prevented any court from evaluating Appellant's defenses. A denial of a meaningful opportunity to present evidence implicates due process, which is reviewed de novo and cannot be disregarded. *Ex parte Capital U-Drive-It, Inc.*, 291 S.C. at 450, 354 S.E.2d at 31.

By declining to consider this new evidence on a mistaken factual premise, the Circuit Court abused its discretion.

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,

Dec. 2, 2025

/s/ Chunyan Gu

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