

## EXHIBIT 1

Defendant Koola's Reply to Plaintiff's Motion for Summary Judgment

Pages 1, 8, 14, 15, 23 and 24 only.

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 TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

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

*SK*

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

Because of the prolonged litigation involving massive construction defects, the real estate transactions in the subdivision were completely frozen. Many homeowners could not sell their units and could not pay off the mortgage related debts. Many defaulted on their mortgage related payments. This forced many homeowners to sell their condominiums by short sale or through foreclosure. Approximately, 35% of the homeowners lost their homes. In the motion for Summary Judgment at page 10, the Association makes a simple statement as: **“.....In fact, every homeowner was affected by the construction lawsuit as no one was able to refinance their condominium while the lawsuit was ongoing.....”** (Emphasis added). This is an understatement as it is silent on large numbers of foreclosures and short sales and people who lost their homes in Cambridge Lakes.

Defendant Koola initially listed his property for sale in May/June 2008. In June 2008, the Association filed the civil action for construction defects. As the news of the construction litigation slowly spread through Charleston County, Defendant Koola could not sell his property in 2008. This forced Defendant Koola to file for Chapter 7 Bankruptcy in March 2009. Defendant Koola was discharged from Bankruptcy in July 2009. This bankruptcy case was subsequently reopened to add the claims against the Plaintiff. Nevertheless, Defendant Koola was paying all the mortgage related payments. In June 2009 Defendant Koola made an attempt to sell the property for the second time. This time the real estate agents refused to list the property citing the prolonged construction litigation. In July 2009, Defendant Koola made an attempt to sell the property by listing the property for sale cum lease. This attempt for sale cum lease was also not successful. By the end of 2009, Defendant Koola could not pay mortgage related payments anymore without sale of his condominium and defaulted on mortgage related payments. In 2010 on the advice of the Mortgagee, Defendant Koola attempted to sell his condominium through short sale. Due to the obstruction of short sale by the Association as detailed below, Defendant Koola withdrew his listing for short sale. In summary, the litigation initiated by the Association made defendant Koola completely insolvent.

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**OBSTRUCTION OF MR. KOOLA'S SHORTSALE OF HIS UNIT  
IS AN ACT OF CONSPIRACY AND VIOLATION OF  
SOUTH CAROLINA AND FEDERAL FAIR HOUSING LAWS**

substantially less. In any case, there is shortfall in the money available for repairs. Due to lack of money, the Association cannot complete all the repairs as claimed. In another words, the Cambridge Lakes condominiums are left with lot of incomplete repair works related to construction defects; these properties are stigmatized forever.

Many Cambridge Lakes homeowners could not sell their units due to the construction defects lawsuit and the stigmatization of the properties for a fair market price. Many lost their homes (an estimated 35 homeowners out of 104) to short sales and foreclosure sales and moved away. These actions of the Association made Defendant Koola financially insolvent and caused him to default on the mortgage related dues and made him face the current litigation.

**THE ASSOCIATION'S CONSTRUCTION DEFECTS LITIGATION  
AND CONSPIRACY AND NEGLIGENCE**

In June 2008, the Association initiated a civil action # 2008-CP-10-3506 for construction defects in the common areas of Cambridge Lake alleging massive construction defects. This litigation was filed without the knowledge and authorization from the homeowners. In the Motion for Summary Judgment at page 8, the Association states, "..... During March-April 2008, the Board of Directors first learned of potential construction defects to the Association's property..... Because of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf". (Emphasis added). The Association filed the lawsuit in June 2008.

The April 2008 Minutes of the Board of Directors of the Association (Exhibit 5 at page 2) makes the following statement:

"New Business Homeowner Request: The water intrusion for unit 1487 will be checked. Ms. Moore will get estimates to check the damages from inside of the unit as well as the interior unit".

This is the only mention of any issues and is insufficient for the Association to proceed with litigation. The minutes for the months of May and June 2008 do not mention anything about defects and repairs. There are no references in these minutes that the Association authorized Attorney Mr. John C. Hayes, IV, to file the civil action # 2008-CP-10-3506. To date, Mr. Koola has not been supplied with the information regarding when this litigation was authorized and by whom. The discussion about these defects, and the decision to file the lawsuit were held outside of the official business of the Association, as there are no references in the minutes of any meeting.

On November 20, 2004 Defendant Koola met with Mr. Stephen Fisher, Member, Board of Directors of the Association and asked him about the rumors of construction defects in Cambridge Lakes. Defendant Koola's immediate neighbor, who was working for the Architect firm, which oversaw the construction of Cambridge Lakes told Defendant Koola in private that some of the rumored constructions defects may be for real. He would not elaborate on this matter, as he was afraid of his job with the architect firm. Defendant Koola conveyed this information to Mr. Fisher during the meeting. Mr. Fisher denied any construction defects in Cambridge Lakes and did not act further on the information provided to him. Defendant Koola believed Mr. Fisher and was convinced that the rumors about construction defects are without any basis. Defendant Koola invested more and more in his condominium toward principal balance of the mortgage. Four years later, the Association filed the civil action # 2008-CP-10-3506 alleging massive construction defects; the architect firm was one of the defendants in the said case. After another three more years from 2008, Defendant Koola became insolvent, thanks to the Association.

Defendant Koola alleges that Mr. Fisher violated the fiduciary responsibilities. Also, Mr. Fisher was grossly **negligent** in not pursuing the information about the construction defects. Had Mr. Fisher, as a member of the Board, had investigated the potential construction defects based on Defendant Koola's information, he would have saved many homeowners from the loss of their homes. Defendant Koola will request the jury to decide whether this involves **violation of fiduciary responsibilities and negligence**. Court of Appeals of South Carolina in Island Car Wash, Inc. v. Norris III, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.) 1987 after case law analysis confirms: "*Confidential or fiduciary relationship exists when one reposes special confidence in another, so that latter, in equity and good conscience, is bound to act in good faith and with due regard to interest of one reposing confidence*".

Defendant Koola further alleges that the decision to file the lawsuit was an act of conspiracy between the Members of the Board of Directors of the Association, the management company (Ravenel Associates) and the Association attorney. The lawsuit was filed in June 2008, just before the expiration of the Statute of Limitations to file civil actions in cases related to construction defects. In South Carolina, civil actions for construction defects must be initiated within eight years. The Cambridge Lakes were ready for occupation sometime in 1999/2000. After the June 2008 deadline, no Cambridge Lakes homeowners can file for construction defects related case. That means the Association and its attorney have the exclusive jurisdiction to file the case. The civil case involved damages worth \$8 million. Therefore, the attorney stands to gain around \$2.4 million as

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: