

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

RECEIVED

Court of Common Pleas

Honorable Mikell R. Scarborough
Master in Equity for Charleston County

SEP 18 2023

SC Court of Appeals

Case No. 2010-CP-10-6060

Appellate Case No. 2023-000819

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

v.

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, Defendants,

Of whom Johnson D. Koola is the appellant.

MOTION TO GRANT HOMESTEAD EXEMPTION

Johnson D. Koola, pro se
1587 Cambridge Lakes Dr
Mt Pleasant, SC 29464
(843) 849-9241
Appellant, *pro se*

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STATEMENT AND FACTS OF THE CASE

On April 24, 2023, appellant Johnson D. Koola ('appellant' or 'Koola') filed Motion to Grant Homestead Exemption in the Court of Master in Equity in Charleston County as provided in S.C. Code Ann. § 15-41-30. (R. pp. 12-13). On April 27, 2023, respondent/plaintiff U.S. Bank Trust as Trustee for LSF10 Master Participation Trust ('U.S. Bank Trust') filed Return to the Motion for Homestead Exemption stating, (i) "Homestead and other exemptions as set forth in § 15-41-30(a)(1) only apply to execution of nonconsensual judgment liens as provided in Chapter 35, Chapter 39 and Chapter 41 of Title 15 of the South Carolina Code of Laws;" and (ii) "[T]he Homestead Exemption is not applicable to foreclosure of a mortgage lien, the mortgage expressly waives all rights to any homestead exemption in paragraph 24 of the Mortgage." (R. p. 14, lines 28-29). On May 25, 2023, Koola filed response to U.S. Bank Trust's Return stating that South Carolina Constitution, S.C. Const. art. III § 28 and S.C. Code Ann. § 15-41-30 do not bar claiming Homestead Exemption in real property, which is secured by promissory notes from sale under any final process issued by a Court. (R. pp. 16-18). On May 30, 2023, the Master in Equity filed a Form 4 Order, stating, "Upon consideration, the Court DENIES the Motion to Grant Homestead Exemption as inapplicable in this mortgage foreclosure case and adopts the Plaintiff's return to the Motion as its basis, which includes waiver of the exemption in the mortgage." (R. p. 20). On June 9, 2023, Koola filed Motion for Reconsideration of the Denial of Homestead Exemption citing S.C. Const. art. III § 28 and S.C. Code Ann. § 15-41-30 and multiple case laws. (R. pp. 21-23). On August 24, the Master in Equity filed a Form 4 Order stating, "Upon consideration, the Court respectfully DENIES Defendant Koola's Motion for Reconsideration of the Denial of the homestead Exemption, filed June 9, 2023. (R. p. 24).

ARGUMENT I

SOUTH CAROLINA CONSTITUTION AND SOUTH CAROLINA LAW DO NOT BAR CLAIMING HOMESTEAD EXEMPTION IN REAL PROPERTY WHICH IS SECURED BY PROMISSORY NOTES FROM SALE UNDER ANY FINAL PROCESS ISSUED BY A COURT.

On April 24, 2023, Koola filed Motion to Grant Homestead Exemption in the Court of Master in Equity in Charleston County as provided in S.C. Code Ann. § 15-41-30. (R. 12-13). On April 27, 2023, U.S. Bank Trust filed Return to Koola's Motion for Homestead Exemption stating, "Homestead and other exemptions as set forth in § 15-41-30(a)(1) only apply to execution of nonconsensual judgment liens as provided in Chapter 35, Chapter 39 and Chapter 41 of Title 15 of the South Carolina Code of Laws." (R. p. 14, lines. 27-28).

In *Scholtec v. Estate of Reeves*, 327 S.C. 551, 553-54, 490 S.E.2d 603, 604 (S.C. Ct.App. 1997), the Court of Appeals stated:

"Homestead rights do not exist under the common law, but are a unique American Institution, having their origins in the greatest debtor revolution of the era of "Jackson democracy."..The homestead interest depends entirely upon constitutional and statutory provisions...The South Carolina Constitution's homestead provision provides that the "General Assembly shall enact such laws as will exempt real and personal property of a debtor." S.C. Const. art. III § 28. The legislature carried out this constitutional mandate under the "Homestead and Other Exemptions" statute, S.C. Code Ann. §§ 15-41-10 to -35 (1976 & Supp. 1966)...." (Internal citations omitted).

S.C. Code Ann. § 15-41-30 have provided in pertinent parts:

(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1) (a) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence...except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars.

(b) In addition to the aggregate interest as provided in subsection (A)(1)(a), a surviving spouse may also exempt the aggregate interest to which the surviving spouse succeeded by inheritance, testamentary transfer, or nonprobate transfer on the death of the decedent

spouse, not to exceed fifty thousand dollars. For purposes of this subsection, a surviving spouse means a spouse married to the decedent at the time of death, who is entitled to the homestead property tax exemption as provided in Section 12-37-250, who has not remarried, and who is living in the residence or cooperative that is used as a residence.

In *Carolina Production Credit Assn. v. Rogers*, 282 S.C. 184, 188; 318 S.E.2d 357, 359 (S.C. 1984), the respondent, Carolina Production Credit Association, filed suit against the appellant, the wife of the deceased mortgagor, *to collect the unpaid balance of a series of promissory notes payable to respondent*. The trial court granted homestead exemption in real property, which was secured by promissory notes, to appellant under S.C. Code Ann. § 15-41-30(a)(1)(b). The respondent claimed that the trial court erred in finding the appellant was entitled to a homestead exemption in real property pledged as collateral to secure the promissory notes in question. On Appeal, however, the Supreme Court of South Carolina reversed the trial court granting Homestead Exemption to the wife of the testator stating, “While Mrs. Shelly [the appellant] was within the class of dependants entitled to the homestead exemption at the time of Rogers’ death, we hold her remarriage prior to the commencement of this foreclosure action removed from this class, and the trial court properly denied her homestead claim.” If she had not remarried, she would have been qualified under South Carolina law to claim Homestead exemption. *Carolina Production Credit Assn. v. Rogers* stands for the proposition that South Carolina Constitution, S.C. Const. art. III § 28 and South Carolina Homestead Exemption law do not bar claiming Homestead Exemption in real property, which is secured by promissory notes. The conclusion of law in *Carolina Production Credit Assn. v. Rogers* clearly refutes U.S. Bank Trust’s assertion that Homestead exemption as set forth in S.C. Code Ann. § 15-41-30(a)(1) only apply to execution of nonconsensual judgment liens.

In *Carolina Production Credit Assn. V. Rogers*, 282 S.C. 188; 318 S.E.2d at 359 the Supreme Court of South Carolina has cited two earlier case laws where the Courts have granted

Homestead Exemption to the dependants of the debtor: "...Upon the death of 'a head of a family,' who owes debts, and to whom no homestead has been assigned in his or her lifetime, the right to interpose the claim of homestead exemption...against the debts of...[the] deceased...is transferred...to the widow or children or both." *Dorn v. Stidham*, 139 S.C. 66, 83, 137 S.E. 331, 337 (1927); *In re: Snoddy's Estate*, 201 S.C. 14; 21 S.E. 2d 198 (1942)."

In *McMasters v. Charpia*, 2020 S.C. App. Unpub. LEXIS 369, 2020 WL 6194025, the Court of Appeals has determined that Charpia was entitled to a homestead exemption in the property under S.C. Code Ann. § 15-41-30(a)(1).

In *Scht v. Angus Invs.*, 2020 S.C. C.P. LEXIS 3699, *5 (Court of Common Pleas of South Carolina, Greenville County, 2020), a foreclosure case originated from Greenville County, S.C., the Court ordered that "Respondent Melehes, as the single member owner and residing in the real property, is entitled to assert the Homestead Exemption as set forth in S.C. Code § 15-41-30(a)(1)...."

In summary, the Supreme Court of South Carolina and the South Carolina Court of Appeals have upheld the South Carolina Constitution, S.C. Const. art. III § 28 and the South Carolina law, S.C. Code Ann. § 15-41-30 that the debtor is entitled to claim Homestead Exemption in real property, which is the principal residence of the debtor, and which is secured by promissory notes from sale under any final process issued by a court.

ARGUMENT II

U.S. BANK TRUST'S CLAIM THAT THE MORTGAGE EXPRESSLY WAIVES ALL RIGHTS TO ANY HOMESTEAD EXEMPTION IN PARAGRAPH 24 OF THE MORTGAGE IS UNCONSTITUTIONAL.

In the "Plaintiff's Return to Motion for Homestead Exemption," U.S. Bank Trust claimed, "Although the Homestead Exemption is not applicable to foreclosure of a mortgage

lien, the mortgage expressly waives all rights to any homestead exemption in paragraph 24 of the Mortgage,” and “Additionally, Defendant expressly waived any right to a homestead exemption in the Mortgage.” (R. p. 14, lines 28-29; p. 15, line 15).

First, Koola argues before this Court that any provision in the Mortgage is unenforceable if it contradicts with South Carolina Constitution and South Carolina statutory law. S.C. Const. art. III § 28 has provided, “General Assembly shall enact such laws as will exempt real and personal property of a debtor.” S.C. Code Ann. § 15-41-30 have provided in pertinent parts:

(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1) (a) The debtor’s aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence...except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars.

The Supreme Court of South Carolina has repeatedly held, “The homestead interest depends entirely upon constitutional and statutory provisions.” *Dorn v. Stidham*, 139 S.C. 66, 76; 137 S.E. 331, 334-35 (S.C. 1927); *Scholtec v. Estate of Reeves*, 327 S.C. at 554; 490 S.E.2d at 604; *Holden v. Cribb*, 349 S.C. 132, 141; 561 S.E. 2d 634, 639 (S.C. 2002). The provision in the Mortgage under reference is unconstitutional if it denies Homestead Exemption as provided by S.C. Const. art. III § 28 and South Carolina law S.C. Code Ann. § 15-41-30. What S.C. Const. art. III § 28 and S.C. Code Ann. § 15-41-30 have granted to Koola shall not be denied by a provision in the Mortgage.

Paragraph 24 of the Mortgage executed between Koola and the lender has provided: “**Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.” S.C. Const. art. III § 28 and S.C. Code Ann. § 15-41-30 have no provision disallowing or waving Homestead Exemption. The key words are to the extent

allowed by Applicable Law. S.C. Const. art. III § 28 and S.C. Code Ann. § 15-41-30 have provided in pertinent parts:

(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1) (a) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence...except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars.

South Carolina law S.C. Code Ann. § 15-41-30 disallows only that those claims to Homestead Exemptions, which are outside of the limits provided in the law. Under the law, the debtor is allowed to claim Homestead Exemption to the *extent* or *limit* of \$50,000, which is adjusted for inflation biannually. Only claims to the Homestead Exemption above the limit of \$50,000, which is adjusted biannually, for single individual are waived in the Mortgage.

In summary, any argument that the mortgage expressly waives all rights to any homestead exemption in paragraph 24 of the Mortgage is unconstitutional and should be denied by this Court.

ARGUMENT III

THE MASTER IN EQUITY ERRED IN DENYING KOOLA'S MOTION TO GRANT HOMESTEAD EXEMPTION BASED ON PLAINTIFF'S RETURN TO MOTION FOR HOMESTEAD EXEMPTION RATHER THAN THE MANDATES OF SOUTH CAROLINA CONSTITUTION AND SOUTH CAROLINA LAW.

In the May 30, 2023 Form 4 Order, the Master in Equity ruled, "Upon consideration, the Court DENIES the Motion to grant Homestead Exemption as inapplicable in this mortgage foreclosure case and *adopts the Plaintiff's return to the Motion as its basis*, which includes waiver of the exemption in the mortgage." (Emphasis by italics added). (R. p. 20) The Court did not state that it denied the Motion to Grant Homestead Exemption based on any applicable law

and case laws. All the laws and case laws cited in this Motion had been presented to the Court in various Motions filed by Koola in the Master in Equity's Court. The Master in Equity did not review any of these Authorities. The Plaintiffs Return to Defendant's Motion to Grant Homestead Exemption does not constitute South Carolina law. The Master in Equity erred in denying Koola's Motion for Homestead Exemption based on Plaintiff's Return.

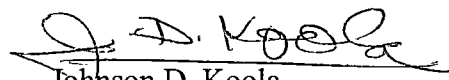
Upon Review, this Court should reverse the Master in Equity's May 30, 2023 and August 24, 2023 Orders because the Master in Equity's Order denying the Motion to Grant Homestead Exemption is not based on S.C. Const. art. III § 28 and South Carolina law, S.C. Code Ann. § 15-41-30.

CONCLUSION

For the reasons stated, this Court should reverse the Order of the Master in Equity and grant Homestead Exemption.

Respectfully submitted,

September 15, 2023
Mt Pleasant, South Carolina


Johnson D. Koola
1587 Cambridge Lakes Dr
Mt Pleasant, South Carolina 29464
(843) 981-6226
Appellant, *pro se*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff

v.

Johnson D. Koola, First Citizens Bank
and Trust Company, Inc. fka First-Citizens
Bank and Trust Company of South Carolina
And Cambridge Lakes Condominium
Homeowner's Association, Inc. fka
Cambridge Lakes Horizontal Property
Regime,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-6060

MOTION TO GRANT
HOMESTEAD EXEMPTION

FILED
2023 APR 24 AM 10:49
JULIE J. AMBROSIANO
CLERK OF COURT
JP

On April 13, 2023, the Master in Equity filed "Master in Equity's Order Granting Plaintiff's Motion for Summary Judgment and Order and Judgment of Foreclosure and Sale."

Defendant Johnson D. Koola ("Koola") files "Motion to Grant Homestead Exemption" after Motion Hearing as provided in S.C. Code Ann. § 15-41-30(A)(1), "Property exempted from attachment, levy, and sale," which has provided in pertinent parts:

The following real property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding: The debtor's aggregate interest not to exceed fifty thousand dollars in value in real property that the debtor uses as a residence except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars.

The law has provided further: Beginning on July 1, 2008, and each even-numbered year thereafter, each dollar amount in subsection (A), items (1) through (14), immediately before July first, must be adjusted to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor, Bureau of Labor Statistics, for the most

recent year ending immediately before January first preceding July first, and to round to the nearest twenty-five dollars, the dollar amount that represents this change. No later than March first of each even-numbered year, the Economic Research Division of the Office of Research and Statistics of the Revenue and Fiscal Affairs Office shall publish in the State Register the dollar amounts that will become effective on July first of each even-numbered year.

“Under the homestead exemption, certain real and personal property of the debtor is statutorily exempt from sale to enforce a judgment. *Holden v. Cribb*, 349 S.C. 132,140 (S.C. 2002).

S.C. Code Ann. § 15-41-10 has provided in pertinent parts:

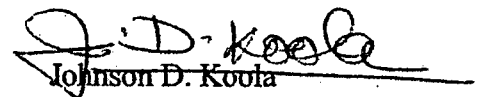
When selling property in which a debtor has an exemption as provided in Section 15-41-10, the sheriff or other officer conducting the sale, in the advertisement of the sale, also shall state that the minimum bid for the property must be in the amount of the exemption and no bid less than the amount of exemption may be accepted.

Koola prays to this Court to grant him Homestead Exemption after Motion Hearing in his residence.

Respectfully submitted,

Mt Pleasant, South Carolina

April 24, 2023


Johnson D. Koola

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).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-10-06060

PLAINTIFF'S RETURN TO
MOTION FOR HOMESTEAD EXEMPTION

(211106.00031)

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorney, does hereby Return and Respond to the Motion for Homestead Exemption by Defendant Johnson Koola.

The Defendant's Motion for Homestead Exemption pursuant to § 15-41-30(a)(1) of the South Carolina Code of Laws is erroneous and inapplicable to this action for foreclosure of a mortgage lien. Enforcement of an unsecured judgment may be done through execution against the debtor's real and personal property pursuant to § 15-39-10, et seq. of the South Carolina Code of Laws. An unsecured judgment only attaches as a lien to any real property owned by the debtor in the county in which the judgment is recorded pursuant to § 15-35-810 of the South Carolina Code of Laws. By contrast, a mortgage is a consensual lien pursuant to a loan that is to be secured by the collateral *ab initio* rather than a lien that only attaches by statute. Homestead and other exemptions as set forth in § 15-41-30(a)(1) only apply to execution of nonconsensual judgment liens as provided in Chapter 35, Chapter 39 and Chapter 41 of Title 15 of the South Carolina Code of Laws.

Although the Homestead Exemption is not applicable to foreclosure of a mortgage lien, the mortgage expressly waives all rights to any homestead exemption in paragraph 24 of the Mortgage.

FILED IN THE OFFICE OF THE CLERK OF THE COURT OF COMMON PLEAS - CHARLESTON COUNTY, SOUTH CAROLINA - 2010 OCT 10 AM 10:00

This action is foreclosure of a consensual mortgage lien and is therefore governed by Title 29 of the South Carolina Code of Laws and not eligible for the Defendant to claim a Homestead Exemption. Additionally, Defendant expressly waived any right to a homestead exemption in the Mortgage.

For the reasons set forth above and as argued at the previous hearing herein, Plaintiff requests that the motion for reconsideration be denied.

SCOTT AND CORLEY, P.A.

of H. Guyton Murrell

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334
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Kevin T. Brown (kevinb@scottandcorley.com), SC Bar #64236
Jordan D. Beumer (jordanb@scottandcorley.com), SC Bar #104074

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200
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803-252-3340

April 27, 2023

FILED IN OFFICE OF THE CLERK OF COURT - JUDGE J. W. HARRIS - 15th FLOOR - 1000 MARKET STREET - COLUMBIA, SOUTH CAROLINA 29201

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff

v.

Johnson D. Koola, First Citizens Bank
and Trust Company, Inc. fka First-Citizens
Bank and Trust Company of South Carolina
And Cambridge Lakes Condominium
Homeowner's Association, Inc. fka
Cambridge Lakes Horizontal Property
Regime,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-6060

DEFENDANT'S REPLY TO
PLAINTIFF'S RETURN TO
DEFENDANT'S MOTION TO
GRANT HOMESTEAD EXEMPTION

FILED
2023 MAY 25 PM 2:42
JULIE J. ARNOLD
CLERK OF COURT

On April 24, 2023, defendant Johnson D. Koola ("Koola") filed "Motion to Grant Homestead Exemption" pursuant to S.C. Code Ann. § 15-41-30(A)(1), "Property exempted from attachment, levy, and sale," which has provided in pertinent parts:

The following real property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding: The debtor's aggregate interest not to exceed fifty thousand dollars in value in real property that the debtor uses as a residence except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars...."

In support of his Motion, Koola cited *Holden v. Cribb*, 349 S.C. 132,140 (S.C. 2002): "Under the homestead exemption, certain real and personal property of the debtor is statutorily exempt from sale to enforce a judgment.

In Plaintiff's Return to Motion for Homestead Exemption, plaintiff argues, "Homestead and other exemptions as set forth in § 15-41-30(a)(1) only apply to execution of nonconsensual judgment liens as provided in Chapter 35, Chapter 39, and Chapter 41 of Title 15 of the South

Carolina Code of Laws.” Plaintiff did not cite any case laws. The plain text of S.C. Code Ann. § 15-41-30(A)(1), “Property exempted from attachment, levy, and sale:”

The following real property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding: The debtor’s aggregate interest not to exceed fifty thousand dollars in value in real property that the debtor uses as a residence except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars....” (Emphasis added).

did not put any limitation as described by plaintiff.

Pursuant to S.C. Code Ann. § 15-41-10, “Minimum bid when selling property subject to exemption: When selling property in which a debtor has an exemption as provided in Section 15-41-30, the sheriff or other officer conducting the sale, in the advertisement of the sale, also state that the minimum bid for the property must be in the amount of the exemption and no bid less than the amount of exemption may be accepted.” Section § 15-41-10 does not make any distinction between consensual and nonconsensual lien.

In support of Defendant’s Motion to grant Homestead Exemption, defendant Koola argues before this Court that whenever a judgment is attached to a real property, homestead exemption can be claimed. Koola cites the following case laws in support of his argument: *Scholtec v. Estate of Reeves*, 327 S.C. 551; 490 S.E.2d 603 (S.C. Ct.App. 1997); *McMaster v. Charpia*, 2020 S.C. App. Unpub. LEXIS 369; 2020 WL 6194025; *Scbt v. Angus Invs.*, 2020 S.C. C.P. LEXIS 3699; *Teal Holdings v. Whisnant*, 2021 S.C. C.P. LEXIS 2879. (Unpublished opinion is cited pursuant to Rule 268(d)(2), SCACR. Orders from Courts of Common Pleas are not mandatory opinions).

Further, appellant argues, “Although the Homestead Exemption is not applicable to foreclosure of a mortgage lien, the mortgage expressly waives all rights to any homestead exemption in paragraph 24 of the Mortgage.” Koola argues before this Court that any provision

in the Mortgage is inoperable if that provision is overridden by statutory or South Carolina Constitution. In *Scholtec v. Estate of Reeves*, 327 S.C. 551, 553-54 490 S.E.2d 603, 604 (S.C. Ct.App. 1997), Court of appeals stated:

“Homestead rights do not exist under the common law, but are a unique American Institution, having their origins in the greatest debtor revolution of the era of “Jackson democracy.” 40 C.J.S. Homesteads §3 at 175-176 (1991). The homestead interest depends entirely upon constitutional and statutory provisions. Dorn v. Stidham, 139 S.C. 66, 76; 137 S.E. 331, 334-35 (1927); 40 Am. Jur. 2d Homestead § 3 at 117 (1968). The South Carolina Constitution’s homestead provision provides that the “General Assembly shall enact such laws as will exempt real and personal property of a debtor.” S.C. Const. art. III § 28. The legislature carried out this constitutional mandate under the “Homestead and Other Exemptions” statute, S.C. Code Ann. §§ 15-41-10 to -35 (1976 & Supp. 1966), which provides, in pertinent part, that certain “real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding.” S.C. Code Ann. § 15-41-30 (Supp. 19996).”

The law has provided further: Beginning on July 1, 2008, and each even-numbered year thereafter, each dollar amount in subsection (A), items (1) through (14), immediately before July first, must be adjusted to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor, Bureau of Labor Statistics, for the most recent year ending immediately before January first preceding July first, and to round to the nearest twenty-five dollars, the dollar amount that represents this change. No later than March first of each even-numbered year, the Economic Research Division of the Office of Research and Statistics of the Revenue and Fiscal Affairs Office shall publish in the State Register the dollar amounts that will become effective on July first of each even-numbered year.

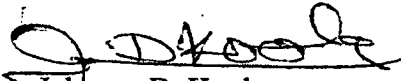
Koola prays to this Court to grant him Homestead Exemption after Motion Hearing.

Continued on next page

Respectfully submitted,

Mt Pleasant, South Carolina

May 25, 2023


Johnson D. Koola

PROOF OF SERVICE

On May 25, 2023, defendant Koola filed "Defendant's Reply to Plaintiff's Return to Defendant's Motion to Grant Homestead Exemption" in the office of the Clerk of the Court and in the office of the Master in Equity and served copy of the same on the following persons named below by depositing a copy of the same, postage prepaid, in the U.S. Post office:

Scott and Corley, P.A.
Attorneys for Plaintiff
2712 Middleburgh Drive, Suite 200
Columbia, SC 29204

Attorney Mr. S. Nelson Weston, Jr. Esq.
Attorney for First Citizens Bank and Trust Co., Inc.
s/b/m to First Citizens Bank and Trust Company of South Carolina
1900 Barnwell Street
Columbia, SC 20202

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


Johnson D. Koola

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010CP1006060

U S Bank Trust N A as trustee et al
PLAINTIFF(S)

Johnson D Koola et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on Defendant Koola's Motion to Stay Foreclosure Sale and Set Supersedeas Bond and the Motion to Grant Homestead Exemption. Upon consideration, the Court DENIES the Motion to Grant Homestead Exemption as inapplicable in this mortgage foreclosure case and adopts the Plaintiff's return to the Motion as its basis, which includes waiver of the exemption in the mortgage.

As to the bond, the Court sets the supersedeas bond at \$75,000.00 pursuant to S.C. Code Section 18-9-170 which requires two sureties on the bond. Defendant must post bond with the Clerk of Court prior to the scheduled June 6, 2023 Foreclosure Sale at 11:00 a.m. Failure to timely post the bond will result in the property being sold at the June 6 foreclosure sale.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/30/2023 .

First Citizens Bank And Trust Company Of South Carolina Etal
 Johnson D Koola for Johnson D Koola
 Eugene P. Corrigan, III for Cambridge Lakes Condominium Homeowners Association Inc Etal
 Johnson D Koola for Johnson D Koola
 Cambridge Lakes Horizontal Property Regime Etc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

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

CASE NO.: 2010-CP-10-6060)

Plaintiff)

v.)

MOTION FOR RECONSIDERATION)
OF THE DENIAL OF)
HOMESTEAD EXEMPTION)

Johnson D. Koola, First Citizens Bank)
and Trust Company, Inc. fka First-Citizens)
Bank and Trust Company of South Carolina)
And Cambridge Lakes Condominium)
Homeowner's Association, Inc. fka)
Cambridge Lakes Horizontal Property)
Regime,)

Defendants.)

2023 JUN -9 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

On May 30, 2023, this Court denied defendant Johnson D. Koola's ("Koola") "Motion to Grant Homestead Exemption" pursuant to S.C. Code Ann. § 15-41-30(A)(1), "Property exempted from attachment, levy, and sale," which has provided in pertinent parts:

The following real property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding: The debtor's aggregate interest not to exceed fifty thousand dollars in value in real property that the debtor uses as a residence except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars...." (Emphasis added).

Koola files Motion for Reconsideration of the denial of Homestead Exemption.

In *Scholtec v. Estate of Reeves*, 327 S.C. 551, 553-54 490 S.E.2d 603, 604 (S.C. Ct.App. 1997), the Court of Appeals stated:

"Homestead rights do not exist under the common law, but are a unique American Institution, having their origins in the greatest debtor revolution of the era of "Jackson democracy." 40 C.J.S. Homesteads §3 at 175-176 (1991). The homestead interest depends entirely upon constitutional and statutory provisions. Dorn v. Stidham, 139 S.C. 66, 76; 137 S.E. 331, 334-35 (1927); 40 Am. Jur. 2d Homestead § 3 at 117 (1968). The

South Carolina Constitution's homestead provision provides that the "General Assembly shall enact such laws as will exempt real and personal property of a debtor." S.C. Const. art. III § 28. The legislature carried out this constitutional mandate under the "Homestead and Other Exemptions" statute, S.C. Code Ann. §§ 15-41-10 to -35 (1976 & Supp. 1966), which provides, in pertinent part, that certain "real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding." S.C. Code Ann. § 15-41-30 (Supp. 19996)."

In support of Koola's Motion to grant Homestead Exemption, Koola cites the following case laws:

In *Carolina Production Credit Assn. v. Rogers*, 282 S.C. 184, 188; 318 S.E.2d 357, 359 (S.C. Ct.App. 1984), which was a foreclosure case, the bank filed suit to foreclose certain mortgages given by the mortgagors. The trial court granted homestead exemption in real property to the wife of the testator. On Appeal, however, the Court of Appeals reversed the trial court granting Homestead Exemption to the wife of the testator on the ground that her eligibility to receive Homestead Exemption extinguished only because she remarried before she received Homestead Exemption.

The same case law as cited above has cited two other cases laws, which support Homestead Exemption: "...Upon the death of 'a head of a family,' who owes debts, and to whom no homestead has been assigned in his or her lifetime, the right to interpose the claim of homestead exemption...against the debts of...[the] deceased...is transferred...to the widow or children or both." *Dorn v. Stidham*, 139 S.C. 66, 83, 137 S.E. 331, 337 (1927); *In re: Snoddy's Estate*, 201 S.C. 14; 21 S.E. 2d 198 (1942)." *Carolina Production Credit Assn. v. Rogers*, 282 S.C. 188; 318 S.E.2d at 359.

In *Scbt v. Angus Invs.*, 2020 S.C. C.P. LEXIS 3699, *5 (Court of Common Pleas of South Carolina, Greenville County, 2020), a foreclosure case originated from Greenville County, S.C., the Court ordered that "Respondent Melehes, as the single member owner and residing in the real

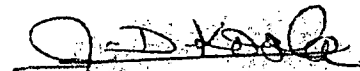
property, is entitled to assert the Homestead Exemption as set forth in S.C. Code 15-41-30(a)(1)....”

In South Carolina Bankruptcy Courts, the debtors are granted Homestead Exemption; Koola cites two case laws: *In re Bycura*, 540 B.R. 211 (D.S.C. 2015); *In re Versace*, 2017 Bankr. LEXIS 1153 (D.S.C. 2017).

Koola prays to this Court to grant him Homestead Exemption after Motion Hearing.

Respectfully submitted,

Mt Pleasant, South Carolina
June 9, 2023


Johnson D. Koola

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010CP1006060

U S Bank Trust N A as trustee et al
PLAINTIFF(S)

Johnson D Koola et al
DEFENDANT(S)

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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Upon consideration, the Court respectfully DENIES Defendant Koola's Motion to Waive the Supersedeas Bond, filed June 9, 2023, and respectfully DENIES Defendant Koola's Motion for Reconsideration of the Denial of the Homestead Exemption, filed June 9, 2023.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/23/2023.

Eugene P. Corrigan, III for Cambridge Lakes Condominium Homeowners Association Inc Etal
Cambridge Lakes Horizontal Property Regime Etc
First Citizens Bank And Trust Company Of South Carolina Etal
Johnson D Koola for Johnson D Koola
Case Party Info Protected
Johnson D Koola for Johnson D Koola

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

211

FILED IN CIVIL DIVISION - FILED - 2023 AUG 24 09:00 AM - CHARLESTON COUNTY - COMMON PLEAS - CASE#2010CP1006060

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Honorable Mikell R. Scarborough
Master in Equity for Charleston County

Case No. 2010-CP-10-6060

Appellate Case No. 2023-000819

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

v.

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, Defendants,

Of whom Johnson D. Koola is the appellant.

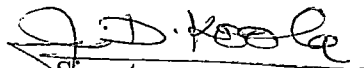
PROOF OF SERVICE

I certify that I have served Appellant's MOTION TO GRANT HOMESTEAD EXEMPTION on the counsels of record for the respondent, addressed below, by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2023:

Attorney Thomas R. McPherson, III, Esquire, MCGUIRE WOODS, LLP, 201 North Tryon St., # 300, Charlotte, NC 28202 and
Scott and Corley, P.A., Attention: Attorney Kevin Ted Brown, Esquire, Attorney Angela R. Grant, Esquire, Attorney Allison Earlin Heffernan, Esquire, and Attorney Henry Guyton Murrell, Esquire, 2712 Middleburgh Drive, Suite 200, Columbia, SC 29204.

September 15, 2023

Mt. Pleasant, South Carolina 29464


Signature

Johnson D. Koola, Appellant, pro se



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Mt Pleasant, SC 29464

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