**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY
Court of the Master in Equity

The Honorable Mikell R Scarborough, Master in Equity
Case No 2010-CP-10-6060

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SC Court of Appeals

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APPELLATE CASE No 2014-001323

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Bank of America, N A , Respondent,

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,

Of whom Johnson D Koola is the . Appellant

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# [INITIAL] BRIEF OF APPELLANT

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Appellant pro se

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## STATEMENT OF ISSUES ON APPEAL

I. **DID THE MASTER ERR IN DETERMINING THAT KOOLA HAS NO STANDING AND EXCLUSIVE RIGHT TO ASSERT COUNTERCLAIMS AGAINST BAC AFTER HE REOPENED HIS CHAPTER 7 BANKRUPTCY CASE, AND THE TRUSTEE DECLINED TO RETAIN SUCH CLAIMS?**

II. **DID THE MASTER ERR IN DETERMINING THAT KOOLA'S COUNTERCLAIMS ARE BARRED BY STATUTE OF LIMITATIONS?**

III. **DID THE MASTER ERR IN DETERMINING THAT BAC OWED KOOLA NO DUTY OF CARE, WHICH WAS CREATED THROUGH THE STATUTORY PROVISIONS OF FIRREA FEDERAL APPRAISAL GUIDELINES AND S.C. HORIZONTAL PROPERTY ACT (§ 27-31-430)?**

IV. **DID THE MASTER ERR IN DENYING KOOLA'S "MOTION TO SANCTION" BAC WITHOUT DUE CONSIDERATION OF "HOPE FOR HOMEOWNERS PROGRAM" AND "THE ADMIONISTRATIVE ORDER" OF THE CHIEF JUSTICE OF SUPREME COURT OF SOUTH CAROLINA?**

V. **DID THE MASTER'S NONCONSIDEARTION OF FEDERAL STATUES AND "THE ADMINISTRATIVE ORDER" OF THE CHIEF JUSTICE OF SUPREME COURT OF SOUTH CAROLINA VIOLATE CONSTITUTIONAL PROVISIONS?**

## STATEMENT OF THE CASE

Appellant *pro se* Johnson D Koola ("Koola") appeals the April 24, 2014 Order of the Hon Mikel Scarborough, Master in Equity for Charleston County ("the Master"), which dismissed Koola's counterclaims against Respondent Bank of America ("BAC"), granted Summary Judgment to BAC and denied Koola's Motion for Sanctions (ROA # 1 Master's Form 4 Order, March 20, 2014, ROA # 2 April 24, 2014, "the Master's Order"), and denied Koola's Motion to Reconsider (ROA # 3 Form 4 Order, May 5, 2014)

## STATEMENT OF FACTS

In January of 2004, Koola contracted to buy a condominium ("condo") in the "Cambridge Lakes" subdivision in Mount Pleasant, S C for $152,300 00, subject to loan approval and upon a satisfactory real estate appraisal which had been converted from apartments to condominiums (a "condo conversion") under South Carolina Horizontal Property Act, S C Code Ann § 27-31-10 et seq (1976) ("HPA") (ROA # 4 Master Deed of the Condominium Regime at 1, ("Master Deed") As part of the loan approval process, the predecessor in interest to BAC, Countrywide Home Loans Servicing, LP, ("Countrywide/BAC") required that Koola produce a "Builder's Certification" from the developer/seller in a format prescribed and provided by the lender prior to loan approval The developer/seller issued a "Builder's Certification" to Koola and Countrywide/BAC, which stated in pertinent part *"For Condo Conversions The structural, health & safety repairs and remodeling have been completed"* (ROA # 5 "Builder's Certification") Through this "Builder's Certification", the developer/seller confirmed to Koola and Countrywide/BAC that the condo conversion complied with S C Horizontal Property Act § 27-31-430 (1976) ("HPA § 27-31-430") Countrywide/BAC accepted the "Builder's Certification" on its face value and without further inquiry

By mid-February of 2004, BAC completed an appraisal and approved the loan Koola paid for the appraisal Koola purchased the condominium on February 24, 2004 for $152,300 00 paying 10% down payment at closing Koola made additional payments of $5,000 00 in March 2004 and $2,030 00 in Dec 2006 against the principal loan balance

In June of 2008, Cambridge Lakes Homeowners Association ("HOA") filed a construction defects lawsuit[1] against developer/seller and others alleging construction defects, negligence, and Unfair Trade Practices The HOA sought $8,000,000 00 in damages to repair the construction defects This translates into damages of $92,300 00 for the 3-bedroom condominium Koola purchased Because of the HOA lawsuit[1] and alleged massive construction defects, the condos in the Cambridge Lakes condo subdivision became unmarketable except for short sales and foreclosure sales (ROA # 6 Koola, "Answer and Counterclaim" at 4)

Almost at the same time that the HOA initiated the HOA Lawsuit[1], Koola placed his condominium in the market for sale in May/June 2008 to clear off his mortgage debts Because of the alleged massive construction defects and the stated potential liability of $92,307 and continuing HOA lawsuit[1], Koola's condo was unmarketable (ROA # 6, "Answer and Counterclaim" at 4) By 2009, Koola had become insolvent and had to file Chapter 7 Bankruptcy After discharge from Bankruptcy in July 2009, Koola again tried to sell the condo, but could not due to the still pending HOA lawsuit[1]

In July of 2009, Koola applied for a loan modification with BAC However, by November 2009, Koola lacked the income and resources to pay the mortgage related payments and fell behind on those payments In Feb 2010, BAC offered Koola a purported "loan modification", reducing the monthly payment from $838 69 as of January 2009 to $797 14 after loan modification There was *no reduction in the interest rate and principal balance* and *no change in the original maturity date* (ROA # 7 Loan

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[1] *Cambridge Lakes Homeowners Association, Inc et al vs Bostic Brothers Construction Inc et al* , Complaint, Case No 2008-CP-10-3506, June 19, 2008

Modification) Koola could not accept this unfavorable loan modification[2] as Koola's total payments would increase considerably after loan modification

In April/May of 2010 Koola, acting on the advice of BAC, listed his unit for short sale Short sale was *the only and best means for Koola for Loss Mitigation* However, BAC filed Lis Pendens in July 2010 and initiated foreclosure proceedings In July/September 2010 (ROA # 8 BAC, Amended Summons and Complaint, Sep 1, 2010) Koola filed a timely Answer and Counterclaim to the foreclosure case

In September of 2010, Koola searched the case dockets of HOA's lawsuit[1] and learned that HOA filed Second and Third Amended Complaints[3] in June 2010 and July 2010, respectively, which included allegations against the developer/seller that he had fraudulently represented compliance with S C Horizontal Property Act § 27-31-430 (ROA # 9 HOA's Second Amended Complaint at 19, ROA # 10 HOA's Third Amended Complaint at 24)

Information about the violation of HPA § 27-31-430 by the developer/seller in September 2010 led Koola to learn the following (i) The recordation of the Master Deed (ROA # 4, Master Deed) by the developer/seller was in violation of HPA, (ii) The Master Deed tendered to Koola is therefore invalid, (iii) The "Builder's Certification" (ROA # 5) was falsified and fraudulent and did not comply with HPA § 27-31-430, and (iv) Moreover, the developer/seller induced Koola to buy a condominium through fraud

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[2] After initiation of foreclosure actions, Koola applied for mortgage loan modifications on four other occasions, April 28, 2011, July 8, 2011, Sep 2, 2011 and July 7, 2013 under HOPE for Homeowners Program, 12 U S C A § 1715z-23, all applications were denied/unsuccessful

[3] *Cambridge Lakes Homeowners Association, Inc et al vs Bostic Brothers Construction Inc et al* Second Amended Complaint, Case No 2008-CP-10-3506, June 28, 2010 and Third Amended Complaint, Case No 2008-CP-10-3506, July 14, 2010

In February/March 2011, when researching relevant law, Koola learned that Countrywide/BAC (i) Did not appraise the converted condominium in compliance with the statutory "FIRREA" Federal Appraisal guidelines (codified into Title 12 of Code of Federal Regulations, specifically, 12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1, (ii) Failed to verify the truthfulness and accuracy of the statements in the "Builder's Certification" in approving Koola's loan, (iii) Violated its own purported "Loan Policy" while completing the appraisal, (iv) Financed a fraudulent mortgage loan transaction and is therefore a joint tortfeasor with the developer/seller, and (v) Was negligent or grossly negligent in its violation of "FIRREA" Federal Appraisal guidelines[4] This discovery caused Koola to amend his Answer and Counterclaim (ROA # 6) against BAC in the instant action to assert new claims for negligence and fraud

In 2013, BAC sold the servicing rights[5] to Koola's loan to Green Tree Financial (ROA # 11 "Notice of Assignment, sale or Transfer of Servicing Rights" to Green Tree)

**PROCEDURAL HISTORY**

In April/May 2010, Koola, on the advice of BAC, listed his condo for short sale as the only means to clear off his mortgage related debts In July 2010, however, BAC filed 'Lis Pendens' and Summons and Complaint in a foreclosure action on Sep 1, 2010, (ROA # 8) Koola filed Answer and Counterclaim on Nov 29, 2010 BAC's Lis Pendens and foreclosure action prompted HOA and the second mortgagee to file foreclosure

[4] Interagency Real Estate Appraisal Regulations, final revisions (FIL-41-94) and Interagency Appraisal and Evaluation Guidelines dated Oct 27, 1994, adopted pursuant to Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA 1989", 12 U S C A § 1811) is designated here as "FIRREA" Federal Appraisal guidelines

[5] Plaintiff had already sold Koola's mortgage loan to Fannie Mae as early as March 2004 BAC informed Koola of the sale the loan only in 2011 (ROA # 12 Loan sale to Fannie Mae)

proceedings[6] and other civil actions[7] against Koola Because of these multiple adversarial civil actions, Koola could not proceed with the short sale of his condo

Koola filed an Amended Answer and Counterclaim on March 24, 2011 (ROA # 6), which put BAC on notice that (i) the developer/seller is in violation of HPA § 27-31-430, (ii) The "Builder's Certification" which BAC used for Koola's condominium appraisal was falsified and fraudulent, (iii) Koola became aware of developer/seller's statute violations and fraud in Sep 2010, (iv) BAC is in violation of the FIERRA Federal Appraisal guidelines [12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1], (v) BAC has been and is part of various civil actions since 2008 for massive fraud over its mortgage backed securities transactions, which resulted in billions of fines and settlements (ROA # 6) On April 21, BAC filed its Reply to Koola's Amended Answer and Counterclaim (ROA # 13 Reply to Koola's Amended Answer and Counterclaim)

In Jan 2011, BAC served Discovery on Koola, Koola responded to the discovery proceedings in a timely manner In March 2011, Koola served discovery on BAC BAC also responded to Koola's discovery proceedings in a timely manner

In April 2012, BAC filed a "Motion for Summary Judgment" to dismiss Koola's counterclaims (ROA # 14 "Motion for Summary Judgment" and Memorandum in Support of Plaintiff's Motion for Summary Judgment or Dismissing the counterclaim of Defendant Koola "BAC's Memorandum" and Builder's Certification as Exhibit)

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[6] First Citizens Bank and Trust Co Inc , Answer and Crossclaim, 2010-CP-10-6060, Sep 30, 2010, Cambridge Lakes Homeowners Association, Inc Answer and Crossclaim, 2010-CP-10-6060, Dec 15, 2010

[7] Cambridge Lakes Homeowners Association, Inc v Johnson Koola 2010-CP-10-9305, Nov 8, 2010

In May 2012 the Bankruptcy Court reopened Koola's Bankruptcy 7 case[8] to let Koola include the new causes of action and fresh claims of negligence and fraud against BAC in Schedule B pursuant to 11 U S C § 350(b) (ROA # 15 Notice To Reopen Case and Memorandum in Support)

In August 2012, Koola filed a "Motion to Sanction" BAC in this instant action for its repeated bad faith denial of Koola's application for loan modification[2] (ROA # 16 Koola, Motion to Sanction)

On Sep 11, 2013, the Master dismissed BAC's case # 2010-CP-10-6060 against Koola under Rule 41(a), SCRCP[9]

On March 14, 2014, Koola filed a "Memorandum in Opposition to BAC's Motion for Summary Judgment or Dismissing the Counterclaims of Defendant Koola and in support of Defendant Koola's Motion to Sanction" (ROA # 17 "Koola's Memorandum")

On March 20, 2014, the Master heard BAC's Motion for Summary Judgment and Koola's Motion for Sanctions, the Master granted BAC's Motion for Summary Judgment, denied Koola's Counterclaims against BAC and denied Koola's Motion for Sanctions (ROA # 1 and ROA # 2)

On May 6, 2014, the Master denied Koola's Motion to Reconsider (ROA # 3) which was filed on May 5, 2014 (ROA # 18 "Memorandum in Support of Motion for Reconsideration") The Appeal followed

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[8] On Nov 6, 2013, the Bankruptcy Court, on the advice of the Bankruptcy Trustee, closed the Bankruptcy case, thereby all the claims were reverted from the Trustee to Koola (ROA # 15)

[9] On Jan 28, 2014, the Master reinstated the case based on Motion to Reinstate filed by Koola on Nov 18, 2013, set March 25, 2014 date for hearing all outstanding motions in the said case and later rescheduled the motion hearing to March 20, 2104

## STANDARD OF REVIEW

In reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c) of SCRCP *Nexsen v Haddock,* 353 S C 74, 576 S E 2d 183 (Ct App 2002) Summary Judgment is proper when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law *Id* In ruling on a motion for summary judgment, "the evidence and inferences that can be drawn there from should be viewed in the light most favorable to the nonmoving party" *Koester v Carolina Rental Ctr* , 313 S C 490, 443 S E 2d 392 (1994) "If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury However, if the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the court" *Ward v Zelinski*, 260 S C 229, 195 S E 2d 385 (1973)

*Hancock v Mid-South Management Co* , 381 S C 326, 330-331, 673 S E 2d 801, 803 (2009), upheld the application of the "scintilla standard" governing the determination of motions for summary judgment where plaintiff's claims must be met by the preponderance of evidence stating "[We] hold that in cases applying the preponderances of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand summary judgment "

## ARGUMENTS

### I. THE MASTER ERRED IN DETERMINING THAT KOOLA HAS NO STANDING AND EXCLUSIVE RIGHT TO ASSERT COUNTERCLAIMS AGAINST BAC AFTER HE REOPENED HIS CHAPTER 7 BANKRUPTCY CASE, AND THE TRUSTEE DECLINED TO RETAIN SUCH CLAIMS.

BAC's Motion for Summary Judgment, citing Bankruptcy codes, 11 U S C A §§ 521(a)(1)(A)-(B)(i), 541(a) and case laws, *In re Educators Group Health Trust, 25 F 3d 1281, 1283-1284 (5th Cir 1994) and Tyler House Apartments, Ltd v U S , 38 Fed Cl 1, 6 (1997),* argued that Koola lacked standing to assert counterclaims against BAC because Koola filed for bankruptcy in March 2009, but failed to list any of the counterclaims in bankruptcy schedules, and therefore the claims remained under the control of the trustee, not Koola, after bankruptcy discharge in July 29

Immediately thereupon the Master stated "That might be dispositive right here" (ROA #19 Transcript, TR p 4), and it seemed that the Master already decided that Koola has no standing to assert counterclaims against BAC even before hearing Koola

Substantive Bankruptcy law 11 U S C A § 350(b) allows for the reopening of a bankruptcy case to "accord relief to the debtor" and to allow debtor to amend his Schedule B to list all previously unlisted creditors and assets, liabilities and claims Bankruptcy codes, 11 U S C A §§541(a), 521(a)(1)(A)-(B)(i) and 554(c), and case laws, *In re Educators Group Health Trust (supra)* and *Tyler House Apartments, Ltd v U.S* (supra), would show to this Court that any assets, including claims, that were scheduled by the debtor but not disposed of are deemed abandoned and revert to the debtor

In May 2012, Koola filed a Motion to Reopen his Chapter 7 Bankruptcy case

under 11 U S C A § 350(b) to include the new causes of action and fresh claims of negligence and fraud against BAC in Schedule B (ROA # 15) BAC did not file any responses and objections to Koola's Motion to Reopen the Bankruptcy case as per April 25, 2012 'Notice of Hearing' from the Court The Court by an Order dated May 22, 2012, reopened the Bankruptcy case On Nov 6, 2013, the Bankruptcy Court, on the advice of the Bankruptcy Trustee, closed the Bankruptcy case, the trustee did not dispose of any newly included claims, and these claims deemed abandoned and reverted to the debtor Consequently, the assets were reverted to debtor, Koola, and Koola has now exclusive right to assert counterclaims against BAC (ROA # 15)

When Koola filed for Chapter 7 Bankruptcy in March 2009, he had no knowledge that the developer/seller (i) Violated HPA §27-31-430, and (ii) Falsified the "Builder's Certification" while selling the condominium to Koola, and That BAC had violated FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) Therefore, Koola did not know in 2004 that he had any claims against BAC for negligently approving Koola's mortgage loan and for not investigating and verifying the truthfulness of the Builder's Certificate

Koola represented to the Master (Koola's "Memorandum", (ROA # 18 and TR p 7) that Koola regained his right to assert counterclaims against BAC after Bankruptcy reopening (ROA # 15) BAC's argument that Koola lacked standing to assert counterclaims in BAC's foreclosure action has lost legal standing The Master erroneously refused to accept Koola's position that Koola regained exclusive right to assert counterclaims against BAC

BAC realized that Koola has regained exclusive right to assert counterclaims in the foreclosure actions Two times during motion hearing BAC pleaded with the Court (with slight changes in words) *"And I believe, Your Honor, after I filed my Motion for Summary Judgment they went back and amended to try to avoid the grounds for, one of the grounds for the Motion for Summary Judgment"* (TR, page 4, 8) The Master still refused to accept Koola's position on Bankruptcy reopening and continued to discredit Koola's position (TR page 8 to page 10) The Master found no legal ground to deny Koola's position on Bankruptcy reopening Instead of rendering a decision in favor of Koola, the Master stated *"Well, we'll cross that bridge [Koola's right to preserve the counterclaim] in a second"* (TR p 11) and went on to adjudicate other issues

The Master could not find any legal and legitimate reasons to deny Koola's bankruptcy reopening to include new causes of action and claims against BAC in Schedule B and the subsequent right that Koola regained to assert these causes of action and claims against BAC in the foreclosure action Hence, the Master decided that Koola can file his counterclaims only in the Bankruptcy Court, and not in the State court in the foreclosure action (TR p 22) The Master's action is unprecedented and has no basis in Bankruptcy laws In fact, the Master wrote new Bankruptcy laws, a function reserved for the Congress in the Constitution and arbitrarily interpreted Bankruptcy laws, a function reserved for the Appellate Courts This Court has previously decided that a master-in-equity's impermissible findings of fact and conclusions of law resulted in prejudice to mortgagor that warranted reversal A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it *Wells*

*Fargo Bank, N A v Michael Smith*, 398 S C 487, 730 S E 2d 328 (Ct App 2012)

After some more time, the Master returned to Bankruptcy reopening and stated "*Mr Koola, I don't believe that we're going to get where you want to get to today*" (TR p 24) and then after some more time formally granted BAC's Motion for Summary Judgment (TR p 30)

The Master's Order (ROA # 2), as initially written, does not address Koola's representation that he regained exclusive right to assert counterclaims against BAC pursuant to 11 U S C A §§ 350(b) 541(a), 521(a)(1)(A)-(B)(i) and 554(c), but added a handwritten post-script on page 4 "Furthermore, Mr Koola received a Ch 7 Bankruptcy discharge in ca # 09-01024[10] on July 13, 2009 rendering Koola's claims moot "

Rule 52, SCRCP, provides

> *"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58,.... The findings of the Master, to the extend that the court adopts them, shall be considered as the findings of the court .. "*

*Id* The Master's Order does not state *findings of fact and conclusions of law* Most significantly, it fails to address the effect of Koola's reopening of his Chapter 7 case and Koola's exclusive right to assert counterclaims against BAC It is respectfully submitted that the Master seriously erred in the interpretation of Bankruptcy laws and their application to Koola's claims and further erroneously dismissed Koola's counterclaims against BAC The Master was prejudicial toward Koola

[10] The case number is 09-02-104-dd

## II. THE MASTER ERRED IN DETERMINING THAT KOOLA's COUNTERCLAIMS AGAINST BAC ARE BARRED BY STATUTE OF LIMITATIONS

BAC argues that Koola's counterclaims occurred in February 2004, and Koola did not assert these claims until March 2011, and hence these counterclaims are barred by three-year Statute of Limitations (ROA # 14 BAC's Memorandum at 3)

The Statute of Limitations begins to run when a person knows or has reason to know of the existence of his claim The Statute of Limitations "begins to run when the underlying cause of action reasonably ought to have been discovered " *Martin v Companion Health Care Corp* , 357 S C 570, 575, 593, S E 2d 624, 627 (Ct App 2004) The statute of limitations does not run from the date of the negligent act, but from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence *McClain v Jarrad*, 354 S C 218, 580 S E 2d 763 (S C App 2003), *Holly Woods Association of Residential Owners v Hiller*, 392 S C 172, 183, 708 S E 2d 787 (Ct/App 2004)

Koola learned only in September 2010 that (i) The developer/seller violated the HPA, specifically HPA § 27-31-430, and falsified "Builder's Certification", and that (ii) Countrywide/BAC's appraisal was based on a falsified, "Builder's Certification", and Countrywide/BAC violated FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) Koola asserted these counterclaims in his Amended Answer and Counterclaims filed in March 2011 (ROA # 10) Koola's actions and counterclaims are thus well within the three-year Statute of Limitations

In view of the developer/seller's assertion in the Master Deed (ROA # 4 at 1) that (i) The condo conversion complied with the provisions of the HPA, (ii) His declaration in the "Builder's Certification" that he has complied with HPA § 27-31-430, and (iii) Countrywide/BAC's ready acceptance of the Builder's Certification and the subsequent appraisal, Koola didn't realize that he had claims against BAC in 2004

Koola represents to this Court that (i) the HOA, which took over the control of the homeowners association in 2004, and filed HOA's construction defects lawsuit in 2008 didn't know about the violation of the HPA, more specifically HPA § 27-31-430, until June/July 2010, and (ii) BAC, which has or ought to have superior knowledge about condo conversions, builder's certifications, and appraisals and has a statutory duty to complete appraisals under FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) didn't know about the violation of the HPA, more specifically HPA § 27-31-430, in 2004 Under these circumstances, BAC's assertion that Koola knew about his claims against BAC in 2004 is not substantiated

For BAC to argue that Koola knew in 2004 that the "Builder's Certification" was falsified implies that BAC also had this information 2004 and did not act on it while completing the appraisal because both parties received copies of the "Builder's Certification There is no reason to conclude that Koola knew in 2004 or before September 2010 that "Builder's Certification" was falsified and fraudulent BAC has not produced any evidence to support its argument Koola's claims are therefore timely and not barred by Statute of Limitations

"Newly discovered evidence which by due diligence could not have been

discovered in time and fraud, misrepresentation or other misconduct of adverse party are grounds for a new trial and/or amendment of judgments" Rule 59(b), SCRCP

BAC did not present any evidence to establish that Koola knew about the falsity of the "Builder's certification" in 2004 The Master could not find any reason to determine that Koola knew about the falsity of the "Builder's certification" in 2004 But the Master decided that "*I find that the timing of the claim is too late, and therefore, the statute of limitations has run*" since Koola stated in his Bankruptcy reopening petition that "Debtor's right to file these suits existed prior to the filing of his Chapter 7 case, but were unknown to Debtor at that time" (ROA # 15) The Master decided that Koola should have known the existence of his claims [prior to 2009], but did not spell out exactly when the statute of limitations began to run

This Court has previously decided that a master-in-equity's impermissible findings of fact and conclusions of law resulted in prejudice to mortgagor that warranted reversal A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it *Wells Fargo Bank, N A v Michael Smith, supra*

"Equitable tolling" is a nonstatutory tolling theory, which suspends a limitations period *Hooper v Ebenezer Sr Services and Rehabilitation Center*, 386 S C 108, 687 S E 2d 29 (2009) Equitable tolling should also be applicable to Koola since Koola's damages arose from BAC's negligence stemming from its breach of statutorily created duty of care to Koola for noncompliance with FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) and HPA § 27-31-430

## III. THE MASTER ERRED IN DETERMINING THAT BAC OWED KOOLA NO DUTY OF CARE, WHICH WAS CREATED THROUGH THE STATUTORY PROVISIONS OF FIRREA FEDERAL APPRAISAL GUIDELINES AND S.C. HORIZONTAL PROPERTY ACT (§ 27-31-430)

BAC's Motion for Summary Judgment demanded the "dismissal of "the counterclaim of Defendant Koola" stating that (i) Koola has no standing to assert these counterclaims and (ii) Koola's counterclaim(s) are barred by the Statute of Limitations Since these two conditions were not satisfied, the Master should have denied BAC's Motion to dismiss Koola's counterclaims at its face value

Koola represented to the Master that Koola's counterclaims arose from BAC's negligence stemming from its breach of statutorily created duty of care to Koola for noncompliance with FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) and HPA § 27-31-430

FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) mandate (i) Real estate appraisals by mortgagees are required to protect the interest of the public and Federal financial institutions, (ii) The Board of Directors of mortgagees shall maintain their own written Loan Policy establishing an effective real estate appraisal program consistent with the public interest requirements mandated by FIRREA Federal Appraisal guidelines, and (iii) The Loan Policy should determine the appropriate type and content of appraisal for different lending transactions

The legal mandates found in the FIRREA Federal Appraisal guidelines created a duty of care on the part of Countrywide/BAC to Koola to ensure that Countrywide/BAC's loan approval process of Koola's original mortgage loan met and followed the mandated

FIRREA Loan Policy requirements and appraisal guidelines In South Carolina, Countrywide/BAC owed an *additional duty of care* to Koola to ensure that its appraisal of converted condominiums also complied with HPA § 27-31-430 (the Disclosure of the Physical Condition of the [Condominium] Building with strict liability clause) It was *only* for this reason that Countrywide/BAC asked the developer/seller to certify in the "Builder's Certification" whether the lending transaction is a "Condo Conversion" and if so, "whether the structural, health and safety repairs have been completed" Simply put, that Countrywide/BAC required a "Condo Conversion Builder's Certification" as a precondition to approving Koola's loan is the affirmative evidence that Countrywide/BAC owed Koola a duty of care to ensure compliance with HPA § 27-31-430

Negligence is the breach of a duty of care owed to the plaintiff by the defendant To state a cause of action for negligence, the plaintiff must allege facts which demonstrate (i) A duty of care owed by the defendant, (ii) A breach of that duty by a negligent act or omission, (iii) A negligent act or omission resulted in damages to the plaintiff, and (iv) That damages proximately resulted from the breach of duty Countrywide/BAC's failure to appraise Koola's converted condominium in compliance with FIRREA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1), and its failure to verify the accuracy and truthfulness of the "Builder's Certification" to comply with HPA § 27-31-430 and the subsequent damage resulted in a breach of duty of care to Koola BAC is liable for negligence *per se*

In *Regions Bank v Schmauch,* 354 S C 648, 582 S E 2d 432 (2003), the Court of Appeals determined that a bank may be held to a fiduciary duty if it undertakes to

advise a customer as part of services the bank offers The Court has not spelled out whether advising customers about mortgage loans and appraisals do fall under fiduciary duty If it were, this would constitute another ground for breach of duty

Whether a particular act is negligent depends on foreseeability and a person of ordinary reason and prudence standard BAC should be held to a person of superior knowledge, and it should have been foreseeable for BAC that if it failed to appraise Koola's condominium under the guidelines of FIRREA Federal Appraisal guidelines and to confirm compliance with HPA § 27-31-430, certain damages will result BAC failed in both these tests

To confirm the breach of duty for negligence, the burden or inconvenience caused by duty of care should be determined To appraise Koola's condominium under the guidelines of FIRREA Federal Financial guidelines and to confirm compliance with HPA § 27-31-430, BAC ought to have (i) Asked the developer/seller whether he provided the "Disclosure of the Physical Condition of the Building" report to Koola (HPA § 27-31-430), (ii) Or, alternatively, verified with Koola whether he received the "Disclosure of the Physical Condition of the Building" Report from the developer/seller, and/or (iii) Asked the appraiser to appraise the condominium (depending upon whether it has been converted from apartment) in compliance with HPA § 27-31-430 Asking any one of these questions and getting answers to them would have taken just a few minutes of time, hardly a burden or inconvenience These failures proximately caused Koola significant damage when it became known that the condominium Koola purchased and Countrywide/BAC had appraised was materially overvalued due to

uncompleted repairs falsely certified as having been completed in the "Builder's Certification"

In its reply to Koola's First Set of Requests for Admission, BAC has *admitted* that BAC is obligated to follow the FIRREA Federal Appraisal guidelines, and that Plaintiff has to order an appraisal appropriate for different lending transactions depending on whether the real estate being appraised is a condo conversion or a new condominium or a single family unit or a residential or non-residential unit (ROA # 20 BAC's Responses to Koola's Request for Admission at 1, 2) These admissions, which cannot be denied during trial, confirm that Countrywide/BAC had a duty of care to ensure that the mandates of FIRREA Federal Appraisal guidelines were followed for the approval process of Koola's loan

BAC did not produce (i) Documents, which BAC provided to the appraiser when the appraiser was engaged by BAC to get the appraisal done, and (ii) Countrywide/BAC's written "Loan Policy" for real estate appraisal (ROA # 21 BAC's Responses to Koola's Request for Production at 2 and 3) which were requested in Koola's Request for Production These objections are evidences of an effort by BAC to conceal its negligence

The developer/seller falsified the Builder's Certification claiming compliance with HPA § 27-31-430 The developer's action has met all the elements of fraud BAC perpetuated the fraud committed by the developer/seller (ROA # 14 at 1, ROA # 18 at 13) BAC is a joint tortfeasor with the developer/seller Elements of actionable Fraud consist of (1) a representation, (2) its falsity, (3) its materiality, (4) speaker's knowledge

of its falsity, (5) his intent that it should be acted upon by person, (6) hearer's ignorance of its falsity, (7) his reliance on its truth, (8) his right to rely thereon, and (9) his subsequent and proximate injury *Regions Bank v Schmauch, (supra)* BAC's appraisal of Koola's condominium met all these elements of fraud

In Motion for Reconsideration, Koola represented to the Master that Federal, and State authorities, various Federal Financial agencies and many private investors in mortgage backed securities offered by BAC had filed numerous lawsuits against BAC alleging violations and fraudulent practices in lending transactions BAC settled most of the cases and paid more than $50 billion in fines and settlements between 2010 and 2013 (ROA # 18 at 13) Just recently in August 2014, BAC settled a mortgage-related litigation and probe with the U S Justice Department, six states and several other regulators for $16 5 billion There are few instances where jury found BAC liable for fraud related to mortgages made and sold to Fannie Mae and Freddie Mac under "FIRREA 1989" BAC is equally liable to Koola under these statutory provisions

During motion hearing, BAC presented three authorities from *Savannah Bank, N.A v. Stalliard,* 400 S C 246, 734 S E 2d 161 (2012), *Regions Bank v Schmauch, supra*, and *Roundtree Villas Ass'n, Inc. v 4701 Kings Corp.*, 282 S C 415, 321 S E 2d 46 (1984) to inform the Master that BAC has no duty of care to Koola The Master should have denied these authorities since presenting surprise evidences and authorities during motion hearing amount to "trial by ambush", but did not

In *Stalliard, supra*, the plaintiff argued that the bank was negligent in processing and discovering false information about his income in the loan application, which would

have made him ineligible for the loan In *Stalliard*, plaintiff did not cite any authority or statute establishing a duty of care that the bank had to discover the plaintiff's falsely stated income in his loan application Rule 16(a)(8)(2), SCRCP, mandates the parties in a [civil] action to "[s]tate the questions of law involved, with *citations of legal authority* substantiating the party's position, " Rule 208(b)(1)(D), SCACR mandates "At the head of each part [of the brief], the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority" In the absence of citations of any statute and authority, a Court cannot make a decision on a particular issue Therefore, in *Stalliard,* the Supreme Court held that the bank did not have a duty to plaintiff to inform the borrower of information that the borrower could have discovered by reading the loan application himself

*Regions Bank, supra,* also distinguishes contrastingly from Koola's case, where the appellant asserted that the bank owed a duty of care because the appellant was particularly vulnerable and depended on the bank for guidance The Court noted that the appellant has over thirty years of experience in the marine business, was not in a vulnerable position, was knowledgeable about her business decisions, and the bank owed her no special duty of care Again, the appellant did not cite any statute or legal authority to establish that the Regions Bank owed the appellant a duty of care in guiding her in her business decisions, and the Court held that the appellant's case did not establish an overall duty of care between the bank and the appellant

Reference to *Roundtree Villas Ass'n, Inc* , *supra*, is not warranted *Roundtree Villas Ass'n, Inc* was decided in 1984, five years before FIRREA Federal Appraisal

guidelines were enacted and codified in 1989 As a result, decision in *Roundtree Villas Ass'n, Inc* related to appraisal was rendered irrelevant The plaintiff alleged that the Lender and its advisor were liable for construction defects The Supreme Court held that there is no applicable statutory or common law duty to hold the lender and its advisor liable for construction defects The Supreme Court held that the lender and the lender's advisor may be held liable for any damages proximately caused by the alleged negligent repair of the common elements of the property, and therefore, the Lender had a common law duty to use due care to Plaintiff-Respondent and ordered a new trial

The authorities in *Stalliard, supra, Schmauch*, *supra*, and *Roundtree Villas Ass'n, Inc* , *supra*, are irrelevant to Koola's case, none of them has stated that the duty of care claimed in those cases was created by FIERRA Federal Appraisal guidelines (12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1) and HPA § 27-31-430 BAC misled the Master by stating that Koola's causes of action are for construction defects, which are not

The Master could not deny Koola's counterclaims as a matter of fact and as a matter of law Hence, the Master decided that Koola can file his counterclaims only in the Bankruptcy Court, and not in the State court in the foreclosure action (TR p 22) The Master's action is unprecedented and has no basis in Bankruptcy laws This Court has previously decided that a master-in-equity's impermissible findings of fact and conclusions of law resulted in prejudice to mortgagor that warranted reversal A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it *Wells Fargo Bank, N A v Michael Smith*, supra

## IV. THE MASTER ERRED IN DENYING KOOLA'S "MOTION TO SANCTION" BAC WITHOUT DUE CONSIDERATION OF "HOPE FOR HOMEOWNERS PROGRAM" AND "THE ADMINISTRATIVE ORDER" OF THE CHIEF JUSTICE OF SUPREME COURT OF SOUTH CAROLINA

In August 2012, Koola filed a "Motion to Sanction" BAC in this instant action for its repeated bad faith denial of Koola's applications for loan modification[2] (ROA # 16)

In July 2009, Koola applied to BAC for a mortgage loan modification In August 2009, BAC approved a special forbearance agreement agreeing to make a decision on loan modification before Dec 2009 In February of 2010, BAC offered a purported "*loan modification*", changing the monthly payment from $838 69 at the beginning of 2009 to $797 14 after loan modification (ROA # 6) There was *no reduction in the interest rate and the principal balance* and *no change in the original maturity date* Koola could not accept this unaffordable and unfavorable loan modification as total payments through the life of the loan would increase considerably after the offer of loan modification

Koola applied for mortgage loan modifications on four other occasions, April 28, July 8, Sep 2 and July 7, 2013 under "HOPE for Homeowners Program", all applications were denied/unsuccessful

"HOPE for Homeowners Program", 12 U S C A §1752z-23 et seq , states that (i) Mortgagees allow homeowners to avoid foreclosure by reducing the principal balance outstanding and interest rate charged on their mortgages, (ii) They target mortgage assistance to homeowners for their principal residence, (iii) They determine the principal obligation amount of the refinanced eligible mortgage by the reasonable ability of the mortgagor to make his or her mortgage payments so that it does not exceed 90% of the

appraised value of the property, (iv) They ensure that eligible mortgages shall have originated on or before Jan 1, 2008, and (v) they complete the appraisal based on the current value of the property which is conducted in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (ROA # xx at10, 11, TR p 25)

12 U S C A § 1710(a)(2) authorizes the Secretary of FHA to pay insurance benefits to the mortgagee to recompense the mortgagee for all or part of any costs of the mortgagee for taking loss mitigation actions that provide an alternative to foreclosure of a mortgage that is in default (ROA # 11)

Participation of the mortgagees in the "HOPE for Homeowners Program", 12, U S C A §1752z-23 et seq , is voluntary But when mortgagees agree to participate in the program, mortgagees assume a duty of care to homeowners to offer a good faith loan modification within the guidelines of 12 U S C A §1752z-23 et seq When the mortgagees accept compensation from the Secretary, FHA, under 12 U S C A § 1710(a)(2) for offering loan modification to homeowners, this duty of care becomes mandatory and absolute

> "*An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special relationship Ordinarily, the common law imposes no duty on a person to act When an act is voluntarily undertaken, however, the actor assumes the duty to use due care*

*Johnson v Robert E Lee Academy, Inc* 401 S C 500, 504 (2012), 737 S E 2d 512 (*internal citations omitted*)

Koola further represented to the Master that BAC could have offered Koola an

affordable loan modification especially after the five largest mortgage banks, including BAC, settled a claim for $25 billion with the United States and 49 state officials specifically intended for loan modification by reduction in interest rate and principal balance (TR page 26, ROA # xx at 12) [Again On August 21, 2014, BAC settled another mortgage related litigation[11] with the U S Justice Department, six states and several other regulators for $16 5 billion, of which $7 billion is intended for consumer relief]

BAC is obligated to offer Koola a loan modification in good faith under the provisions of "HOPE for Homeowners Program", 12 U S C A §1752z-23 et seq" (this Initial Brief, supra, at xx) and the two major settlements that the BAC entered into If BAC failed to offer an affordable loan modification to Koola in spite of its best "good faith efforts", BAC is obligated to inform Koola how much reduction in interest rate and principal balance was considered to determine the principal obligation amount of the refinanced mortgage [loan modification] BAC did not act in good faith toward Koola while considering his loan modification application

The Chief Justice of the Supreme Court of South Carolina has ordered that

> "*[I]n the event the Court, having jurisdiction over the foreclosure action, determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this Order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessme*nt of reasonable attorneys' fees and costs against the culpable party "

Administrative Order No 2011-05-02-01 dated May 2, 2011, Chief Justice of South

[11] BAC settlement with Dept of Justice

Carolina Supreme Court ("Administrative Order") (ROA # 13, TR p 26)

In spite of being informed about the motion hearing through court notices and through Koola's Memorandum (ROA # 19), BAC did not file any affidavit or memorandum in response to Koola's Motion to Sanction BAC did not address any of the statutes that Koola presented to the Court Instead, BAC informed the Court that (i) Borrowers have no standing to assert that the banks failed to offer loan modification, (ii) Mentioned "*W-E-B-E-R, a case from South Carolina District Court*", that is "*fairly recent*" and "*universal*", (iii) BAC does not have a copy of "W-E-B-E-R" for immediate review by the Master, and (iv) that a copy of "W-E-B-E-R" can be sent to the Court (TR page 25,26) To date, BAC has not sent a copy of "W-E-B-E-R" to the Court or to Koola To date "W-E-B-ER" remains "fictional" This failure to produce authorities for court hearing is a "trial by ambush", the Master encouraged BAC in its "trial by ambush"

Upon the Master's request, Koola pointed out the relevant sections of 12 U S C A §1752z-23 et seq , stated in Koola's Memorandum on page 10 to make the Master aware of laws that requires a lender to reduce principal balance (TR Page 25)

Koola further represented to the Master that if the principal obligation amount of the refinanced mortgage [after loan modification] made by the good faith efforts of BAC remains unaffordable, the difference between Koola's affordability and the principal obligation amount of the refinanced mortgage can be covered through support from S C HELP, a federally funded program administered through the State of South Carolina to offer assistance for homeowners facing foreclosure

During the proceedings, the Master never discussed the provisions of 12

U S C A § 1752z-23 et seq (the "HOPE for Homeowners Program") and the settlements that BAC entered into with Federal and various state authorities to provide consumer relief, and the "Administrative Order", and but acknowledged the assistance available from SC Help to homeowners under foreclosure (TR page 29)

The Master used the authority in fictional "W-E-B-E-R" (TR p 25 26) to issue the Order from the Bench stating

> *"Here's what I'm going to do Mr Koola, based on the circumstances I'm hearing I do not find the basis upon which to grant sanctions under Rule 11 I understand your frustration. (TR p 29)*
>
> *What I'm going to do for today is I'm going to grant Mr Hayes' [Consul for BAC] motion And that's going to dismiss the counterclaims. I'm going to deny your motion for sanctions under Rule 11 and the Chief' Justice's Order . (TR p 30)*
>
> *So I would suggest you go back to the drawing board with SC HELP I would suggest the Home Ownership Resource Center and see if they have any wiggle room with the Bank of America They are not the easiest bank to deal with I am well aware of that .. "* (TR p 31)

The Master's Order has not set forth the findings of fact and conclusions of law, which were the grounds for the Master's decision in this action The Master's Order does not even mention various provisions of 12, U S C A §1752z-23 et seq , "the Administrative Order", the settlements that BAC entered into with Federal and various state authorities to provide consumer relief, and the assistance available from SC Help to homeowners under foreclosure (ROA Koola's Memorandum, TR xxxx)

The Master's Order, citing a foreclosure case, *Federal Nat Mort Ass'n v LeCrone*, 868 F 2d 190, 193 (6th Cir 1989), states that "*Koola can also point to no specific servicing guidelines that require BAC to provide him with the loan modification*

*he says he requires, and even if he could, he would not have a private right of action against BAC for violating those guidelines*" (The Master's Order at 4) What the Sixth Circuit Decision said was that "no express or implied right of action in favor of mortgagor exist[ed] for violation of HUD servicing polices" because "no legal relationship exists between the FHA and individual mortgagors " The Court arrived at this conclusion because FHA only insured LeCrone's Mortgage, but did not offer a mortgage loan to LeCrone A legal relationship exists between Koola as mortgagor and BAC as mortgagee Moreover, BAC, which is a private entity, does not enjoy any sovereign immunity, and Koola can bring actions against BAC for the violations of provisions of Title 12, U S C A §1752z-23 et seq and the "Administrative Order" The Master's Order further failed to distinguish the fact that Koola's causes of action are based on 12, U S C A §1752z-23 et seq codified in 2009 compared to Lecrone's case decided in 1989

The Master's Order cites *Spaulding v Wells Fargo Bank*, 714 F 3d 769 (4th Cir 2013), a Maryland case, in support of his decision to deny Koola's Motion to Sanction The Fourth Circuit Court denied Spaulding's appeal because (i) Spaulding has no standing to pursue action against Wells Fargo Bank as there is no *contract* between Spaulding and Wells Fargo Bank under Maryland law for Wells Fargo Bank to offer an affordable loan modification to Spaulding as Spaulding claimed, (ii) Spaulding could not establish any misrepresentation and fraud on the part of the Bank to Spaulding Again, the Master's Order failed to notice that Koola's causes of action are not based on a contract law from Maryland, but on the provisions of 12, U S C A §1752z-23 et seq

(The Master's Order at 4)

The Master's Order further makes an argument to deny Koola's Motion to Sanction because social security benefits are the only source of income for Koola, which Koola has admitted in his Amended Answer and Counterclaim (The Master's Order at 4) The "Hope for Homeowners Program" was designed to insure refinanced loans for distressed borrowers to support long-term sustainable homeownership and bans offering loan modification to wealthy individuals 12 U S C A §§ 1715z-23(b)(1), (e)(12) (2009)

BAC has not presented any authority from South Carolina, which would deny Koola his right to pursue action against BAC The Master's Order has not cited any authority from South Carolina while denying his Motion for Sanctions for good faith violations of the provisions of "HOPE for Homeowners Program", (12 U S C A §1752z-23 et seq ) and "the Administrative Order"

"The Administrative Order" of the Chief Justice of Supreme Court of South Carolina is the Law that gives authority to the Citizens of South Carolina to pursue actions against BAC for good faith violations of the provisions of "HOPE for Homeowners Program", (12 U S C A §1752z-23 et seq )

## V. THE MASTER'S NONCONSIDEARTION OF FEDERAL STATUES AND THE ADMINISTRATIVE ORDER OF THE CHIEF JUSTICE OF SUPREME COURT OF SOUTH CAROLINA VIOLATES CONSTITUTIONAL PROVISIONS.

The Master's Order did not consider any of the authorities stemming from Federal statutes presented by Koola Bankruptcy codes, 11 U S C A §§ 350(b) 541(a),

521(a)(1)(A)-(B)(i) and 554(c), FIRREA Federal Appraisal guideline, 12 C F R §§ 34 41, 34 43, 34 44, 34 45, 34 62, 564 1, and "HOPE for Homeowners Program", 12 U S C A §1752z-23 et seq The Master's Order has not cited any Federal or South Carolina statutes and relevant authorities from Federal and State Court decisions The Master's Order considered invalidated or inappropriate authorities from other states having no jurisdiction in South Carolina Thus, the Master's Order is in violation of Constitutional provisions "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, anything in the constitution or Laws of any State to the Contrary notwithstanding U S Const art VI

The Appellate Court of South Carolina has articulated in detail what are the principles of statutory interpretation

> "A statue as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers The real purpose and intent of the lawmakers willprevail over the literal import of the words
> Courts will reject a statutory interpretation, which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law"

Wieters v Bon-Secours-St, Francis Xavier Hosp , 378 S C 160, 662 S E 2d 430 (Ct App 2008) (Internal citations omitted)

In an unprecedented action the Master's Order does not consider the "Administrative Order" of the Chief Justice of South Carolina while denying Koola's

Motion for Sanction, thereby overruling the Chief Justice of South Carolina

Throughout the motion hearing, it was the Master rather than the counsel for BAC, who was establishing BAC's claims The Master acted as a "counsel" for "counsel for BAC" This presented a serious handicap for Koola

Notice of Appeal followed (ROA # 22)

## CONCLUSION

Based upon the foregoing points and authorities, Koola respectfully prays to this Honorable Court that the April 24, 2014 Order of the Hon Master in Equity granting Summary Judgment to BAC and denying Koola's counterclaims against BAC and denying Koola's Motion to Sanction should be reversed and Koola's claims against BAC restored and remanded to the Court of Common Pleas

Respectfully submitted,

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(843) 849-9241

Appellant pro se

September 15, 2014
Mt Pleasant, South Carolina

**THE STATE OF SOUTH CAROLINA**
**In the Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY
Court of the Master in Equity

The Honorable Mikell R Scarborough, Master in Equity
Case No 2010-CP-10-6060

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SC Court of Appeals

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APPELLATE CASE No 2014-001323

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Bank of America, N A , Respondent,

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,

Of whom Johnson D Koola is the Appellant

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PROOF OF SERVICE

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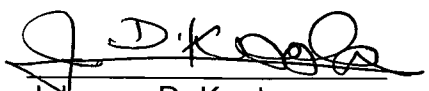
I, Johnson D Koola, Appellant *pro se*, under penalty of perjury, certify that on Sep 15, 2014, I served a copy of the Appellant's Initial Brief by mailing a true and accurate copy thereto to counsel of record for the Respondent, Dean A Hayes, Esq., Korn Law Firm, P A , P O Box 12369, Columbia, SC 29211-2369

Sep 15, 2014

Respectfully submitted,



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Sep 15, 2014

The Hon Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, S C 29201



Re Bank of America, v Johnson D Koola
Appellate Case No 2014-001323
Sub Appellant's Initial Brief and Designation of Matter

Honorable Ms Kitchings,

I, Appellant pro se, am filing a copy of the Initial Brief of the Appellant and Designation of Matter along with Proof of Service in each case

I thank you in advance for receiving the same

Yours sincerely,

J. D. Koola

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Copy to
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