RECEIVED
Sep 23 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Marvin H. Dukes III, Circuit Court Judge
Circuit Court Case No. 2024-CP-10-04474

Appellate Case No. 2026-001589

Exchange Club Fair of Charleston, Inc.,

Appellant-Respondent,

v.

Charleston Area Regional Transportation Authority,

Respondent-Appellant.

APPELLANT-RESPONDENT'S MOTION TO DISMISS CROSS-APPEAL

Appellant-Respondent Exchange Club Fair of Charleston, Inc. ("ECFC") respectfully moves this Court, pursuant to Rules 203(c), 240, and 263, SCACR, for an order dismissing the cross-appeal noticed out of time by Respondent-Appellant Charleston Area Regional Transportation Authority ("CARTA") on September 15, 2026.

CARTA's timer for its cross-appeal hit zero at midnight on July 23, 2026. CARTA served its Notice of Cross-Appeal fifty-four (54) days later. CARTA does not dispute the arithmetic; its Notice asserts instead that the five-day cross-appeal period was suspended by "the automatic stay imposed by Rule 240(b), SCACR," while CARTA's own Motion to Dismiss ECFC's appeal was

pending. (Notice of Cross-Appeal pp. 1-2). But Rule 240(b) only stays "the time limits for perfecting the appeal"; it does not enlarge the time to institute one, and, pursuant to Rule 263(b), SCACR, it is beyond the power of this Court to extend the time for serving a notice of appeal. Because timely service of a notice of appeal is a jurisdictional prerequisite, the cross-appeal must be dismissed.

BACKGROUND

On June 18, 2026, the circuit court entered its Order Granting Plaintiff/Landowner's Motion for Summary Judgment (the "Final Order" (Notice of Appeal Ex. C)). The court held that CARTA, at the time it served its Condemnation Notice on August 12, 2024, lacked authority to exercise the power of eminent domain because a condition precedent to that exercise, approval by Charleston County Council under Article I, Section 2(d) of CARTA's Formational Agreement, had not been satisfied. (Final Order pp. 2-3 ¶¶ 1-4, pp. 6-9). The lower court dismissed the condemnation action without prejudice; dismissed CARTA's counterclaims, including its counterclaim for fees and costs under S.C. Code Ann. § 28-2-510(A); found ECFC to be the prevailing party; and reserved jurisdiction over ECFC's recoverable litigation expenses. (Final Order pp. 8–9). The Final Order also re-affirmed the court's earlier interlocutory ruling, entered in a Form 4 Order dated October 24, 2024, that S.C. Code Ann. § 58-25-50(d) authorizes CARTA to condemn a fee simple interest in property contiguous to a right-of-way and that the proposed parking area was a "facility" under that statute. (Final Order p. 4).

On Thursday, July 16, 2026, ECFC served its Notice of Appeal on CARTA's counsel of record and filed it through the circuit court's E-Filing system, which transmitted a Notice of Electronic Filing to all counsel the same day. (July 16, 2026 Proof of Service). ECFC's appeal is expressly limited to the § 58-25-50(d) ruling. CARTA did not serve or file a notice of cross-appeal.

Instead, on Thursday, July 23, 2026, CARTA served and filed a Motion to Dismiss ECFC's appeal, arguing that ECFC was not an "aggrieved party" under Rule 201(b), SCACR, because the Final Order dismissed the condemnation in ECFC's favor, and that the October 24, 2024 Form 4 Order "was immediately appealable" such that ECFC's time to appeal it had expired "nearly a year and a half ago." (CARTA Mot. to Dismiss pp. 4–6).

On September 15, 2026, this Court denied CARTA's Motion to Dismiss, stating that "nothing in this order prevents Respondent from briefing the issues raised in the motion to dismiss." Order dated Sept. 15, 2026. The Clerk's transmittal letter of the same date advised that "[t]his appeal is no longer held in abeyance" and directed ECFC, as Appellant, to file proof within ten days that it had ordered the transcript.

Later that same day, CARTA served the Notice of Cross-Appeal now before the Court. The Notice designates two orders: (1) the Final Order, and (2) a "Form Order issued by Circuit Court Judge Marvin H. Dukes, III and dated October 14, 2024." No order of that date exists; there are Form 4 Orders dated October 24, 2024 and January 14, 2025 (Notice of Appeal Exs. A, B). The Notice does not state when CARTA received ECFC's Notice of Appeal (*see* Rule 203(e)(1)(C), SCACR), and it offers a single justification for its timing: that it "is timely filed and served within five days of receipt of Appellant-Respondent's Notice of Appeal as a result of the automatic stay imposed by Rule 240(b), SCACR, during the pendency of the Respondent-Appellant's Motion to Dismiss which was filed July 23, 2026 and disposed of by this Court on September 15, 2026." (Notice of Cross-Appeal pp. 1-2).

ARGUMENT

I. THE TIME TO INSTITUTE A CROSS-APPEAL EXPIRED JULY 23, 2026.

A. Rule 203(c), SCACR, prescribes two periods, and the later of the two controls.

Rule 203(c), SCACR, provides that a respondent "may institute a cross-appeal by serving a notice of appeal on all adverse parties… within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires." Both periods are computed under Rule 263(a), SCACR.

The Rule 203(b) period. Rule 203(b)(1) required CARTA to serve any notice of appeal from the Final Order within thirty days after receipt of written notice of its entry. The Final Order was electronically filed and served on June 18, 2026. Thirty days later was Saturday, July 18, 2026; the period therefore ran through Monday, July 20, 2026. Rule 263(a), SCACR. When a timely post-trial motion is made, the time to appeal instead runs from receipt of written notice of entry of the order disposing of that motion. Rule 203(b)(1), SCACR. Neither party made any of the post-trial motions listed in Rule 203(b)(1), so CARTA's thirty days ran uninterrupted from June 18.

The five-day period. ECFC served its Notice of Appeal on Thursday, July 16, 2026. Excluding the day of service and the intervening Saturday and Sunday, the five days were Friday, July 17; Monday, July 20; Tuesday, July 21; Wednesday, July 22; and Thursday, July 23, 2026. Rule 263(a), SCACR.

The later of the two periods expired on July 23, 2026, making that the last day on which CARTA could institute a cross-appeal. CARTA chose instead to file a Motion to Dismiss that day. CARTA did not serve its Notice of Cross-Appeal until September 15, 2026: fifty-four (54) days after the period closed, sixty-one (61) days after receiving ECFC's Notice of Appeal, and eighty-nine (89) days after entry of the Final Order.

B. CARTA's own Notice concedes that the cross-appeal is untimely unless Rule 240(b), SCACR, suspended the period.

CARTA does not contend that the Rule 203(b) period remained open or that its receipt of ECFC's Notice of Appeal was delayed. Its Notice asserts timeliness on one ground only: that the Notice was served "within five days of receipt of Appellant-Respondent's Notice of Appeal *as a result of* the automatic stay imposed by Rule 240(b)." (Notice of Cross-Appeal pp. 1–2 (emphasis added)). CARTA thus acknowledges that, absent the claimed stay, the five-day period had run. The only question this Motion presents is whether Rule 240(b), SCACR, suspended CARTA's time to institute a cross-appeal. It did not.

II. RULE 240(b) DID NOT SUSPEND THE TIME TO INSTITUTE A CROSS-APPEAL.

A. Only "the time limits for perfecting the appeal" are stayed by the Rule.

Rule 240(b) establishes a default rule and a single, narrow exception:

> Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

Rule 240(b), SCACR. The default is that motions stay nothing. The exception reaches only "the time limits for perfecting the appeal." The Appellate Court Rules use "institute" and "perfect" to describe different things. A party ***institutes*** a cross-appeal **by serving a notice of appeal**. Rule 203(c), SCACR (a respondent "may *institute* a cross-appeal by serving a notice of appeal") (emphasis added). ***Perfecting*** an appeal describes **the steps that follow**: ordering and paying for the transcript (Rule 207), serving and filing the initial briefs (Rule 208), designating the matter to be included in the Record on Appeal (Rule 209), and preparing and filing the Record and final briefs (Rules 210, 211). Those are the time limits a motion to dismiss suspends, and for a sensible

reason: a party should not be required to incur the expense of building out an appeal whose viability is being contested. The stay does not encompass the minimal act, service of a two-page notice, by which a respondent preserves its own right to seek appellate review.

The record confirms the intended operation of the stay. When this Court denied CARTA's Motion on September 15, 2026, the Clerk advised that "[t]his appeal is no longer held in abeyance" and directed ECFC to demonstrate within ten days that it had ordered the transcript. That is the Rule 207 obligation of an appellant, a step in perfecting an appeal already instituted. Nothing in this Court's Order or the Clerk's letter purported to reopen the time to notice an appeal.

South Carolina has drawn this line for as long as it has required a notice of appeal. Construing the Act of 1878, the Supreme Court described the statute as prescribing "the mode and manner of inaugurating and perfecting appeals": a timely notice "initiated" the appeal, and "a failure… to take the next step necessary to perfect it" was a distinct matter. *Hyatt v. McBurney*, 17 S.C. 143, 147, 149 (1882). Under the 1912 Code, the Court explained that "[w]here the notice of appeal has been duly given," it could relieve a party "from the consequences of other omissions in the perfecting of his appeal," under a statute that permitted extension of the time for "any step or proceeding in the preparation and perfection of appeals… ***except the time of giving notice of appeal to the opposite party***." *Rylee v. Marett*, 121 S.C. 366, 372–73, 113 S.E. 483, 485 (1922) (emphasis added). In 1930, the Court stated the rule "for the information of the bar": an appellant "must, within the ten days allowed by law, give notice of his intention to appeal. If that notice is not given, there can be no appeal, and ***no extension for the time of the giving of this notice can be granted by either the lower Court or this Court***… After the required notice of intention to appeal has been given, it is the duty of appellant's counsel to proceed in the matter of perfecting the appeal." *Wade v. Gore*, 154 S.C. 262, 264, 151 S.E. 470, 471 (1930) (emphasis added); *see*

also State v. Lagerquist, 254 S.C. 501, 504, 176 S.E.2d 141, 142 (1970) (notice of intention to appeal "timely served"; consent order "extending the time for perfecting the appeal" until sixty days after the transcript was furnished); *S.C. Dep't of Soc. Servs. v. Ihnatiuk*, 396 S.C. 207, 209, 721 S.E.2d 766, 767 (2003) (distinguishing "filing fees" from "costs of perfecting the appeal," the latter being the cost of the transcript).

The South Carolina Appellate Court Rules inherited both the vocabulary and the structure. A respondent "institute[s]" a cross-appeal by serving a notice, Rule 203(c); Rules 207 through 211 prescribe the steps that follow; Rule 240(b) stays "the time limits for perfecting the appeal"; and Rule 263(b), like section 387 of the 1912 Code before it, withholds from every court the power to extend the time for the notice. ECFC acknowledges that courts in some jurisdictions use "perfect" more loosely, to describe the filing of the notice itself. That usage cannot control the meaning of Rule 240(b), SCACR. In South Carolina the word has carried the same meaning for a century and a half, and it has never described or included the notice.

B. The stay operates on "<u>the</u> appeal" that is the subject of the motion, and CARTA's cross-appeal did not exist.

Rule 240(b) stays the time limits for perfecting "*the* appeal," referring to the appeal that is the subject of the motion to dismiss. CARTA moved to dismiss ECFC's appeal. The only appeal pending on July 23, 2026 was ECFC's, and the only "time limits for perfecting" that could be "stayed" were those applicable to ECFC's appeal. A cross-appeal that had not been instituted had no time limits for perfection to stay. CARTA's construction requires the Court to read "the time limits for perfecting the appeal" as "all time limits imposed by these Rules on any party," which is precisely the default rule rejected by the first sentence of Rule 240(b), SCACR. A notice served after the time has run is, in the Supreme Court's word, "nugatory." *Hyatt*, 17 S.C. at 147. It initiates nothing, meaning no appeal-perfection deadlines existed for a stay to operate upon.

C. Rule 263(b) specifies that the time for serving a notice of appeal cannot be extended by this Court, by agreement, or by one party's motion.

Rule 263(b), SCACR, confirms that the Rule 240(b) stay for "perfecting the appeal" does not reach service of a notice of appeal: it strictly prohibits any extension of that deadline. Rule 263(b) states 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, or by any judge or justice thereof," and that "[t]he time prescribed by these Rules for performing any act or taking any action may *not* be extended by agreement of the parties." Rule 263(b), SCACR (emphasis added).

Two consequences follow. First, in addition to post-conviction relief petitions for certiorari, the deadline for serving a notice of appeal under Rule 203, including a notice instituting a cross-appeal under Rule 203(c), is the one deadline in the Appellate Court Rules that this Court itself has no authority to enlarge. It would be anomalous to construe Rule 240(b) as permitting a single party, by filing a motion of its own choosing, to accomplish what the Rules withhold from the Court. Second, if the parties acting together cannot extend this deadline by agreement, one party acting alone cannot extend it by motion.

Read together, Rules 203(c), 240(b), and 263(b) are coherent: motions ordinarily stay nothing; a motion to dismiss stays the appellant's perfection deadlines; and the time for serving a notice of appeal is stayed by nothing at all. When the Rules intend a motion to suspend the time for a notice of appeal, they say so expressly. Rule 203(b)(1) provides that when a timely post-trial motion has been made, "the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion," and Rules 203(b)(2) and (b)(6) contain parallel provisions. Rule 240(b) contains no such language. It stays "the time limits for perfecting the appeal," and it does not mention the time for appeal at all.

CARTA never asked for more time. It did not move this Court for an extension of the Rule 203(c) period before it expired, and it does not now contend that it could have obtained one; Rule 263(b) would have foreclosed the request. The claimed automatic stay must therefore carry the entire weight of CARTA's position. The simple alternative: a protective notice of cross-appeal within the five days Rule 203(c) allows. CARTA did not serve one.

D. The time for serving a notice of appeal is jurisdictional.

Our Supreme Court has been unequivocal: "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. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)). Rule 203(c) provides that a cross-appeal is instituted by serving "a notice of appeal," and Rule 263(b) treats notices of appeal under Rule 203 as a single category. A respondent who misses the Rule 203(c) deadline stands in the same position as an appellant who misses the Rule 203(b) deadline: the Court lacks jurisdiction over the appeal, and considerations of hardship, inadvertence, or intent cannot supply what the Rules withhold. The Rules fix the jurisdictional moment at the same point in time: "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal." Rule 205, SCACR. Our Supreme Court said the same thing before the Rules existed: if the notice is not timely given, "there can be no appeal, and no extension for the time of the giving of this notice can be granted by either the lower Court or this Court." *Wade*, 154 S.C. at 264, 151 S.E. at 471.

CARTA agrees with these principles when they are applied to its adversary. In moving to dismiss ECFC's appeal, CARTA reminded this Court that "[t]he right of appeal arises from and is controlled by statutory law," (Mot. to Dismiss p. 4), and that "appellate jurisdiction" may not be

conferred "by estoppel, consent, or acquiescence." (Aug. 17, 2026 Reply p. 3). It equally may not be conferred by a stay that the Rules do not provide. Nor may the consequence be softened because CARTA would prefer to have the Final Order reviewed. Every party that misses the time to serve a notice of appeal loses review it wishes it had; that is what a jurisdictional deadline means, and *Elam* holds that the Court has "no authority or discretion" to weigh the hardship. 361 S.C. at 14-15, 602 S.E.2d at 775.

The result remains unchanged whether the deadline is labeled jurisdictional or not. In *Nutraceutical Corp. v. Lambert*, 586 U.S. 188 (2019), a unanimous United States Supreme Court held that a filing deadline that is not jurisdictional is still not subject to equitable tolling when the governing rules withhold the power to extend it: "[w]hether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility." *Id.* at 192. There, Federal Rule of Appellate Procedure 26(b)(1) excised the time to petition for permission to appeal from the courts' general power to extend deadlines, and that carve-out "express[ed] a clear intent to compel rigorous enforcement" of the deadline "even where good cause for equitable tolling might otherwise exist." *Id.* at 193. A rule of that kind is mandatory once the opposing party invokes it, as ECFC does by this Motion. *Id.* at 192. Rule 263(b), SCACR, is built the same way: a general power to extend, and a single excision for "the time for serving the notice of appeal under Rules 203 and 243." Under *Elam*, the deadline is jurisdictional; under the reasoning of *Nutraceutical*, it would be unalterable even if it were not.

E. Courts that have addressed this question have rejected CARTA's position.

No South Carolina appellate decision has addressed whether a motion to dismiss an appeal suspends the time to institute a cross-appeal, and ECFC has located no decision in any jurisdiction so holding. Courts elsewhere that have squarely confronted the argument CARTA makes have rejected it, including under a stay provision considerably broader than Rule 240(b).

In *In re Marriage of Rossmiller*, 151 Wis. 2d 386, 444 N.W.2d 445 (Wis. Ct. App. 1989), the respondent moved to dismiss the appeal and, after the cross-appeal period had run, served a notice of cross-appeal, contending that the pendency of her motion had enlarged her time. The Wisconsin statutory rule she invoked provided that the filing of a motion "seeking an order or other relief which may affect the disposition of an appeal… automatically enlarges the time for performing an act required by these rules for a period coextensive with the time between the filing of the motion and its disposition." *Id.* at 389, 444 N.W.2d at 446 (quoting Wis. Stat. Rule 809.14(3)). A separate rule, 809.82(2)(b), prohibited enlargement of the time to file a notice of appeal or cross-appeal. *Id.* at 389, 444 N.W.2d at 446. Harmonizing the two, the court held that "the tolling provision in Rule 809.14(3) does not apply to the time for filing notices of appeals or cross-appeals which cannot be extended," because "[t]o hold otherwise would nullify [the prohibition by] Rule 809.82(2)(b) because a party could obtain an extension of time for filing a notice of appeal or cross-appeal simply by filing a motion." *Id.* at 390, 444 N.W.2d at 447.

The *Rossmiller* court considered the policy argument CARTA must make here, that a respondent should be spared a protective cross-appeal while a dispositive motion is pending, and rejected it because it "allows a party to unilaterally obtain an extension of time to file a cross-appeal merely by filing a motion… regardless of the merits of the motion." *Id.* at 390-91, 444 N.W.2d at 447. "**The automatic extension is not warranted simply to allow a party additional time in deciding whether to cross-appeal. If a written final judgment aggrieves a cross-appellant in some manner, the cross-appeal is not dependent on the existence of an appeal**." *Id.* at 391, 444 N.W.2d at 447 (emphasis added). The cross-appeal was dismissed for want of jurisdiction. *Id.* Rule 240(b) is narrower than the Wisconsin provision: its stay embraces only "the time limits for perfecting the appeal," not every "act required by these rules," and Rule 263(b) is

at least as emphatic as the Wisconsin bar on enlargement. If the broader Wisconsin rule could not save the cross-appeal in *Rossmiller*, Rule 240(b) cannot save CARTA's.

The Supreme Court of Montana confronted a similar sequence in *Joseph Eve & Co. v. Allen*, 284 Mont. 511, 945 P.2d 897 (1997). There the respondent moved to dismiss the appeal; the court denied the motion; and two days later, fifty-two days after the appellant's notice had been filed, the respondent sought leave to file a cross-appeal. The court held that the time for filing a cross-appeal is "mandatory and jurisdictional," that the pendency and denial of the motion to dismiss did not alter that conclusion, and that it was therefore "precluded from considering" the cross-appeal. *Id.* (collecting authority, including *Rossmiller*). ECFC cites *Joseph Eve* for what it holds, and notes two things about it in candor. First, the respondent there argued not that her motion had tolled the period but that the deadline was a rule of practice the court could waive; the court rejected that argument, and its reasoning applies with equal force to a tolling theory the Rules do not provide. Second, the opinion, quoting earlier Montana decisions, at times uses "perfect" to describe the filing of the notice itself. That is Montana's vocabulary, not South Carolina's (*see* Argument II.A, *supra*), and whatever word is used for it, *Joseph Eve* treats the timely notice as the jurisdictional act that no motion and no court may enlarge.

CARTA may point to decisions in which a federal court of appeals overlooked a late cross-appeal as a matter of discretion. *See, e.g.*, *Texport Oil Co. v. M/V Amolyntos*, 11 F.3d 361, 366 (2d Cir. 1993) (cross-appeal one business day late; court "exercise[d] [its] discretion and disregard[ed] the time requirement"). *Texport* treated the cross-appeal deadline as a "rule of practice" the court could waive, borrowing that phrase from cases that concerned a different question: whether a cross-appeal is needed at all when the relief the appellee seeks is derivative of the appellant's. *See Langnes v. Green*, 282 U.S. 531 (1931). It has not survived in its own circuit. In *In re Johns-*

Manville Corp., 476 F.3d 118 (2d Cir. 2007), the Second Circuit dismissed a cross-appeal filed one day late, holding that even if the deadline is a claim-processing rule rather than a jurisdictional one after *Eberhart v. United States*, 546 U.S. 12 (2005), that means only that it may be forfeited if no party invokes it; once the adverse party moves to dismiss, the court must enforce it. *Id.* at 123-24. The court explained that *Eberhart* "obliges us to reconsider our approach to untimely cross-appeals," *id.* at 122, including the approach taken in *Texport*, and held that the exceptional-circumstances doctrine on which *Texport* relied is never available where, as here, the would-be cross-appellant seeks affirmative relief from the judgment. *Id.* at 121-22, 124.[1] CARTA's notice was fifty-four days late, not one, and South Carolina, unlike the federal system, has no rule permitting any extension of the time to serve a notice of appeal. *Compare* Fed. R. App. P. 4(a)(5), *with* Rule 263(b), SCACR.

F. CARTA's construction would allow any respondent to manufacture an indefinite extension.

Under CARTA's reading, a respondent uncertain whether to cross-appeal need only file a motion to dismiss on the last day of its Rule 203(c) window to postpone its decision. The jurisdictional deadline would then be suspended for as long as the motion remained pending (here, fifty-four days), regardless of the motion's merit, and the respondent could decide whether to cross-appeal only after learning whether the appellant's appeal survived. A jurisdictional deadline that one party may suspend at will is not a deadline. Rule 263(b) forecloses that result by placing the time for serving a notice of appeal beyond extension by this Court and by agreement of the

[1] The narrow exceptions excusing a cross-appeal apply only where the respondent's relief is derivative of the appellant's. *Anthony v. Petroleum Helicopters, Inc.*, 693 F.2d 495, 497–98 (5th Cir. 1982). None applies here: CARTA was aggrieved by the Final Order and seeks its reversal, requiring a cross-appeal. As Judge McGowan explained, a party aggrieved by a judgment must preserve its objection "by a cross-appeal if time permits … or … by a timely notice of appeal[.]" *Tallman v. Udall*, 324 F.2d 411, 418 (D.C. Cir. 1963) (McGowan, J., concurring), *rev'd on other grounds*, 380 U.S. 1 (1965), *quoted in Anthony*, 693 F.2d at 498 n.6.

parties alike. The Court should not read Rule 240(b) to accomplish silently, at the option of a single litigant, what Rule 263(b) forbids the Court itself to do.

III. THE DESIGNATION OF THE OCTOBER 2024 FORM 4 ORDER DOES NOT SAVE THE CROSS-APPEAL.

A. Any right to review that order depended on a timely appeal of the Final Order.

CARTA's Notice also designates the circuit court's Form 4 Order of October 2024. That designation adds nothing. The October 24, 2024 order granted CARTA's motion to dismiss as to ECFC's First Cause of Action and denied "the balance of Defendant's motion." (Oct. 24, 2024 Order p. 1). CARTA cannot be aggrieved by the portion of that Order that granted its motion; "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal." Rule 201(b), SCACR. Indeed, the § 58-25-50(d) ruling embodied in that portion is the ruling ECFC appeals and CARTA will defend as Respondent.

The only portion of the lower court's October 24, 2024 order that could aggrieve CARTA is the denial of the balance of its motion. But, as CARTA itself told this Court, "the denial of a motion to dismiss pursuant to Rule 12(b)(6) is not appealable." (CARTA Mot. to Dismiss p. 5 (citing *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986))). An interlocutory denial of a motion to dismiss is reviewable, if at all, only on a timely appeal from the final judgment into which it merges. CARTA has no timely appeal from the Final Order, meaning its designation of the October 2024 Order, tethered to a late notice, falls with it.

Alternatively, to the extent CARTA seeks review of the October 24, 2024 order as one that was itself immediately appealable, CARTA is bound by the position it urged against ECFC: that the Order "was immediately appealable" and the time to appeal it or the January 14, 2025 order denying reconsideration "would have been nearly a year and a half ago." (CARTA Mot. to Dismiss pp. 4-6). CARTA cannot ask this Court to apply that rule to its adversary and disregard it for itself.

On CARTA's own theory, a notice served September 15, 2026, nearly twenty-three months after entry, is untimely by a margin far exceeding the one CARTA asked this Court to treat as fatal.

B. The Notice designates an order that does not exist and omits the information Rule 203(e) requires.

CARTA's Notice designates a "Form Order issued by Circuit Court Judge Marvin H. Dukes, III and dated October 14, 2024." No order of that date appears in the record; the only Form 4 Order of that month is dated October 24, 2024, the date CARTA used correctly throughout its Motion to Dismiss. The Notice also omits the statement Rule 203(e)(1)(C), SCACR, requires of a cross-appellant: "when the respondent received appellant's notice of appeal." ECFC notes these defects to clarify the record and because the omitted receipt date is the very fact on which CARTA's claim of timeliness depends.

IV. DISMISSAL LEAVES CARTA WITH RIGHTS IT TIMELY PRESERVED.

Dismissal of the cross-appeal does not silence CARTA. As Respondent, CARTA may urge this Court to affirm the § 58-25-50(d) ruling that ECFC challenges, and it may do so "upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR; *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723 (2000). That includes grounds the circuit court rejected or never reached. *See Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 214-15, 758 S.E.2d 187, 194-95 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (respondent that prevailed below may urge affirmance on a defense the circuit court denied, without a cross-appeal). This Court's September 15, 2026 Order further preserves CARTA's ability to brief the aggrieved-party and timeliness arguments it raised in its Motion to Dismiss. Every ruling bearing on CARTA's statutory authority is therefore before the Court on ECFC's appeal, with CARTA free to defend it.

What CARTA may not do without a timely notice of appeal is obtain affirmative relief from the Final Order: reversal of the judgment that dismissed its August 2024 condemnation and

its counterclaims and found ECFC to be the prevailing party. "An appellate court may not, of course, reverse for any reason appearing in the record." *I'On*, 338 S.C. at 421–22, 526 S.E.2d at 724. A respondent that wishes the judgment altered in its favor must institute a cross-appeal within the time Rule 203(c), SCACR, allows. This Court applies that rule consistently. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999); *Sanders v. S.C. Dep't of Corr.*, 379 S.C. 411, 418 & n.3, 665 S.E.2d 231, 234 (Ct. App. 2008); *accord Nw. Airlines, Inc. v. County of Kent*, 510 U.S. 355, 364 (1994) ("A cross-petition is required… when the respondent seeks to alter the judgment below."). CARTA had that opportunity through July 23, 2026, and elected a motion to dismiss instead. That was CARTA's choice to make, and the consequence of the choice is the ordinary one that follows when an appeal period lapses. It is the same consequence CARTA urged this Court to impose on ECFC.

CONCLUSION

CARTA had the full period prescribed by Rule 203(c), SCACR, to institute a cross-appeal and let it expire on July 23, 2026. Rule 240(b) stays the time limits for perfecting an appeal already taken; it does not enlarge, and under Rule 263(b) cannot enlarge, the time for serving a notice of appeal. Because the September 15, 2026 Notice of Cross-Appeal was served after the jurisdictional period had run, ECFC respectfully requests that the Court dismiss CARTA's cross-appeal.

[*Signature Follows*]

Respectfully submitted,

s/Jeffrey S. Tibbals

Richard D. Bybee (S.C. Bar No. 1063)
rdb@bybeetibbals.com
Jeffrey S. Tibbals (S.C. Bar No. 72628)
jst@bybeetibbals.com
Evan P. Williams (S.C. Bar No. 101981)
ewilliams@bybeetibbals.com
BYBEE & TIBBALS, LLC
1100 Queensborough Boulevard, Suite 202
Mt. Pleasant, SC 29464
843.881.1623

Attorneys for Appellant-Respondent
Exchange Club Fair of Charleston, Inc.

September 23, 2026

RECEIVED
Sep 23 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Judge Marvin H. Dukes III, Circuit Court Judge
Circuit Court Case No. 2024-CP-10-04474

Appellate Case No. 2026-001589

Exchange Club Fair of Charleston, Inc.,

Appellant-Respondent,

v.

Charleston Area Regional Transportation Authority,

Respondent-Appellant.

PROOF OF SERVICE

I certify that *Appellant-Respondent's Motion to Dismiss Cross-Appeal* was served on the other party to this matter via email to its counsel of record on September 23, 2026, containing the referenced document as an attachment in .pdf, sent to the email addresses shown below.

Andrew F. Lindemann, Esq.
andrew@ldlawsc.com
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, SC 29260

Counsel for Respondent-Appellant

R. Stewart Miller, Jr., Esq.
rsmiller@burr.com
T. Jarrett Bouchette, Esq.
jbouchette@burr.com
BURR & FORMAN LLP
2411 N. Oak St., Suite 206
Myrtle Beach, SC 29577
Post Office Box 336 (29578)

Counsel for Respondent-Appellant

[*Signature Follows*]

Respectfully submitted,

s/Jeffrey S. Tibbals

Richard D. Bybee (S.C. Bar No. 1063)
rdb@bybeetibbals.com
Jeffrey S. Tibbals (S.C. Bar No. 72628)
jst@bybeetibbals.com
Evan P. Williams (S.C. Bar No. 101981)
ewilliams@bybeetibbals.com
1100 Queensborough Boulevard, Suite 202
Mt. Pleasant, SC 29464
843.881.1623

Attorneys for Appellant-Respondent
Exchange Club Fair of Charleston, Inc.

September 23, 2026