

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

---

Appellate Case No. 2015-001150  
Civil Case No. 2012-CP-46-00472

---

**RECEIVED**

JUN 17 2016

**SC Court of Appeals**

R&J Restaurants, LLC d/b/a Steve's Bar & Grille, LLC.....Plaintiff  
v.

Sotirios Mantekas and Kelman, Inc.....Defendants

J&S Real Estate Holdings, LLC.....Cross-claim Plaintiff  
v.

Sotirios Mantekas and Kelman, Inc.....Cross-claim Defendants

Sotirios Mantekas and Kelman, Inc.,.....Cross-claim Plaintiffs  
v.

J&S Real Estate Holdings, LLC, and John Sherwood.....Cross-claim Defendants

Of whom, J&S Real Estate Holdings, LLC, as Cross-claim Plaintiff, is the Appellant and Sotirios Mantekas, as Cross-claim Defendant, is the Respondent.

---

RESPONDENT'S REPLY  
TO RETURN TO MOTION TO DISMISS APPEAL

---

Charles B. Burnette, III  
Burnette & Payne, P.A.  
414 East Main Street  
Rock Hill, South Carolina 29730  
(803) 328-1800

Lucy L. McDow  
P.O. Box 767  
Rock Hill, South Carolina 29731-6767  
(803) 327-1700  
ATTORNEYS FOR THE RESPONDENT

June 15, 2016

**ORIGINAL**

The appellant, J&S Real Estate Holdings, LLC (“J&S”),<sup>1</sup> contends that its unperfected appeal should continue on equitable grounds despite this Court’s fatal lack of jurisdiction.

J&S argues first that counsel for the respondent, Sotirios Mantekas (“Mantekas”), eventually became aware of the pending appeal. That is undisputed. Through their own affirmative investigation, Mantekas’ counsel became aware more than a month after the expired deadline for service of Notice of Appeal that an appeal had, in fact, been filed. Having heard informally from J&S’s trial counsel that she believed an appeal may have been filed, Mantekas’ counsel followed up to confirm it. Even then, the confirmation provided by J&S was a belated e-mail of its Notice of Appeal, not service in the manner required by Rule 262(b), SCACR.

J&S additionally contends that the appeal should continue because Mantekas has suffered no prejudice from J&S’s oversight, in that briefing has not begun. It appears that J&S is still in the process of gathering trial transcripts. This Court’s records reflect that.

Neither of these arguments gives the Court the required basis to entertain the appeal. Rule 203(b)(1), SCACR, contains no “awareness” exception or any “no harm, no foul” exception, nor does J&S cite any precedent for implying such exceptions. The Rule is plain, straightforward, and one of those few rules that is rigorously, objectively, and easily applied. This Court’s very jurisdiction depends on compliance. Viewing compliance through the lens of equitable arguments and subjective considerations would soon see the Rule’s clarity swallowed up by the exceptions. It would require this Court’s fact-specific review of the reasons and circumstances of

---

<sup>1</sup> The return filed in response to this pending motion to dismiss refers to “appellants” in the plural and identifies both J&S and John Sherwood as appellants, but J&S is the only appellant according to the Notice of Appeal. This reply continues to refer, therefore, to J&S as the sole appellant.

every non-compliant handling of a Notice of Appeal, as well as the effect of the non-compliance on respondents.

As support for its contention that existing precedent should be relaxed, J&S urges reliance on *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013) for the principle that Rule 203 should recognize a good-faith attempt at compliance. *Limehouse*, however, deals with the means by which a state trial court resumes jurisdiction from a federal court on remand for purposes of answer deadlines. It neither has nor suggests any application to appellate court jurisdiction or to the Rules of Appellate Procedure on which this Court's jurisdiction is based.

Even if an equitable argument were to be entertained, J&S could not prevail. It proffers no explanation of its failure to comply with the service requirement of Rule 203. To compound its non-compliance, J&S, neither then nor now, has ever filed its Notice of Appeal with the Clerk of Court for the trial court, as Rule 203 further requires. This Court may take judicial notice of the Circuit Court's records to conclude that the Circuit Court remains unaware of the appeal that has now been pending for over a year.

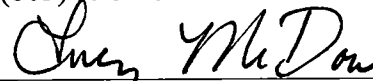
The Court has no latitude to consider J&S's arguments and no basis for accepting them even if considered. Proper and timely service of the Notice of Appeal is fatal. Even when the appellant in *Mears v. Mears* petitioned the Supreme Court to relax the predecessor to the current appellate rule, the Court refused to do so, holding that "[s]ervice of the notice of intent to appeal is a jurisdictional requirement, **and this Court has no authority to extent or expand the time in which the notice of intent to appeal must be served.**" 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); (emphasis added). The Court went on to note that even though the predecessor rule had

been replaced by the time of the decision, “timely service of the notice of intent to appeal will remain a jurisdictional requirement.” Id. This Court has continued to follow that precedent within months of this motion, citing and applying the strictness of the appellate service rules to an attempted General Sessions appeal. *State v. Devore*, 416 S.C. 115, 784 S.E.2d 690, 692 (Ct.App. 2016).

J&S did not serve the Notice of Appeal on the respondent Mantekas by any means within the required 30-day period. Equitable arguments cannot confer jurisdiction on this Court to continue the appeal.

Respectfully submitted,

Charles B. Burnette, III  
Burnette & Payne, P.A.  
414 East Main Street  
Rock Hill, South Carolina 29730  
(803) 328-1800



---

Lucy L. McDow  
P.O. Box 767  
Rock Hill, South Carolina 29731-6767  
(803) 327-1700

June 15, 2016

ATTORNEYS FOR THE RESPONDENT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Appellate Case No. 2015-001150  
Civil Case No. 2012-CP-46-00472

RECEIVED

JUN 17 2016

SC Court of Appeals

R&J Restaurants, LLC d/b/a Steve's Bar & Grille, LLC.....Plaintiff

v.

Sotirios Mantekas and Kelman, Inc.....Defendants

J&S Real Estate Holdings, LLC.....Cross-claim Plaintiff

v.

Sotirios Mantekas and Kelman, Inc.....Cross-claim Defendants

Sotirios Mantekas and Kelman, Inc.,.....Cross-claim Plaintiffs

v.

J&S Real Estate Holdings, LLC, and John Sherwood.....Cross-claim Defendants

Of whom, J&S Real Estate Holdings, LLC, as Cross-claim plaintiff, is the Appellant and Sotirios Mantekas, as Cross-claim defendant, is the Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the respondent's Reply and this proof of service on the appellant, J&S Real Estate Holdings, LLC, by mailing a copy by United States Mail, postage prepaid, on June 15, 2016, addressed to its attorney as shown on this Court's records and addressed as shown below. A copy has also been mailed at the same time and in the same manner, addressed as shown below, to attorneys D. Bradley Jordan and Geoffry Dunn:

William E. Hopkins, Jr.  
P.O. Box 1885  
Pawleys Island SC 29585

D. Bradley Jordan/Geoffry Dunn  
P.O. Box 11785  
Rock Hill SC 29731

  
\_\_\_\_\_  
Lucy L. McDow

ORIGINAL

Lucy L. McDow  
Attorney  
P.O. Box 767, 514 Oakland Avenue  
Rock Hill, SC 29731  
Telephone: (803) 327-1700; Fax: (803) 327-4200  
LucyLMcDow@mcdowlaw.com

RECEIVED

June 15, 2016

JUN 17 2016

The Honorable Jenny Abbott Kitchings, ~~Clerk~~ **SC Court of Appeals**  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

RE: R&J Restaurants v. J&S Real Estate  
Appellate Case No. 2015-001150

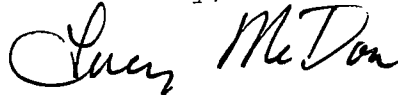
Dear Ms. Kitchings:

Enclosed for filing are:

1. The original and six copies of a reply to the appellant's return to the motion to dismiss; and
2. A proof of service.

Thank you.

Sincerely,



Lucy L. McDow

Enclosure

cc w/enc: William E. Hopkins, Jr.  
D. Bradley Jordan/Geoffry Dunn

RECEIVED

JUN 17 2016

SC Court of Appeals



The Honorable Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

