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**Mar 13 2026**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

Appellate Case No. 2025-002298

TORGUES MINGO,

Appellant,

v.

FLATS AT HAYWOOD,

Respondent.

APPEAL FROM GREENVILLE COUNTY

Perry H. Gravely, Chief Administrative Judge -- Civil

2025-CP-23-6831

APPEAL FROM WEST GREENVILLE SUMMARY COURT

Jonathan A. Horne, Magistrate Judge

2025CV2310101556

**APPELLANT'S REPLY BRIEF**

Torgues Mingo  
75 Mall Connector Rd. Unit 203  
Greenville, SC 29607  
Pro Se Appellant

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## INTRODUCTION

Respondent's Initial Brief, filed March 11, 2026, advances a single proposition: that because Appellant failed to post a surety bond in the magistrate court proceeding, every question arising from the eviction action is forever foreclosed from appellate review. That proposition is incorrect as a matter of law, procedurally overbroad, and constitutionally infirm.

Respondent does not dispute that Appellant timely appealed Judge Gravely's November 13, 2025 dismissal order to this Court. Respondent does not dispute that this Court has jurisdiction over that order. Respondent does not dispute the factual record showing that disputed payment ledgers were never reconciled at the summary court level. Instead, Respondent urges this Court to rubber-stamp a cascade of procedural dismissals that, taken together, have deprived Appellant of any meaningful opportunity to contest an eviction rooted in a landlord's own accounting irregularities.

Appellant submits this Reply to address three issues on which Respondent's Brief is legally deficient: (1) the jurisdictional premise of this appeal; (2) the misapplication of statutory bond requirements; and (3) the due process implications of conditioning appellate access on a bond that, under the facts of this case, operated as an absolute bar.

## ARGUMENT

### **I. THIS COURT HAS PROPER JURISDICTION: THE APPEAL IS FROM JUDGE GRAVELY'S CIRCUIT COURT DISMISSAL ORDER, WHICH IS A FINAL APPEALABLE ORDER.**

Respondent's framing of the jurisdictional question reveals a fundamental category error. Respondent repeatedly asserts that the "only matter properly before this Court" is whether the dismissal was proper due to non-payment of bond. Respondent's Brief at 4. In making this concession, Respondent simultaneously confirms this Court's jurisdiction and defines the very issue Appellant is asking this Court to decide.

The Order under appeal is not the original eviction judgment from the West Greenville Summary Court. It is Judge Gravelly's November 13, 2025 Form 4 dismissal of Appellant's circuit court appeal -- a final civil judgment of the Greenville County Court of Common Pleas. This Court has appellate jurisdiction over final judgments of the circuit court. The question whether Judge Gravelly's dismissal was legally correct is, by Respondent's own admission, squarely before this Court.

Appellant does not ask this Court to conduct a de novo trial of the underlying eviction. Appellant asks this Court to determine whether the procedural framework employed -- requiring a cash bond of \$4,243.50 under conditions that did not comply with the governing statute -- was legally permissible. That determination necessarily involves examining the merits of what was dismissed and why.

**II. RESPONDENT CONFLATES TWO DISTINCT STATUTORY FRAMEWORKS;  
THE MAGISTRATE EMPLOYED AN IMPERMISSIBLE HYBRID BOND  
PROCEDURE.**

Respondent relies principally on S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 18-7-10 for the proposition that a bond is a non-discretionary condition precedent to any appeal in an ejectment case. However, a careful reading of these statutes reveals that the procedure actually employed at the October 27, 2025 bond hearing does not conform to either.

Section 27-37-130 provides that an appeal will not stay ejectment "unless at the time of appealing the tenant shall give an appeal bond." The same statute further provides: "In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate." S.C. Code Ann. § 27-37-130 (emphasis added). Appellant filed his Notice of Appeal on October 17, 2025. Under the plain text of § 27-37-130, if bond was not filed within five days -- by October 22, 2025 -- the magistrate was to dismiss the appeal.

Instead, a bond hearing was not conducted until October 27, 2025 -- ten days after the Notice of Appeal, and beyond the statutory deadline under either a calendar-day or business-day reading of the statute. (Counting calendar days: five days from October 17 = October 22; the hearing was five calendar days late. Counting business days and excluding the weekend of October 18-19: five business days from October 17 = October 24; the hearing was three business days late.) Under neither interpretation did the magistrate act within the time § 27-37-130 prescribes. The magistrate did not dismiss the appeal at five days. Instead, the court conducted a hearing, set an amount, and gave a further deadline of November 3, 2025. This procedure is not authorized by §

27-37-130. By departing from the strict five-day framework, the magistrate implicitly invoked a different statutory mechanism -- the undertaking procedure of S.C. Code Ann. § 27-40-800(b) -- while then applying the cash-bond consequence of § 27-37-130. This hybrid approach has no statutory basis and produced an outcome that was more onerous to Appellant than either statute standing alone would require.

### **III. SECTION 27-40-800(b) PROVIDES AN INDEPENDENT STAY MECHANISM THAT WAS NEVER PROPERLY OFFERED TO APPELLANT.**

Even if this Court concludes that the § 27-37-130 bond was properly required, S.C. Code Ann. § 27-40-800(b) provides a separate and independent mechanism for staying execution of an ejectment judgment that operates entirely apart from a cash bond. That provision states:

*"It is sufficient to stay execution of a judgment for ejectment that the tenant signs an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate in accordance with Section 27-40-780, as it becomes due periodically after the judgment was entered. Any magistrate, clerk, or circuit court judge shall order a stay of execution upon the undertaking." S.C. Code Ann. § 27-40-800(b) (emphasis added).*

The language of this provision is mandatory: upon signing an undertaking to pay ongoing rent, a stay "shall" issue. The statute does not require payment of accrued arrearages, posting of cash, or procurement of a surety. It requires only a signed undertaking for future rent.

The record reflects that Appellant was never offered the § 27-40-800(b) undertaking option. The bond hearing on October 27, 2025 set a cash bond of \$4,243.50 -- representing

arrears through October -- and additionally required advance payment of November's rent of \$1,125.00. This combined requirement of \$5,368.50 in cash payments was not what § 27-40-800(b) authorizes. The circuit court's and magistrate court's failure to comply with § 27-40-800(b) constitutes an independent ground for reversing Judge Gravely's dismissal order and remanding for proper consideration of Appellant's stay request under the correct statutory standard.

Moreover, Rule 241(b)(10) SCACR -- cited by Respondent -- carves out an exception to the automatic stay rule for ejectment orders "as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800." The Rule expressly incorporates both statutes. Reading § 27-40-800(b) out of the analysis, as Respondent urges, renders the Rule's reference to § 27-40-800 surplusage.

**IV. APPELLANT HAS NOT ABANDONED THE DISMISSAL ISSUE; THE MERITS OF THE UNDERLYING EVICTION ARE INEXTRICABLY LINKED TO THE PROPRIETY OF THE DISMISSAL.**

Respondent invokes *Fields v. Melrose P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (1993) for the proposition that an issue raised on appeal but not argued in the brief is abandoned. This rule has no application here.

Appellant's Initial Brief directly challenges the orders at issue: it argues that the magistrate court erred, that the bond-based dismissal was improper, and that the merits of the disputed accounting were never properly adjudicated. Respondent characterizes these arguments as challenges to the magistrate court's evidentiary rulings rather than to Judge Gravely's dismissal. But the two are not separable. The reason Judge Gravely's dismissal was improper is precisely that the bond requirement was applied in a manner that denied Appellant any opportunity to contest an

eviction that rested on disputed accounting. To evaluate whether Judge Gravely correctly dismissed the appeal, this Court must examine the underlying proceeding's integrity.

The line of cases Respondent cites, see also *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 572 S.E.2d 298 (2002), applies to issues never raised at all. Appellant raised his payment and ledger disputes at the October 10, 2025 magistrate hearing. They are part of the record transmitted to this Court. They were not abandoned; they were dismissed without adjudication. This Court can and should consider them in the context of determining whether the appellate dismissal was proper.

**V. DUE PROCESS BARS AUTOMATIC DISMISSAL WHERE BOND IS  
FINANCIALLY UNATTAINABLE AND NO ALTERNATIVE STAY MECHANISM  
WAS PROVIDED.**

Even if Respondent were correct that § 27-37-130 mandated dismissal, automatic application of that sanction to a pro se tenant who cannot afford the bond amount raises serious constitutional concerns that this Court should not foreclose without examination.

The Supreme Court has recognized that conditioning access to judicial process on the payment of fees or costs can violate due process where the effect is to completely bar the courthouse doors. *Boddie v. Connecticut*, 401 U.S. 371, 374-77 (1971). This principle was directly extended to appellate access in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), where the Court held that conditioning an appeal on prepayment of record preparation costs violated due process where the appellant lacked the financial means to pay and a vital interest was at stake. The Court reasoned that where the State "controls the ability to pursue a fundamental interest," it cannot condition that access on resources the litigant does not have. *Id.* at 120. See also *Goldberg v. Kelly*, 397 U.S. 254 (1970) (procedural due process requires meaningful opportunity to be heard before deprivation of

a vital interest). While M.L.B. involved parental rights and Boddie involved access to divorce proceedings, the due process principle they establish -- that the State may not effectively close the courthouse door based solely on a litigant's financial condition where a vital interest is at stake -- applies with equal force here.

Housing is a vital interest. An eviction judgment carries consequences that extend far beyond the loss of a specific apartment -- it produces a permanent adverse record that impairs a tenant's ability to secure housing for years. Appellant's Initial Brief documents how the eviction record has already caused denial of multiple housing applications. The bond set on October 27, 2025 -- \$4,243.50 in accrued arrears plus \$1,125.00 in advance rent -- totaling \$5,368.50 -- was beyond Appellant's financial means. That inability was not a strategic choice; it was a financial reality that the court never inquired into.

South Carolina courts have not squarely addressed whether an inability-to-pay defense is available under § 27-37-130. But where a statute is susceptible of a constitutional construction, courts should adopt that construction. Applying § 27-37-130 as a per se bar without any inquiry into ability to pay -- and without offering the lesser § 27-40-800(b) undertaking alternative -- produced a result that is disproportionate to the statute's legitimate purpose of protecting landlords from the accrual of unpaid rent during prolonged appeals.

Had the court employed § 27-40-800(b) -- requiring only a signed undertaking to pay ongoing rent -- the landlord would have received protection against future accruals while Appellant retained his right to contest the eviction's underlying factual basis. This is precisely the balance the legislature struck when it enacted § 27-40-800(b) as part of the Residential Landlord and Tenant

Act. Its omission from the proceedings below was not a harmless procedural irregularity; it was an error that foreclosed Appellant's access to any appellate forum.

Additionally, Respondent's affidavit (Ex. J) asserts that Appellant has made no rent payments whatsoever since the commencement of this action. Appellant maintains that the ledger disputes identified in his Initial Brief explain a portion of this discrepancy. The court has never examined those disputes. Requiring Appellant to pre-pay disputed arrearages as a condition of access to the court that could adjudicate whether those arrearages are even valid is circular logic that forecloses the very remedy the legislature provided.

### **CONCLUSION**

For the reasons set forth herein and in Appellant's Initial Brief, Appellant respectfully requests that this Court:

1. Reverse Judge Gravely's November 13, 2025 Order dismissing Appellant's circuit court appeal;
2. Hold that the bond proceeding of October 27, 2025 did not conform to the requirements of S.C. Code Ann. § 27-37-130 and that § 27-40-800(b) provides an independent, available alternative stay mechanism that was not offered to Appellant;
3. Remand this matter to the circuit court with instructions to reinstate Appellant's appeal from the West Greenville Summary Court and to afford Appellant an opportunity to comply with S.C. Code Ann. § 27-40-800(b) as a condition of maintaining a stay of the Writ of Ejectment; and

4. Alternatively, remand for a hearing at which the lower court must examine the disputed rental ledgers, Appellant's evidence of payment, and the propriety of Respondent's payment application practices before any final eviction judgment is entered.

Respectfully submitted,

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March 12, 2026

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of March, 2026, I served a copy of the foregoing Appellant's Reply Brief upon Respondent by mailing the same via United States Mail, First Class, postage prepaid, in an envelope addressed as follows:

D. Andrew Turman, Esquire  
MULLEN HOLLAND & COOPER, P.A.  
P.O. Box 488  
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And by filing the original with:

s/ Torgues Mingo  
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