

## EXHIBIT 2

Memorandum in Support of Plaintiff's Motion for Summary Judgment

Pages 1 and 8 only.

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

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-9305

**MEMORANDUM IN SUPPORT OF  
 PLAINTIFF'S MOTION FOR  
 SUMMARY JUDGMENT**

2012 DEC -7 PM 12:46  
 FILED  
 BRUCE J. ARMSTRONG  
 CLERK OF COURT

**TO: SHAWN M. FRENCH, ESQ., ATTORNEY FOR THE DEFENDANT:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff Cambridge Lakes HOA will, within ten (10) days of the service of this notice, or as soon thereafter as possible move before the Court for an Order granting Summary Judgment as to the Defendant Johnson Koola's ("Koola") counter claims. This motion is being made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

**FACTS**

In a summary judgment motion, the Court may take into consideration evidence beyond the allegations in the pleadings. This case was filed on July 29, 2010 and involves a collection action against Koola for the payment of homeowner's assessments. On November 9, 2010, this case was transferred from Charleston County Small Claims Court. Koola has asserted counter claims against Cambridge Lakes HOA (the "Association") for civil conspiracy and breach of fiduciary duty. (Am. Countercl., June 8, 2012.)

Regarding the claim of civil conspiracy, Koola alleges that the Association obstructed his attempt to short sale his property by filing a lien against his property and later filing this action. (Id. at 14-15.) Next, Koola alleges the Association did not need to file a

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Cambridge Lakes. (Fischer Aff. at 17; Henning Aff. at 10; Blevins Aff. at 10). The Association also has the power to retain legal counsel. (Fischer Aff. at 18; Henning Aff. at 11; Blevins Aff. at 11.) Next, the Association has the power to sue. See S.C. Code Ann. § 33-31-302(1). During March-April 2008, the Board of Directors first learned of potential construction defects to the Association's property. (Fischer Aff. at 15.) The defects were not disclosed by the developer when the Association was turned over to the members. (Fischer at 16.) Because of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf. (Fischer at 19; Henning Aff. at 12; Blevins Aff. at 12.)

Koola incorrectly presumes that the Association levied special assessments against its members to fund the expense of this construction lawsuit. He relies on Section 16, Paragraph 6 of the Master Deed, which requires the Association to obtain a two-thirds (2/3) vote of the members prior to levying a special assessment for capital improvements. Here, not only is this provision inapplicable to the Association's ability to file a lawsuit, it is also inapplicable because the Association did not levy a special assessment against the members to fund the construction lawsuit. (Fischer at 20; Henning Aff. at 13; Martin Aff. at 13; Blevins Aff. at 13.) Rather, all expenses related to the construction lawsuit were paid out of the Association's Reserve Accounts. (Fischer at 21; Henning Aff. at 14; Martin Aff. at 14; Blevins Aff. at 14.) Finally, since January 2007, there have only been three (3) increases to the monthly regime fee from \$210.00 to \$285.00 per month. (Blevins Aff. at 20-22.) These increases were due to increases in insurance premiums on the common areas of Cambridge Lakes. (Id.)