THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

RECEIVED
JUN 3 0 2014
SC Court of Appeals

Case No. 2010-CP-10-9305

Cambridge Lakes HOA.. ....Respondent,

v.

Johnson Koola....... ....Appellant.

INITIAL BRIEF OF RESPONDENT

Eugene P. Corrigan III
J. Matthew Johnson
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
CAMBRIDGE LAKES HOA

TABLE OF CONTENTS

TABLE OF AUTHORITIES. iii

STATEMENT OF ISSUES ON APPEAL. 1

STATEMENT OF THE CASE. 2

STATEMENT OF FACTS. 3

STANDARD OF REVIEW. 7

ARGUMENT. 9

I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT AND CORRECTLY RESOLVED THE APPELLANT'S MOTION TO COMPEL. 9

II. THE CIRCUIT COURT UNDERSTOOD THE ISSUES AND THE LAW PRESENTED BY THE APPELLANT, TOOK THEM UNDER CONSIDERATION, AND REACHED THE PROPER CONCLUSIONS IN GRANTING SUMMARY JUDGMENT. 13

CONCLUSION. 25

TABLE OF AUTHORITIES

Cases

Anchor Point, Inc. v Shoals of Anderson, Inc, 309 S.C. 486, 424 S.E.2d 521 (Ct. App. 1992) 20

Battery Homeowners Ass'n v. Lincoln Financial Resources, Inc, 309 S.C. 247, 422 S.E.2d 93 (1992) 16

Baughman v. AT & T Co., 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991) 9

CEL Products, LLC v Rozelle, 357 S.C. 125, 591 S.E. 2d 643 (Ct. App. 2004) 10

Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E. 2d 39, 46 (Ct. App. 2010) 13, 14

Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) 9

Dockside Ass'n, Inc. v. Deytens, 294 S.C. 86, 362 S.E. 2d 874 (Ct. App. 1987) 21

Egrets Pointe Townhouses Property Owners Ass'n, Inc. v Fairfield Communities, Inc, 870 F.Supp. 110 (D.S.C.1994) 16

Fender & Latham, Inc v. First Union Nat Bank of S. Carolina, 316 S.C. 48, 50, 446 S.E.2d 448, 449 (Ct. App. 1994) 11

Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) 7

Gauld v O'Shaughnessy Realty Co., 380 S.C. 548, 561, 671 S.E. 2d, 79 (Ct. App. 2008) 18

George v Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) 7

Goddard v. Fairways Dev Gen Partnership, 310 S.C. 408, 426 S.E. 2d 828 (Ct. App. 1993) 21

Gordon v Busbee, 397 S.C. 119, 136, 732 S.E. 2d 822, 832 (Ct. App. 2011) 19

Hackworth v Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) 16

Hansen v DHL Laboratories, Inc., 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994) 7, 17

Hansson v Scalise Builders of S C, 374 S.C. 352, 357–58, 650 S.E.2d 68, 71 (2007) 8

Harrington v Blackston, 322 S.C. 470, 473 S.E. 2d 47 (1996) 16

Johnson v Robert E Lee Acad., Inc, 401 S.C. 500, 503, 737 S.E.2d 512, 513 (Ct. App. 2012) 8

Lanham v. Blue Cross, 349 S C. 356, 563 S.E. 2d 331 (2002) 10

Middleborough Horizontal Property Regime Council of Co-owners v Montedison, 320 S.C. 470, 479, 465 S E. 2d 765, 771 (Ct. App. 1995) 12

O'Shea v Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 632 (1992) 20

Pridgen v Ward, 391 S.C. 238, 244, 705 S.E.2d 58, 62 (Ct. App. 2010) 13, 14

Queen's Grant Villas Horizontal Property Regimes I-IV v. Daniel Intern'l Corp, 286 SC 555, 556, 335 S.E. 2d 365, 366 (1985) 22

Roundtree Villas Homeowners Association v. DeRienzo, 287 S.C. 114, 336 S.E.2d 883, (Ct. App. 1985) 20, 22

Thomas v Waters, 315 S.C. 524, 445 S.E. 2d 659 (Ct. App 1994) 11

Turner v. Milliman, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011) 7

Vaught v Waites, 300 S.C. 201, 208, 387 S.E. 2d 91, 94 (Ct. App. 1989) 13, 15

Statutes

S.C. Code Ann. §§ 27-31-10, et. seq. 9

S.C. Code Ann. § 27-31-30 17

S.C. Code Ann. § 27-31-100 17

S.C. Code Ann. § 27-31-170 16

S.C. Code Ann. § 27-31-200 16

S.C. Code Ann. § 27-31-430 .... 16, 24

S.C. Code Ann. §§ 33-31-10, et. seq. 19

S.C. Code Ann. § 33-31-302(1) 22

S.C. Code Ann. § 33-31-830(a) 19

S.C. Code Ann. § 33-31-830(a)(3) 15

S.C. Code Ann. § 33-31-830(b)(2) 19, 23

Uniform Condominium Act §3-103(a)(1980) 20, 21

Other Authorities

16 Am.Jur.2d *Conspiracy* § 56 (2005) 14

Rules

Rule 56(c), SCRCP 7

Rule 56(e), SCRCP 17, 18

Rule 411, SCRE 21

STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY GRANT SUMMARY JUDGMENT AND CORRECTLY RESOLVE THE APPELLANT'S MOTION TO COMPEL?

II. DID THE CIRCUIT COURT UNDERSTAND THE ISSUES AND THE LAW PRESENTED BY THE APPELLANT, TAKE THEM UNDER CONSIDERATION, AND REACH THE PROPER CONCLUSIONS IN GRANTING SUMMARY JUDGMENT?

STATEMENT OF THE CASE

Respondent Cambridge Lakes Homeowners Association[1] (the "HOA") filed suit in Charleston County Small Claims Court for unpaid monthly regime fees and late charges on July 29, 2010 owed by Appellant Koola in the amount of two thousand nine hundred twelve dollars and three cents ($2,912.03) (Small Claims Court Complaint, July 29, 2010) Attached to the Complaint was a statement of Appellant's account showing his last payment was on October 29, 2009. He was served on August 13, 2010, and on September 2, 2010, he filed a form answer with the box checked indicating he contested the claim. He did not state in the Answer that he did not owe the money. On the same day Appellant filed a document entitled "Summons" but it is not a summons but more of a letter to the Court wherein he asks the Court to remove the case to Circuit Court where a foreclosure action was already pending on the same property filed by his mortgage company (Appellant's "Summons", September 2, 2010). A *lis pendens* was placed on the property by the mortgage company when that suit was filed. *See Bank of America, N A v. Koola, et al*, 2010-CP-10-6060.

By October 13, 2010, Appellant had obtained an attorney. The attorney filed a motion to transfer the case to Charleston County Circuit Court, where the foreclosure action against Appellant was pending.[2] Appellant filed a Counterclaim against the HOA on November 5, 2010, alleging Civil Conspiracy and Breach of Fiduciary Duty, seeking damages in excess of one hundred thousand ($100,000.00) dollars. The case was sent to

---

[1] The HOA is incorporated under South Carolina law as a non-profit corporation and its official name is Cambridge Lakes Condominiums Homeowners Association, Inc

[2] Attorney Melinda Lucka also filed a Notice of Appearance on October 13, 2010 Attorney Shawn French then filed a Notice of Appearance on behalf of Appellant, on September 30, 2011, substituting Ms Lucka as Appellant's counsel On July 3, 2013, Mr French was relieved as counsel and Appellant now proceeds in this litigation *pro se*

the Court of Common Pleas by the Small Claim's Court Judge. On January 11, 2011 the Respondent filed a Motion to Dismiss the Counterclaims since they were already asserted in the Circuit Court case. (Motion to Dismiss, January 11, 2011). Appellant filed a *pro se* response to the Motion on the grounds that the counterclaims in the foreclosure suit were totally separate matters than those in this case. (Response to Motion to Dismiss, July 19, 2011). The HOA filed a Motion for Summary Judgment as to Appellant's counterclaims on August 1, 2012. Appellant filed a Motion to Compel discovery from the HOA and a Motion for Summary Judgment on August 15, 2012.[3] The parties appeared before the Honorable R. Markley Dennis on November 6, 2012. Judge Dennis issued an order on November 14, 2012, informing the parties he was taking the motion under advisement. On March 4, 2013, the court issued a Form 4 Order granting the HOA's Motion for Summary Judgment and rendering Appellant's Motion to Compel moot. A written Order was entered on March 15, 2013. The court held there was no evidence to support Appellant's claim that the HOA conspired against him in seeking to collect his unpaid fees or that the HOA Board of Directors did not act in the best interest of the HOA by pursuing a construction defect case to correct problems with the building. (Order of March 15, 2013, pp. 4, 6) Appellant filed a Motion to Reconsider on April 5, 2013, which was denied on June 18, 2013. He appealed to this Court on July 17, 2013.

STATEMENT OF FACTS

This case derives from Appellant's failure to pay his condo fees and assessments to the HOA. Appellant's last payment occurred on October 23, 2009. Appellant purchased his condominium located at 1587 Cambridge Lakes Drive, Unit 208 in

[3] Appellant subsequently withdrew his Motion for Summary Judgment (Form 4 Order, November 14, 2012)

Charleston, South Carolina (the "Condo"), on February 24, 2004, which is evidenced by a deed recorded in the Charleston County RMC Office. The Condo is a part of the Cambridge Lakes Horizontal Property Regime ("HOA"). Appellant is a member of the HOA. Article seventeen of the Master Deed established the operation and administration of Cambridge Lakes Condominiums by the HOA, which is structured as a nonprofit corporation. The HOA was incorporated by filing the appropriate documents with the South Carolina Secretary of State's Office on April 25, 2003. (Fischer Aff. at 4). All unit owners including the Appellant are members of the HOA ("Owners") and subject to the regulations set forth in the Master Deed and the HOA's By-laws ("By-laws"). A Board of Directors ("Board") consisting of unit owners elected from the Owners has existed since 2004. At all times relevant to this lawsuit, these Board members were acting in their official capacities and in the best interests of the Association by instituting this collection action against Appellant. (Fischer Aff at 6; Henning Aff at 4; Martin Aff. at 4; Blevins Aff. at 4).

The Master Deed specifies the HOA's ability to collect monthly assessments from all condominium owners, as is standard practice with Horizontal Property Regimes. (Master Deed, Art. 16, Sec.1). The By-laws charge the Board to administer the affairs of the HOA and Cambridge Lakes. (*Id*, Art. 12, ¶ b). The HOA budget is reviewed and adjusted annually and does not change during the calendar year. (Martin Aff. at 10). The budget is presented to the Owners at the annual meeting and the new annual budget takes effect on January 1st each year. (*Id.*). Owners may review the proposed annual budget from the date of the annual meeting until January 1st to review the proposed

budget. (*Id.*) Appellant met with at least one Board Member on several occasions to discuss the HOA's finances. (*Id* at 11).

The By-laws also require the HOA to maintain, repair, replace and operate the common elements; enforce by legal means the provisions of the South Carolina Horizontal Property Act, the Master Deed, Charter, By-Laws, and Rules and Regulations of the HOA; and allow the Board to retain legal counsel." (Master Deed, Art. 12, ¶¶ e, i, and l). In April 2008, the Board learned of potential construction defects at Cambridge Lakes. (Fischer Aff. at 3). The defects were not disclosed by the Developer when the HOA was turned over to the Owners. (Fischer Aff. at 16). Exercising their power to retain legal counsel, the HOA hired an attorney to file a construction lawsuit on its behalf. (*Id.*, p 3). The attorney was retained on a contingency fee basis and would only be compensated out of monies received on behalf of the HOA. (*Id.* at 22). All expenses related to the construction lawsuit were paid out of the HOA's Reserve Accounts. (Fischer Aff. at 20; Henning Aff. at 13; Martin Aff. at 13; Blevins Aff. at 14). The HOA did not levy a special assessment to fund the construction lawsuit. Since January 2007, there have only been three increases to the monthly regime fee from $210 00 to $285.00 per month. (Blevins Aff. at 20-22). These were due to increases in insurance premiums on the common areas of Cambridge Lakes. (*Id.*).

The attorney sent a letter to all Owners on June 25, 2008, through Cambridge Lakes' property management company, Ravenel Associates, informing them about the construction defect lawsuit. The letter asked the Owners to assign their claims to the HOA and additionally to join the lawsuit as plaintiffs. Owners were under no obligation to join the lawsuit, and some, including Appellant declined to do so. (Fischer Aff. at 24;

Henning Aff. at 17; Martin Aff. at 17; Blevins Aff. at 17). Ultimately, all unit owners received new windows from the settlement of the construction case, improving the units. There is no evidence that Appellant attempted to refinance his unit with a company that does offer refinancing even when litigation to improve the property is pending.

The HOA, like all horizontal property regimes, relies on the collection of fees and assessments from all of its owners to operate. No individual owner can stop making payments for a length of time of their choosing or they will be placed in default. (Master Deed, Article 16, Sec. 8). Since the HOA was established, it has filed multiple liens and lawsuits and obtained judgments against different Owners[4].

Appellant stopped paying his monthly assessment to the HOA on October 23, 2009 (Small Claims Court Complaint, ¶¶ 2(b) and (c)). The Board members discussed several delinquent homeowners at board meetings, including Appellant, before making any decisions to pursue legal action. (Fischer Aff. at 10; Henning Aff at 8; Martin Aff. at 8; Blevins Aff. at 8). Acting under the provisions set forth in the Master Deed and By-laws, the HOA filed a Notice of Lien against Appellant's Condo on May 24, 2010, for the unpaid assessments and late fees in the amount of One thousand nine hundred sixty-three dollars and fifty-two cents ($1,963.52). This action was filed to recover payment of delinquent assessments from Appellant. (Fischer Aff. at 9; Henning Aff. at 7; Martin Aff. at 7; Blevins Aff. at 7).

[4] *See generally Cambridge Lakes HOA v Michael B Hartnett*, 2010-CP-10-9146 (Charleston County) (Nov 3, 2010) (Judgment for Plaintiff in the amount of $7,580 00), *Cambridge Lakes HOA v Charles W Taylor, Jr* , 2011-CP-10-39 (Charleston County) (Jan 4, 2011) (Judgment for Plaintiff in the amount of $3,690 46), *Cambridge Lakes HOA v The Naws, LLC, et al*, 2011-CP-10-2767 (Charleston County) (April 15, 2011) (Judgment for Plaintiff in the amount of $7,644 42), *Cambridge Lakes HOA v Geoff G Forbes*, SC872010002259 (Charleston County Small Claims Court) (Dec 20, 2010) (Judgment for Plaintiff in the amount of $5,105 99), *Cambridge Lakes HOA v The Naws, LLC*, 2012-CP-10-4714 (Charleston County) (July 19, 2012) (Judgment for Plaintiff in the amount of $4,120 82)

On July 27, 2010, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP ("BAC"), filed a *Lis Pendens* and Summons and Complaint against Appellant seeking to foreclose its first mortgage on his Condo. On July 29, 2010, the HOA instituted this action against Appellant. Rather than pay the balance due, Appellant counterclaimed against the HOA alleging Civil Conspiracy and Breach of Fiduciary Duty. To date, Appellant continues to live in the unit without paying past or current fees required by his Deed.

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *Turner v. Millman,* 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). A genuine issue of fact, however, can be created only by evidence that would be admissible at trial. *Hansen v DHL Laboratories, Inc* , 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994). Further, this Court has established that the plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.

Johnson v Robert E Lee Acad , Inc., 401 S.C. 500, 503, 737 S.E.2d 512, 513 (Ct. App. 2012) (*quoting Hansson v. Scalıse Buılders of S.C* , 374 S.C. 352, 357–58, 650 S.E.2d 68, 71 (2007)

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT AND CORRECTLY RESOLVED THE APPELLANT'S MOTION TO COMPEL.

The lower court acted properly in granting the HOA's motion for summary judgment and ruling Appellant's Motion to Compel moot. (Form 4 Order, March 4, 2013,Order of March 15, 2013). Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman v AT & T Co* , 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991). However, the non-moving party to a summary judgment party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

Appellant argues that it was improper for the lower court to grant summary judgment because his motion to compel was still pending. (App. Initial Brief, p.9). He asserts that the HOA (1) did not produce several months of financial statements; (2) that some of the statements were either modified or altered before submission to Appellant; (3) the HOA intentionally withheld minutes of BOD meetings for several months; and (4) the HOA failed to produce the official policy of the HOA to initiate litigation against Appellant to collect unpaid dues.[5] (*Id.*). This Court has examined whether it is proper

[5] Appellant's motion to compel does not specify what items were not produced by the HOA and therefore it is assumed that the meeting minutes "intentionally withheld for several months" were subsequently produced and are therefore not applicable to this argument Moreover, Appellant has been provided with the "policy" that allows the HOA to initiate litigation for unpaid assessments In its Memorandum in Support of its Motion for Summary Judgment, the HOA stated that its ability to initiate collection actions against individual members is derived from the Master Deed and By-laws, documents that were readily available to Appellant as a member of the HOA (Memorandum in Support of Motion for Summary Judgment, p 3) As a member of the HOA, Appellant has equal authority as the Board members to obtain documents from the custodian of the records (Master Deed and By Laws, South Carolina Horizontal Property Act, S C Code Ann §§ 27-31-10, et seq)

for the lower court to grant a motion for summary judgment without first ruling on a motion to compel. In *CEL Products, LLC v Rozelle*, 357 S.C. 125, 591 S.E. 2d 643 (Ct. App. 2004) Defendant filed several counterclaims against the Plaintiff in a case arising from an employment matter. The Court of Appeals upheld the trial court's summary judgment as to Rozelle's counterclaims in spite of her outstanding motion to compel for three reasons. First, they found there had been ample time to complete discovery as the hearing for summary judgment occurred seventeen months after Defendant filed her answer and counterclaims. *Id.*, 357 S.C. at 129, 591 S.E. 2d at 643. Next, the court held that the trial judge exercised discretion in granting the motion and found no abuse of discretion caused prejudice to the Defendant. *Id.* Third, they found the Defendant failed to demonstrate how further discovery would be beneficial. *Id*, 357 S.C. at 131, 591 S.E. 2d at 646. The Court also noted that the information sought by Defendant was not necessary to a material claim and the information was not in the sole possession of Plaintiff. *Id.* (distinguishing this case from *Lanham v. Blue Cross*, 349 S.C. 356, 563 S.E.2d 331 (2002) where the Supreme Court found the trial court erred in ruling on summary judgment before ruling on a motion to compel because the information sought was material to Plaintiff's claim and under the sole custody of Defendant).

The facts at issue here are very similar to those set forth in *CEL Products*. The HOA filed its Motion for Summary Judgment on August 1, 2012, nearly twenty-two months after Appellant filed his amended answer and counterclaims. (Counterclaim, November 3, 2010)[6] It was filed two years after Appellant was served with the suit. At the motion hearing, the trial court took all pending motions (including Appellant's

[6] Appellant filed an Amended Answer and Counterclaim with the lower court on June 8, 2012, but the facts alleged in the counterclaims are substantially the same

Motion to Compel) under advisement and ordered the parties to submit memorandums pertaining to the HOA's Motion for Summary Judgment. Appellant also failed to show how the information sought would support his counterclaims for civil conspiracy and breach of fiduciary duty by the HOA. In fact, Appellant stated in his brief that he "cannot state with specificity as to how he was prejudiced" by the HOA's failure to provide these documents. (App. Initial Brief. at 10). Moreover, the information Appellant sought was also available to him from other sources, including the HOA's property management company, which is required to provide HOA documents upon request of a unit owner. There is nothing in the record to support that these statements sought by Appellant would have established the HOA acted improperly in bringing its collection action against him. *See Thomas v Waters*, 315 S.C. 524, 445 S.E. 2d 659 (Ct. App. 1994) (affirming grant of summary judgment when plaintiff did not demonstrate likelihood that further discovery would produce additional relevant evidence); *Fender & Latham, Inc v First Union Nat Bank of S. Carolina*, 316 S.C. 48, 50, 446 S.E.2d 448, 449 (Ct. App. 1994) (holding the trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case). The Master Deed and By-Laws require that the Board collect these fees. Therefore, the circuit court's decision to grant summary judgment to the HOA was correctly decided since Appellant had ample time to obtain the records, if he did not already have them. The items requested do not change the material facts. There is no clear reason as to why Appellant continues to raise the issue of his Motion to Compel. There was a time that Appellant was acting as his own attorney while he had an attorney of record. Attorney French filed the Motion (Motion to Compel, August 15,

2011.) Appellant sent the discovery without serving all the attorneys and without a certificate of service. Despite this Appellant received responses to requests to admit in August 2011 and to interrogatories and request for production by December 2011. The Motion was most certainly moot.

Appellant also argues that the trial court should have afforded him sufficient time to develop opposition before ruling on the HOA's motion for summary judgment. (App Initial Brief at 10). In *Middleborough Horizontal Property Regime Council of Co-owners v. Montedison*, 320 S.C. 470, 479, 465 S.E. 2d 765, 771 (Ct. App. 1995) the defendant argued that granting partial summary judgment for the plaintiff was inappropriate as it did not have a full and fair opportunity to conduct discovery. The Court disagreed, finding that defendant advanced "no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment and did not point out in any specific manner how it would be prejudiced by its inability to conduct discovery." *Id* As previously discussed, the HOA filed its Motion for Summary Judgment on August 1, 2012, three months before the hearing occurred. The collection action was over two years old. The lower court took the matter under advisement on November 14, 2012, allowing the parties to submit supporting memorandum. The HOA filed their memorandum on December 7, 2012; Appellant filed his response in opposition on January 2, 2013. Following the court's rationale in *Middleborough*, the five months between the HOA's initial filing for summary judgment and Appellant's response shows there was adequate time to develop his opposition. Thus, Appellant's argument is without merit, and the HOA's motion for summary judgment should be affirmed.

II THE CIRCUIT COURT UNDERSTOOD THE ISSUES AND THE LAW PRESENTED BY THE APPELLANT, TOOK THEM UNDER CONSIDERATION, AND REACHED THE PROPER CONCLUSIONS IN GRANTING SUMMARY JUDGMENT.

The Appellant has spent years living in his unit without paying his legally mandated fees to pay for insurance, management, landscaping and all other shared expenses. He has not paid anything on his mortgage. The only conclusion from the record is that he cannot or will not honor his financial obligations. Appellant maintains that by filing this lawsuit, the HOA obstructed his short sale on his condominium, which constitutes an act of civil conspiracy. (App. Initial Brief, p. 11). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. *Cricket Cove Ventures, LLC v Gilland*, 390 S.C. 312, 324, 701 S.E. 2d 39, 46 (Ct. App. 2010).

Appellant has failed to establish the first element of a civil conspiracy because the HOA members cannot conspire with themselves. "A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." *Pridgen v Ward*, 391 S.C. 238, 244, 705 S.E.2d 58, 62 (Ct. App. 2010). Therefore, "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *Id., see also Vaught v Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 94 (Ct. App. 1989) (finding no civil conspiracy where defendant city council members, as officers of the city are the alter egos of the city and, therefore, cannot be held to have conspired amongst themselves).

Appellant counters that "suing other parties in their individual capacities for conspiracy is not an element of conspiracy." (App. Initial Brief, p. 18). Appellant has not

named the individual Board members as defendants in this matter, and therefore this argument is neither relevant nor a correct understanding of the law. At all times relevant to this lawsuit, the Board members were acting in their official capacities. (Fischer Aff at 6; Henning Aff at 4; Martin Aff. at 4; Blevins Aff. at 4). Although it is true that "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties," this presumes that the agents are acting in their individual capacities, not in their official capacities. *Pridgen*, 391 S.C. at 244, 705 S.E 2d at 62. Further, South Carolina recognizes the intracorporate conspiracy doctrine. Under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment cannot conspire among themselves. *Cricket Cove*, 390 S.C. 312, 325, 701 S.E. 2d 39, 46 (Ct. App. 2010); *see also* 16 Am.Jur.2d *Conspiracy* § 56 (2005) (a corporation cannot be a party to a conspiracy consisting of the corporation and the persons engaged in the management, direction, and control of corporate affairs, where the individuals are acting only for the corporation and not for any personal purposes of their own). Here, Appellant only sued the HOA, an incorporated entity, itself. None of its agents, members or directors has been sued in their individual capacities.[7] The first element of civil conspiracy has not been established and summary judgment was rightfully granted.

Next, there is no evidence to support that the HOA conspired to injure Appellant by filing this lawsuit. Appellant alleges the HOA singled him out for nonpayment of assessments. (App. Initial Brief, p. 17). There is nothing in the record to support this claim. The obligation to collect these fees is clear in our law. This assertion is

[7] To the extent Appellant alleges a civil conspiracy between the HOA, the property management company and the HOA's attorney, this fails as well because neither of these parties are named as defendants in this action either

unfounded. Not only did the Board discuss several delinquent homeowners at its meetings, including Appellant, before making any decisions to pursue legal action, but accounting records show that the HOA has been assessing late fees, filing liens and lawsuits and obtaining judgments against homeowners for several years. (Fischer Aff. at 10-12; Henning Aff. at 5-10; Martin Aff. at 5-9; Blevins Aff. at 5-9). Additionally, the object of filing this action was to recover payment of delinquent assessments from Appellant, an action the HOA was required to take to preserve its assets. (Fischer Aff. at 9; Henning Aff. at 7; Martin Aff. at 7; Blevins Aff. at 7); *see* S.C. Code Ann. § 33-31-830(a)(3) ("A director shall discharge his duties as a director . . . in a manner the director reasonably believes to be in the best interests of the corporation."). To hold that the HOA engaged in a civil conspiracy against Appellant would be tantamount to preventing similarly situated homeowners' associations from instituting collections actions against its members. Therefore, based on the facts presented, there is no evidence to support that the HOA conspired to injure Appellant by filing this lawsuit.

Finally, Appellant has failed to establish special damages. To allege a civil conspiracy, a plaintiff must also plead special damages that go beyond the damages alleged in other causes of action. *Vaught,* 300 S.C. at 209, 387 S.E.2d at 95. In Appellant's counterclaim for civil conspiracy he alleges "that because of the actions of the corporate agents, which include this action and actions contained in previous allegations, [Koola] has suffered special damages...[he] will be faced with bottom val[u]e at foreclosure sale." (Undated Amended Answer and Counterclaim filed June 8, 2012, ¶ 17). Likewise, in Appellant's counterclaim for breach of fiduciary duty, he claims that Board's filing of a construction defect action "created hardship and the

opportunity to sell his property was lost." (*Id*, ¶ 9). The crux of Appellant's damages under both counterclaims is his inability to sell his Condo and the loss of proceeds, purportedly as a result of the HOA's actions. This is insufficient to establish special damages. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) (If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed).

Appellant has also failed to establish any question of fact over alleged damages caused by the HOA. He alleges the HOA's decision to institute this lawsuit forced him to cancel the short sale on his condo, thereby "destroying him financially." (App. Initial Brief, p. 13). Appellant relies on S.C. Code Ann. §27-31-200 which provides for the payment of outstanding assessments upon the sale or conveyance of a property as evidence that the HOA should have allowed his short sale to go through, rather than file a lien and/or file a collections action against him[8]. (*Id*). However, the Master Deed and S.C. Code Ann. § 27-31-170 authorize the HOA to institute an action against homeowners for noncompliance with the Master Deed.[9] In addition, a *Lis Pendens* and

[8] Appellant incorrectly states that it was the policy of the HOA to allow owners to sell their condominiums through a short sale to recover outstanding assessments and late fees (App Initial Brief, p 14) Appellant has continually referenced a portion of the minutes of the August 25, 2009 Board of Directors' meeting where it mentions that if the bank wants to pursue "short sales" it works to [the HOA's] benefit There is no evidence to support this is an accepted practice of the HOA in regards to unpaid assessments, nor is it clear whether this was specific to the situation being discussed at this meeting (a deceased owner s foreclosure action) Moreover, this language would seem to indicate that the utilizations of short sales would only be encouraged once the bank had taken possession of the property, not when an owner was currently in default

[9] Appellant makes a separate argument that the HOA is not able to pursue this collection action because the Master Deed is invalid (App Initial Brief, p 15) Appellant argues that the developer provided him with a "fraudulent, falsified builders certification" in violation of S C Code Ann §27-31-430 Not only has there been any competent evidence submitted by Appellant in this case to establish the builder's certification was fraudulent, but his reliance on *Harrington v Blackston*, 322 S C 470, 473 S E 2d 47 (1996) for the proposition that "strict compliance with the Horizontal Property Act is required to create a horizontal property regime" is misplaced as this opinion was vacated South Carolina case law on the need for strict compliance with the Act is generally about the need for the Master Deed to contain specific language that property is a horizontal property regime *See Egrets Pointe Townhouses Property Owners Ass'n, Inc v Fairfield Communities, Inc*, 870 F Supp 110 (D S C 1994), (Defendant property owner was not bound by the requirements of the horizontal property regime where he had inadvertently failed to delete an

Summons and Complaint for Mortgage foreclosure were filed against Appellant on July 27, 2010, two weeks before the HOA's collection action was filed. The filing of the *Lis Pendens* alone served as public notice that the property was subject to litigation and would have interfered with Appellant's ability to sell his property. It was the foreclosure action that harmed Appellant's ability to obtain loans as it tends to show Appellant's inability to pay off his debts. The HOA did not cause special damage to Appellant by filing this lawsuit.

A. There Is No Admissible Evidence To Substantiate Appellant's Allegations of Civil Conspiracy Against the HOA.

In granting the HOA summary judgment, the circuit court held that Appellant's claims against the HOA were not supported and there was no general issue of material fact (Order of March 15, 2013, p. 2). Appellant alleges, without citing any supporting evidence, that the obstruction of the short sale of his condominium was an act of conspiracy. (App. Brief, p.11). Specifically, he argues that members of the Board of the HOA were motivated by (1) their infuriation with Appellant because he did not join in the construction defect litigation and questioned the HOA's policy regarding condominium rentals; and (2) revenge because Appellant questioned the financial statements of the HOA. (*Id* at 12). Appellant also asserts the HOA singled him out for payment and acted discriminatorily. (*Id.* at 17). "A genuine issue of fact . . . can be created only by evidence which would be admissible at trial." *Hansen, supra*, 316 S.C. at 510, 450 S.E.2d at 627. In addition, Rule 56(e), SCRCP states that an adverse party may

---

affidavit's boilerplate language asserting that a declaration of horizontal property regime master deed had been recorded), *Battery Homeowners Ass'n v Lincoln Financial Resources, Inc* , 309 S C 247, 422 S E 2d 93 (1992) (townhouse development not a horizontal property regime where the master deed for the development neither stated the intention to create such a regime, as required by S C Code Ann § 27-31-30, nor expressly included the words "Horizontal Property Regime" in its name, as required by S C Code Ann § 27-31-100)

not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. These affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. *Id* As evidenced by his Reply to the HOA's Memorandum in Support for Summary Judgment and Motion to Reconsider, Appellant has not provided any admissible evidence to support his allegations of a civil conspiracy, in the form of an affidavit or otherwise. Instead, Appellant offers through conjecture and unsubstantiated speculation, that the HOA is liable for civil conspiracy by virtue of instituting a collections action for $2,912.03, which he maintains was a decision motivated by revenge, fury and a discriminatory desire to destroy Appellant, rather than to recover unpaid assessments rightfully owed to the HOA.

As to the special damages suffered, Appellant avers that he would have received anywhere between $120,000 and $125,000 in proceeds from his short sale in 2010. (App. Initial Brief, p. 14). He further states that a foreclosure action would bring $50,000 to $60,000, resulting in a deficiency judgment. (*Id.*) Again, Appellant presents no competent evidence to support these allegations. As this Court has previously held, bald allegations of diminution in property value are insufficient to create a genuine issue of fact regarding damages absent any competent evidence showing the existence, amount or causation of damages. *Gauld v O'Shaughnessy Realty Co* , 380 S.C. 548, 561, 671 S.E. 2d, 79 (Ct. App. 2008).

Accordingly, there is no is no admissible evidence to substantiate the alleged conspiracy, thus Appellant cannot establish the requisite elements that HOA's purpose of

instituting this action was to cause him injury and or special damages. *See Gordon v Busbee,* 397 S.C. 119, 136, 732 S.E. 2d 822, 832 (Ct. App. 2011) (upholding a directed verdict on Plaintiff's civil conspiracy claim where the record contained no evidence, only speculation that any of the parties conspired with each other). Summary judgment should be affirmed on this additional sustaining ground.

The trial court correctly granted summary judgment on the basis that there was no material issue of fact in regard to a breach of fiduciary duty by the HOA. The HOA is a nonprofit corporation organized under the laws of South Carolina. (Master Deed, Art. 5, Sec. c; Fischer Aff., p.1). In accordance with the Master Deed, the HOA is governed by a Board of Directors ("Board"). (Master Deed, Art. 5, Sec. d). When the Master Deed was first recorded in 2003, the Board was controlled by the developer, Cambridge Two, LLC. (Master Deed, Art. 17, Sec. 5). Appellant purchased his condominium in February 2004. (Deed from Cambridge Two, LLC, to Johnson D. Koola, filed Feb. 24, 2004). In October 2004, the developer transferred control to the homeowners who elected a new board of directors from the collective owners. (Fischer Aff, p.3).

As directors of a nonprofit corporation, the Board's standard of care is derived from the South Carolina Non Profit Corporation Act. *See* S.C. Code Ann. §§ 33-31-10, et. seq. A director is required to discharge their duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation *See* S.C. Code Ann. § 33-31-830(a). In discharging their duties, a director is entitled to rely on information, opinions, reports or statements prepared or presented by legal counsel. *See* S.C. Code Ann. § 33-31-830(b)(2).

In South Carolina, a fiduciary relationship does not exist between an owner-controlled homeowners association and an individual owner in the area of collecting assessments and fees. In *Roundtree Villas Homeowners Association v DeRienzo*, 287 S.C. 114, 336 S.E.2d 883, (Ct. App. 1985) appellant challenged the trial court's direct verdict on owners' breach of fiduciary duty counterclaim against the condominium owners association finding there was "no concomitant relationship, legally, between the payment of assessments and a condominium association's duty to maintain common elements." Although, the court of appeals declined to review the trial court's ruling in this matter because the jury verdict also found on behalf of the condominium association, which was not appealed, no other opinion has been rendered by the appellate courts on this issue.[10] Similarly, the South Carolina Supreme Court declined to find a fiduciary relationship existed between an architectural review board, appointed by a developer in a planned community, and an individual owner holding that "we have never imposed the high standard of fiduciary duty on planned community organizations...instead the correct standard, the Board has a duty to exercise judgment reasonably and in good faith." *O'Shea v Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 632 (1992).

Further, the Uniform Condominium Act distinguishes the duty of care required by Board members based on how they are elected. *See* Uniform Condominium Act § 3-103(a)(1980) (the officers and members of the executive board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners and (ii) if

---

[10] *But see Anchor Point, Inc v Shoals of Anderson, Inc* , 309 S C 486, 424 S E 2d 521 (Ct App 1992) (affirming the master's finding that appellant homeowners association was liable for individual unit co-owners' failure to pay fees to respondent by virtue of fiduciary relationship because "at no point in [appellant's] reply does the appellant raise the issue that, as a homeowner's association, the appellant is not liable for the debts of its members " The master also found the owners authorized appellant to act on their behalf and represented the interests of the co-owners in legal actions) This case is distinguishable from the facts at issue here because the HOA does not need authorization to institute legal action on behalf of individual owners and the actions taken by the Board were in furtherance of its contractual duty to maintain the common elements

elected by the unit owners, ordinary and reasonable care). Moreover, the comments to this section state that "this lower standard of care should increase the willingness of unit owners to serve as officers and members of the board." *Id* As previously discussed, control of the Board transferred from the developer to the owners in October 2004. No heightened standard of care is imposed upon the Board members and no fiduciary duty exists between the HOA and Appellant.

In a dispute between the directors of an incorporated, nonprofit homeowners association and an aggrieved homeowner, the conduct of the directors should be tested by the business judgment rule, and absent a showing of bad faith, dishonesty or incompetence, the business judgment of the directors should not be set aside. *Dockside Ass'n, Inc v Deytens*, 294 S.C. 86, 362 S.E. 2d 874 (Ct. App. 1987); *Goddard v Fairways Dev. Gen. Partnership*, 310 S.C. 408, 426 S.E. 2d 828 (Ct. App. 1993). In addition, the burden of proving a lack of good faith is borne by those challenging the board's actions. *Dockside*, 294 S.C at 87, 362 S.E. 2d at 875.

Appellant argues there have been serious breaches of fiduciary duty by the HOA, through the Board's actions, but he fails to demonstrate any bad faith, dishonesty or incompetence.[11] First, he alleges that the Board's authorization to initiate a construction defect lawsuit occurred during a private meeting and outside the domain of the HOA. (App. Initial Brief, p. 20). Appellant offers no evidence to support this allegation, only

[11] Appellant also raises an argument about a lack of deficit for outstanding assessments upon comparison of collected revenue and budgeted revenue for 2010 and 2011 (App Initial Brief, p 23) These budgets are not contained in the lower court's record and therefore cannot be addressed by the HOA without referencing documents properly before the court Appellant's additional example of the HOA's purported breach of fiduciary duty is derived from the existence of a "Comprehensive Business Liability Insurance policy" that is carried by the HOA Not only is this policy not part of the lower court's record, but its existence is not competent evidence pursuant to Rule 411, SCRE

speculation. Further, he alleges that the HOA initiated this lawsuit without first obtaining two-thirds approval of the homeowners. (App. Initial Brief, p.22).

The rights and obligations of a homeowners association are gleaned from the Master Deed. *See Queen's Grant Villas Horizontal Property Regimes I-IV v. Daniel Intern'l Corp*, 286 SC 555, 556, 335 S.E. 2d 365, 366 (1985). Here, the HOA has the power to maintain, repair, replace and operate the common elements at Cambridge Lakes. (Fischer Aff. at 17; Henning Aff. at 10; Blevins Aff. at 10). The HOA also has the power to retain legal counsel and the power to sue. (Fischer Aff. at 18; Henning Aff. at 11; Blevins Aff. at 11); *See* S.C. Code Ann. § 33-31-302(1). Appellant erroneously 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, which is inapplicable to the Association's ability to file a lawsuit. A property regime has standing to bring an action for construction defects in common elements that the regime has a duty to maintain. *Roundtree, supra*, 282 S.C. 415, 321 S.E.2d 46 (1984). Should a regime not uphold its duty to pursue recovery for construction defects in the common elements it maintains, it may be liable to the homeowners for its omissions. *Queen's Grant*, 286 SC at 556, 335 S.E. 2d at 366. Thus, the HOA acted properly in initiating a lawsuit regarding construction defects to Cambridge Lakes' common elements and acted in the best interest of the owners.

Next Appellant argues that the Board's decision to settle the construction defects lawsuit for $1.815 million dollars at the expense of homeowners was not in the best interest of the members of the HOA. (App. Initial Brief, p. 19). This statement makes no sense. The attorney for the HOA was successful in obtaining funds and window

replacements that improved the buildings and increased their value. Appellant is incorrect that settlement of the lawsuit was at the expense of the homeowners. The HOA retained its attorney on a contingency fee basis who would only be compensated out of monies received on behalf of the HOA. (Fischer Aff. at 22). Further, decisions to settle and release certain parties were taken under advice of legal counsel. In discharging their duties, a director is entitled to rely on information, opinions, reports or statements prepared or presented by legal counsel. *See* S.C. Code Ann. § 33-31-830(b)(2). Thus, Appellant's accusation that the Board acted improperly in settling the construction defect lawsuit fails to overcome the statutory protections set forth in the business judgment rule.

Appellant also alleges that Board member Stephan Fischer failed to act on information from Appellant in November 2004 about construction defects at Cambridge Lakes. Even if true, there is no relationship of this claim to this case. Assuming *arguendo* that Appellant did impart such information to Fischer in November 2004, this does not demonstrate that Fischer acted improperly in his capacity as a board member. Fischer did not join the Board until January 2005, therefore any discussions between the two occurred prior to his involvement with the Board. (Fischer Aff., at 5). Appellant claims that Fischer lied to him about the absence of construction of defects, but offers no evidence to support this statement (App. Initial Brief, p. 20). In his affidavit filed with the trial court, Fishers states that the defects were not disclosed by the developer when the HOA was turned over to the members. (Fischer Aff., at 16). It was not until sometime in March or April 2008 that the Board of Directors first learned of potential construction defects to the Association's property. (Fischer Aff. at 15). Thereafter, the HOA retained an attorney to file a construction lawsuit on its behalf. (Fischer Aff. at 19).

In response to Fischer's affidavit, Appellant has not overcome the burden to prove a material issue of fact exists as to knowledge of construction defects prior to 2008.

Finally, Appellant argues the Board violated S.C. Code Ann. § 27-31-430 because it knew about construction defects affecting his condominium in 2004 when it took control of the association from the developer, but failed to disclose these defects to him at the time of his purchase of the condominium. However, S.C. Code Ann. § 27-31-430 only applies to the lessee, sole owner, or co-owner of a building seeking to convert rental units into condominium units. Here, the statute would apply to Cambridge Two, LLC, the developer of Cambridge Lakes and the entity that sold the condominium to Appellant. Under Section 27-31-430, Cambridge Two, LLC had the duty to provide a written disclosure to all prospective purchasers as to the physical condition of the buildings within thirty (30) days of recording the Master Deed, not the HOA. Next, Appellant purchased his condominium on February 24, 2004. (Deed from Cambridge Two, LLC, to Johnson D. Koola, filed Feb. 24, 2004). However, Cambridge Two, LLC did not turn over control of the HOA to the members until October 2004, over seven months after Appellant purchased his condominium. (Fischer Aff. at 14). Thus, any obligation to notify Appellant of construction defects affecting his condominium at the time of his purchase fell solely on Cambridge Two, LLC, not the HOA.

Ultimately, the acts of the Board of Directors were taken in the best interests of the HOA. Additionally, Appellant has not and cannot show bad faith, dishonesty, or incompetence on the part of the HOA or its directors. (Fischer Aff. at 28; Henning Aff. at 20, Martin Aff. at 21, Blevins Aff. at 23). Therefore, their actions are protected by the

business judgment rule and Appellant's claim for breach of fiduciary duty fails as a matter of law.

The Appellant fails to establish that the lower court failed to grasp the issues in this matter. Lashing out at the lower Court because is getting closer to a judgment against him for the money owed, is not proper or supported in his arguments. On the contrary, the lower court fully understood what the Appellant was trying to do. The ruling was not issued until the Appellant was given additional time after the hearing to submit support for his position, was based on matters of law which cut off all attempts to raise a material issue of fact.

CONCLUSION

What began as a routine attempt to recover unpaid assessments from a delinquent member of an HOA was transformed into nearly four years delay to try to avoid payment. While the most recent recession caused regrettable income issues for many, the law and responsibilities of the Board to all the unit owners did not change. It is clear that for the Board to have acted differently would have resulted in loss of value for all units and put a great strain upon unit owners who were making their payments. These owners must pay more, if needed, when others did not meet their obligations. Appellant's failure to establish any facts to support his counterclaims and the application of well-established South Carolina law requires the affirmation of the Circuit Court's order granting summary judgment in favor of the HOA[12].

[12] After this motion was granted the collection action moved forward handled by the attorney who filed the original Complaint A judgment was entered in favor of the HOA Appellant filed a second notice of appeal as to the judgment On June 25, 2014 Appellant filed for an extension of time to file his initial brief in that matter

For all the foregoing reasons, and any others this Court may deem proper, Respondent, by and through its undersigned counsel, respectfully requests that this Court AFFIRM the Circuit Court's order granting summary judgment in its favor.

Respectfully submitted,

Eugene P. Corrigan III
J. Matthew Johnson
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
CAMBRIDGE LAKES HOA

June 27, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

RECEIVED
JUN 30 2014
SC Court of Appeals

Case No. 2010-CP-10-9305

Cambridge Lakes HOA...Respondent,

v.

Johnson Koola ....Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing **INITIAL BRIEF OF RESPONDENT, RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL,** and **PROOF OF SERVICE** on all parties of record by depositing a copy of them in the United States Mail, postage prepaid, on June 27, 2014, addressed to their attorneys of record as follows:

Johnson Koola
1587 Cambridge Lakes Drive
Mt. Pleasant, SC 29464

Pro Se Appellant

Lydia P. Brooks, Esquire
Krawcheck and Davidson, LLC
9 State Street
Charleston, SC 29401

Attorneys for Respondent Cambridge Lakes Condominiums, Inc.

[SIGNATURE PAGE TO FOLLOW]

Eugene P. Corrigan
J. Matthew Johnson
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
CAMBRIDGE LAKES HOA

CORRIGAN & CHANDLER LLC

ATTORNEYS AT LAW

J Matthew Johnson
(843) 577-5420 (direct)
matt@corrigancchandler com

REPLY TO
P O Box 547
Charleston, SC 29402

June 27, 2014

RECEIVED
JUN 3 0 2014
SC Court of Appeals

VIA U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
1015 Sumter St.
Columbia, SC 29211

Re: *Cambridge Lakes HOA v Johnson Koola*
Case No. 2010-CP-10-10108
Appellate Case No. 2013-001632
Our File No. C1001.M0142

Dear Ms. Kitchings:

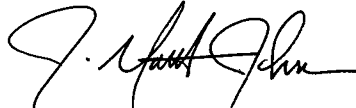
Enclosed for filing is an original and one copy of the Initial Brief of Respondent, Respondent's Designation of Matter to be Included in the Record on Appeal, and Proof of Service in the above-captioned case. Please file the original and return the clocked copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter, we are serving the pro se Appellant and other counsel of record with a copy of the enclosed.

Should you have any questions, please do not hesitate to contact us.

With highest professional regards, I am

Respectfully yours,

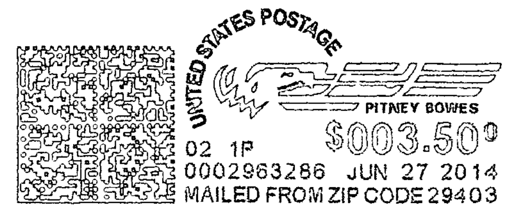


J. Matthew Johnson

Enclosures (as noted)

cc: Johnson Koola, pro se Appellant
Lydia P. Brooks, Esquire

16 CHARLOTTE STREET, SUITE B • POST OFFICE BOX 547 (29402) • CHARLESTON, SOUTH CAROLINA 29403
PHONE 843-577-5410 • FAX 843-577-5650



CORRIGAN & CHANDLER LLC

ATTORNEYS AT LAW

P O BOX 547
CHARLESTON, SOUTH CAROLINA 29402

RECEIVED
JUN 30 2014
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
1015 Sumter St.
Columbia, SC 29211