

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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DEC 11 2014

SC Court of Appeals

Appellate Case No.: 2013-000279

The Honorable W. Jeffrey Young,
Charleston County
Trial Court Case No.: 2010-CP-10-9158

Johnson Koola,.....Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lake Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC, Carolina One, and William E. Jenkinson, IV, individually,

Of Whom Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP are theRespondents.

PETITION FOR REHEARING

Appellant pro se, Johnson Koola, ("Koola") files this Petition for Rehearing of the Court of Appeals' Unpublished Opinion No. 2014-UP-422, filed on November 26, 2014. The petition is filed under Rule 221(a) and Rule 221(c), SCACR. The action of the Court of Appeals has the effect of dismissing Koola's appeal, No.: 2013-000279. Koola also prays to the Court for an opportunity for an oral argument before a decision is rendered on the Petition for Rehearing.

I. THE APPELLATE COURT MISAPPREHENDED THE FACT THAT THE RESPONDENTS LIED IN THE RESPONDENTS' BRIEF THAT THE HOA ASSERTED CLAIMS OF VIOLATIONS OF THE S.C. HORIZONTAL PROPERTY ACT IN ITS LAWSUIT FILED ON JUNE 19, 2008.

The Respondents' brief (p. 2, lines 9-14) states: " On June 16, 2008, the HOA on behalf of itself and the individual condominium unit owners, filed a lawsuit against the Respondents and other parties (ROA. p. 115). In the lawsuit the HOA asserted claims for alleged defects in the construction of the condominium buildings, garages and pool/clubhouse building, and the HOA asserted claims based on alleged violations of the S.C. Horizontal Property Regime Act, S.C. Code Ann. § 27-31-10 *et seq.* ("SCHPA"), in connection with the conversion and sale of the condominiums (ROA. p.115)".

A reading of the said complaint, which is part of the Record on Appeal (R. p. 115-120), will confirm that the HOA has not pled any claims for Respondents' SCHPA violations in its complaint filed in June 2008. The Respondents lied in their Brief. The reference to the Record on Appeal shall indicate where the material appears in the Record on Appeal specifying page and line numbers, Rule 211(b)(1), SCACR, which the Respondents failed to do. This is to conceal the deliberate and intentional lie from this Court's immediate scrutiny.

The purpose of the deliberate and intentional lie was to establish that Koola knew about the SCPHA violations in June 2008, and therefore, the Statute of Limitations began to accrue from June 2008 to justify the Motion for Summary Judgment. Another purpose of the intentional lie was to commingle allegations of construction defects and violation of SCHPA and eliminate the differences between these two allegations so that the Respondents can claim that if Koola

knew about the constructs defects allegations in 2008, Koola ought to have known about the violation of SCHPA allegations in 2008.

This Court can independently verify whether the Respondents lied or not by reading the HOA's June 2008 complaint in the Record on Appeal (R. p. 115-120), and could come to this Court's own conclusions.

If this Court determines that the Respondents lied in their Brief and received Affirmation of the lower Court's Order granting Summary Judgment, then this Court is, in all fairness, obligated to reverse its November 26, 2014 Order and hold the Respondents and their attorneys for Contempt of the Court and impose Sanctions against them.

II. DURING THE MOTION HEARING IN THE TRIAL COURT THE RESPONDENTS DID NOT ESTABLISH THAT KOOLA KNEW ABOUT SCHPA VIOLATIONS IN 2008.

During the motion hearing on July 25, 2012, the Respondents presented to the Trial Judge that: (i) Koola is complaining about construction defects and problems with his unit in his lawsuit (R. p. 042, lines 24-25); (ii) Koola stated in his lawsuit, paragraphs 14 through 18 that Koola learned about the [HOA's] lawsuit in 2008, the [said] lawsuit alleged construction defects, violation of the Horizontal Property Act, and everything that Koola is alleging in his own lawsuit and that Koola knew about all these allegations in 2008 (R. p. 044, lines 18-23); (iii) Koola also learned that the Defendants allegedly violated the Master Deed and the Horizontal Property Act (R. p. 044, lines 24-25-p. 045, line 1); (iv) Upon learning of the lawsuit that was filed in 2008, he reviewed the Builder's Certificate (R. p. 045, lines 2-4); (v) Koola determined that all sorts of things were improperly done (R. 045, lines 5-6); and (vi) Koola was on notice about 2008 about all the allegations

that HOA has made against the Respondents, and Koola has made the same allegations in his complaint.

This Court can independently verify the statements that Koola made in his complaint (R. p. 022-029). Koola has not alleged construction defects as a cause of action in his complaint.

In Paragraph 14 of Koola's complaint (R. p. 025, lines 12-15), Koola simply stated that the HOA filed a lawsuit against the Respondents and various other parties for construction defects in 2008. Koola has not stated that the HOA's complaint filed in 2008 alleged violation of SC HPA.

In Paragraph 15 of Koola's complaint (R. p. 025, lines 16-18), Koola simply stated that Koola learned that the Respondents did not file with the master deed or provide copies of report required by the SCHPA, S.C. Code ann. 27-31-10 *et seq.* There is no mention of any date in this paragraph. The event in paragraph 15 refers to the time event around the time Koola filed the complaint in November 2010.

In Paragraph 16 of Koola's complaint (R. p. 025, lines 19-21), Koola simply stated that upon learning of the lawsuit he reviewed the Builder's Certification that was provided to him before he bought the condominium. There is no mention of any date in this paragraph. The event in paragraph 16 refers to the time event around the time Koola filed the complaint in November 2010.

In Paragraph 17 of Koola's complaint (R. p. 025, lines 22-23), Koola simply stated that he would not have bought the condominium if he had known that neither the work nor paperwork to complete the condominium conversion was done. There is no mention of any date in this paragraph. The event in paragraph

17 refers to Koola's thought process around the time Koola filed the complaint in November 2010.

In Paragraph 18 of Koola's complaint (R. p. 025, lines 24-26), Koola simply stated that he placed his condominium unit up for sale but learned that the condominium was virtually worthless because of the violations of the SCHA. There is no mention of any date in this paragraph. The event in paragraph 18 refers to the time event around the time Koola filed the complaint in November 2010.

Whenever the Respondents state that Koola stated construction defects as a cause of action in his complaint, and that he knew about the Respondents' SCHA violations in 2008, these are deliberate and intentional lies.

Further, the Respondents refer to the statements Koola made in his Interrogatory Answers that Koola filed in his Bankruptcy case. Specifically the Respondents refer to paragraph 2 of his Answer (R. p. 46, lines 24-25-p. 047, lines 1-3). In his Answer under reference, Koola referred to a conversation he had in November 2004 with a member of the Board of Directors of HOA regarding construction defects in Cambridge Lakes. Koola did not mention about the Respondents' SCHA violations in this paragraph (R. p. 099, lines 32-40-p. 100, lines 1-9).

Next the Respondents refer to page [5] and 6 of his Interrogatory Answers. (R. p. 047, lines 4-15). In his Answer under reference (R. p. 102, lines 25-38), Koola clearly stated that he made a fourth attempt to sell his property in April 2010 through short sale, but did not receive any offers from buyers and that Koola

cancelled his short sale attempt in August 2010. Koola did not state about any SCHA violations by the Respondents.

The Respondents continue further to the bottom of page 6 of his Interrogatory Answers (R. p. 047, lines 16-25-p. 048 lines 1-8). In his Answer under reference(R. p. 103, lines 31-39), Koola referred to a letter (R. p. 110-112) he received from the HOA regarding the HOA's lawsuit. The letter stated various construction defects in Cambridge Lakes. The HOA did not state that there were any violations of SCHA in the said letter (R. p. 103, lines 31-39).

The Respondents further refer to page 7 of Koola's Interrogatory Answer (R. p. 048, lines 9-18). In his Answer under reference (R. p. 104, lines 21-28), Koola stated that he studied the Builder's Certification provided by the Respondents to Koola and the Master Deed. Koola did not state that he read these documents in 2008. Koola read these documents in September 2010. There is no mention of any date in this paragraph. The events in paragraph 18 refer to the time event around the time Koola filed the complaint in November 2010.

In summary, the Respondents arguments in the Trial Court did not establish that Koola knew about the Respondents' SCHA violations in 2008; the Respondents established that Koola knew about construction defects in Cambridge Lakes in 2008. The Respondents further argue that Koola should have initiated a lawsuit against the Respondents in 2008. In 2008, Koola could initiate a lawsuit for construction defects, but not for violation of SCHA. The Respondents fail to recognize that Koola cannot sue the Respondents for construction defects in the common elements of a condominium under the purview of SCHA because these common elements are jointly and severally owned by all the condominium

owners. The condominium regime is entrusted with the maintenance and repair of the common elements, and only the condominium regime, and not individual condominium owners, can pursue legal action for the any construction defects in common elements.

III. THE COURT OF APPEALS FAILED TO RECOGNIZE THAT KOOLA'S CAUSE OF ACTION IS FOR THE RESPONDENTS' SCHPA VIOLATIONS AND *Holly Woods Ass'n of Residence Owners v. Hiller* IS THE CONTROLLING LAW.

Koola's primary cause of action in the case at bar is violation of SCHPA by the Respondents (R. p. 025, lines 29-30), and violation of Unfair Trade Practices Act (R. p. 026, line 14), Breach of Contract/Warranty (R. p. 026, line 25), Negligence (R. p. 207, line 5), Fraud, Deceit, and Negligent Misrepresentation (R. p. 028, line 1) resulting from the violation of SCHPA which are readily ascertained from the four corners of the Summons and Complaint (R. p. 022- 029) filed by Koola in November 2010. Koola has not pled a cause of action for construction defects caused by the Respondents.

A key element in the reasonable diligence test is "notice". *Grillo v. Speedrite Products, Inc.*, 340 S.C. 498, 532 S.E.2d 1 (Ct.App. 2000). Koola has categorically and repeatedly stated that he received "notice" that he has a cause of action against the Respondents only in September 2010. Koola received this "notice" when he researched the case dockets of HOA's lawsuit in the courthouse. The HOA's Summons and Complaint filed in June 2008 did not allege that the Respondents violated the SCHPA. The HOA filed the Second and Third Amended Complaints in June and July 2010, which included, among others, alleged violation of SCHPA by the Respondents. Koola read these Amended Complaints in the

Courthouse in September 2010. Therefore, Koola knew about the violation of SCHA by the Respondents in September 2010. Neither the Respondents nor the HOA did send copies of these Complaints to Koola as "notice"; Koola, through his own diligent efforts, discovered the causes of action that he stated in his complaint.

The Appellate Courts' decisions in *Gibson v. Bank of America, N.A.*, 383 S.C. 399, 680 S.E.2d 778 (Ct.App. 2009), *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App. 2004), *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 700 S.E.2d 280 (Ct.App. 2010) and *Turner v. Millman*, 381 S.C. 101, 671 S.E.2d 636 (Ct.App. 2009) detail how the Courts determine whether the parties received the "notice" to determine when the Statute of Limitations began to accrue.

The Respondents' contention is that Koola knew about construction defects in June 2008; therefore, Koola ought to have received "notice" about the violation of SCHA by the Respondents also in June 2008. This contention is neither a logical argument nor a factual statement.

The Court of Appeals also failed to determine when the Statute of Limitations began to accrue in the case of Koola. "[A] cause of action accrues at the moment when the plaintiff has a legal right to sue on it". *Grillo, supra*. Koola cannot sue the Respondents for construction defects in the common elements of a condominium under the purview of SCHA because the common elements are jointly and severally owned by all the condominium owners. The condominium regime is entrusted with the maintenance and repair of the common elements, and only the condominium regime, and not individual condominium owners, can

pursue legal action for any construction defects in common elements. If the rules were correctly applied, this Court would have determined that the Statute of Limitations began to run in September 2010 and not in June 2008, and Koola's action was within the Statute of Limitations.

In *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 708 S.E.2d 787 (Ct.App. 2011), this Court determined that the Respondents' action for negligence and breach of warranty **related** to the common areas of the development built within 13 years of action, and thus the statute of repose did not bar the action even though there were problems that existed prior to 13 years. This Court clearly distinguished the causes of action that existed prior to and after 13 years at the time of initiation of litigation. In the case of Koola, this Court has to differentiate between the construction defects known in 2008 [which are not the causes of action] and Respondents' SCHA violations came to be known in 2010 [which are the causes of action].

IV. EQUITABLE TOLLING

This Court did not consider the application of the doctrine of equitable tolling to Koola's appeal as the issue was not preserved for appellate review. Koola admits this fact. However, Koola requests this Court to reconsider Koola's failure as an excusable neglect.

During the motion hearing in the Lower Court on July 25, 2012, Koola presented to the Trial Judge that Koola knew about the violations of SCHA by the Respondents in September 2010. The Trial Judge would not accept Koola's position. Koola repeated his position to the Trial Judge, when the Trial Judge remarked that Koola is arguing with the Trial Judge. (ROA p. 056, I 24-25) Koola

realized that any further presentations to the Trial Judge including the consideration of equitable tolling would be a defiance of the Trial Judge in the open court. Koola could not and should not defy a Trial Judge in a courtroom.

After the Motion hearing, Koola filed a statement (R. p. 060-064) on August 1, 2010 explaining his positions taken during the motion hearing to the Trial Judge attaching evidentiary exhibits: Koola knew about the SCHPA violations by the Respondents only in September 2010, the Statute of Limitations started running from September 2010, Koola filed his lawsuit in November 2010, Koola served the Respondents with the Summons and Complaint in January 2012 and therefore Koola completed the service of process within the 3-year period of Statute of Limitations. Koola's filing included evidentiary exhibits which included the HOA's [First] Complaint filed on June 19, 2008, relevant sections of HOA's Third Amended Complaint filed on July 14, 2010, the first page of the Master Deed and the Builder's Certification. These evidentiary exhibits would confirm Koola's statements.

The filing of this statement with the specified evidentiary exhibits was intended to be an indirect request to the Trial Judge to consider the doctrine of equitable tolling. Koola wished to avoid the impression that he is arguing with the Trial Judge in the open courtroom. For this reason, Koola requests this Court to consider his failure to preserve the issue of the doctrine of equitable tolling for appellate review during motion hearing as an excusable neglect.

In *Hooper v. Ebenezer Sr. Services and Rehabilitation Center*, 386 S.C. 108, 687 S.E.2d 29, 32-34 (2009), the Supreme Court of South Carolina has detailed how and when South Carolina law and the doctrine of equitable tolling

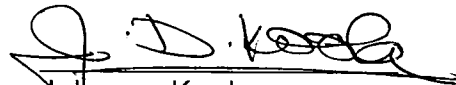
developed by the Court are applied to toll the applicable limitations period. Specifically the Court states that the Courts apply doctrine of equitable tolling in order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, equitable tolling stems from the judiciary's inherent power to formulate rules of procedure where justice demands it, equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control, the equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief can be granted when, in view of the circumstances, to deny it would permit one party to suffer gross wrong at the hands of the other, and the public policy and the interests of justice favor the equitable tolling when appropriate. The Supreme Court reversed the lower Courts' decisions and held that the petitioner's cause of action was equitably tolled. In *Ross v. Ross*, 394 S.C. 261, 715 S.E.2d 359 (Ct.App. 2011) this Court reversed the lower Court's decision and held that the Appellant's cause of action was equitably tolled.

Koola represents to this Court that the HOA's lawsuit, filed in June 2008 for construction defects and violations of SCHA, froze real estate transactions in Cambridge Lakes during 2008-2011 period except for short sales and foreclosure sales, nearly 30% of the Cambridge Lakes homeowners lost their homes to short sales and foreclosures, and Koola faces imminent foreclosure. The intervention of the Court in the case at bar would support the cause of public policy of the State.

CONCLUSION

For the reasons stated above, Koola respectfully requests that this Court grant Koola's Petition for Reconsideration and grant Koola's Appeal to reverse the Summary Judgment granted to the Respondents by the Trial Court.

Respectfully submitted,



Johnson Koola
1587 Cambridge Lakes Dr
Mt. Pleasant, SC 29464
(843) 849-9241

Appellant pro se

December 10, 2014

TABLE OF AUTHORITIES

CASES

Gibson v. Bank of America, N.A.,
383 S.C. 399, 680 S.E.2d 778 (Ct.App. 2009).....08

Grillo v. Speedrite Products, Inc.,
340 S.C. 498, 532 S.E.2d 1 (Ct.App. 2000).....07

Holly Woods Ass'n of Residence Owners v. Hiller,
392 S.C. 172, 708 S.E.2d 787 (Ct.App. 2011).....09

Hooper v. Ebenezer Sr. Services and Rehabilitation Center,
386 S.C. 108, 687 S.E.2d 29, 32-34 (2009)10

Prince v. Liberty Life Ins. Co.,
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Ross v. Ross, 394 S.C. 261, 715 S.E.2d 359 (Ct.App. 2011).....11

Rumpf v. Massachusetts Mut. Life Ins. Co.,
357 S.C. 386, 593 S.E.2d 183 (Ct.App. 2004).....08

Turner v. Millman, 381 S.C. 101, 671 S.E.2d 636 (Ct.App. 2009).....08

STATUTE

S.C. Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et seq.*

RULE

Rule 211(b)(1), SCACR

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Appellate Case No.: 2013-000279

The Honorable W. Jeffrey Young,
Charleston County
Trial Court Case No.: 2010-CP-10-9158

Johnson Koola,.....Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lake Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC, Carolina One, and William E. Jenkinson, IV, individually,

Of Whom Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP are theRespondents.

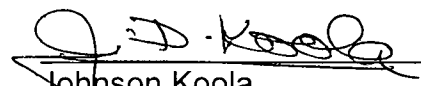
PROOF OF SERVICE

I, Johnson Koola, under penalty of perjury, certify that on December 10, 2014, I mailed a copy of appellant's Petition for Rehearing by mailing a true and accurate copy thereto to the following counsel of record for the respondents:

David J. Parish, Esq.
Nexsen Pruet, LLC
P.O. Box 486
Charleston, S.C. 29402

Linda Weeks Gangi, Esq.
Thompson & Henry, P.A.
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December 10, 2014


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JOHNSON D KOOLA
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Mt. Pleasant, SC 29464
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December 2014, 2014

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

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SC Court of Appeals

Re: Johnson Koola v. Cambridge Two, LLC, et al.
Appeal Case No.: 2013-000279

Sub: Appellant's Petition for Rehearing

Dear Honorable Kitchings:

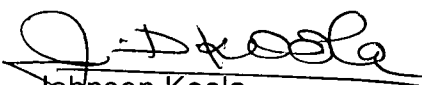
I am the appellant pro se in the above appeal, Johnson Koola v. Cambridge Two, LLC. *et al.*, Appeal case No.: 2013-000279.

I am writing to file Appellant's Petition for Rehearing in the above case. Enclosed please find seven copies of the appellant's Petition for Rehearing and a check in the amount of \$25.00 toward the filing fee. Original Certificates of Service are attached to each document. I am serving a copy of this letter and enclosures to the counsels on record for the respondents.

Kindly note that I am filing this Petition for Rehearing as Appellant pro se.

I thank you in advance for your kind efforts to receive the Petition for Rehearing.

Sincerely yours,


Johnson Koola

CC:
David J. Parish, Esq.
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Charleston, S.C. 29402

Linda Weeks Gangi, Esq.
Thompson & Henry, P.A.
P.O. Box 1740
Conway, S.C. 29528-1740

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 JOHNSON KOOLA,)
)
 Plaintiff,)
)
 vs.)
)
 CAMBRIDGE TWO, LLC, et al.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 Case No.: 2010-CP-10-9158

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**CONSENT ORDER FOR WILLIAM B. JUNG, ESQ. TO
 WITHDRAW AS COUNSEL FOR PLAINTIFF**

WHEREAS, plaintiff Johnson Koola ("Koola") is desirous to proceed *pro se* in the above-captioned action and has notified attorney William B. Jung, Esq. ("Jung") that he should no longer appear for or serve as counsel for Koola in this proceeding; and

WHEREAS, Koola acknowledges that Jung has notified Koola of the potential adverse consequences of proceeding without counsel at this stage of this litigation and has cautioned Koola regarding his decision to proceed *pro se*; however, Koola, by his execution of this Consent Order, acknowledges that it is his informed and wholly voluntary decision to proceed in this action without representation of counsel. Koola further understands that the relief entered by this Order shall not be grounds to seek the continuance of any pending motion in this proceeding; and

NOW, THEREFORE, IT IS HEREBY ORDERED that the application of William B. Jung, Esq. to withdraw as attorney of record for Koola is **GRANTED**; and, it is further

ORDERED that plaintiff Johnson Koola hereby is hereby and hereafter proceeding *pro se* in this action and shall keep the Clerk of Court and counsel of record informed of any changes to his below contact information.

RMDJ/1

I MOVE:

William B. Jung

William B. Jung, Esq.
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

I CONSENT:

J. D. Koola

Johnson Koola
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Mount Pleasant, S.C. 29464
(843) 849-9241

WE CONSENT:

Michael Scarafite *(Signed w/ express permission Attached)*

Michael Scarafite, Esq.
4024 Salt Pointe Parkway
North Charleston, S.C. 29405
(843) 202-2061

Attorney for Carolina One

R. Michael Ethridge *(Signed w/ express permission see Attached)*

R. Michael Ethridge, Esq.
Carlock, Copeland & Stair
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(843) 727-0307

Attorney for Trademark Realty

Linda Weeks Gangi *(Signed w/ express permission Attached)*

Linda Weeks Gangi, Esq.
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(843) 248-5741

Attorney for Cambridge Lakes, LP and
Stephen R. Heape

David J. Parrish *(Signed w/ express permission Attached)*

David J. Parrish, Esq.
Nexsen Pruet, LLC
P.O. Box 486
Charleston, S.C. 29402
(843) 248-5741

Attorney for Cambridge Two, LLC and
Albert V. Estee

AND IT IS SO ORDERED:

Dated: Charleston, South Carolina
October 6, 2014

R. Markley Dennis, Jr.
Hon. R. Markley Dennis, Jr.
Presiding Judge

RMDJ/2



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