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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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 REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION

Respondent Thomas H. Morgan respectfully submits this Reply Memorandum in support of his Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction. Appellants' Response confirms that they received electronic notice of the October 14, 2025 Form 4 Order on that date but did not file their Notice of Appeal until November 17, 2025—four days after the jurisdictional deadline expired. Appellants' arguments seeking to excuse their untimely filing are unsupported by South Carolina law and should be rejected.

I. THE ELECTRONIC NOTICE OF FILING TRIGGERED THE APPEAL DEADLINE.

A. *Wells Fargo Bank* Controls This Issue

Appellants' argument that the mandatory clerk review process under the SCEF creates a "conflict" with case law fundamentally misreads *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 422 S.C. 211, 810 S.E.2d 856 (2018). The Supreme Court's holding in *Wells Fargo Bank* is unambiguous that an e-mail providing written notice of the 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). *Id.* at 213-14, 810 S.E.2d at 857.

Appellants concede that "[t]he NEF signifying that the SCRCP Form 4 Order had been filed into the ECF system was admittedly filed on 14 October 2025… ." (Appellants' Response at 11.) This admission is dispositive. The Notice of Electronic Filing transmitted on October 14, 2025, at 2:20 PM, constitutes "written notice of entry of the order" under Rule 203(b)(1), SCACR, and *Wells Fargo Bank*. The thirty-day appeal period, therefore, commenced on October 14, 2025, and expired on November 13, 2025.

B. The Clerk Review Process Does Not Delay the Triggering of the Appeal Period

Appellants argue that because the SCEF requires clerk review before a document is "accepted," and because there may be a delay between filing and when the document becomes "available for review," the appeal clock should not begin until counsel can actually view the document. This argument finds no support in the SCEF, the SCACR, or any South Carolina case law.

Section 6(c) of the SCEF expressly provides: "Immediately 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*, for all parties who are proceeding in the E-Filing System." (Emphasis added.) The SCEF makes no distinction between when

the NEF is transmitted and when the document becomes "available for review." The NEF *is* the notice.

Moreover, Appellants' counsel had the ability to access the Form 4 Order immediately upon receiving the NEF. The NEF specifically identified the document as an "Order/Awarding Arbitration Form 4" and provided counsel with the means to access it. If Appellants' counsel experienced any difficulty accessing the document, they could have contacted the Clerk's office or taken other steps to obtain the order. They cannot now claim ignorance of an order they were expressly notified had been entered.

Appellants' policy argument—that the clerk review process "shaves several days off" the appeal period—is an argument for rule reform, not a basis for excusing an untimely appeal. The thirty-day appeal period has been the law in South Carolina for decades. Sophisticated counsel practicing before the Court of Appeals must be aware of this deadline and must monitor their electronic notifications accordingly.

C. The Mailed Rule 77 Notice Does Not Supersede Electronic Notice

Appellants contend that because the Clerk of Court mailed a separate Notice of Entry of Judgment pursuant to Rule 77, SCRCP, on October 15, 2025, which Appellants' counsel allegedly did not receive until October 20, 2025, the appeal period should be calculated from the date of receipt of the mailed notice. This argument conflates two separate notice mechanisms and ignores the plain language of Rule 203(b)(1), SCACR.

Rule 203(b)(1) provides that a notice of appeal must be served "within thirty (30) days after receipt of written notice of entry of the order or judgment." The Rule does not require that notice be provided by mail; it requires only "written notice." As *Wells Fargo Bank* makes clear, an electronic notification that provides written notice of entry of an order satisfies this requirement and triggers the appeal period. 422 S.C. at 214, 810 S.E.2d at 857.

The mailed Rule 77 notice was duplicative of the electronic notice already transmitted. The Clerk's office's mailing of a paper notice does not reset or extend the appeal deadline already triggered by the earlier electronic notice. To hold otherwise would create an absurd result: parties could ignore electronic notifications and wait for paper mail, thereby unilaterally extending their appeal deadlines by days or weeks, depending on the vagaries of postal delivery.

Appellants received written notice of the entry of the Form 4 Order on October 14, 2025, via the NEF. That notice triggered the thirty-day appeal period. The subsequent mailed notice was merely a courtesy and did not extend the deadline.

II. THE TRANSCRIPTS OF JUDGMENT ARE NOT APPEALABLE DOCUMENTS

Appellants argue that the Transcript of Judgment and the Amended Transcript of Judgment are appealable documents and that their appeal of these transcripts necessarily encompasses the Form 4 Order. This argument fails for multiple reasons.

First, a Transcript of Judgment is a ministerial document prepared by the Clerk of Court, not a judicial order or judgment from which an appeal lies. Rule 203(b)(1), SCACR, permits appeals from "the order or judgment" of the lower court. Transcripts of Judgment are not orders or judgments; they are certifications prepared by the Clerk's office to memorialize an existing judgment for docketing and collection purposes. See SCCA Form 250 (Revised 08/2025).

Appellants' reliance on out-of-state authorities discussing the lien effects of transcripts of judgment is misplaced. The question is not whether a transcript of judgment has legal effect—it clearly does for lien and collection purposes—but whether it is an appealable order under South Carolina appellate procedure. It is not. The cases Appellants cite from Colorado and New York address entirely different questions and do not support the proposition that a ministerial clerk document can be the subject of an appeal in South Carolina.

Second, even if the Transcripts were somehow "intertwined" with the Form 4 Order, Appellants cannot bootstrap their untimely appeal of the Form 4 Order by claiming to have timely appealed the Transcripts. The Form 4 Order is the judicial act that Appellants seek to challenge; the Transcripts are merely ministerial documents that flow from that Order. Appellants' attempt to recharacterize their appeal as directed at the Transcripts rather than the Order is a transparent effort to circumvent the jurisdictional deadline they missed.

If Appellants' logic were accepted, any party who missed the deadline to appeal an order could simply wait for some subsequent ministerial act by the Clerk—the filing of a transcript, the issuance of a writ of execution, the recording of a lien—and then appeal that ministerial act as a means of challenging the underlying order. This would render appeal deadlines meaningless and is contrary to the fundamental principle that jurisdictional time limits are absolute.

III. APPELLANTS' MERITS ARGUMENTS DO NOT CURE THE JURISDICTIONAL DEFECT

Appellants devote substantial portions of their Response to arguing that the Circuit Court lacked jurisdiction to issue the Form 4 Order because: (1) it allegedly violated the ninety-day time limit in S.C. Code Ann. § 15-48-140(a) for modifying arbitration awards; and (2) it was improperly obtained *ex parte*. Whatever merit these arguments may or may not have (Respondent believes they are meritless), they are irrelevant to the question before this Court—whether the appeal was timely filed.

An untimely appeal cannot be saved by arguing that the underlying order was erroneous or even void. "The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. DOT*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)

If Appellants believed the Form 4 Order was improperly entered, their remedy was to file a timely appeal and raise that issue before this Court. Having failed to do so, they cannot now argue

that the alleged impropriety of the Order somehow excuses their untimely filing. The proper time to challenge an order—whether on grounds of jurisdiction, procedure, or substance—is within the thirty-day appeal period. That deadline has passed.

Moreover, Appellants' characterization of the Form 4 Order as an improper modification of the Arbitration Award misapprehends the Order's nature. The Form 4 Order did not modify the Arbitration Award; it merely docketed the previously entered February 6, 2024 Order confirming the Award. Enrollment of a judgment is a ministerial act necessary for enforcement; it does not alter the judgment's substance. Appellants' argument conflates enrollment with modification.

Similarly, Appellants' complaint that the Form 4 Order was obtained "ex parte" does not excuse their untimely appeal. Even assuming the Order should have been entered on notice, the remedy for such a procedural defect is a timely motion to the Circuit Court or a timely appeal—not a belated appeal filed after the jurisdictional deadline has expired.

IV. THE APPEAL DEADLINE CANNOT BE EXTENDED BY THIS COURT

Rule 263(b), SCACR, expressly provides that "[t]he 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 thirty-day deadline for serving a notice of appeal is the only deadline that cannot be extended by this Court. It is absolute and jurisdictional.

Appellants invoke the maxim that appellate rules "should not be interpreted to create a trap for the unwary lawyer," quoting *Swing v. Swing*, 445 S.C. 340, 351, 914 S.E.2d 158, 164 (2025). But there is no "trap" here. The thirty-day appeal deadline is neither hidden nor ambiguous; it is plainly stated in Rule 203(b)(1), SCACR. The triggering effect of electronic notice is neither novel nor surprising; it was established by the Supreme Court in *Wells Fargo Bank* in 2018. In addition, Section 6 of the E-Filing Rules states: "**(d) Receipt of Written Notice of Entry of Order or Judgment.** An Authorized E-Filer has receipt of written notice of the entry of a judgment or the filing of an order

upon receipt of the emailed NEF. It shall be the responsibility of an Authorized E-Filer to review the content of the E-Filed order to determine its force and effect; however, any delay in accessing the E-Filing System to review the order does not affect the time of receipt."

Counsel practicing in South Carolina's appellate courts are expected to know and comply with these rules.

Appellants also cite *J.L. Mott Iron Works v. Clark*, 84 S.C. 493, 66 S.E. 680 (1910), for the proposition that courts should be "liberal" in construing rules to allow appeals "taken in good faith" to be heard on the merits. But good faith does not confer jurisdiction where none exists. The appeal deadline is jurisdictional, and subject matter jurisdiction cannot be waived or conferred by agreement of the parties or by equitable considerations. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985).

CONCLUSION

Appellants received electronic notice of the Form 4 Order on October 14, 2025. Under Rule 203(b)(1) of the SCACR and *Wells Fargo Bank*, their Notice of Appeal was due by November 13, 2025. They filed on November 17, 2025—four days late. This Court lacks subject matter jurisdiction to hear the appeal, and dismissal is mandatory.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Respondent's Reply Memorandum in Support of Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction in the above-referenced case has been served upon opposing counsel by emailing a digital copy this 16th day of January, 2026 to:

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