

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

OCT 12 2023

SC Court of Appeals

Honorable Mikell R. Scarborough  
Master In Equity for Charleston County

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Case No. 2010-CP-10-6060

Appellate Case No. 2023-000819

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

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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**APPELLEE'S RETURN TO PETITION FOR WRIT OF SUPERSEDEAS**

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Appellee/Respondent, U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust ("USBT"), by and through its undersigned attorney, does hereby Return and Respond to the Petition for Writ of Supersedeas Bond by Appellant/Petitioner Johnson Koola ("Koola").

**PROCEDURAL BACKGROUND**

USBT's predecessor-in-interest filed a foreclosure action against various defendants, including Koola, on July 27, 2010, and later amended same on September 1, 2010. Koola answered the amended complaint on November 29, 2010, then filed an amended answer and counterclaim on March 24, 2011

In April 2012, after a period of discovery, USBT's predecessor filed a motion for summary

judgment as to Koola's counterclaims. In a March 26, 2014 Order, the trial court granted that motion. Koola appealed. On February 17, 2016, this Court affirmed the trial court's decision, however, the remittitur to the trial court was not filed until March 9, 2018.

On October 25, 2019, USBT was substituted as the Plaintiff. On February 15, 2023, after resolution of bankruptcy issues, USBT filed a motion for summary judgment on its case-in-chief. That motion was granted on April 13, 2023.

On April 24, 2023, Koola filed a Motion to Stay Foreclosure and Set Supersedeas Bond Pending Appeal. (Koola R. pp. 14-5.)<sup>1</sup> USBT filed a return to the motion on May 4, 2023. (Koola R. pp. 18-20.) Included with this return was evidence of the annual real property taxes for the property and an affidavit from an experienced real estate broker and property manager who opined that the fair rental value of the property was \$2,375.00 to \$2,400.00 per month. (Koola R. pp. 18-20; USBT Exh. 1.) A hearing on the motion to stay foreclosure and set supersedeas bond was held on May 30, 2023. During the course of the hearing, the trial court heard from the parties and considered the evidence presented. Ultimately, the trial court rejected the bond amounts proposed by the parties and, instead, "ran its own numbers." The trial court concluded that a rental value of \$2,000.00 per month was just, that a total annual amount should include real property taxes, that the total annual amount should be \$25,000.00 and that, based on the trial court's experience, this appeal could last between two and four years. (Koola R. pp. 28-24.) The trial court, therefore, selected three years as the expected period in which a bond would be required. (Koola R. p. 33.)

On May 30, the trial court entered an order setting a supersedeas bond in the amount of \$75,000.00. (Koola R. p. 35.) On June 5, 2023, the trial court entered a stay of foreclosure following the payment of this bond by Appellant. On June 9, 2024, Appellant filed a Motion to Reconsider and a Motion to Wave (sic) Supersedeas Bond. (Koola R. p. 37-9.) Those motions were denied by the trial

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<sup>1</sup> Insofar as the "Record" Koola appended to his Petition is largely provides sufficient information to allow this Court to deny the Petition, USBT relies on same and refers to it as "Koola R." However, Koola did not include the annual tax information submitted with USBT's Return to his Motion for Supersedeas Bond and it is attached hereto as USBT's Exhibit 1.

court on August 24, 2023.

### LEGAL STANDARD

Because the Judgment of Foreclosure and Sale directs the sale of real property, that order is not automatically stayed by Appellant's appeal. See SCACR 241(b)(4) (listing as an exception to the automatic stay rule any "Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170"); see also *C-Sculptures, LLC, No. 3 v. Brown*, 393 S.C. 27, 32, 709 S.E.2d 705, 708 (2011) ("The foreclosure decree would be the type of order covered by section 18-9-170 ...."). "In a case subject to an exception [set forth in SCACR 241(b)], any party may move for an order imposing supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." SCACR 241(c)(1). "Except where extraordinary circumstances make it impracticable, an application . . . for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal." SCACR 241(d)(1). "After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending" to review the trial court's order. SCACR 241(d)(2).

### ARGUMENT

S.C. Code Ann. § 18-9-170 explains how a court should calculate an appropriate bond amount:

If the judgment appealed from direct[s] the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and 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 and which shall be specified in the undertaking.

(emphasis added).

Here, Appellee submitted competent evidence to the trial court that the value of the use and occupation of the property was \$2,400.00 per month. (Koola R. p. 20). It further submitted evidence that the property taxes for the property are \$612.45 per annum. (USBT's Exhibit 1.). Appellee also estimated

the length of the appeal at four years. (Koola R. p. 19.) Thus, based on this evidence, Appellee substantiated and requested a bond amount of \$117,649.80. (Koola R. p. 18-9.)

The trial court correctly stated the factors comprising the calculation of the bond amount. (May 30, 2023 T. p. 15.) The trial court, however, also “ran the numbers” in a clear effort to ensure a just and fair decision (May 30, 2023 T. p. 16.). It rejected Appellant’s request for a bond amount of \$250.00 per month as “way too low.” (May 30, 2023 T. p. 16.) However, it also rejected Appellee’s estimated rental value. The trial court concluded a reasonable rental value was approximately \$2,000.00 per month. (May 30, 2023 T. p. 16.). It further concluded that, including the real property taxes likely to come due, a total amount of \$25,000.00 per annum was just. (May 30, 2023 T. p. 16.). Finally, the trial court believed this appeal could span three years and, therefore, entered a bond amount of \$75,000.00. (May 30, 2023 T. p. 16.)

Koola’s contention that the trial court’s conclusions are arbitrary is completely unsupported. also appears to rely on arguments advanced in, and findings made, in another case concerning another property. This Petition concerns only this Property and only the method used for determining the bond owed during this appeal.

As a practical matter, Koola does not dispute that a three-bedroom, two-bathroom unit in his geographic location could rent for \$2,000.00 per month. While his specific property might require some repairs to become marketable in that range, that does not reduce the reasonable rental value to zero. Rather, the cost of those repairs could be deducted from the total rental amount. And, of course, once repaired, the property might fetch far more than \$2,000.00 per month. However, more fundamentally, it is not reasonable to expect the trial court, or this Court, to engage in an exacting review of properties subject to § 18-9-170. It is enough, as the trial court did here, to fashion a bond amount based on the relevant market, and the size and general condition of the property, using its sound discretion. Because this method was duly employed, this Court should not disturb the bond amount established by the trial court.

#### **CONCLUSION**

For the foregoing reasons, Appellee prays that:

- The Court affirm the trial court's supersedeas bond in the amount of \$75,000.00; and
- For such other and further relief as the Court deems just and appropriate.

This the \_\_ day of October, 2023.

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(SC Bar ID #80432)  
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*Attorneys for Plaintiff/Respondent*  
*U.S. Bank Trust, N.A., as Trustee for LSF10 Master*  
*Participation Trust*

# **Exhibit 1**



WELCOME    REAL PROPERTY RECORD SEARCH    REAL PROPERTY BILL SEARCH    PERSONAL PROPERTY SEARCH  
 MOTOR VEHICLE SEARCH    CHECKOUT    CONTACT US

\$0.00  
 CHECK OUT

RETURN    PRINT

Account Information

Last Update: 5/1/2023 2:42:09 AM

| Parcel Number | Alternate Number | Property Type |
|---------------|------------------|---------------|
| 5591400157    |                  | Real          |

No records found.

Installment Information

Payable Year: 2022/2023 | Bill Number 11006780 | Tax Bill 17602108

| Date      | Tax      | Penalty | Interest | Fees   | Total Paid | Amount Due | Status |
|-----------|----------|---------|----------|--------|------------|------------|--------|
| 1/17/2023 | \$612.45 | \$0.00  | \$0.00   | \$0.00 | (\$612.45) | \$0.00     | Paid   |

Assessment Information

| Taxing Authority             | Gross Tax | Credits    | Savings | Net Tax         |
|------------------------------|-----------|------------|---------|-----------------|
| <b>County</b>                |           |            |         |                 |
| County Government Bonds      | \$44.84   | (\$12.20)  | \$0.00  | \$32.64         |
| County Government Operating  | \$302.82  | (\$228.13) | \$0.00  | \$74.69         |
| <b>Fund Type Total</b>       |           |            |         | <b>\$107.33</b> |
| <b>Town of Mt Pleasant</b>   |           |            |         |                 |
| Town of Mount Pleasant Bonds | \$33.81   | (\$9.20)   | \$0.00  | \$24.61         |
| Town of Mount Pleasant       | \$255.05  | (\$129.56) | \$0.00  | \$125.49        |
| <b>Fund Type Total</b>       |           |            |         | <b>\$150.10</b> |
| <b>Parks and Rec</b>         |           |            |         |                 |
| Parks & Recreation Operating | \$29.40   | (\$8.00)   | \$0.00  | \$21.40         |
| Parks & Recreation Bond      | \$13.23   | (\$3.60)   | \$0.00  | \$9.63          |
| <b>Fund Type Total</b>       |           |            |         | <b>\$31.03</b>  |

**School Board**

|                        |          |            |        |                 |
|------------------------|----------|------------|--------|-----------------|
| School Board Operating | \$955.50 | (\$955.50) | \$0.00 | \$0.00          |
| School Board Bond      | \$205.80 | (\$56.00)  | \$0.00 | \$149.80        |
| <b>Fund Type Total</b> |          |            |        | <b>\$149.80</b> |

**RES SOLID WASTE USER FEE**

|                        |         |        |        |                |
|------------------------|---------|--------|--------|----------------|
| RESIDENTIAL USER FEE   | \$99.00 | \$0.00 | \$0.00 | \$99.00        |
| <b>Fund Type Total</b> |         |        |        | <b>\$99.00</b> |

**TTC**

|                               |         |          |        |                |
|-------------------------------|---------|----------|--------|----------------|
| Trident Technical College Ops | \$13.23 | (\$3.60) | \$0.00 | \$9.63         |
| Trident Tech Bonds            | \$5.15  | (\$1.40) | \$0.00 | \$3.75         |
| <b>Fund Type Total</b>        |         |          |        | <b>\$13.38</b> |

**Town of Mt Pleasant Res SW Fee**

|  |         |        |        |                 |
|--|---------|--------|--------|-----------------|
| Town of Mt Pleasant Residential SW Fee | \$61.81 | \$0.00 | \$0.00 | \$61.81         |
| <b>Fund Type Total</b>                 |         |        |        | <b>\$61.81</b>  |
| <b>Total Net Tax</b>                   |         |        |        | <b>\$612.45</b> |

Payment History

| LAST PAID | AMOUNT PAID | RECEIPT NUMBER |
|-----------|-------------|----------------|
| 1/13/2023 | \$612.45    | B23.35422      |

CERTIFICATE OF SERVICE

The undersigned attorney for the Plaintiff/Respondent U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust certifies that its **RESPONDENT'S RETURN TO MOTION TO GRANT HOMESTEAD EXEMPTION** was served on counsel for Appellant by the South Carolina Court's electronic system and by depositing a copy thereof in the United States Mail, first class, postage prepaid, on \_\_\_\_\_, 2023 to the following:

H. Guyton Murrell, Esq.  
Scott and Corley, P.A.  
2712 Middleburgh Drive, Suite 200  
Columbia, SC 29204  
*Attorneys for Plaintiff*

Mr. S. Nelson Weston, Jr. Esq.  
1900 Barnwell Street  
Columbia, SC 29202  
*Attorneys for First Citizens Bank and Trust Co., Inc.*  
*s/b/m to First Citizens Bank and Trust Company of South Carolina*

Ms. Lydia P. Davidson, Esq.  
Krawcheck & Davidson, LLC  
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*Attorneys for Cambridge Lakes*  
*Condominium Homeowner's Association Inc.*

Johnson D. Koola  
1587 Cambridge Lakes Drive  
Mt. Pleasant, SC 29464  
*Pro Se*

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T. Richmond McPherson

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October 9, 2023

VIA U.S. MAIL

Ms. Stormy Falin  
Clerk's Office Team Leader (Civil)  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Court of Appeals No. 2023-000819  
U.S. Bank Trust, N.A. v. Johnson D. Koola et al.

Dear Ms. Falin:

Please find enclosed an original and six (6) copies of the Appellee's Return and Respond to the Petition for Writ of Supersedeas Bond to be Included in the Record on Appeal in connection with the above referenced matter. I have also enclosed our check in the amount of \$50.00 for the motion filing fee and order fee. Please file the Motion and return the certified filed copies to me in the envelope provided for your convenience.

By copy of this letter, I am serving counsel of record for the Defendants and Appellant with a copy of Appellee's Return and Respond to the Petition for Writ of Supersedeas Bond to be Included in the Record on Appeal.

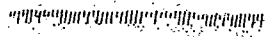
Thank you for your kind consideration in this matter. Should you have any questions, please do not hesitate to contact our office.

Sincerely,  
McGuireWoods LLP

*Chaniese S. Collins*  
Chaniese S. Collins  
Senior Litigation Paralegal

Enclosures

cc: H. Guyton Murrell, Esq.  
Mr. S. Nelson Weston, Jr. Esq.  
Ms. Lydia P. Davidson, Esq.  
Mr. Johnson D. Koola, pro se



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US POSTAGE

From: Chaniese Collins

**McGuireWoods**

201 N. Tryon St. | Suite 3000  
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Clerk's Office Team Leader (Civil)  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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