

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

RECEIVED

SEP 28 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.

PETITION FOR A WRIT OF SUPERSEDEAS

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

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STATEMENT OF ISSUES

DID THE MASTER IN EQUITY ABUSED HIS DISCRETION IN ARBITRARILY DETERMING THE FAIR MARKET RENTAL VALUE OF APPELLANT’S PROPERTY?

STATEMENT OF THE CASE

On April 24, 2023, appellant/defendant Johnson D. Koola (“Koola”) filed Motion to Stay Foreclosure Sale and to Set Supersedeas Bond pending Appeal. In Plaintiff’s Return to Koola’s Motion, U.S. Bank Trust as Trustee for LF10 Maser Participation Trust (“U.S. Bank Trust”) claimed that the fair market rental value of Koola property is between \$2,375.00 and \$2,400.00 per month, and the time to compete the appeal is between three and one-half to five years. U.S. Bank Trust’s agent *determined the fair market rental value by looking at Koola’s condominium*

from the road. In the defendant's Reply to plaintiff's Return, Koola represented to the Court that Koola's condominium is currently not rentable because of various defects such as no air-conditioning (heating and cooling), no running hot water and other essential repairs. Koola lives in his condominium because of his difficult financial conditions. A nominal user fee not exceeding \$250.00 per month should be the basis to set the Supersedeas Bond. The Master denied Koola's request to order plaintiff to require inspection of the property from inside and determine the fair market rental value. During the Hearing on May 30, 2023, Koola requested the Court, "[M]ost appropriate amount [for the Bond] is \$10,000.00." In spite of Koola's objection, the Court set the Bond at \$75,000.00 based on estimated fair market rental value is \$25,000 per year including taxes, and the appeal would take on the average three years.

On June 9, 2023, Koola filed Motion to waive the Supersedeas Bond or to set it at a nominal amount which the Court denied on August 24, 2023.

ARGUMENT

THE MASTER IN EQUITY ABUSED HIS DISCRETION IN DETERMINING THE FAIR MARKET RENTAL VALUE FOR THE USE AND OCCUPATION OF THE PROPERTY. UPON APPELLATE REVIEW, THE APPELLATE COURT REVIEWS ORDERS OF THE COURT BELOW FOR ABUSE OF DISCRETION.

Facts of the Case

On April 24, 2023, Koola filed Motion to Stay Foreclosure Sale and to Set Supersedeas Bond pending Appeal. (R. p. 14). On May 8, 2023, the Master in Equity filed a Form 4 Order stating, *inter alia*, the Motion will be entertained post-filing of any appeal. (R. p. 16).

On May 17, 2023, Koola filed Notice of Appeal in the Court of Appeals.

On May 4, 2023, U.S. Bank Trust filed "Plaintiff's Return to Motion to Stay Foreclosure Sale and to Set Supersedeas Bond Pending Appeal." (R. p. 18). In the Return, U.S. Bank Trust argued, *inter alia*, that: (1) an average appeal takes approximately a minimum of three and one-

half years to five years to complete, (2) the fair market value for the use and occupation of the property is \$2,400.00 per month, and (3) the appropriate appeal bond would be by two sureties in an amount not less than One Hundred Seventeen Thousand Six Hundred and Forty-Nine and 80/100 Dollars (\$117,649.80). (R. p. 18, lines 25-28; R. p. 19, lines 1-3). In support of the Return, U.S. Bank Trust filed an Affidavit in which the affiant stated, "*I have researched the property located at 1587 Cambridge Lakes Drive, Mt Pleasant, South Carolina to view it from the road,*" and "Based upon the current rates for renting comparable properties in the same geographic area, I would estimate the fair market rental value for the property as between \$2,375.00 to \$2,4000.00 per month." (Emphasis by italics added). (R. p. 20, lines 20-27).

In Defendant's Reply to Plaintiff's Return filed on May 23, 2023, Koola made the following representations:

1. The average time to complete an Appeal in the Court of Appeals is less than one year after filing the Notice of Appeal. (R. p. 22, line 18).
2. The plaintiff hired a property manager who viewed the property from the road and determined that the fair market rental value is between \$2,375.00 to \$2,400.00. *That is an inappropriate procedure to determine the fair market rental value.* (R. p. 22, lines 19-21).
3. This Court may order plaintiff to require inspection of the property from inside and determine the fair market rental value. (R. p. 22, lines 22-23)
4. In defendant Koola's 2021 Bankruptcy, he hired a professional to appraise the property. The appraisal covered the present condition of the property. The following conditions were reported: Mold in the ceiling of the drawing/living room; the air-conditioner is broken; there is no heating and cooling; there is no running hot water; bath rooms have to be updated; new carpet has to be laid; fresh painting may be necessary. Under these

conditions, the property cannot be rented. Defendant lives in the property because of his difficult financial conditions. *A nominal user fee rather than fair market rent not exceeding \$250.00 is appropriate.* The copy of the appraisal would be filed in the Court.”

(R. p. 22, lines 24 – 27; R. p. 23, lines 1-5; R. p. 26-27).

5. During the Hearing on May 30, 2023, Koola requested the Court, “[M]ost appropriate amount [for the Bond] is \$10,000.00.” (R. TR. p. 31, lines 24-25). In spite of Koola’s objection to arbitrary determination of the fair market value of the use and occupation of the property, the Court set the Bond at \$75,000.00. (R. TR, p. 33, lines 24-25). The Court estimated that the fair market rental value is \$25,000 per year including taxes and the appeal would take on the average three years. (R. TR. P. 33, 9-12). On May 30, 2023, the Master in Equity filed a Form 4 Order setting the Supersedeas Bond at \$75,000.00 which required two sureties. (R. p. 35).

On June 9, 2023, Koola filed Motion to Waive the Supersedeas Bond or to set it at a Nominal Amount. (R. p. 37). On August 24, 2023, the Master in Equity filed a Form 4 Order denying the Motion for Reconsideration. (R. p. 40).

The Master in Equity abused his Discretion in setting the amount of the Supersedeas Bond.

S.C Code Ann. § 18-9-170 has provided in pertinent parts;

“If the judgment appealed from direct the sale or delivery of possession of real property, the execution shall not be stayed unless a written undertaking be executed on the part of the appellant”

“[[I]f the judgment be affirmed [on Appeal] he [the appellant] will pay the value of the use and occupation of the property from the time of the execution of the undertaking until delivery of possession thereof pursuant to judgment, *not exceeding a sum to be fixed by a judge of the court by which the judgment was rendered....*” (Emphasis by italics added).

Pursuant to S.C Code Ann. § 18-9-170, the amount of the Supersedeas Bond is fixed by a judge of the court by which judgment was rendered. The judge has discretion to set the amount

of the Supersedeas Bond. The Master in Equity stated this fact during the Motion hearing on May 30, 2023, "There is no set rule as to determine what the amount of the bond should be." (R. TR. p. 32, lines 3-5). However, *the Master in Equity is bound to determine the fair market rental value* while setting the Supersedeas Bond rather than arbitrarily determining the value of the use and occupation of the property

In determining the fair market rental value, the Master in Equity was influenced by the U.S. Bank Trust's statement that the fair market rental value is between \$2,375.00 and \$2,400.00. (R. p. 18, lines 25-28; R. p. 19, lines 1-3). U.S. Bank Trust arrived at this figure based on an Affidavit filed by the owner/broker of Hayden Jennings Properties in which the affiant stated, *"I have researched the property located at 1587 Cambridge Lakes Drive, Mt Pleasant, South Carolina to view it from the road,"* and "Based upon the current rates for renting comparable properties in the same geographic area, I would estimate the fair market rental value for the property as between \$2,375.00 to \$2,400.00 per month." (Emphasis by italics added). (R. p. 20, lines 21-27). This is a very inappropriate way to determine the fair market rental value of a condominium. Nobody will rent or lease a residential property by looking at it from the road.

In Defendant's Reply to Plaintiff's Return filed on May 23, 2023, Koola represented to the Court that because of the condition of Koola's condominium it is not rentable. In Koola's 2021 Bankruptcy, he hired a professional to appraise the property. The appraisal covered the present condition of the property. The following conditions were reported: Mold in the ceiling of the drawing/living room; the air-conditioner is broken; there is no heating and cooling; there is no running hot water; bath rooms have to be updated; new carpet has to be laid; fresh painting may be necessary. Under these conditions, the property cannot be rented. Koola lives in the property

because of his difficult financial conditions. *A nominal user fee rather than fair market rent not exceeding \$250.00 is appropriate to determine the fair market rental value.* (R. p. 22, lines 24 – 27; R. p. 23, lines 1-5; R. p. 26-27).

During the Hearing on May 30, 2023, Koola requested the Court, “[M]ost appropriate amount [for the Bond] is \$10,000.00.” (R. TR. p. 31, lines 24-25). In spite of Koola’s objection, the Court set the Bond at \$75,000.00. (R. TR, p. 33, lines 24-25). The Court estimated that the fair market rental value is \$25,000 per year including taxes and the appeal would take on the average three years. (R. TR, p. 33, lines 24-25). On May 30, 2023, the Master in Equity filed a Form 4 Order setting the Supersedeas Bond at \$75,000.00 which required two sureties. (R. p. 35).

U.S. Bank Trust’s foreclosure action is for the breach of contractual terms in the Note executed by Koola in favor of the original lender, Countrywide Home Loans, Inc., in February 2004. The Mortgage Note is a promissory Note and is a contract under S.C. law, *Citizens & Nat’l Bank v. Lanford*, 313 S.C. 540-44; 443 S.E. 2d 549-51 (S.C. 1994). “In a breach of contract action, the measure of damages is the loss actually suffered by the contractee as a result of the breach.” *Collins Holding Corp. v. Landrum*, 360 S.C. 346, 350 (S.C. 2004); *U.S. Bank Trust v. Otto*, 2023 S.C. App. Unpub. LEXIS 288 *6-*7 (S.C. Ct. App. 2023).

Under the present conditions of Koola’s condominium, it is not rentable. (R. p. 22, lines 24 – 27; R. p. 23, lines 1-5; R. p. 26-27). Nevertheless, Koola lives in his condominium. Therefore, *“A nominal user fee rather than fair market rent not exceeding \$250.00 is appropriate to determine the fair market rental value.”* The Master in Equity denied Koola’s request to “order plaintiff to require inspection of the property from inside and determine the fair market rental value.” (R. p.22, lines 22-23).

During the Hearing on May 30, 2023, Koola requested the Court, “[M]ost appropriate amount [for the Bond] is \$10,000.00.” (R. TR. p. 31, lines 24-25). This amount takes into consideration the present condition of Koola’s condominium. (R. p. 22, lines 24 – 27; R. p. 23, lines 1-5; R. p. 26-27). In spite of Koola’s objection to arbitrary determination of the fair market value of the use and occupation of the property, the Court set the Bond at \$75,000.00. (R. TR, p. 33, lines 24-25). The Court estimated that the fair market rental value is \$25,000 per year including taxes and the appeal would take on the average three years. (R. TR. P. 33, 9-12). On May 30, 2023, the Master in Equity filed a Form 4 Order setting the Supersedeas Bond at \$75,000.00 which required two sureties. (R. p. 35). The Master in Equity abused his discretion in arbitrarily setting the fair market rental value of Koola’s property at \$2,000 p.m. plus taxes.

In *Bunkum v. Manor Properties*, 321 S.C. 95, 97-98; 467 S.E.2d 758, 760 (S.C. Ct. Spp. 1996), the Master in Equity rendered an Order requiring Bunkum to post an Appeal Bond in the amount of \$150,000 as a condition of staying the execution of the judgment in the underlying case. Bunkum filed a Petition for Supersedeas in the Court of Appeals of South Carolina seeking to reduce the amount of the bond. The Court of Appeals reduced the amount of the Bond from \$150,000.00 to \$36,000.00. The Court did not state the reasons why it reduced the amount of the Supersedeas Bond. It is presumed that the Court found Abuse of Discretion in the Order of the Master in Equity.

During the Hearing on My 30, 2023, Koola brought to the attention of the Master in Equity the case law, *Ditech Fin. V. Snyder*, 2022 S.C. App. Unpub. LEXIS 377, *9 -*10 (S.C. Ct. pp. 2022). In this Appeal, the Court of Appeals reviewed the petition for a writ of supersedeas filed by Snyder and found the following facts:

1. "The master found the Note was in default as a result of Snyder's failure to make monthly payments due for September 1, 2008, and all subsequent months.
2. "He determined the amount due and owing on the note totaled \$293,930.69, which included \$137,020.25 in principal; \$109,616.64 in accrued interest; \$39,816.39 in escrow advances; and, \$6,626.25.25 in attorney fees."
3. "Ditech waived the right to deficiency judgment."
4. "The master granted the supersedeas motion and set the bond at \$25,000."
5. "Snyder filed a petition for a writ of supersedeas to waive the bond or set it at a nominal amount, which this Court denied."

In the *Snyder's* case, the Master in Equity set the Supersedeas Bond at \$25,000.00 by taking into consideration the monthly mortgage payment of \$1,396.36 multiplied by eighteen months – the time reasonably required to complete Appeal. (R...p. 46, lines 1-4).

Koola brings to the kind attention of this Court the facts of the case in the matter of Koola and that of Snyder.

1. In the case of Koola, the Master determined in his April 13, 2023 Order that the total debt secured by Note and Mortgage including interest to date was \$232,014.68. In the case of Snyder, the total debt was \$293,930.69.
2. The mortgagees *waived deficiency* in both cases.
3. In the case of Koola, the Master in Equity arbitrarily set the bond at \$75,000.00 *based on an estimated monthly rent of \$2,500.00 month for three years*. In the case of Snyder, the Master in Equity set the Bond at \$25,000 based on *the monthly mortgage payment of \$1,396.36 multiplied by eighteen months* – the time reasonably required to complete Appeal.

Clearly, the Master in Equity employed two different standards while setting the Supersedeas Bond. Had the Master in Equity applied the same standard as it did in the case of Snyder to Koola's case, *the Master in Equity ought to have set the Supersedeas Bond at \$15,500.00 based on Koola's monthly mortgage payments of 851.35 multiplied by eighteen months – the time reasonably required to complete Appeal.*

Upon Appellate Review, the Appellate Court reviews the Orders of the Court below for abuse of discretion. “An **abuse of discretion** occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support.” *S.C. Dept' of Soc. Serv. V. Frank*, 438 S.C. 400, 417-18; 883 S.E.2d 229, 239 (S.C. Ct.App. 2023). (Emphasis in original). (“An abuse of discretion occurs [when] the trial court is controlled by an error of law or [when] the [c]ourt's order is based on factual conclusions without evidentiary support.” *Keene v. CNA Holdings, LLC* S.C. 462 S.C. 357, 365; 827 S.E. 2d 183, 188 (S.C. Ct. App. 2019). (Emphasis in original).

Summary


The Master in Equity employed an arbitrary standard to set the Supersedeas Bond at \$75,000.00 assuming fair market rental value of Koola's property is \$25,000 per year. The Court did not take into its consideration that Koola's condominium is not rentable under its current conditions, and a user fee of \$250.00 p.m. is appropriate to set the Bond. In the case of Snyder, the Court set the Supersedeas Bond at \$25,000.00 based on monthly mortgage payments of \$1,396.36 for eighteen months. Upon Appellate Review, the Appellate Court reviews the Orders of the Court below for abuse of discretion.

CONCLUSION

For the reasons stated, the Petition for a Writ of Supersedeas should be granted, and the bond set at a nominal amount of \$10,000.00 by taking into consideration the condition of Koola's condominium or at \$15,500.00 based on Koola's monthly mortgage payments of 851.35 multiplied by eighteen months – the time reasonably required to complete Appeal.

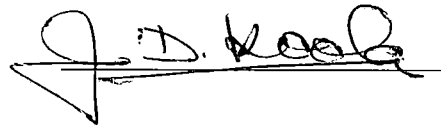
Respectfully submitted,

September 26, 2023
Mt Pleasant, South Carolina


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


VERIFICATION

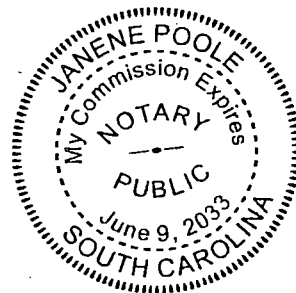
Personally appeared before me, Johnson D. Koola, who is being duly sworn does state as follows: I am the appellant in this case, I have read the Petition for a Writ of Supersedeas and can and do verify under oath that to the best of my knowledge, the facts stated herein are true.

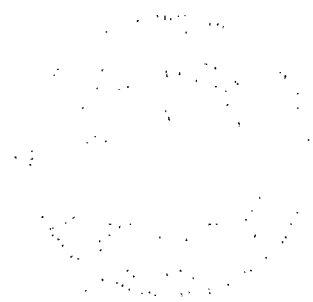


SWORN TO AND SUBSCRIBED BEFORE ME

This 26th day of September, 2023

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires:
6/9/33





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 STAY FORECLOSURE
SALE AND TO SET SUPERSEDEAS
BOND PENDING APPEAL**

FILED
2023 APR 24 AM 10:51
CLERK OF COURT
J.P.

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") informs this Court that he has not yet received a copy of the Order from the Foreclosing Party even though the Court ordered that the Foreclosing Party *shall* within five days of execution of this Order cause this Order and the Notice of Sale (if available) to be served by U.S. Mail upon said property owner. Order filed on April 13, 2023, p. 14, lines 24-33.

Defendant Koola files Motion to Stay Foreclosure Sale tentatively scheduled for June 2023 and prays to this Court to order Koola to post a bond after Motion Hearing based on the following:

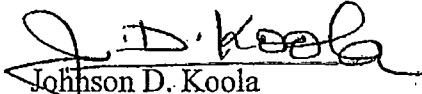
1. This is a foreclosure on the primary residence of the defendant Koola.
2. The Court has tentatively set a June Sale date.

3. On April 21, 2023, Koola filed a Motion for Reconsideration. If this Court denies the Motion for Reconsideration and the relief requested in the said Motion, Koola will be filing an Appeal to the South Carolina Court of Appeals.
4. Koola prays to this Court to hold Motion Hearing to stay the proposed foreclosure sale tentatively scheduled for June 2023 and to order Koola to post a supersedeas bond pursuant to Rule 62, SCRPC while the Appeal is pending.
5. Koola requests this Court to take into consideration that his condominium has appreciated in value, which minimizes the requirement of a supersedeas bond.

Respectfully submitted,

Mt Pleasant, South Carolina

April 24, 2023


Johnson D. Koola

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:

Defendant Johnson Koola, now acting pro se, has filed several motions following this Court's grant of summary judgment by Order filed April 13, 2023. Johnson Koola's Motion for Reconsideration, filed April 21, 2023, is DENIED and the Court adopts the Plaintiff's return as its basis. On April 24, 2023, Johnson Koola filed a Motion to Void the Cross-Claim of First Citizens Bank. This Motion is patently without merit as First Citizens Bank dismissed its cross-claim with prejudice on October 21, 2010. Defendant's Motion to Grant Homestead Exemption and Motion to Stay Sale and Grant a Supersedeas Bond will be entertained post-filing of any appeal as neither is ripe.

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 05/08/2023.

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



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: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-05-08 10:43:24 page 3 of 3

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.S.
By Whitney Stokados
DEPUTY CLERK

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 TO STAY FORECLOSURE SALE AND TO SET SUPSEDEAS BOND PENDING APPEAL

(211106.00031)

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorney, does hereby Return and Respond to the Motion to Stay Foreclosure Sale and to Set Supersedeas Bond Pending Appeal by Defendant Johnson Koola.

Pursuant to S.C. Code Ann. §18-9-170, the judgment shall not be stayed unless "a written undertaking be executed on the part of the appellant, with two sureties, ... that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered." The statute further provides that the appropriate amount of the bond should also include the "taxes due at the time of the appeal ... or becoming due during the pendency of the appeal".

Plaintiff's counsel would argue that the average appeal takes approximately a minimum of three and one-half (3 & 1/2) to five (5) years complete. Plaintiff would show that the previous appeal filed by Defendant stayed the case for approximately four years, from June 9, 2014 to March 12, 2018. Based on the research conducted by the Plaintiff, the reasonable fair market value for the use and occupation of the

158 19
1819

18

property is \$2,400.00 per month (see attached affidavit incorporated herein by reference). Petitioner's counsel would show that the property is currently assessed for property taxes of \$612.45 (see current county tax statement attached hereto and incorporated herein by reference), and an additional four (4) years of taxes would be expected to accrue during the pendency of the appeal.

Plaintiff's counsel would argue that the pursuant to the statute, the appropriate appeal bond would be by two sureties in an amount not less than One Hundred Seventeen Thousand Six Hundred and Forty Nine and 80/100ths (\$117,649.80) Dollars, which constitutes the reasonable fair market value for the use and occupation of the property (\$115,200.00) during the pendency of the appeal and the property taxes (\$2,449.80) currently due and expected to come due during the pendency of the appeal.

This Motion is supported by the South Carolina Code of Laws, South Carolina Rules of Civil Procedure, supporting affidavit and public records of Charleston County.

SCOTT AND CORLEY, P.A.

s/ H. Guyton Murrell

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Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334
Allison E. Heffernan (allisonh@scottandcorley.com), SC Bar #68530
H. Guyton Murrell (guytonm@scottandcorley.com), SC Bar #64134
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
Columbia, SC 29204
803-252-3340

May 04, 2023

[Handwritten initials]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO. 2010-CP-10-06060

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

PLAINTIFF,

VS.

AFFIDAVIT

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).

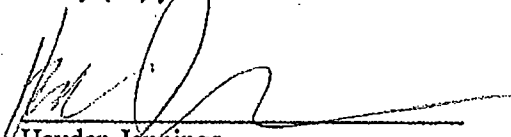
(211106.00031CVK)

BEFORE ME the undersigned, who being duly sworn, deposes and says:

My name is Hayden Jennings. I am the owner/broker of Hayden Jennings Properties. I have been a real estate broker and property manager for 31 years. My business is focused on property management and, as such, I am familiar with the current rental rates for properties in the Charleston area.

My company frequently manages rental properties throughout the Charleston & Mount Pleasant areas and I am familiar with the normal rental values both through direct experience as well as researching the current values of comparable property rentals during the most recent 120 day period. I have researched the property located at 1587 Cambridge Lakes Drive, Mount Pleasant, South Carolina to view it from the road. Additionally, I have reviewed the available records for the property located at 1587 Cambridge Lakes Drive, Mount Pleasant, South Carolina. The online records show the property as a Three (3) bedroom, two (2) bath property. Based upon the current rates for renting comparable properties in the same geographic area, I would estimate the fair market rental value for the property as between \$2,375.00 to \$2,400.00 per month.

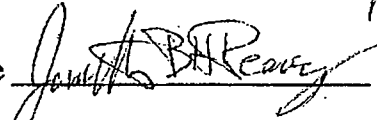
This estimate is my objective valuation for the property based on my knowledge and experience from managing rental properties in the area for over thirty (31) years.


Hayden Jennings

State of South Carolina

County of Charleston

Subscribed and sworn to (or affirmed) before me on this 3rd day of May, 2023

Signature 

JONATHAN B.H. PEAVEY
Notary Public - State of South Carolina
My Commission Expires May 7, 2025

NOTARY PUBLIC FOR Charleston, SC

My commission expires: May 7, 2025

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
MOTION TO STAY FORECLOSURE
SALE AND TO SET SUPERSEDEAS
BOND PENDING APPEAL**

FILED
2023 MAY 23 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT
JR

In response to Plaintiff's Return to Defendant's Motion to Stay Foreclosure Sale and to Set Supersedeas Bond Pending Appeal, defendant Koola makes the following representations:

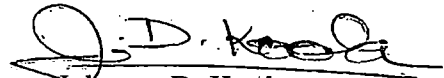
1. The average time to complete an Appeal in the Court of Appeals is less than one year.
2. The plaintiff hired a property manager who viewed the property from the road and determined that the fair market rental value is between \$2,375 to \$2,400.00. **That is an inappropriate procedure to determine the fair market rental value.**
3. **This Court may order plaintiff to require inspection of the property from inside and determine the fair market rental value.**
4. In defendant Koola's 2021 Bankruptcy, he hired a professional to appraise the property. The appraisal covered the present condition of the property. The following conditions were reported: Mold in the ceiling of the drawing/living room; the air-conditioner is broken; there is no heating and cooling; there is no running hot water; bath rooms have to

be updated; new carpet has to be laid; fresh painting may be necessary. Under these conditions, the property cannot be rented. Defendant lives in the property because of his difficult financial conditions. A **nominal user fee** rather than fair rent not exceeding \$250.00 per month is appropriate. The copy of the appraisal that was filed in the Bankruptcy Court would be produced in the Court.

Respectfully submitted,

Mt Pleasant, South Carolina

May 23, 2023


Johnson D. Koola

Debtor 1 Johnson D. Koola Case number (if known) _____
First Name M.I. Last Name

The Guerry Group

December 16, 2020

Johnson Koola
1587 Cambridge Lakes Drive
Mount Pleasant, SC 29464

Re: Property located at:
1587 Cambridge Lakes Drive, Mount Pleasant, SC 29464

Dear Mr. Koola,

At your request, Joseph H. Guerry, has physically inspected the above referenced property. The undersigned have prepared the following appraisal report. The undersigned understand that this analysis will be utilized in conjunction with the client's bankruptcy proceedings. The purpose of the appraisal is to determine the estimated market value as defined in the report, of the subject property as of the effective date of this appraisal. The enclosed report considers the Cost, Sales Comparison and Income Capitalization approaches to value. The estimated value set forth herein is subject to the assumptions and limiting conditions included as part of this report.

The estimated value set forth herein is subject to the assumptions and limiting conditions included as part of this report. Based on an investigation and analysis of the available data, it is our opinion that the estimated market value of the subject property as of December 14, 2020 is:

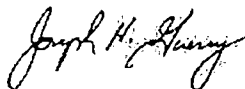
Estimated Market Value
\$245,000

It is understood that a substantial or gross valuation misstatement resulting from an appraisal of the value of the property that the appraiser knows, or reasonably should have known, would be used in connection with a return or claim for refund, may subject the appraiser to civil penalty under section 6695A of The United States Treasury regulation.

This appraisal is intended to meet the requirements of Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, Public Law.

The undersigned hereby certify that we have no interest in the subject property and that neither the employment to provide this appraisal nor the compensation for this assignment is contingent upon the estimated value of the property. We further certify that this appraisal report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice.

Sincerely,



Kimberly Perrine

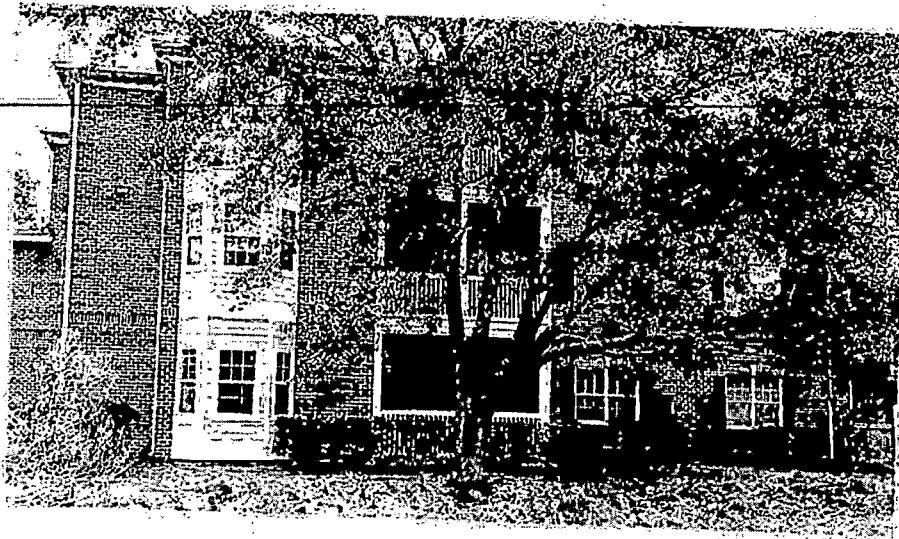
Joseph H. Guerry, SRA, MAI

Page 2/12

Debtor 1 Johnson, D. Koola Case number (if known) _____
First Name M.I. Last Name

Main File No. 53101

APPRAISAL OF REAL PROPERTY



LOCATED AT

1587 Cambridge Lakes Dr
Mount Pleasant, SC 29464
Unit 208E, Cambridge Lakes HPR

FOR

Johnson Koola
1587 Cambridge Lakes Dr
Mount Pleasant, SC 29464

AS OF

12/14/2020

BY

Kimberly Perrine
The Guerry Group
P.O. Box 1532, 1051 Johnnie Dodds Blvd, Ste J
Mt. Pleasant, SC 29465-1532
(843) 375-1446
Request@GuerryGroup.com
www.GuerryGroup.com

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25

Debtor 1 Johnson D. Koola Case number (if known) _____
First Name M.I. Last Name

Main File No 53101

Information Provided By Client

Appraiser	Kimberly Perrine		
Property Address	1587 Cambridge Lakes Dr		
City	Mount Pleasant	County	Charleston
Client	Johnson Koola	State	SC
		Zip Code	29464

APPRAISAL - 1587 Cambridge Lakes Dr, Mt. Pleasant, SC 29464

Owner: Johnson D Koola

The condominium is approximately 21 years old.

Kitchen and bathrooms need upgrading.

All the appliances - A/C, Heating, water heater, and refrigerator - need to be replaced; they are not functional.

There is mold growth in the unit, in particular on the ceiling in the drawing room. A preliminary estimate for mold remediation amounts to \$2,759,000. It is possible that simple remediation would not prevent mold growth again after some time.

Some back ground information: In 2008, the HOA initiated a construction defect lawsuit against the builders and developers of Cambridge Lakes condominiums alleging construction defects lawsuit [2008-C-10-3506, June 19, 2008]. In the lawsuit, the HOA emphasized: "The latent building defects have since resulted in repeated and severe water intrusion into the buildings and other damages and continue to do so through the date of filing" In a June 25, 2008 letter, the HOA informed the condominium owners that there were defects in "the foundation, main walls, windows, roofs, trusses, framing or any other part of the structure or building envelope." The HOA claimed damages in an amount in excess of eight million dollars. This amounts to damages in excess of \$76,023 per unit. The HOA dismissed the claims against the builders and developers, but recovered \$500,000 from the window manufacturer and \$80,000 from one of the real estate agents. The HOA repaired some of the defects, but most of the defects were left unaddressed.

Nearly six years ago, water started leaking from the ceiling in my drawing room, and finally, part of the ceiling collapsed. Water had collected above the ceiling, most reasonably be a result of the construction defects mentioned above. The HOA repaired the ceiling. The ceiling had been soaked with water, which was not addressed. This is the most probable reason for the mold growth in the drawing room of my condominium. I suspect that mold would continue to grow for a long time.

27

Kimberly Perrine

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

3
4

5 US Bank Trust, NA at trustee, et)
6 al,)
7)
8 Plaintiff,)

9) Case No.
10 vs.) 2010-CP-10-6060

11)
12 Johnson D. Koola,)
13)
14 Defendant.)

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18 Hearing before the Honorable Mikell R.
19 Scarborough, reported by Josie Allen Boehm, Registered
20 Professional Reporter and Notary Public, at 100 Broad
21 Street, Courtroom 2A, Charleston, South Carolina, May
22 30th, 2023 commencing at 12:08 p.m.

23
24
25

MIKELL R. SCARBOROUGH
MASTER IN EQUITY
CHARLESTON COUNTY JUDICIAL CENTER
100 BROAD STREET, SUITE 266
CHARLESTON, SOUTH CAROLINA 29401

28

P-206
28

APPEARANCES

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For the Plaintiff:

Henry Guyton Murrell, Attorney at Law

Scott and Corley, P.A.

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

guytonm@scottandcorley.com

(803) 252-3340

Pro Se Defendant:

Johnson D. Koola

johnson.koola@gmail.com

D78
7 29

1 THE COURT: The Court previously issued its
2 order granting summary judgement and foreclosure to
3 sale entered April 13th of this year. Mr. Koola then
4 filed some motions to reconsider, as well as some
5 other motions which the Court addressed in an order of
6 May 8, 2023.

7 The motion to reconsideration was denied.
8 Court adopted the plaintiff's return as the basis for
9 the denial of the reconsideration. Mr. Koola filed a
10 motion to void crossclaim at First Citizens Bank, but
11 that claim had been dismissed with prejudice early on
12 in this case, back in October of 2010.

13 And then defendant filed a motion to grant
14 homestead exemption, a motion to stay the sale, which
15 the Court found was not ripe because the matter had
16 not been appealed.

17 But I am informed based on the record that an
18 appeal was filed on or about the 18th of May this
19 year, to which the -- either it was printed off twice
20 or it got filed twice.

21 Defendants have replied to the plaintiff's
22 return to the motion to stay the foreclosure sale, as
23 well as a motion to grant the homestead exemption.
24 That's what that is. Okay.

25 So the two issues before the Court would be

1 those. But I think those would be the appropriate
2 components to use in calculating the debt rather than,
3 well, my property has increased in value so you should
4 ignore the statues and the court rules and just let me
5 skate on posting any appellate bond.

6 But certainly I think not only based on my
7 experience and probably this Court's experience but
8 based upon the procedural history of this case, I
9 don't think there's any question that four to six
10 months is wholly unrealistic.

11 MR. KOOLA: May I address the Court?

12 THE COURT: Certainly.

13 MR. KOOLA: In the case I mentioned here,
14 *Ditech v. Snyder*, that case started in April 2005 and
15 that case ended in 2022, and that's longer than my
16 case.

17 And in that case, the judge -- do you
18 remember how much the bond was in the Snyder case?
19 \$25,000.

20 THE COURT: Okay.

21 MR. KOOLA: And when the loan was -- the debt
22 was almost 300,000. Okay. And mine is close to
23 200,000.

24 And asking this Court -- I think most
25 appropriate amount is \$10,000, Your Honor. I can give

1 you the order of -- I couldn't make copies.

2 THE COURT: Okay. All right. So, you know,
3 there's no set -- that I know of, there's no set rule
4 as to determine what the amount of the bond should be.
5 But the purpose behind the setting of the bond is to
6 make sure that there's no waste to the property.

7 MR. KOOLA: So I think --

8 THE COURT: Mr. Koola, I'm speaking right
9 now. Okay? And I'm speaking to this lady as much as
10 I'm speaking to you.

11 Because you clearly want to take this case up
12 on appeal, but you need to have a record so that you
13 can see to that. So if you'll just allow one person
14 to speak at a time, it would be a lot easier for all
15 us, especially this lady taking stuff down.

16 MR. KOOLA: Okay.

17 THE COURT: So there's no real set rules on
18 it. The Court does it as a matter of rule. I've had
19 them come back because it's too high and I've
20 determined some were too low.

21 And you're correct, it says master in equity,
22 supersedeas motion, set the bond at \$25,000. That
23 particular case, I can't remember what all it was, but
24 it involved different questions of law than this one
25 did. That had a estate involved with it just like the

1 case you talked about before with the lady that had
2 something to do with dower rights. I mean, those have
3 been gone so long. That got kicked out some point in
4 time when I started practicing law.

5 MR. MURRELL: I think it may have been on my
6 law school exam.

7 THE COURT: So I ran numbers. I sort of went
8 between the two. I mean, clearly \$250 a month is way
9 too low. \$2,000 a month seems about right. I find
10 that's about 24,000, 25,000 dollars a year if you add
11 the taxes in there. And it's somewhere between three
12 to five years that these appeals are taking.

13 They're taking longer today than they were in
14 the past, I believe partly because of COVID and partly
15 because of there's an emphasis on getting criminal
16 cases taken out these days.

17 I noticed that the interest on this debt as
18 of March 22 was \$87,000. There hasn't been a payment
19 since I guess September, October of 2009. You do have
20 escrow adjustments. Those don't look to be totally
21 out of whack. 6700 dollars there, that's \$93,000
22 right there. Rent at 2,000 a month. Like I said,
23 it's 24 -- somewhere between 24 and \$25,000 a year.

24 So I'm going to set the bond at \$75,000 is
25 what I'm going to set the bond at. So Mr. Koola, what

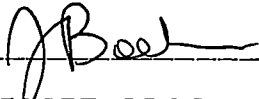
COURT REPORTER'S CERTIFICATE

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I DO HEREBY CERTIFY THAT THE TESTIMONY
CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
ATTORNEY, AGENT, OR OTHERWISE.

SIGNED THIS THE 14th DAY OF JUNE 2023.



JOSIE ALLEN BOEHM

My Commission Expires 10/18/32

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

35



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: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-05-30 12:48:37 page 3 of 3

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., CS. & F.C.
By W. H. Sakado
DEPUTY CLERK

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 WAIVE THE
SUPERSEDEAS BOND OR TO SET
IT AT A NOMINAL AMOUNT**

FILED
2023 JUN -9 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT

On May 30, 2023, the Master in Equity set supersedeas bond at \$75,000.00 guaranteed by two sureties. Defendant Koola posted the bond, and the total cost to set the bond came to approximately \$82,000.00, which had a crippling effect on Koola. Koola files Motion to waive the Bond or to set it at a nominal amount.

While ordering to set the Bond, the Court was guided by the appellant's arguments: (i) The time to complete the Appeal process in the Court of Appeals is four to five years; (ii) The rental value of the property is \$2,375 to \$2,400 p.m. *The real estate agent who determined the rental value did so by looking at Koola's condominium from the roadside.*

During the Hearing, Koola made the following representations: (i) The average time to complete an Appeal in the Court of Appeals is less than one year; (ii) Determination of the fair rental value by looking at the condominium from the roadside is grossly inappropriate; (iii) The market value of Koola's condominium is much higher than the debt allegedly owed to the

plaintiff; (iv) In Koola's 2021 Bankruptcy, he hired a professional to appraise the property. The appraisal covered the present condition of the property. The following conditions were reported: Mold in the ceiling of the drawing/living room; the air-conditioner is broken; there is no heating and cooling; there is no running hot water; bath rooms have to be updated; new carpet has to be laid; fresh painting may be necessary. Under these conditions, the property cannot be rented. Defendant lives in the property because of his difficult financial conditions. A **nominal user fee** rather than fair rent not exceeding \$250.00 per month is appropriate to determine the supersedeas bond.

Further, the Court's Order is on Appeal to the Court of Appeals. The Appeal is based on the arguments that Plaintiff lacked standing in Koola's foreclosure case, and the Court lacked jurisdiction over plaintiff's claims (*lack of in rem jurisdiction*) and over plaintiff (*lack of in personam jurisdiction*). In support of its claims, plaintiff produced a copy of the Note, which Koola executed in favor of Countrywide Home Loans, Inc. Obviously, it is claiming that Countrywide's claims against Koola is U.S. Bank Trust's claims against Koola.

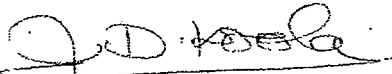
In *Ditech Fin. V. Snyder*, 2022 S.C. App. Unpub. LEXIS 377, *9 - *10; 2022 WL 2826359 (S.C. Ct. App. 2022), a case originated from this Court, the Master in Equity set the supersedeas bond at a nominal amount for \$25,000.00. In Snyder's case, the total amount of the debt was \$293,930.00 versus the total amount of the debt in Koola's case is approximately \$232,000.00. Apparently, this Court employs arbitrary standards to set the supersedeas bond.

In *Bunkum v. Manor Properties*, 321 S.C. 95, 97; 467 S.E.2d 758, 759-60 (S.C. 1966), the Supreme Court reduced the supersedeas bond amount from \$150,000 to \$36,400.00

Koola prays to this Court to waive the supersedeas bond or to set it at a nominal amount of \$15,000.00 comparable to that in *Snyder*.

Respectfully submitted,

Mt Pleasant, South Carolina
June 9, 2023


Johnson D. Koola

PROOF OF SERVICE

On June 9, 2023, defendant Koola filed "Motion to Waive the Supersedeas Bond or to Set it at a Nominal Amount" 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~~ 29202

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

FORM 4

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:

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

3A-28 40



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: Order/Electronic Form 4

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s/Mikell R. Scarborough 3062

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JULIE J. ARMSTRONG (SEAL)
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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

**Mikell Scarborough
Master-in-Equity**

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OCT 30 2019
SC Court of Appeals

Appellate Case No. 2019-000575

Ditech Financial, LLC..... Respondent,

v.

**Kevin G. Snyder, individually and
as Personal Representative of the
Estate of Mary Snyder Appellant.**

PETITION FOR A WRIT OF SUPERSEDEAS

Appellant Kevin G. Snyder submits this Petition for Supersedeas, pursuant to Rule 241, SCACR, requesting a writ of supersedeas to suspend proceedings in the lower court. Snyder would show this Court the following¹ in support of his petition:

¹ Also attached, pursuant to Rule 241(d)(4)(C), SCACR, are certified copies of:

09/27/19 Order denying supersedeas (Exhibit A)

10/18/19 Order denying supersedeas (Exhibit B)

Snyder's motion for supersedeas before the Master-in-Equity is located in the Record on Appeal (R. pp. 435-440), as is Ditech's response (R. pp. 554-560). The Record on Appeal and final briefs were filed of record with this Court on October 18, 2019.

BACKGROUND

This is the appeal of a contested residential foreclosure. The Respondent is the purported successor to the original Plaintiff, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. The Appellant is Kevin Snyder, in his individual capacity as a mortgagor of the property, and as personal representative of his late wife, who was also a mortgagor.² BAC filed the original foreclosure Complaint and Lis Pendens on September 23, 2010, and amended the Complaint and Lis Pendens on October 13, 2010. (R. pp. 35-39, 42, 45-49, 56-57). Kevin and Mary Snyder were served a Notice Foreclosure Intervention on December 17, 2012, which was denied. (R. pp. 59-60, 63). Undersigned counsel appeared for the Snyders on May 3, 2013, filing his notice of appearance with the Clerk of Court and serving it on BAC's counsel. (R. p. 66). BAC purportedly transferred the Snyders' loan at some point shortly thereafter to Green Tree Servicing, LLC,³ and on June 17, 2013, the Snyders' counsel sent Green Tree a letter informing it of the Snyders' representation, and enclosing a copy of In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (2011) (the "Admin Order"). (R. p. 121). The Snyders' counsel followed up this letter with another letter on July 18, 2013, that enclosed a written authorization from the Snyders (requested by Green Tree) and another copy of the Admin Order. (R. pp. 144-45). BAC's attorney was copied on this letter. (R. p. 144). These opening communications inaugurated Green Tree's nearly six year period of bungled communications and foreclosure interventions, presented in detail in Argument I of Snyder's Principal Brief.

² During the pendency of this action, Snyder's profoundly disabled daughter died (December 22, 2014), and almost a year later his wife, former Defendant Mary Snyder, died of undiagnosed lung cancer (November 23, 2015).

³ However, please see Argument III of Snyder's Principal Brief, which argues that BAC (and ultimately Ditech) did not have the standing to pursue this action.

Pursuant to a September 30, 2013, status hearing, this action was stayed pending foreclosure intervention. The Snyders' counsel was not provided notice of this hearing or order. (R. p. 4). On March 12, 2014, the Master-in-Equity, without notice or hearing, granted BAC's motion to replace BAC Home Loans Servicing, LP with Green Tree Servicing, LLC as Plaintiff. (R. pp. 9-10, 179-87).

Green Tree substituted counsel on April 9, 2015, and again on July 2, 2018. The parties engaged in discovery, and Snyder filed a motion to compel on November 29, 2018 to compel Green Tree's responses to his discovery. (R. pp. 88-90, 179-87). Pursuant to a December 10, 2018, status conference (where the motion to compel was heard without a court reporter), the Master-in-Equity issued a consent scheduling order and a consent order amending the caption to replace Green Tree Servicing, LLC with Ditech Financial, LLC. (R. pp. 13-16).

Ditech filed notice of its bankruptcy on March 1, 2019 (amended May 1, 2019). (R. pp. 199-288). All parties filed motions for summary judgment on March 11, 2019. (R. pp. 291-433). These motions were heard at a pre-trial hearing on March 18, 2019. (R. pp. 561-601). The Master-in-Equity denied Snyder's motion, granted Ditech's motion in part, and denied Snyder's motion to compel by order dated March 27, 2019. (R. pp. 19-22). Snyder timely appealed this order on March 29, 2019. (R. pp. 531-33). Though Snyder argued that the Master-in-Equity lacked jurisdiction due to the appeal (R. pp. 606-22), the Master-in-Equity proceeded with a final hearing on April 1, 2019. (R. pp. 622-60). The Master-in-Equity issued his final order on April 23, 2019, ordering the foreclosure of the mortgage and the sale of 1752 Orange Grove Shores. (R. pp. 23-32). Snyder amended his notice of

appeal to include this order and also filed a motion for supersedeas on May 2, 2019. (R. pp. 436-40). Ditech filed its response to the motion on June 3, 2019. (R. pp. 554-560).

The Clerk of Court scheduled the supersedeas motion to be heard before Judge Deadra Jefferson on September 27, 2019; at hearing, Judge Jefferson denied the motion for being filed with the “wrong Court”.⁴ (Exhibit A). The Master-in-Equity subsequently heard the motion without hearing, with the consent of the parties, and granted the motion on October 18, 2019, setting the supersedeas bond at \$25,000.00. (Exhibit B).

ARGUMENT

A writ of supersedeas must be issued if “such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. The parties agree that such a writ is proper under the circumstances of this case, as the judicial sale of Snyder’s property would moot some or all of the issues of this appeal. Snyder takes issue with the amount of the bond, which he believes should be nominal. While the amount of an appeal bond is committed to the sound discretion of the court below, United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992), the appellate court has the authority to reduce the amount of a bond. See e.g. Bunkum v. Manor Props., 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996) (Supreme Court reduced the amount of appeal bond upon a petition for supersedeas).

⁴ This is incorrect. Snyder’s counsel properly filed the motion with the Charleston County Clerk of Court, as he has done for his entire fourteen years of practice; the Master-in-Equity’s office does not accept written motions for filing. After the September 27, 2019 hearing the parties’ counsel provided written copies of the motion and response to the Master-in-Equity’s office, who agreed to consider the motion without re-filing and without a hearing.

In its response before the Master-in-Equity, Ditech requested a bond of \$25,134.48, which represented the monthly mortgage payment of \$1,396.36 multiplied by eighteen months; this bond would increase if the appeal lasted longer than eighteen months. (R. pp. 557-58). A supersedeas or appeal bond is intended to indemnify the respondent for the value of the judgment if it is affirmed. See generally Jerome v. McCarter, 88 U.S. (21 Wall) 17, 30 (1874); Catlett v. Brodie, 22 U.S. 553, 554 (1824). Ditech has waived its right to pursue a deficiency judgment in this matter, limiting its recovery on its \$249,883.00 judgment to the assets obtained from the sale of the residence at 1752 Orange Grove Shores. (R. pp. 27-28, 659). This property is worth perhaps \$249,883.00. (R. p. 248). Ditech holds a judgment for \$293,930.69. (R. p. 28). As Ditech has voluntarily limited its harm to the value of the property at issue in this action (which will never conceivably satisfy or exceed Ditech's judgment), it cannot be harmed by this appeal, and bond is not necessary. Cf. Urbain v. Knapp Bros. Mfg. Co., 217 F.2d 810, 815-16 (7th Cir. 1954) (no security necessary for a preliminary injunction when no material harm can come to the party restrained).

A bond is also not necessary because the Master-in-Equity lost jurisdiction over this matter on March 29, 2019, when Snyder appealed the Master-in-Equity's March 27, 2019, order granting, in part, Ditech's motion for summary judgment. (R. pp. 19-22, 531-33). Assuming, *arguendo*, the March 27, 2019, order was not final,⁵ it nonetheless affects

⁵ In the alternative, Snyder would submit that the March 27, 2019, order was a "final" order under South Carolina law. South Carolina law defines a final judgment/order as: "one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term". Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 21 S.E. 2d 209 (1942); S.C. Code § 14-3-330(3) (final orders appealable). If the March 27, 2019 order is treated as interlocutory, this Court will not be able to place the parties in their original condition

a substantial right, as it effectively strikes Snyder's cause of action for civil compensatory contempt, and strikes the Estate of Mary Snyder's defense of the Attorney Preference Statute. See S.C. Code § 14-3-330(2) (interlocutory order affecting a substantial right immediately appealable). Snyder was unable to fully contest Ditech's case at the final hearing; a substantial right was affected. See McLaughlin v. Strickland, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983); see also Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 529 S.E.2d 11 (2000) (immediate appeals under section 14-3-330(2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case). Ditech appears to agree with Snyder's position: **"Respondent does not dispute the immediate appealability of the portion of the Court's March 27, 2019 Order granting Ditech partial summary judgment and striking Appellant's defense..."** (R. p. 549) (emphasis added).

As the March 27, 2019, order was immediately appealable (even in part), the effect of the March 29, 2019, notice of appeal was to divest the Master-in-Equity of jurisdiction.

after trial. The April 23, 2019, final order in this matter directs the sale of the property in question. (03/23/19 order p. 6). Orders directing the sale of property are not subject to the automatic stay of an appeal. Rule 241(b)(4), SCACR. Should Snyder prevail on his appeal of the March 27, 2019, order, the Master-in-Equity's order of foreclosure and sale would be reversed. However, by this time this Court issues an opinion, the property in question will have been sold via judicial sale. Without an immediate appeal of the March 27, 2019 order, and the consequential automatic stay, the property at issue could be lost and an appeal would not reinstate ownership.

The immediate appealability of the March 27, 2019, order is consistent with other South Carolina decisions, which generally hold that an order that affects an interest in property is immediately appealable, especially if there exists a risk that the underlying property could be lost. See Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986) (order dissolving lis pendens immediately appealable); Va.-Carolina Chem. Co. v. Wilkins, 105 S.C. 291, 298, 89 S.E. 659, 661 (1916) (order dissolving an attachment to lumber immediately appealable); Kay v. Meadors, 216 S.C. 483, 486, 58 S.E.2d 893, 895 (1950) (order refusing to dissolve an attachment to automobile immediately appealable).

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” Rule 241(a), SCACR. Upon the service of the Notice of Appeal, Rule 205, SCACR, divests the lower court of jurisdiction in matters “affected by the appeal”. Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). According to the South Carolina Supreme Court, to “affect” a matter is “to produce an effect on; to influence in some way”. Id. (quoting Black’s Law Dictionary 68 (10th ed. 2014)). This is a broad definition – the Stokes-Craven court held that even issues in other cases may be stayed if the issues in those cases depend in some way on the case appealed.

Id.

Snyder requested the following relief⁶ in his civil compensatory contempt cause of action:

...Defendants request that this Court strike Plaintiff’s Amended Complaint and Plaintiff’s Reply to Defendant’s counterclaims. Defendants would further request that this Court enter default against the Plaintiff and issue a default judgment on Defendants’ counterclaims for civil compensatory contempt and quiet title ordering either (1) dissolution of Plaintiff’s lien on 1752 Orange Grove Shores Drive or (2) rescission of the note and mortgage at issue in this action.

In the alternative, Defendants would ask that Plaintiff’s demand for damages of accrued interest, fees (including attorneys’ fees), costs, advances, and a deficiency judgment be struck from Plaintiff’s Amended Complaint and it be barred from offering any evidence of the same.

(R. p. 419). This cause of action was effectively struck by the Master-in-Equity’s March 27, 2019 order (“Plaintiff’s Motion for Summary Judgment is GRANTED as to the non-

⁶ While this language is from Snyder’s motion for summary judgment (which was denied), it shows the scope of relief possible under the current orders from the bankruptcy court.

HGT #18

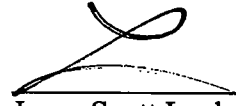
stayed portions of Defendants' counterclaim for Civil Compensatory Contempt"). (R. p. 22). Should Snyder prevail on appeal and obtain this requested relief, Ditech will have had no right to proceed with its foreclosure action and Snyder's property would no longer be encumbered by the mortgage at issue. Should Snyder prevail on appeal and obtain his alternative relief, Ditech would not be able to claim a significant amount of damages (in excess of \$150,000.00). Either circumstance "produce[s] an effect on" or "influence[s]" the underlying action; therefore, this action should have been stayed in its entirety on March 29, 2019. Likewise, the striking of the Attorney Preference Statute defense (R. p. 22) has a direct effect on the foreclosure action, as if the Estate of Mary Snyder were to prevail on this defense, it would be entitled to a setoff. See Deutsche Bank Nat. Trust Co. v. Booms, Op. No. 2015-UP-097 (S.C. Ct. App. Feb. 25, 2015) (citing S.C. Code § 37-10-105(A)).

The Master-in-Equity's March 27, 2019, order granting summary judgment does not fall within any of the recognized exceptions in Rule 241(b), SCACR. Therefore, the March 27, 2019, order falls under the "general rule" of Rule 241(a), where "the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal". The action below should have been stayed without bond on March 29, 2019; accordingly, any supersedeas issued by this Court should likewise be issued without bond (or alternatively, a nominal bond).

CONCLUSION

The petition for supersedeas should be granted and bond be waived or set at a nominal amount (e.g. \$100.00).

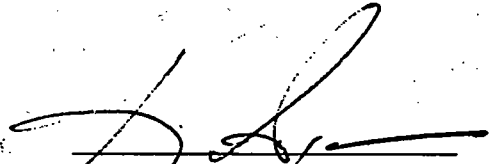
Dated: 10/28/2019



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North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorney for Appellant

VERIFICATION

Personally appeared before me, Kevin G. Snyder, who being duly sworn does state as follows: I am the Appellant in this case, I have read the Petition for a Writ of Supersedeas and can and do verify under oath that to the best of my knowledge, the facts stated therein are true.



Kevin G. Snyder

SWORN TO AND SUBSCRIBED BEFORE ME

this 28th Day of October, 2019

 (SEAL)

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/25/2028



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

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Case No. 2010-CP-10-6060

SC Court of Appeals

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.

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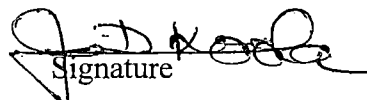
I certify that I have served Appellant's Petition for a Writ of Supersedeas on the counsels of record for the respondent, addressed below, by depositing a copy of it in the United States Mail, postage prepaid, on September 26, 2023:

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 26, 2023

Mt. Pleasant, South Carolina 29464


Signature

Johnson D. Koola, Appellant, pro se

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