

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

U.S. Bank Trust, N.A., as Trustee for LSF10
Master Participation Trust,

PLAINTIFF,

VS.

Johnson D. Koola, First Citizens Bank and Trust
Company, Inc. f/k/a First-Citizens Bank and Trust
Company of South Carolina, and Cambridge
Lakes Condominium Homeowners Association,
Inc. f/k/a Cambridge Lakes Horizontal Property
Regime,

DEFENDANT(S).

(211106.00031CVK)

TO: Scott and Corley, P.A.
Attorneys for Plaintiff
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

William H. Sloan, Esq. (Attorney for Johnson D. Koola)
Post Office Box 85
Summerville, SC 29484

S. Nelson Weston, Jr., Esq. (Attorney for First Citizens Bank and Trust Company, Inc. s/b/m to
First-Citizens Bank and Trust Company of South Carolina)
1900 Barnwell Street
Columbia, SC 29202

Lydia P. Davidson (Attorney for Cambridge Lakes Condominium Homeowners Association Inc.)
Krawcheck & Davidson, LLC
Nine State Street
Charleston, SC 29401

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-10-06060

MASTER IN EQUITY'S ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

RECEIVED

MAY 19 2023

SC Court of Appeals

Pursuant to the said Order of Reference a hearing was held by this Court. At the hearing, evidence was presented and from the documents and records received into evidence by this Court, I find, conclude and order as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the adjudication of this matter.

2. In his memorandum opposing Plaintiff's Motion for Summary Judgment, Defendant Koola argues that he was not properly reviewed or noticed for foreclosure intervention as required by Administrative Order 2011-05-02-01. The court notes that this action was commenced in 2010, prior to the promulgation of the Administrative Order. The court further notes that Plaintiff filed a Certificate of Exemption from Administrative Order 2011-05-02-01 on January 20, 2022. The Certificate cited and included as an attachment thereto the United States Bankruptcy Court Order filed March 25, 2021 confirming "The Debtor has advised the Court that he is not eligible for Loss Mitigation/Mortgage Modification and does not intend to pursue Loss Mitigation/Mortgage Modification. Therefore, he wishes to have the LM/MM Order vacated." The Court further notes that the certification was served on Defendant Koola as noted on the certificate of service attached thereto and filed therewith, with no objection or return to the certification being filed by Defendant Koola. The Court has determined that Plaintiff has fully complied with the Administrative Order of the South Carolina Supreme Court dated May 2, 2011 (2011-05-02-01) in this matter.

3. The Lis Pendens, Summons, and Complaint (and any amendments thereto or joinders thereto) as well as service affidavits for all defendants have been filed with the Clerk of Court for this county.

4. The Defendant First Citizens filed an Answer and Crossclaim on October 1, 2010. The Defendant Koola filed an Answer and Counterclaim (incorrectly labeled as a crossclaim) on November 29, 2010, an Amended Answer and Counterclaim on March 3, 2011 and a second Amended Answer and Counterclaim on March 24, 2011. The Defendant Cambridge Lakes Condominium Homeowners Association, Inc. filed an Answer and Crossclaim on December 15, 2010.

5. According to the affidavit(s) and certifications filed herein, any Defendant who is in default has been reviewed for their eligibility under The Servicemembers' Civil Relief Act of 2003 ("SCRA") and any amendments thereto and this review does not indicate any Defendant is eligible for such protections.

6. All of the above-named Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter. In order to comply with the Lis Pendens statute (S.C. Code

Section 15-11-10, et. seq.) and case law, and to also clear or adjudicate any claims or interests in the real estate and improvements thereon, Defendant(s) named herein are also made a necessary party due to similarity in names of parties of public record, or pursuant to the laws and statutes of Descent and Distribution or other statutory or regulatory requirements.

7. Defendant Koola is the sole party who raised any issues related to Plaintiff's standing to prosecute this action and/or as to Plaintiff being the real party in interest as contemplated by Rule 17(a), SCRPC. An assignment of mortgage conveying the subject debt to U.S. Bank, N.A., as Trustee for LSF10 Master Participation Trust (hereinafter U.S. Bank) was recorded January 31, 2019 in Book 775 at Page 105 and on February 22, 2019 in Book 779 at Page 35. An Order Substituting U. S. Bank as Plaintiff in this action was filed on October 25, 2019. On March 3, 2023, Defendant Koola filed a Motion to Strike the Order Substituting Plaintiff. Defendant Koola filed a Supplemental Brief opposing Plaintiff's Motion for Summary Judgment which also discussed his motion to vacate the Order Substituting Plaintiff. In his memorandum, Defendant Koola alleged (in bold print) that U.S. Bank and its servicer Fay Servicing **"lack standing in Koola's foreclosure case as they have not established that they have claims against Koola and have a right to enforce a claim against Koola in the foreclosure case under substantive laws of South Carolina; they are not the real party in interest under South Carolina Rules of Civil Procedure."** Defendant Koola cites the lack of an endorsement on the promissory note conveying the promissory note to U.S. Bank and the assignment of mortgage allegedly being defective and invalid. A review of the previous litigation in Defendant Koola's Chapter 13 case 18-01373-jw, shows that this issue was previously adjudicated between the parties during that action. At the time the Chapter 13 case was filed, the subject Note and Mortgage were held by Ditech Financial LLC (Ditech), who filed a proof of claim on April 19, 2018. Defendant Koola filed a motion to require Ditech to produce the original Note and Mortgage on April 18, 2018, as well as an Objection to Ditech's proof of claim filed on May 7, 2018. Ditech filed an amended proof of claim on June 8, 2018 stating that the original promissory note had been lost during the extended litigation over the previous eight (8) years. A hearing was held on the matter with extensive testimony taken as to the original promissory note being in the physical possession of previous litigation counsel but lost when that firm ceased operations. The United States Bankruptcy Court issued an Order filed September 28, 2018, making a finding that Ditech was the holder of the Note and Mortgage and was the proper party authorized to enforce the debt. The order also required any subsequent holder of the debt and/or its servicer to notify the court upon any transfer or conveyance of the debt. U.S. Bank filed an amended proof of claim on November 13, 2019 as the new assignee of the mortgage and current holder of the debt. Defendant Koola filed a motion for a new trial based upon the amended proof of claim filed by U.S. Bank. By Order filed January 15, 2019, the United States Bankruptcy Court denied Defendant's

motion and made a specific finding that U.S. Bank was the owner of the Note and mortgage and the proper party to enforce the debt and expressly approved the proof of claim filed by U.S. Bank. The United States Bankruptcy Court issued an Order filed February 13, 2019, overruling a second objection to the proof of claim of U.S. Bank by Defendant. Therefore, Defendant's claim in his motion that U.S. Bank lacks standing is barred under *res judicata* and judicial estoppel. The court further notes that Defendant's motion made no mention of the extensive previous litigation and prior adjudication pertaining to this specific issue. The court finds U.S. Bank is the proper party plaintiff in this action pursuant to the previous adjudication in the United States Bankruptcy Court. Therefore, Defendant's Motion to Strike the Order Substituting Party is denied.

8. This matter came before the court for a hearing on Plaintiff's Motion for Summary Judgment. A motion for summary judgment is appropriate only when it is clear there is no genuine issue of material fact in dispute and the moving party is entitled to a judgment as a matter of law. *Shumpert v. Time Insurance Co.*, 328 S.C. 574, 493 S.E.2d 111 (Ct. App. 1997). In ruling on a motion for summary judgment, the trial court must view the evidence and all inferences which can be reasonably drawn therefrom in the light most favorable to the non-moving party. *Id.* Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Once the moving party meets its initial burden, the non-moving party may not rest on mere allegations or denials in the pleadings; rather the non-moving party must come forward with specific facts showing there is a genuine issue for trial. *Boone v. Sunbelt Newspapers, Inc.* 347 S.C. 571, 556 S.E. 2d 732 (Ct. App. 2001)

9. This court has taken judicial notice of the issues previously adjudicated in this action and prior related actions. Defendant Koola filed a Chapter 7 Petition with the United States Bankruptcy Court March 20, 2009, as Case #09-02104-dd. Pursuant to Item 21 of Schedule B of the Chapter 7 Petition, Defendant Koola was required to declare any "contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims" as assets of the estate. Defendant Koola made a sworn statement under penalty of perjury that he had no such claims to declare as assets. The United States Bankruptcy Court granted Defendant Koola an Order of Discharge on July 13, 2009.

10. Defendant Koola subsequently fell into arrears on the subject mortgage loan and this foreclosure action was commenced. Defendant Koola filed second Amended Answer with Counterclaims on March 24, 2011. This court granted Plaintiff's Motion for Summary Judgment as to the Defendant's counterclaims by Order filed April 25, 2014. Defendant Koola filed a Motion to Reconsider the dismissal of his counterclaims, which was denied by Order filed April 29, 2014. The Defendant Koola again filed a Motion to Reconsider the dismissal of his counterclaims, which was again denied by Order filed May 9,

2014. Defendant filed an appeal of the Order Denying his Motion for Reconsideration on June 9, 2014, and Defendant filed a second appeal on June 16, 2014. The Order Denying Defendant Koola's Motion for Reconsideration was affirmed and his appeal was denied by Order filed February 17, 2016. The Remittitur for the failed appeal was filed March 12, 2018.

11. Shortly after the Remittitur for the failed appeal was filed, Defendant Koola filed a Chapter 13 Bankruptcy Petition on March 20, 2018 as Case No. 18-01372-jw. Pursuant to Item 34 Schedule B of the Chapter 13 Petition, Defendant Koola was required to declare any "contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims" as assets of the estate. Defendant Koola again made a sworn statement under penalty of perjury that he had no such claims to declare as assets. The Note and mortgage were held by Ditech Financial LLC f/k/a Green Tree Servicing LLC at the time of the 1st Chapter 13 Bankruptcy, with Ditech filing a proof of claim on April 19, 2018. Due to the original promissory note being lost, Ditech filed an amended proof of claim on June 8, 2018. Defendant Koola filed a Motion Requiring Ditech to show proof of Note and Mortgage on April 18, 2018 and an Objection to the proof of claim on May 7, 2018. After extensive litigation, the United States Bankruptcy Court issued a detailed Order filed September 28, 2018, finding that Ditech had standing to file the proof of claim and denying the Debtor's objection to the creditor's claim. The Order also specifically approved the amount of the claim. Due to the account being transferred and assigned to U.S. Bank during the pendency of the bankruptcy, U.S. Bank filed a proof of claim on November 13, 2018. The Defendant Koola moved for a new trial, which was denied by Order filed January 15, 2019. It should further be noted that the Order made a specific finding that U.S. Bank was the proper party to proceed with the proof of claim. Defendant Koola made a repetitive 2nd Objection to the claim, which was denied by Order filed February 13, 2019. Due to the Defendant Koola's failure to propose a feasible Chapter 13 plan, his bankruptcy petition was dismissed by Order filed February 13, 2019. Defendant Koola filed an appeal of the Order Dismissing his Chapter 13 Bankruptcy case with the United States District Court as Case No. 2:19:cv-00429-RMG, which was denied by Order December 26, 2019. As shown on the Chapter 13 Trustee's Statement of Disbursements, no payments were made on the mortgage account through the Chapter 13 Trustee during the 1st Chapter 13 Bankruptcy case.

12. Upon the dismissal of Defendant Koola's 1st Chapter 13 case, the foreclosure action was scheduled for hearing on September 19, 2019. The day prior to the scheduled foreclosure hearing, Defendant Koola filed a Notice of Removal of the foreclosure action to Federal Court on September 9, 2019, as Case No. 2:19-CV-2530-RMG. The United States District Court determined there was a lack of subject matter jurisdiction for the removal and the case was remanded back to state court by Order filed April 2, 2020.

13. Defendant Koola filed a 2nd Chapter 13 Case on March 19, 2021 as Case No. 21-00564-jw. Defendant Koola continued to argue that the creditor's claim of U.S. Bank was invalid despite that specific issue having been extensively litigated with finality in the prior bankruptcy case. The 2nd Chapter 13 Bankruptcy case was dismissed by Order filed August 17, 2021. In the order, the court noted that the debtor was continuing to reargue the identical issues that had been previously decided (**"As stated in its Order Denying Confirmation entered June 8, 2021, this Court found that the doctrine of *res judicata* bars Debtor from challenging the Creditor's standing to assert its rights in the Mortgage and asserting its claim in this case."**) (emphasis added). The Court sanctioned the Debtor by making a specific finding that he "is barred from relitigating this issue" as well as banning him from any further bankruptcy filings for a period of three (3) years. As shown on the Chapter 13 Trustee's Statement of Disbursements, no payments were made on the mortgage account through the Chapter 13 Trustee during the 2nd Chapter 13 Bankruptcy case.

14. The court finds that Defendant Koola is barred under the doctrines of *res judicata* and judicial estoppel from claiming the defenses and/or counterclaims he is now attempting to raise in the opposing Plaintiff's Motion for Summary Judgment as to foreclosure. "When claims arising out of a particular transaction or occurrence are adjudicated, *res judicata* bars the parties to that suit from bringing subsequent actions on either adjudicated issues or any issues that might have been raised in the first suit.", *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992) ("To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit."; *id.* The issues of the real party in interest and standing to collect on the debt were previously adjudicated between the same parties on the same issue in the Defendant's prior Chapter 13 case. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation", *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). "The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. Judicial estoppel generally applies only to inconsistent statements of fact". See *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 748 S.E.2d 781, 788 (2013) ("For the doctrine of judicial estoppel to apply, . . . two inconsistent positions [must be] taken by the same party [and] . . . the inconsistency must be part of an intentional effort to mislead the court . . ."). ("When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him".) See *Hayne*. Defendant Koola's Chapter 7 & Chapter 13 Bankruptcy Petitions included sworn statements by him that he had no defenses, counterclaims and/or rights to setoff to declare as assets. Furthermore, the United States Bankruptcy Court granted Defendant Koola an Order

of Discharge on July 13, 2009, based upon the sworn statements in his Chapter 7 Petition. The court finds that there is a clear inconsistency between Defendant Koola's sworn statements in his prior bankruptcy actions and his allegations in the current action, and his allegations in opposing Plaintiff's motion for summary judgment are therefore barred under both *res judicata* and judicial estoppel.

15. In his memorandum opposing Plaintiff's Motion for Summary Judgment, Defendant Koola further argues that the account was not properly accelerated with a breach letter prior to the current litigation as required by the Note and Mortgage. The court has also taken judicial notice of the Order filed January 30, 2019, denying confirmation of the Defendant's Chapter 13 case, 18-01373-jw. The Order also discusses the unsuccessful argument by the Defendant Koola that the mortgage debt was invalid under the Statute of Limitations due to the account **being previously accelerated in 2009** (emphasis added). Defendant Koola is barred under the doctrine of judicial estoppel from arguing the debt was accelerated in 2009 in his bankruptcy action yet alleging the account was not properly accelerated in the current action. The court further notes that Plaintiff's counsel produced a breach letter dated November 18, 2009 at the hearing, which was received into evidence.

16. The court further notes that the arrearage on the subject mortgage account is not in dispute. The proof of claims for the subject mortgage debt, containing a detailed itemization of the arrearage, was expressly approved by the United States Bankruptcy Court in the Chapter 13 Case 18-01373-jw by Order filed September 28, 2018 and Order filed January 15, 2019, with the September 28, 2019 Order making an express finding that the Defendant is in arrears since November 2009. The proof of claim approved by the United States Bankruptcy Court has consistently shown the debt as being due for November 1, 2009, with a principal balance of \$112,390.48 with interest accruing at 5.75%. Additionally, the Statement of Trustee's Disbursements shows no payments made to the Chapter 13 Trustee on the mortgage arrearage during the bankruptcy cases.

17. The court finds that Plaintiff has met the requisite burden of proof and there is no genuine issue of material fact in dispute. The previous litigation between the parties has been prolonged, extensive and has fully adjudicated all of the issues in this matter.

18. Defendant's counsel moved to be relieved as counsel at the conclusion of the hearing on Plaintiff's motion for summary judgment as his representation was restricted to solely arguing on Defendant Koola's behalf in opposition to the motion. The motion was granted and attorney William Sloan is hereby relieved as counsel for Defendant Koola effective upon the filing of this order.

19. For value received, Johnson D. Koola made, executed and delivered a Note dated February 20, 2004, promising thereby to pay to the order of Countrywide Home Loans, Inc. the sum of \$136,192.00 with interest at the rate of 5.75% per annum. Other terms and conditions are stated in the Note, which is of

record herein.

20. To better secure the payment of the Note described above, the said Johnson D. Koola, made, executed and delivered to Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for Countrywide Home Loans, Inc. a Mortgage in writing, dated February 20, 2004, covering real property in Charleston County, which is the same as that described in the Complaint or Amended Complaint. The Mortgage was filed on February 24, 2004, and is of record in the Office of the Clerk of Court/Register of Deeds for Charleston County in Book B485, at Page 011. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s).

21. Thereafter, said Mortgage was assigned to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP by assignment instrument dated August 17, 2010 and recorded September 9, 2010 in Book 0143 at Page 770; thereafter, assigned to Green Tree Servicing LLC by assignment instrument dated May 16, 2013 and recorded May 28, 2013 in Book 0333 at Page 773. Thereafter, by virtue of a corporate merger, Green Tree Servicing LLC merged with Ditech Financial LLC with Ditech Financial LLC being the surviving entity; thereafter, assigned to Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for Countrywide Home Loans, Inc. by assignment instrument dated December 11, 2018 and recorded February 22, 2019 in Book 00779 at Page 032 (invalid); thereafter, assigned to Green Tree Servicing LLC by assignment instrument dated June 4, 2013 and recorded June 17, 2013 in Book 0338 at Page 879 (invalid). Thereafter, by virtue of a corporate merger, Green Tree Servicing LLC merged with Ditech Financial LLC with Ditech Financial LLC being the surviving entity; thereafter, assigned to U.S. Bank Trust, N.A., as trustee for LSF10 Master Participation Trust by assignment instrument dated January 16, 2019 and recorded January 31, 2019 in Book 0775 at Page 105 (corrective).

22. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. seq.) Counsel for Plaintiff has accomplished a Report on Title whereby Counsel for Plaintiff has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Court further finds that this Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts and the amount is found to be reasonable.

23. This Court therefore finds that this Mortgage constitutes a first lien on the mortgaged premises.

24. The Court finds that Plaintiff and its counsel have fully complied with all of their obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices, where applicable (e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter, if or where applicable); the review of this Mortgage loan for compliance with the Home Affordability

Modification Program (HMP), if applicable; and moreover the Court further finds said full compliance by Plaintiff and its counsel additionally includes all their statutory, common law and regulatory duties and obligations under the laws and rules of the Dodd-Frank Act, the Federal Trade Commission, and the Consumer Financial Protection Bureau. Moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to the servicing of any applicable banking or consumer laws by Plaintiff and/or its counsel.

25. According to the records of Plaintiff and its counsel, neither Plaintiff nor its counsel is aware of any party to this action currently being on active duty or recently discharged. The Notice of Hearing issued by Counsel for Plaintiff specifically requests any defendant eligible under the SCRA contact Plaintiff's counsel. The Court finds that Counsel for the Plaintiff shall be entitled to recover its charges from the Plaintiff for this Certification/Report to the Court as part of its professional duties in prosecuting this action.

26. According to the records of Plaintiff and its counsel, neither Plaintiff nor its counsel is aware of any party to this action currently being under the protection of the United States Bankruptcy Court. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure. The Court finds that Counsel for Plaintiff shall be entitled to recover its charges from Plaintiff for this Certification/Report to the Court as part of its professional duties in prosecuting this action and the Court finds such charges to be reasonable.

27. Payment due on the Note has not been made as provided for in the Note and Plaintiff has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

28. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that a reasonable attorney's fee in this matter would be \$12,120.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Taylor v. Medenica*,

331 S.C. 575, 503 S.E.2d 458 (1998); *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989), *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). Pursuant to the language in the Note and Mortgage, this Court has specifically reviewed and satisfied itself with all six (6) factors, as well as the disclosed client billing by Plaintiff's counsel considered in awarding reasonable attorneys' fees and costs/expenses/charges in this matter as set forth herein in this paragraph as well as Paragraph 30. The court further notes the extensive and protracted litigation over various courts and the need for current counsel to review and familiarize himself with that previous litigation. As itemized below, I find all of the itemized fees and costs/expenses/charges to be reasonable. As itemized below, I find all of the itemized fees and costs/expenses/charges to be reasonable.

29. Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

30. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a) Principal due	\$112,390.48
(b) Interest Due from 11/01/2009 to 03/22/2023	\$87,110.18
(c) Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$6,703.50
(d) Previous Litigation/Bankruptcy Fees & Costs	\$12,355.75
(e) Property Inspections	\$724.00
(f) Attorney's Costs	\$610.77
(g) Paid Attorney's Fees	\$6,775.00
(h) Unpaid Attorney's Fees	\$5,345.00
TOTAL DEBT secured by Note and Mortgage including interest to date shown	\$232,014.68

Interest shall continue to accrue on the unpaid principal balance shown in (a) above, at the rate of 5.750%

from the date of hearing until entry of judgment, and such interest shall be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein. Interest after the date of entry of judgment at the rate of 5.750% per annum (pursuant to the terms of the Note and Mortgage) shall accrue on the judgment debt and shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date of compliance with the terms of judicial sale. (Items (c) through (g) are subject to supplemental revision by Plaintiff's counsel and/or modification by the Court, with such items including but not limited to post-judgment escrow and corporate advances, and costs related to the publication and sale of the subject property.)

31. Based upon a search of the public records of the aforesaid county pursuant to the South Carolina Lis Pendens statute, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

32. Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

33. The Defendants below-named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, including but not limited to the subordinate lien or junior interests specifically described below, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant(s) is/are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

- a. The Defendant, First Citizens Bank and Trust Company, Inc. f/k/a First-Citizens Bank and Trust Company of South Carolina, by virtue of that certain mortgage from Johnson D. Koola to First Citizens Bank and Trust Company, Inc. f/k/a First-Citizens Bank and Trust Company of South Carolina, dated February 23, 2005, in the original amount of \$42,000.00, and recorded on March 17, 2005, in the Office of the Charleston Clerk of Court/Register of Deeds in Book J529, at Page 512.
- b. The Defendant, Cambridge Lakes Condominium Homeowners Association, Inc. f/k/a Cambridge Lakes Horizontal Property Regime, by virtue of any lien or enforceable assessments against the subject property and the following:
 - i. A Lien against Johnson D. Koola in the original amount of \$1,963.52, dated May 24, 2010, and recorded on May 25, 2010, in the Office of the Charleston Clerk of

Court/Register of Deeds, in Book 0124 at Page 400.

34. None of the named Defendant(s) has/have established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons and/or entities who may be or may have been entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed of any rights, titles, or interests.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. After review of the pleadings of the parties, the Plaintiff's motion for summary judgment and attached exhibits, the case history of the Defendant's previous Bankruptcy, State court appeal and Federal Court appeal cases, and the argument presented at hearing, I find that the Plaintiff has met its burden of establishing its right to foreclose upon the subject property. Further, I find that it submitted credible evidence as to the amount of the total debt owed on the property as of the date of its affidavit. Additionally, Defendant is bound by the prior adjudications in his related previous bankruptcy cases and is barred from making arguments contrary to those prior adjudications under *res judicata* and judicial estoppel. The court finds there is no genuine issue of material fact in dispute and Plaintiff is entitled to an order granting summary judgment as to foreclosure.

3. With the production of the Note, Mortgage, applicable Assignment(s), and Affidavit of Indebtedness and Affidavit of Attorney's fees Plaintiff has provided ample evidence that it is entitled to foreclosure in this matter and has properly established its damages due to the Defendant's breach of the terms and conditions of the Note and Mortgage. Furthermore, no Defendant has provided any evidence of any specific facts which would tend to show there is a genuine issue of material fact for trial. Therefore, Plaintiff's Motion for Summary Judgment should be granted and Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

4. All of the named Defendant(s) has/have not established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons who may be entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed. In order to comply with the Lis Pendens statute (S.C. Code Section 15-11-10, et. seq.) and case

law, and to also clear or adjudicate any claims or interests in the real estate and improvements thereon, Defendant(s) named herein are also made a necessary party due to similarity in names of parties of public record, or pursuant to the laws and statutes of Descent and Distribution or other statutory or regulatory requirements.

Now, on motion or notice of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. Plaintiff's Motion for Summary Judgment is granted.

3. The motion to be relieved as counsel is hereby granted and William Sloan is hereby relieved as attorney for Defendant Koola effective upon the filing of this order.

4. That there is due to Plaintiff on the obligation and mortgage as set forth in the Complaint or Amended Complaint the sum of \$233,469.68, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph 30 hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff (may be supplemented as permitted by the Court) and shall bear interest hereafter at the rate of 5.750 percent per annum.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint or Amended Complaint, as hereinafter set forth, be sold by this Court at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this Court, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

(a) **CERTIFIED FUNDS:** The Master in Equity will require a deposit of 5% on the amount of the bid (in certified funds or equivalent, said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 30 days same to be forfeited and applied to the costs and Plaintiff's debt.

(b) The sale shall be subject to taxes and assessments, existing easements and restrictions of record and prior liens of record.

(c) This Mortgage constitutes a first lien covering the real estate and improvements

therein described.

(d) Purchaser to pay for deed stamps/transfer taxes and costs of recording the satisfaction of mortgage by foreclosure and the deed, with Plaintiff to pay the Statutory allowed fee to the preparer of said deed (be it this Court or Counsel for Plaintiff).

7. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Court only the amount of the outstanding costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

8. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

9. This Court will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court, provided notice of the new sales date is duly advertised as required by law. This Court will execute to the purchaser, or purchasers, a deed to the premises sold. Plaintiff, or any other party to this action may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 30 days after the date of sale, then this Court may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event Plaintiff is the successful bidder, at its option, or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. All bidders are hereby and herein noticed that in the event the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations of any kind as to the subject property, including but not limited to its title or habitability on behalf of the third party bidder or any subsequent purchasers.

10. That, in addition to all notices to the property owner(s) which are required by the South Carolina Rules of Civil Procedure or other law, in a case involving property owner's SCRCF Rule 55 default, or in any other case or circumstance where property owner(s) would not ordinarily receive a copy of the Order of Foreclosure and/or the Notice of Sale, the party seeking foreclosure (Foreclosing Party) shall, within five (5) days of the execution of this Order cause this Order and the Notice of Sale (if available) to be served by US Mail upon said property owner(s). A Certificate of Service, pursuant to Rule 5, SCRCF, shall be with the Clerk of Court expeditiously. In cases where the Notice of Sale is executed later in time than the Order, service shall be accomplished separately, and shall be sent no later than five (5) days from receipt by the Foreclosing Party.

11. The sale will not be held unless either Plaintiff's attorney or Plaintiff's bidding agent is

present at the sale and either Plaintiff's attorney or Plaintiff's bidding agent enters the authorized bid of Plaintiff for this individually captioned matter. In the alternative, Plaintiff's counsel, if permitted by the Court, may advise this Court directly of its authorized bidding instructions. In the event a sale is inadvertently held without Plaintiff's Counsel or Counsel's bidding agent entering the authorized bid of Plaintiff for this specifically captioned matter, the sale shall be null and void and the property shall be re-advertised for sale on the next available sale date.

12. In the event of a third party bidder wherein the successful third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to this Court by close of bidding on the day of the sale, this Court will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That this Court shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem or SCRA Attorney Fee or fees of any attorneys appointed by motion of Plaintiff's Counsel and under Order of the Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71, South Carolina Rules of Civil Procedure;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED, that if the successful bidder is other than the person(s) or entity in possession herein, the Sheriff of this County is ordered and directed to evict and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

15. And it is further ORDERED, ADJUDGED AND DECREED that none of the named Defendant(s) has/have established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons and/or entities who may be or may have been entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever

foreclosed of any rights, titles, or interests.

16. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the applicable recorder of deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

17. This Court will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may affect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

18. Upon issuance of this Court's Report on Sale and Disbursements, the Clerk of Court/Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from Johnson D. Koola to Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for Countrywide Home Loans, Inc., dated February 20, 2004, covering real property in Charleston County, filed on February 24, 2004, and is of record in the Office of the Clerk of Court/Register of Deeds for Charleston County in B485, at Page 011.

19. This sale is specifically subject to all title matters of record, including but not limited to any other senior lien or encumbrance, and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, Plaintiff or its Counsel.

20. The following is a description of the premises herein ordered to be sold:

All that certain condominium unit known and designated as Unit 208, Building E, Cambridge Lake Horizontal Property Regime, a Horizontal Property Regime established pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq., 1976, South Carolina Code of Laws, as amended, and submitted by Master Deed dated February 24, 2003 and recorded in the Office of the RMC for Charleston County, South Carolina in Book T-437 at Page 047. Said Dwelling unit conveyed hereby being shown as Exhibit "F" attached to the Master Deed.

Conveyed together with: (1) An undivided percentage in the common elements, restricted common areas, and facilities of the property described in said Master Deed ("Common Elements") attributable to the said unit; (2) An easement for the continuance of all encroachments by the Dwelling Unit on any adjoining unit or common elements existing as a result of construction of the Condominium Unit(s) or which may come into existence hereafter as a result of settling or shifting of the dwelling unit(s) or of the other condominium unit(s), after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain percentages, or by reason of alteration or repair to the common elements made by or with the owners of the Board of Administration; (3) An easement in common with the owners of other condominium units to use any pipes, wires, ducts, flues, cables, conduits, public utility lines and other common elements located in any other rights and easements in common with the other condominium unit owners, all as described in the Master Deed, Bylaws and any and all Amendments thereto as recorded in the

Office of the RMC for Charleston County, South Carolina.

Subject to any and all Restrictions, Covenants, Conditions, easements, Rights of Way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina, including, but not limited to those contained in said Master Deed and/or Bylaws, and any and all Amendments thereto.

Being a portion of the same property as conveyed to Cambridge Two, LLC by deed of Cambridge Lakes, L.P., A SC Limited Partnership, dated April 2, 2003 and duly recorded in the Office of the RMC for Charleston County, South Carolina, in Book Z-442 at Page 141. This being the same property conveyed to Johnson D. Koola by virtue of a Deed from Cambridge Two, LLC, a SC Limited Liability Company, dated February 20, 2004 and recorded February 24, 2004, in Book Y484 at Page 813, in the ROD Office for Charleston County, South Carolina.

TMS No. 5591400159

Property address: 1587 Cambridge Lakes Drive
Mount Pleasant, SC 29464

21. IT IS FURTHER ORDERED that if Plaintiff or Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

22. IT IS FURTHER ORDERED that U.S. Bank is the proper party plaintiff in this action pursuant to the previous adjudication in the United States Bankruptcy Court and has standing to prosecute this action.

23. All of the named Defendant(s) has/have not established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons who may be entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed.

24. Attorney William Sloan is hereby relieved as counsel for Defendant Koola effective upon the filing of this order.

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
_____, 2023



Charleston Common Pleas

Case Caption: Bac Home Loans Servicing Lp Etc , plaintiff, et al VS Johnson D
Koola , defendant, et al
Case Number: 2010CP1006060
Type: Master/Order/Foreclosure & Sale and Form 4

So Ordered

s/Mikell R. Scarborough 3062