

# **EXHIBIT D**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
CAMBRIDGE LAKES HOA )  
Plaintiff )  
v. )  
JOHNSON KOOLA )  
Defendant )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL DISTRICT  
CASE # 2010-CP-10-9305

DEFENDANT KOOLA'S REPLY  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

FILED  
JAN -2 PM 3:45  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: EUGENE P. CORROGAN III, ESQ., ATTORNEY FOR THE PLAINTIFF

By and through his attorney, Shawn M. French, Defendant Koola, submits his Reply to Plaintiff's Motion for Summary Judgment.

**FACTS**

Cambridge Lakes was originally an apartment complex, which was converted into condominiums through a recordation of a Master Deed on February 24, 2003. Mr. Koola states that he the Developer, predecessor in interest of the plaintiff, never provided the proper disclosure report necessary for conversion of an apartment building into a condominium. Mr. Koola first became aware of this issue in 2008 when the Association filed a law suit against the developers and builders for construction defects.

Cambridge Lakes Condominium Homeowners Association f/k/a/ Cambridge Lakes Horizontal Property Regime (hereinafter the "Association") originally filed a civil action # 2010-SC-87-1646 against Mr. Koola in the Small Claims Court on August 10, 2010. Mr. Koola answered and Counterclaimed. The Honorable Magistrate transferred the case to the Court of Common Pleas on November 8, 2010. The original case was then continued as case number 2010-CP-10-9305. On December 15, 2010 a foreclosure action was filed by Bank of America at case number 2010-CP-10-6060. The plaintiff brought a cross claim against Mr. Koola in this action. Mr. Koola filed a timely response and counterclaim to the cross-claim. On January 4, 2011 and March 18, 2011, the Association filed motions to dismiss Mr. Koola's counterclaims against the Association, which were denied by the Honorable Court on July 26, 2011. In June 2011 the Association served

**THE ASSOCIATION'S CONSTRUCTION DEFECTS RELATED LITIGATION  
AND SELECTIVE PROSECUTION OF POSSIBLE WRONGDOERS.**

The Association filed the lawsuit # 2008-CP-10-3506 against Albert Estee and Stephen Heape and related entities as developers/sellers and Trademark Real Estate Inc. as one of the real estate agents and the builder and various subcontractors. The Association was selective and discriminatory in its pursuit of legal action. The developer/seller initially engaged Trade Mark as an exclusive selling agent. Trademark sold approximately 30 units out of possible 104 units in the subdivision. Later, the developer/seller replaced Trademark with Prudential Carolina Real Estate, currently Carolina One, which sold approximately 65 units in the subdivision. The Plaintiff pursued legal action against Trademark for violation of South Carolina Horizontal property Act §27-31-10 et. seq. However, the Plaintiff did not pursue any legal action against Prudential Carolina Real Estate even though Prudential was also equally in violation of South Carolina Horizontal property Act §27-3-110 et. seq.

For more than three years from June 2008 till the middle of 2011, the Association pursued civil action against Albert Estee and Stephen Heape as developers/sellers and related entities. However after three years and in mid-2011, the Association dismissed the case against Albert Estee and Stephen Heape as developers and sellers and related entities with prejudice. This is another example for the pursuit of civil actions against various entities and serious wrongdoers selectively and discriminatorily. The Association has not informed the homeowners and Defendant Koola why the case against developers/sellers was dismissed after three years of pursuing the legal action.

By these actions, the Association showed bad faith, dishonesty and incompetence and bad business judgment.

**IRRGULARITES IN THE ANNUAL BUDGET STATEMENTS**

The relevant sections of the annual budgets provided to the homeowners by the Association for certain years are reproduced below:

The budget for the year 2007 has the following entry:

CAMBRIDGE LAKES HOMEOWNERS ASSOCIATION					
YEAR TO DATE AS OF SEPTEMBER 30, 2007					
COMPARED TO 2007 BUDGET					
	Current Year to Date				
	Actual	Budget	Variance	Annual Budget	Budget Remaining
INCOME					
Operating	\$205,977.29	\$201,420.00	\$4,557.29	\$268,560.00	\$62,582.71

The budget for the year ended December 31, 2009 has the following entry:

CAMBRIDGE LAKES						
PROJECT RECAP						
9 MOS ACTUAL 3 MOS PROJECTION YEAR ENDING DECEMBER 31, 2009						
	Cambridge Lakes	Income/Expense 9/30/2009	3 Mos Projection Oct-Dec. 09	Total Projected 12/31/2009	Annual budget 2009	Budget Variance Proj 2009
		ACTUAL INCOME				
4100	Regime revenue	\$210,600	\$70,200	\$280,800	\$280,800	0

The budget information provided to the homeowners for 2013 contains the following information:

CAMBRIDGE LAKES			
APPROVED OPERATING BUDGET 2013			
INCOME	2011 Actual	2012 8 Months Actual	2013 Approved
OPERATING			
Regular Assessments	\$284,880.00	\$136,200.00	\$284,880.00
Late Fees	\$2,000.00	\$1,870.00	\$500.00
Comcast Royalties		\$3,590.00	\$4,400.00
Interest on Operating/Reserve	\$1,953.76	\$2.39	\$996.00

Total Operating Revenue	\$288,833.76	\$141,662.39	\$290,776.00
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None of the Annual Budgets of the Association presented above shows any dues outstanding from any homeowners. If so, the Association's claim that Defendant Koola is indebted to the Association for the non-payment of monthly regime assessments is not substantiated and established. For this reason, Mr. Koola requests this Honorable Court dismiss the Association's claims against Defendant Koola.

The other alternative is that the Association is providing wrong and manipulated budget information to homeowners. This serves to hide any wrongdoing in book keeping. Also, these annual budgets are intended to show prospective new homebuyers and lending institutions that Cambridge Lakes is operating perfectly well without any dues from homeowners - a method employed to artificially raise the home prices to let insiders sell property at huge premium. The Association stands to gain as it can levy higher sales transfer fee from new homebuyers. The Association does not follow the **Generally Accepted Accounting Practices** and appears to be manipulating the books. The manipulations of the information in the account book are possible violations of Unfair Trade Practices Act.

During the General Body meeting of the Association in November 2009, Mr. Koola asked the property manager to explain some accounting irregularities in the budget. The manager advised Defendant Koola to send an e-mail to the Manager. Within the next few days, Defendant Koola met with one of the Board members, Mr. John Martin to discuss the irregularities in the budget. He told Mr. Kool that he could not explain them. He advised Mr. Koola to write to the property manager. On Nov. 30, 2009, Defendant Koola sent an e-mail to the Property Manager with copy to the Mr. John Martin, the Board member (Exhibit 10). No response was received. Mr. Koola sent two to three additional e-mails to the property manager and copy to Mr. John Martin. Again, no responses. In the Motion for Summary Judgment at page 9, the Association states: "**.....Koola has met with at least one Board Member regarding the Association's finances**". This statement was complemented by an Affidavit from Mr. Martin, which states (Exhibit 11, Affidavit # 11 at page 2): "**On numerous occasions, I personally met with Mr. Koola and reviewed several Association balance sheets and annual budgets with him**". Mr. Koola states this is inaccurate.

South Carolina Horizontal Property Act §27-31-180 states: