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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Appellate Case No.: 2013-000279

**RECEIVED**  
DEC 22 2014  
SC Court of Appeals

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 the .....Respondents.

**MOTION FOR LEAVE BY THE COURT TO FILE SUPPLEMENTAL RECORD**

Appellant pro se, Johnson Koola, ("Koola") is moving the Court of Appeals for Leave to file Supplemental Record under Rule 212(b), SCACR, which provides for a party desiring to supplement the Record on Appeal by Leave of the Court.

The reasons for this motion are that the respondents represented by experienced attorneys filed a Motion to Dismiss under Rule 12(b), SCRCP, in the case at bar, and then quietly converted the Motion to Dismiss to a Motion for

Summary Judgment without any notice to the appellant. The appellant was unaware of the reasons for Motion for Summary Judgment till the motion hearing day. The respondents surprised the appellant pro se who could not respond to respondents' arguments with any supporting evidences, and received Summary Motion Judgment.

The motion [for Summary Judgment and supporting memoranda] shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, support the Motion for Summary judgment. Rule 56(c), SCRCP, *Epstein v. Coastal Timber Co. Inc.*, 393 S.C. 276, 711 S.E.2d 912 (2011).

In determining a genuine issue of material fact exists, a court must consider everything in the record – pleadings, depositions, interrogatories, admissions on file, affidavits etc....([A] court cannot consider statements of fact appearing only in argument of counsel)." *Gilmore v. Ivey*, Court of Appeals of South Carolina, Opinion No. 0778, 348 S.E. 2d 180 (Ct.App. 1986).

South Carolina Rule of Civil Procedure 56(c) requires summary judgment motions and, inferentially, supporting materials to be on file when they are to be relied upon at a summary judgment motion hearing. To be on file, we hold they ordinarily must have been filed. Rule 26(g)(1), SCRCP, specifically requires original discovery requests and responses to be filed with the clerk of the court when they are to be used at hearing or trial. *Lloyd's Inc. v. Good*, Court of Appeals of South Carolina, Opinion No. 1729, 412 S.E.2d 441 (Ct.App. 1991);

The Court of Appeals [held] that “[t]o warrant consideration, an affidavit must be served on the opposing party no later than the day before the start of the hearing. *Black v. Lexington School Dist. No. 2*, 327 S.C. 55, 488 S.E.2d 327 (1997).

When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Higgins v. Medical University of S.C.*, Court of Appeals of South Carolina, No. 2662, 486 S.E.2d 269 (Ct.App. 1997).

Summary Judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 543 (1991). *Board v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Trial Court may refuse to consider materials that were not timely served such that the opposing party had no time to prepare a response. *Black v. Lexington School Dist. No. 2, supra*. Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law. *Middleborough Horizontal Property Regime Council of Co-owners v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct.App. 1995).

When important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses. If a party to the case does not receive this opportunity, it is violative of the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012).

There were no pleadings, depositions, answers to interrogatories, and admissions, affidavits, and memoranda in the file in the Lower Court to support Respondents' Motion for Summary Judgment. Consequently, the appellant pro se could not defend himself with any supporting documents.

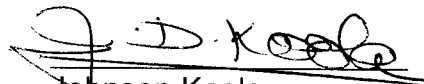
The attorneys for the respondents violated Rule 3.4, RPC 407, SCACR, "Fairness to Opposing Party and Counsel".

At the end of the motion hearing, the Trial Judge has to make a choice and a decision between two experienced attorneys of the bar and an appellant pro se appearing for a Summary Judgment Motion hearing for the first time in his life. The experienced attorneys who violated multiple civil procedure rules received Summary Motion Judgment.

### CONCLUSION

For the reasons stated above, Koola respectfully requests that this Court grant Koola's Motion for Leave by the Court of Appeals to File Supplemental Record.

Respectfully submitted,



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

Appellant pro se

December 10, 2014

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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 the .....Respondents.

\_\_\_\_\_  
PROOF OF SERVICE  
\_\_\_\_\_

I, Johnson Koola, under penalty of perjury, certify that on December 20, 2014, I mailed a copy of appellant's Motion for Leave by the Court to File Supplemental Record by mailing a true and accurate copy thereto to the following counsels 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.  
P.O. Box 1740  
Conway, S.C. 29528-1740

December 20, 2014



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Mt. Pleasant, SC 29464  
Phone: (843) 849-9241

December 20, 2014

**RECEIVED**  
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SC Court of Appeals

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

Re: Johnson Koola v. Cambridge Two, LLC, et al., Appeal Case No.: 2013-000279  
Sub: Motion for Leave by the Court of Appeals to file Supplemental Record

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. Subsequent to appellant's Petition for Rehearing filed on Dec. 10, 2014, the respondents informed the Court that they do not intent to file a return to the Petition. Consequently the appellant has no basis to file a reply. However, if there are any provisions in the Appellate Court Rules, which allow the petitioner to file any supplemental materials to the original Petition for Rehearing, please advise the appellant accordingly.

However, the appellant is moving the Court of Appeals for leave to file Supplemental Record under Rule 212(b), SCACR. Enclosed please find seven copies of a Motion and motion-filing fee of \$25, and the proof of service is attached herewith.

The reason for this motion is that the respondents filed a Motion to Dismiss under Rule 12(b), SCRCPP, in the case at bar, then quietly converted the Motion to Dismiss to a Motion for Summary Judgment without any notice to the appellant. The appellant was unaware of the reasons for Motion for Summary Judgment till the motion-hearing day. There were no filings by the respondents in the Lower Court as required by Rule 56 (c), SCRCPP. The Appellate Courts have repeatedly ruled that Summary Judgment by the [Trial Court] must not be granted until the opposing party has had a full and fair opportunity to complete discovery, and where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses.

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

Sincerely yours,

  
Johnson Koola

cc:

David J. Parish, Esquire  
Linda Weeks Gangi, Esquire

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