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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2014-UP-422 (S.C. Ct.App. - filed November 26, 2014)

Johnson Koola, ... Petitioner

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, and Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP are the Respondents.

APPENDIX

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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

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

JOHNSON KOOLA,

Appellant,

vs.

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 LAKES APARTMENT HOMES, LP, CLASSIC PROPERTIES OF CHARLESTON, INC., CAMBRIDGE CONTRACTING, LP, TRADEMARK PROPERTIES, INC., CAROLINA ONE CHARLESTON HOME 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.

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Attorney for Respondents
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Stephen R. Heape

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-9158

Johnson Koola
PLAINTIFF(S)

Cambridge Two, LLC et al.,
DEFENDANT(S)

Submitted by: David J. Parrish and Linda Weeks. Gangi	Attorney for : ☐ Plaintiff ☒ Defendant
	or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: The attached Order dismisses the following Defendants with prejudice: Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a/ Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP; a/k/a Cambridge Lakes Apartments Homes, LP), Stephen R. Heape, and Classic Properties of Charleston, Inc. The Order does not apply to the other Defendants in the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff	Defendants	\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

Not Applicable

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Johnson Koola,

Case No. 2010-CP-10-9158

Plaintiff,

vs.

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 Lakes
Apartments 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,

Defendants.

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
CAMBRIDGE TWO, LLC, ALBERT V.
ESTEE, CAMBRIDGE LAKES, LP (a/k/a
CAMBRIDGE LAKES APARTMENT
HOMES a/k/a CAMBRIDGE LAKES
APARTMENTS, LP a/k/a CAMBRIDGE
LAKES APARTMENTS HOMES, LP),
STEPHEN R. HEAPE, and CLASSIC
PROPERTIES OF CHARLESTON, INC.**

FILED
12 SEP 19 PM 12:21
JULIE J. ARKSTRONG
CLERK OF COURT
BY

This matter came before the Court for a hearing on July 25, 2012, on the motion of Defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartments Homes, LP), Stephen R. Heape, and Classic Properties of Charleston, Inc. (all of the foregoing are hereinafter collectively referred to as the "Moving Defendants" for ease of reference), for an Order dismissing Plaintiff's Complaint pursuant Rule 12(b)(6), SCRCP, on the ground that the Plaintiff's Complaint is barred by the statute of limitations. Plaintiff appeared and proceeded at the hearing *pro se*, with his former counsel have previously been relieved by consent.

FACTS

Plaintiff's claims in this lawsuit are based on his ownership of a condominium unit in the Cambridge Lakes condominium development located in Mount Pleasant, South Carolina. The Cambridge Lakes development was originally constructed and operated as a rental apartment complex. The development was subsequently converted to condominiums and the converted condominium units were sold to individual buyers. The Cambridge Lakes Condominium Homeowners Association, Inc. (the "HOA") manages and controls the condominium development pursuant to its master deed.

On June 16, 2008 the HOA, on behalf of itself and the individual condominium unit owners, filed a lawsuit against Moving Defendants and other parties. 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. § 27-31-1 et seq. in connection with the conversion and sale of the condominiums.

The Cambridge Lakes development consists of 104 units, and all but ten or so of the unit owners elected to join the HOA's lawsuit and were named as parties in the HOA's lawsuit. Plaintiff purchased a condominium unit in 2004, and Plaintiff was one of the approximately ten unit owners that refused to join the HOA's lawsuit. In 2011 the HOA settled the lawsuit on the eve of trial.

The Plaintiff filed this lawsuit on November 4, 2010, alleging the construction defects and violations of the S.C. Horizontal Property Regime Act made his unit not "fit, habitable, and marketable." The Plaintiff did not serve his Complaint on the Moving Defendants in this case until 2012, Stephen R. Heape, Classic Properties of Charleston, Inc., and Cambridge Lakes, LP

were not served until January 4, 2012, and the Plaintiff did not serve Cambridge Two, LLC or Albert V. Estes until January 17, 2012.

The Moving Defendants filed a Rule 12(b)(6) motion to dismiss Plaintiff's complaint based on the three-year statute of limitations. During the hearing on that motion, and with prior notice to the Plaintiff,¹ the Moving Defendants submitted and cited to the discovery responses filed by the Plaintiff with the Court in another lawsuit in which the Plaintiff is a party. The presentation of matters outside of Plaintiff's Complaint in effect converted the Rule 12(b)(6) motion to a motion for summary judgment, and the Court has treated and disposed of the motion pursuant to Rule 56, SCRPC.²

SUMMARY JUDGMENT STANDARD

Rule 56(c), SCRPC, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with

¹ The Motion filed by Albert Estee and Cambridge, Two, LLC states: "This motion is based on the pleadings and other matters of record in this case, and may be supplemented by matters filed by the Plaintiff in Case Number 2010-CP-10-6060 and Case Number 2010-SC-87-1646[.]"

² See Rule 12(b), SCRPC ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.")

respect to a disputed material fact." S.C. Prop. & Cas. Guar Ass'n v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Id.* at 122, 708 S.E.2d at 769. When, as here, the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

DISCUSSION

Plaintiff's claims are governed by a three-year statute of limitations. S.C. Code Ann. § 15-3-530. The three-year limitations period is governed by the "discovery rule," under which a claim must be brought within three-years from the date a plaintiff knew or, with the exercise of reasonable diligence should have known, that a right had been violated or that a claim existed. S.C. Code Ann. § 15-3-535 (stating actions must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action). The statute of limitations is triggered not merely by knowledge of an injury but by

knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005). The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of the wrongdoer. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). Under the discovery rule, the statute of limitations begins to run when the facts and circumstances would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333, 334 (1981); Burgess v. American Cancer Society, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989). The statute of limitations begins to run at that point and not when advice of counsel is sought or a full-blown theory of discovery is developed. Id. "The date on which discovery should have been made is an objective rather than subjective question." Dorman v. Campbell, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct App. 1998).

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (citation omitted). Statutes of limitations promote justice by forcing parties to pursue a case in a timely manner and to act before memories dim, before evidence grows stale or becomes nonexistent, and before people act in reliance on what they believe is a settled state of affairs. State ex. rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408, 413-14 (2000).

In the present matter, and after viewing the Plaintiff's evidence and all reasonable inferences therefrom in the light most favorable to the Plaintiff, by June 2008 Plaintiff was on notice of the claims he is asserting in this lawsuit. For example, Plaintiff's Complaint states:

1. In 2008 Plaintiff learned that the Cambridge Lakes Homeowners Association and several individual unit owners filed a lawsuit against the defendant's named in this matter (excluding William E. Jenkinson, IV, and Carolina One) and various contractors and subcontractors for various construction defects.
2. The Plaintiff also learned that the Defendants named herein did not file with the master deed or provide copies of a report required by the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et seq.*

The Plaintiff's *pro se* interrogatory responses filed by the Plaintiff in his lender's mortgage foreclosure lawsuit³ on his condominium unit include the following assertions by the Plaintiff:

- "Defendant Koola had a meeting with Mr. Fisher [a member of the POA board on November 20, 2004 and asked him about rumors of construction defects in Cambridge Lakes condominiums. My immediate neighbor, who was working for the architect firm, which oversaw the construction of Cambridge Lakes apartments, told me in private that some of the construction defects might be for real." (Koola's answer to Interrogatory No. 1.)

- On November 20, 2004, Mr. Koola sent a letter to one of the POA's board members, which states in pertinent part:

1. Defective Construction. Please contact the architectural firm or consultants that built this complex. It is learnt that various building code difficulties were identified at the time of construction. There were difficulties to get insurance for the building complex. . . ." (Exhibit 1 to Koola's answers to Interrogatories)

- "Defendant Koola listed the property for sale in June/July 2008 Defendant Koola did not receive any offer from prospective buyers. . . . Under information and belief, defendant Koola alleges that the ongoing lawsuit (case #2008-cp-10-3506) and the massive construction defects claims as alleged in the lawsuit were the prime factors why defendant Koola did not receive a single offer." (Koola's answer to Interrogatory No. 7.)

- "On June 25, 2008, the defendant HOA and HOA's attorney sent a letter (Exhibit 5) to the homeowners informing the homeowners that a lawsuit (#2008-cp-10-3506) has been filed against the builder, developer, and others. . . ." (Koola's answer to Interrogatory No. 8.)

- "Defendant Koola studied the "Builder's Certification again when the Defendant HOA filed the lawsuit # 2008-cp-10-3506 against the builder, developer/seller and others. Then I studied the Master Deed of the Cambridge Lakes Horizontal Property Regime, filed in Book T437, Charleston County RMC Office very, very carefully. The said Master Deed stated that "developer submits the Property to the provision of the Horizontal Property Act, section 27-1-31-10, et seq., South Carolina Code of Laws 1975....." Now it was clear the developer/seller understood the provisions of South Carolina Horizontal Property Act."

The Plaintiff's above-quoted allegations and discovery responses indicate that by June 2008 he was on notice that some right of his had allegedly been invaded by the Moving Defendants or that some claim against the Moving Defendants might exist. The three-year

³ BAC Home Loans Servicing, L.P. v. Johnson D. Koola, et al., Case No. 2010-CP-10-6060.

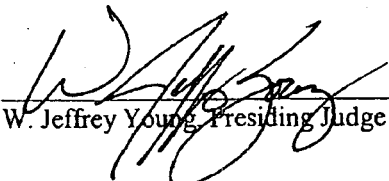
statute of limitations began to run at that point. The Plaintiff filed this lawsuit in 2010; however, the Plaintiff failed to serve his Complaint on the Moving Defendants until January 2012, at which point the three-year statute of limitations had expired. See Mims v. Babcock Center, Inc., 2012 WL 3524831, 3 (S.C., decided August 15, 2012) (holding that under S.C. Code Ann. § 15-3-20 and Rule 3(a), SCRPC, if a complaint is filed but not served within the statute of limitations, then service must be made within 120 days of filing).

CONCLUSION

The Plaintiff's claims against the Moving Defendants are barred by the statute of limitations based on his failure to serve his Complaint on them within the statute of limitations or within 120 days of the filing of his Complaint. Accordingly, the Moving Defendants are entitled to summary judgment, and the Plaintiff's claims against Defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a/ Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartments Homes, LP), Stephen R. Heape, and Classic Properties of Charleston, Inc. are hereby dismissed with prejudice.

SO ORDERED.

4 Sept, 2012


W. Jeffrey Young, Presiding Judge



State of South Carolina
The Circuit Court of the Third Judicial Circuit

W. JEFFREY YOUNG
JUDGE

141 NORTH MAIN STREET
SUMTER, SOUTH CAROLINA 29150
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E-MAIL: wwyoung@sccourts.org

Tina M. Christmas
Administrative Assistant

January 28, 2013

SENT VIA EMAIL: JOHNSON.KOOLA@MSN.COM
Mr. Johnson Koola

SENT VIA FAX: 843-248-5112
Ms. Linda Weeks Gangi
Thompson & Henry, P.A.
Post Office Box 1740
Conway, SC 29528

Re: Johnson Koola v. Cambridge Two, LLC, et al.
Case No: 2010-CP-10-9158

Dear Mr. Koola:

Judge Young has given much consideration to the Motion for Amendment and Reconsideration of Order Granting Summary Judgment to Defendants which you filed. Please note that Judge Young has ruled that the motion for reconsideration is DENIED. Judge Young's prior order stands.

Sincerely,

Tina M. Christmas
Administrative Assistant
S.C. Judicial Department for

Judge W. Jeffrey Young

Encl.: None
/tmc

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Johnson Koola,

Plaintiff,

vs.

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 Lakes
Apartments 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,

Defendants.

Case No. 2010-CP-10-9158

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
CAMBRIDGE TWO, LLC, ALBERT V.
ESTEE, CAMBRIDGE LAKES, LP (a/k/a
CAMBRIDGE LAKES APARTMENT
HOMES a/k/a CAMBRIDGE LAKES
APARTMENTS, LP a/k/a CAMBRIDGE
LAKES APARTMENTS HOMES, LP),
STEPHEN R. HEAPE, and CLASSIC
PROPERTIES OF CHARLESTON, INC.**

This matter came before the Court for a hearing on July 25, 2012, on the motion of Defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartments Homes, LP), Stephen R. Heape, and Classic Properties of Charleston, Inc. (all of the foregoing are hereinafter collectively referred to as the "Moving Defendants" for ease of reference), for an Order dismissing Plaintiff's Complaint pursuant Rule 12(b)(6), SCRCF, on the ground that the Plaintiff's Complaint is barred by the statute of limitations. Plaintiff appeared and proceeded at the hearing *pro se*, with his former counsel have previously been relieved by consent.

FACTS

Plaintiff's claims in this lawsuit are based on his ownership of a condominium unit in the Cambridge Lakes condominium development located in Mount Pleasant, South Carolina. The Cambridge Lakes development was originally constructed and operated as a rental apartment complex. The development was subsequently converted to condominiums and the converted condominium units were sold to individual buyers. The Cambridge Lakes Condominium Homeowners Association, Inc. (the "HOA") manages and controls the condominium development pursuant to its master deed.

On June 16, 2008 the HOA, on behalf of itself and the individual condominium unit owners, filed a lawsuit against Moving Defendants and other parties. 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. § 27-31-1 et seq. in connection with the conversion and sale of the condominiums.

The Cambridge Lakes development consists of 104 units, and all but ten or so of the unit owners elected to join the HOA's lawsuit and were named as parties in the HOA's lawsuit. Plaintiff purchased a condominium unit in 2004, and Plaintiff was one of the approximately ten unit owners that refused to join the HOA's lawsuit. In 2011 the HOA settled the lawsuit on the eve of trial.

The Plaintiff filed this lawsuit on November 4, 2010, alleging the construction defects and violations of the S.C. Horizontal Property Regime Act made his unit not "fit, habitable, and marketable." The Plaintiff did not serve his Complaint on the Moving Defendants in this case until 2012, Stephen R. Heape, Classic Properties of Charleston, Inc., and Cambridge Lakes, LP

were not served until January 4, 2012, and the Plaintiff did not serve Cambridge Two, LLC or Albert V. Estes until January 17, 2012.

The Moving Defendants filed a Rule 12(b)(6) motion to dismiss Plaintiff's complaint based on the three-year statute of limitations. During the hearing on that motion, and with prior notice to the Plaintiff,¹ the Moving Defendants submitted and cited to the discovery responses filed by the Plaintiff with the Court in another lawsuit in which the Plaintiff is a party. The presentation of matters outside of Plaintiff's Complaint in effect converted the Rule 12(b)(6) motion to a motion for summary judgment, and the Court has treated and disposed of the motion pursuant to Rule 56, SCRCP.²

SUMMARY JUDGMENT STANDARD

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with

¹ The Motion filed by Albert Estee and Cambridge, Two, LLC states: "This motion is based on the pleadings and other matters of record in this case, and may be supplemented by matters filed by the Plaintiff in Case Number 2010-CP-10-6060 and Case Number 2010-SC-87-1646[.]"

² See Rule 12(b), SCRCP ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.")

respect to a disputed material fact." S.C. Prop. & Cas. Guar Ass'n v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Id.* at 122, 708 S.E.2d at 769. When, as here, the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

DISCUSSION

Plaintiff's claims are governed by a three-year statute of limitations. S.C. Code Ann. § 15-3-530. The three-year limitations period is governed by the "discovery rule," under which a claim must be brought within three-years from the date a plaintiff knew or, with the exercise of reasonable diligence should have known, that a right had been violated or that a claim existed. S.C. Code Ann. § 15-3-535 (stating actions must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action). The statute of limitations is triggered not merely by knowledge of an injury but by

knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005). The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of the wrongdoer. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). Under the discovery rule, the statute of limitations begins to run when the facts and circumstances would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333, 334 (1981); Burgess v. American Cancer Society, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989). The statute of limitations begins to run at that point and not when advice of counsel is sought or a full-blown theory of discovery is developed. Id. "The date on which discovery should have been made is an objective rather than subjective question." Dorman v. Campbell, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct App. 1998).

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (citation omitted). Statutes of limitations promote justice by forcing parties to pursue a case in a timely manner and to act before memories dim, before evidence grows stale or becomes nonexistent, and before people act in reliance on what they believe is a settled state of affairs. State ex. rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408, 413-14 (2000).

In the present matter, and after viewing the Plaintiff's evidence and all reasonable inferences therefrom in the light most favorable to the Plaintiff, by June 2008 Plaintiff was on notice of the claims he is asserting in this lawsuit. For example, Plaintiff's Complaint states:

1. In 2008 Plaintiff learned that the Cambridge Lakes Homeowners Association and several individual unit owners filed a lawsuit against the defendant's named in this matter (excluding William E. Jenkinson, IV, and Carolina One) and various contractors and subcontractors for various construction defects.
2. The Plaintiff also learned that the Defendants named herein did not file with the master deed or provide copies of a report required by the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 et. seq.

The Plaintiff's *pro se* interrogatory responses filed by the Plaintiff in his lender's mortgage foreclosure lawsuit³ on his condominium unit include the following assertions by the Plaintiff:

- "Defendant Koola had a meeting with Mr. Fisher [a member of the POA board on November 20, 2004 and asked him about rumors of construction defects in Cambridge Lakes condominiums. My immediate neighbor, who was working for the architect firm, which oversaw the construction of Cambridge Lakes apartments, told me in private that some of the construction defects might be for real." (Koola's answer to Interrogatory No. 1.)

- On November 20, 2004, Mr. Koola sent a letter to one of the POA's board members, which states in pertinent part:

1. Defective Construction. Please contact the architectural firm or consultants that built this complex. It is learnt that various building code difficulties were identified at the time of construction. There were difficulties to get insurance for the building complex. . . ." (Exhibit 1 to Koola's answers to Interrogatories)

- "Defendant Koola listed the property for sale in June/July 2008 Defendant Koola did not receive any offer from prospective buyers. . . . Under information and belief, defendant Koola alleges that the ongoing lawsuit (case #2008-cp-10-3506) and the massive construction defects claims as alleged in the lawsuit were the prime factors why defendant Koola did not receive a single offer." (Koola's answer to Interrogatory No. 7.)

- "On June 25, 2008, the defendant HOA and HOA's attorney sent a letter (Exhibit 5) to the homeowners informing the homeowners that a lawsuit (#2008-cp-10-3506) has been filed against the builder, developer, and others. . . ." (Koola's answer to Interrogatory No. 8.)

- "Defendant Koola studied the "Builder's Certification again when the Defendant HOA filed the lawsuit # 2008-cp-10-3506 against the builder, developer/seller and others. Then I studied the Master Deed of the Cambridge Lakes Horizontal Property Regime, filed in Book T437, Charleston County RMC Office very, very carefully. The said Master Deed stated that "developer submits the Property to the provision of the Horizontal Property Act, section 27-1-31-10, et seq., South Carolina Code of Laws 1975....." Now it was clear the developer/seller understood the provisions of South Carolina Horizontal Property Act."

The Plaintiff's above-quoted allegations and discovery responses indicate that by June 2008 he was on notice that some right of his had allegedly been invaded by the Moving Defendants or that some claim against the Moving Defendants might exist. The three-year

³ BAC Home Loans Servicing, L.P. v. Johnson D. Koola, et al., Case No. 2010-CP-10-6060.

statute of limitations began to run at that point. The Plaintiff filed this lawsuit in 2010; however, the Plaintiff failed to serve his Complaint on the Moving Defendants until January 2012, at which point the three-year statute of limitations had expired. See Mims v. Babcock Center, Inc., 2012 WL 3524831, 3 (S.C., decided August 15, 2012) (holding that under S.C. Code Ann. § 15-3-20 and Rule 3(a), SCRCP, if a complaint is filed but not served within the statute of limitations, then service must be made within 120 days of filing).

CONCLUSION

The Plaintiff's claims against the Moving Defendants are barred by the statute of limitations based on his failure to serve his Complaint on them within the statute of limitations or within 120 days of the filing of his Complaint. Accordingly, the Moving Defendants are entitled to summary judgment, and the Plaintiff's claims against Defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a/ Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartments Homes, LP), Stephen R. Heape, and Classic Properties of Charleston, Inc. are hereby dismissed with prejudice.

SO ORDERED.

W. Jeffrey Young, Presiding Judge

_____, 2012

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

LINDA WEEKS GANGI
lgangi@thompsonlaw.com

TELEPHONE
(843) 248-5741
FAX
(843) 248-5112

January 21, 2013

The Honorable W. Jeffrey Young
141 North Main Street
Sumter, SC 29150

Re: Johnson Koola vs. Cambridge Two, LLC, et al.
Civil Action No.: 2010-CP-10-9158
Claim #: 40-D178-151
Policy No.: 99-CR-0356-6
Date of Loss: May 23, 2001
Claim Rep: Sharon Eason

Dear Judge Young:

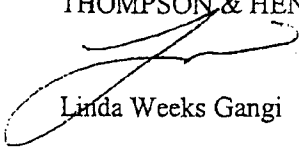
I am in receipt of Johnson Koola's letter to you dated January 16, 2013. He is the Pro Se Plaintiff. Your Honor issued an Order Granting Summary Judgment to my clients and David Parrish's clients, a copy of which is attached. Thereafter, Mr. Koola filed a Motion for Reconsideration. The Motion for Reconsideration has not been heard. Mr. Koola by his letter dated January 16, 2013 forwarded to you a proposed Order. I enclose herewith a proposed Order (Form-4) on behalf of my clients and David Parrish's clients.

If you have any questions with regard to this matter, please do not hesitate to contact me.

With kindest personal regards, I remain

Very truly yours,

THOMPSON & HENRY, P.A.



Linda Weeks Gangi

LWG/avs
Enclosures

pc: Johnson Koola - johnson.koola@msn.com
David J. Parrish, Esq. - Dparrish@nexsenpruet.com
Michael C. Scarafie, Esq. - msc@carolinaone.com
Frank M. Cisa, Esq. - frank@cisadodds.com
Sharon Eason - sharon.eason.cr9g@statefarm.com

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-9158

Johnson Koola
PLAINTIFF(S)

Cambridge Two, LLC et al.,
DEFENDANT(S)

Submitted by: David J. Parrish and Linda Weeks. Gangi

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : The Court having considered all of the information provided to it by all of the parties hereby denies the Plaintiff's Motion for Reconsideration and upholds this Court's Order dated September 14, 2012 whereby this Court granted Summary Judgment to the Defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartment Homes, LP), Stephen R. Heape and Classic Properties of Charleston, Inc.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff	Defendants	\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

Not Applicable

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

JOHNSON KOOLA
Plaintiff

CASE NO.:

Vs.

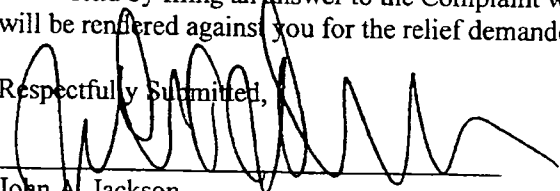
CAMBRIDGE TWO, LLC, ALBERT V. ESTES,
Individually, CAMBRIDGE LAKES, LP,
STEPHEN R. HEAPE, Individually and as General
Partner of CAMBRIDGE LAKES, LP, CAMBRIDGE
LAKES APARTMENTS, LP a/k/a CAMBRIDGE LAKES)
APARTMENT HOMES, a/k/a CAMBRIDGE LAKES)
APARTMENTS, LP a/k/a CAMBRIDGE LAKES)
APARTMENTS HOMES, LP,)
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,)
Defendants,)

FILED
2010 NOV -4 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 535 Stinson Drive, Charleston, SC 29407 within thirty days after the service hereof, exclusive of the day of such service; and, if you fail to appear and defend by filing an answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,


John A. Jackson,
Attorney at Law
SC Bar #:76387
Phone: 843-571-2226
Fax: 1-888-281-0207
Email: jaj@lawofficeofjaj.com
535 Stinson Drive
Charleston, SC 29407

This the 2nd day of Nov., 2010.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

JOHNSON KOOLA)

Plaintiff)

CASE NO.:

Vs.)

CAMBRIDGE TWO, LLC, ALBERT V. ESTES,)
Individually, CAMBRIDGE LAKES, LP,)
STEPHEN R. HEAPE, Inidividually and as General)
Partner of CAMBRIDGE LAKES, LP, CAMBRIDGE)
LAKES APARTMENTS, LP a/k/a CAMBRIDGE LAKES)
APRATMENT HOMES, a/k/a CAMBRIDGE LAKES)
APARTMENTS, LP a/k/a CAMBRIDGE LAKES)
APARTMENTS 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,)
Defendants,)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 NOV -4 AM 11:16

FILED

COMPLAINT
VIOLATION OF THE HORIZONTAL PROPERTY ACT,
BREACH OF CONTRACT/WARRANTY, FRAUD,
NEGLIGENCE, UNFAIR TRADE PRACTICES

COMES NOW the Plaintiff, JOHNSON KOOLA, by and through his undersigned attorney and states as follows:

1. In early 2004 Plaintiff, an individual, was a legal resident and resident of Charleston County, State of South Carolina, purchased a condominium in the Cambridge Lakes Condominiums (Cambridge Lakes) located in Mount Pleasant, South Carolina, County of Charleston.
2. Cambridge Lakes are a group of five residential structures and buildings that include individually owned units and a clubhouse.
3. Upon information and belief Cambridge Lakes was originally an apartment complex.
4. Upon information and belief this apartment complex was operated under Cambridge Lakes LP a/k/a Cambridge Lakes Apartment Homes, LP a/k/a Cambridge Lakes Apartments LP, Cambridge Lakes Apartments Homes, LP.

5. Upon information and belief, Stephen R. Heape is an individual, is and was a citizen and resident of Charleston County, State of South Carolina, was the General Partner of Cambridge Lakes, LP and was engaged, individually and as the General Partner, in the business of developing, building, renting, marketing, converting, and selling the Cambridge Lakes buildings to the public in the State of South Carolina.
6. Upon information and belief, upon information and belief, from 2002 through 2004, Mr. Heape collaborated with Albert V. Estee and Trademark Properties to convert, develop, market and sale Cambridge Lakes Apartments into individually owned condominium units to the general public.
7. Upon information and belief, Albert V. Estee, an individual, and a citizen and resident of Charleston County, State of South Carolina, was engaged, individually and as the General Partner, in the business of developing, building, renting, marketing, converting, and selling the Cambridge Lakes buildings into individual units for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the conversion and sales of condominiums in the State of South Carolina.
8. Upon information and belief, that Mr. Estee, individually, organized Cambridge Two, LLC to shield himself from personal liability for matters and things complained of hereafter and from responsibility for his actions in the conversion and sales of the Cambridge Lakes condominiums and that at all time hereafter mentioned, Albert V. Estee, solely, personally, and individually, was the alter-ego of, controlled and dominated the shell or sham corporation known as Cambridge Two, LLC; and this court should pierce the corporate veil in order that Albert V. Estee, individually, may be held personally liable for damaged caused by the said sham corporation and/or all Defendants.
9. Upon information and belief, that Mr. Estee was at all times individually and as Limited Partner of Cambridge Lakes, LP, engaged, in the business of developing, building, renting, marketing, converting, and selling the Cambridge Lakes buildings to the public in the State of South Carolina.
10. Upon information and belief, the Defendant Trademark Properties Inc., is a corporation organized under the laws of the State of South Carolina and does business within the County of Charleston, State of South Carolina, was engaged in the conversion, development, marketing, and sales of Cambridge Lakes in the State of South Carolina for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the conversion and sales of condominiums in the State of South Carolina.
11. When the Plaintiff purchased his condominium unit in early 2004 the listing agent was William E. Jenkinson, IV, from Carolina One.
12. Upon information and belief, that the Defendant Carolina One is a corporation organized under the laws of the State of South Carolina and does business within the County of Charleston, State of South Carolina, was engaged in the conversion, development, marketing,

and sales of Cambridge Lakes in the State of South Carolina for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the conversion and sales of condominiums in the State of South Carolina.

13. Upon information and belief, that Defendant William E. Jenkinson, IV, an individual, was a citizen and resident of Charleston County, State of South Carolina, who was engaged, individually and as an agent and owner for Carolina One, in the marketing and sales of Cambridge Lakes in the State of South Carolina for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the sales of condominiums in the State of South Carolina.
14. In 2008 the Plaintiff learned that the Cambridge Lakes' Homeowners Association and several individual owners filed a lawsuit against the defendants' named in this matter (excluding William E. Jenkinson, IV, and Carolina One) and various contractors and subcontractors for various construction defects. This Plaintiff is not a party in that matter.
15. The Plaintiff also learned that the Defendants named herein did not file with the master deed or provide copies of a report required by the South Carolina Horizontal Property Act, S.C. Code §§27-31-10 *et. seq.*
16. Upon learning of the lawsuit the Plaintiff reviewed the Builders Certificate he was giving when he purchased his condominium unit and found that it indicated that all necessary work and documentation for the Condo Conversion was complete.
17. Had the Plaintiff known that neither the work nor paperwork to complete the condominium conversion was done he would not have purchased his condominium unit.
18. The Plaintiff placed his condominium unit up for sale but learned that the condominium was virtually worthless because of the violations of the Horizontal Property Act, §§27-31-10 *et. seq.*
19. This Court has jurisdiction over all matters contained, herein and pursuant to S.C. Code §15-7-30, Charleston County, South Carolina is the proper venue for this action.

VIOLATION OF THE HORIZONTAL PROPERTY ACT

S.C. CODE §§27-31-10 *et. seq.*

All Defendants

20. Paragraphs 1 through 19 are incorporated herein by reference.
21. The Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* requires that:
 - a. whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building.

- b. the disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements.
 - c. the report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations.
22. Defendants did not provide the notice required by The Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* either through recordation in the Master Deed filed on February 24, 2003 or by providing notice directly to prospective purchasers.
23. The failure to make the disclosure required by The Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* is a violation of the South Carolina Unfair Trade Practices Act.

VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
All Defendants

24. Paragraphs 1 through 23 are incorporated herein by reference.
25. The Defendants did violate the South Carolina Unfair Trade Practices Act, South Carolina Code Ann. Sections 39-5-40 *et. seq.* (hereinafter "the Unfair Trade Act").
26. The Defendants' acts and omissions as described previously constitute unfair or deceptive practices under the Unfair Trade Act.
27. These acts or omissions impact the interest and safety of the public, and have the potential for repetition with each residential unit the Defendants offer for sale to the general public.
28. The damages suffered by the Plaintiff were the direct and proximate result of the acts and omissions of the Defendants.

BREACH OF CONTRACT/WARRANTY
All Defendants

29. Paragraphs 1 through 28 are incorporated herein by reference.
30. At the time the Plaintiff purchased his condominium the actions and representations the Defendants, their employees, and agents lead the Plaintiff to believe that the condominium he was purchasing was fit, habitable and was marketable.
31. That the Plaintiff purchased the Condominium because he believed that the unit was marketable.
32. The Defendants breached this warranty, and the contract, by selling a condominium unit that was not and is not marketable.

33. The Defendants sold the unit either knowingly or without the proper investigation and inspection to determine the unit's actual condition prior to the sale to the Plaintiff.

34. The damages caused to the Plaintiff were the direct and proximate cause of the acts and omissions of the Defendants.

NEGLIGENCE

Cambridge Two, LLC, Albert V. Estes, Individually, Cambridge Lakes, LP, Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartments Homes, LP, Stephen R. Heape, Individually and as General Partner Of Cambridge Lakes, LP, Classic Properties Of Charleston Inc., Cambridge Contracting, LP, and Trademark

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. The Defendants, Cambridge Two, LLC, Classic Properties Of Charleston, Inc., Cambridge Contracting, LP, and Albert V. Estes, were negligent, reckless, willful and wanton in the following particulars:

- a. In failing to obtain a written report prepared by an independent registered architect or engineer describing the present condition of all general common elements required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.*
- b. In failing to record the written report required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* with the Master Deed.
- c. In failing to provide a copy of the written report required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* to prospective purchasers.
- d. In issuing certificates that certified that the work required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* was complete.

37. As a direct and proximate cause result of the Defendant's acts and omissions, the Plaintiff suffered the damages herein alleged.

NEGLIGENCE

Charleston Home Team Properties, LLC, Charleston Home Team, LLC
Carolina One, William E. Jenkinson, IV

38. Paragraphs 1 through 37 are incorporated herein by reference.

39. The Defendants were negligent, reckless, willful and wanton in the following particulars:

- a. In failing to ascertain whether or not the condominium conversion certification was done and/or was done properly.
- b. In failing to obtain a proper condominium conversion certificate.
- c. In failing to advise the Plaintiff that the condominium conversion certification was not done and/or was done properly.

40. As a direct and proximate cause result of the Defendant's acts and omissions, the Plaintiff suffered the damages herein alleged.

FRAUD, DECEIT AND NEGLIGENT MISREPRESENTATION
All Defendants

41. Paragraphs 1 through 40 are incorporated herein by reference.
42. That the Defendants despite actual and constructive knowledge to the contrary the Defendants issued the Plaintiff a certificate that certified that the work required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* was complete.
43. The Defendants, despite actual and constructive knowledge to the contrary, represented to the Plaintiff that the condominium unit he bought was marketable.
44. That the condominium was not and is not marketable.
45. Such representations were made to Plaintiff either with reckless disregard as to their accuracy, or with the knowledge that the representations were incorrect and Defendants owed Plaintiff a duty of care to provide correct and truthful information to the Plaintiff, and Defendant breached that duty by failing to exercise due care.
46. The Plaintiff had no knowledge of the falsity of the statements when made, and was entitled to rely on the representations made by Defendants.
47. Plaintiff relied on the representations in his decision to purchase the condominium unit.
48. The damages suffered by the Plaintiff were directly and proximately caused by the representations and actions of the Defendants.

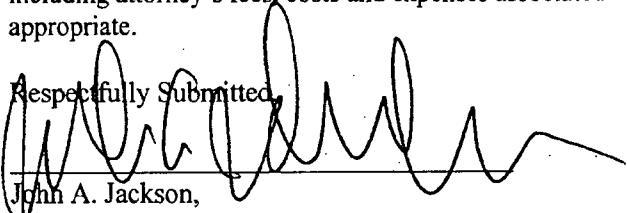
DAMAGES
All Defendants

49. Paragraphs 1 through 48 are incorporated herein by reference.
50. As a direct and proximate result of the acts and omissions of the Defendants as set forth in this complaint, the Plaintiff suffered damages, including but not limited to:
 - a. The price of the condominium unit.
 - b. The cost of replacing the condominium.
 - c. Other damages as will be set forth in the trial of this matter.

SIGNATURE BLOCK NEXT PAGE

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays that the Court enter judgment against the Defendants for an amount of actual and punitive damages to be determined by the trier of fact, and, in addition, all special damages available under the Unfair Trade Acts, and including attorney's fees, costs and expenses associated with this action, and any other relief deemed appropriate.

Respectfully Submitted,


John A. Jackson,
Attorney at Law

SC Bar #:76387

Phone: 843-571-2226

Fax: 1-888-281-0207

Email: jaj@lawofficeofjaj.com

535 Stinson Drive

Charleston, SC 29407

This the 2nd day of Nov., 2010.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Johnson Koola,

Case No. 2010-CP-10-9158

Plaintiff,

**DEFENDANTS CAMBRIDGE TWO, LLC
AND ALBERT V. ESTEE'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

vs.

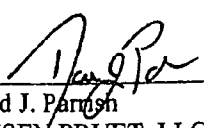
Cambridge Two, LLC, Albert V. Estes,
Individually, Cambridge Lakes, LP, Stephen R.
Heape, Individually and as General Partner of
Cambridge Lakes, LP, Cambridge Lakes
Apartment Homes, a/k/a Cambridge Lakes
Apartments, LP, a/k/a Cambridge Lakes
Apartments Homes, LP, Classic Properties of
Charleston, Inc., 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,

Defendants.

FILED
2012 JAN 27 PM 1:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY MB

Defendants Cambridge Two, LLC and Albert V. Estee by way of response to the Plaintiff's Complaint, of which the allegations against these Defendants are denied, hereby move the Court for an Order dismissing Plaintiff's Complaint against these Defendants to pursuant Rule 12(b)(6), SCRCF, on the ground that the Plaintiff's Complaint is barred by the statute of limitations.

This motion is based on the pleadings and other matters of record in this case, and may be supplemented by matters filed by the Plaintiff in Case Number 2010-CP-10-6060 and Case Number 2010-SC-87-1646, and by a memorandum in support of this motion that maybe submitted at or before the hearing on this motion.



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Attorneys for Defendants
Cambridge Two, LLC and Albert V. Estee

January 27, 2012
Charleston, South Carolina

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2010-CP-10-9158

Plaintiff,

**MOTION TO DISMISS ON BEHALF OF
CAMBRIDGE LAKES, LP, STEPHEN R.
HEAPE, INDIVIDUALLY AND AS
GENERAL PARTNER OF CAMBRIDGE
LAKES, LP, CAMBRIDGE LAKES
APARTMENT, LP a/k/a CAMBRIDGE
LAKES APARTMENTS, LP a/k/a
CAMBRIDGE LAKES APARTMENT
HOMES, LP, and CLASSIC PROPERTIES
OF CHARLESTON, INC.**

Cambridge Two, LLC, Albert V. Estes, 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 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,

Defendants.

FILED
2012 FEB -3 PM 12:28
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

Defendants 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 Lakes Apartment Homes, LP, and Classic Properties of Charleston, LP by way of response to Plaintiff's Complaint, of which the allegations against these Defendants are denied, hereby move the Court for an Order dismissing Plaintiff's Complaint against these Defendants pursuant to Rule 12(b)(6), SCRPC, on the ground that the Plaintiff's Complaint is barred by the statute of limitations.

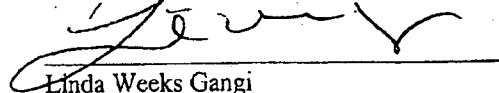
This motion is based on the pleadings and other matters of record in this case, and may be supplemented by matters filed by the Plaintiff in Case Number 2010-CP-10-6060 and Case Number

2010-CP-87-1646, and by a memorandum in support of this motion that maybe submitted at or before the hearing on this Motion.

Conway, South Carolina

January 30, 2012

THOMPSON & HENRY, P.A.



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Apartments, LP a/k/a Cambridge Lakes
Apartment Homes, LP, and Classic Properties
of Charleston, LP

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

JOHNSON KOOLA,

Plaintiff,

vs.

CAMBRIDGE TWO, LLC, et al,

Defendants.)

Case No.: 2010-CP-10-9158

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
HEARING ON MOTIONS
HEARD BEFORE JUDGE JEFFREY YOUNG
ON JULY 25, 2012

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

A P P E A R A N C E S

For the Plaintiff, pro se:

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Mount Pleasant, South Carolina 29464

For the Defendants:

LINDA WEEKS GANGI
Thompson & Henry, PA
P.O. Box 1740
Conway, South Carolina 29528
*On behalf of Stephen Heape and
Cambridge Lakes, LP*

DAVID JAY PARRISH
P.O. Box 486
Charleston, South Carolina 29402
*On behalf of Cambridge Two, LLC, and
Albert Estes*

Reported by:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

I N D E X

DESCRIPTION

PAGE

PROCEEDINGS

4

REPORTER'S CERTIFICATE

26

E X H I B I T S

DESCRIPTION

PAGE

(No exhibits were not marked during the proceedings.)

Reported By:

Rolayne M. Volpe, CCR, RPR

Official Court Reporter for the State of South Carolina

Hearing on Motions held July 25, 2012
2010-CP-10-9158

1 The above-styled cause came on for hearing on
2 the 25th day of July, 2012, at 9:34 a.m., before Judge
3 Jeffrey Young, Judge at Large, presiding over the
4 Circuit Court for the County of Charleston, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 THE COURT: All right. What do we have up
9 first?

10 THE DEPUTY CLERK OF COURT: All right. We have
11 2010-9158, Koola versus Cambridge Two.

12 THE COURT: Okay. Parties identify themselves
13 for the court reporter.

14 MS. GANGI: Your Honor, I'm Linda Gangi,
15 with Thompson & Henry, from Conway, and I represent
16 Stephen Heape and Cambridge Lakes, LP. There are
17 several different Cambridge Lakes that have appeared
18 in different documents, but I represent all of the
19 Cambridge Lakes that are the limited partnership, no
20 matter how they're named.

21 THE COURT: Okay.

22 MR. PARRISH: Your Honor, I'm David Parrish,
23 and I represent Defendants, Cambridge Two, and that's
24 T-w-o, LLC, and Albert Estes, individually.

25 THE COURT: And you're Mr. Koola?

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Hearing on Motions held July 25, 2012
2010-CP-10-9158

1 MR. KOOLA: Yes. Good morning, your Honor. I
2 am Johnson Koola. I am also a *pro se* Plaintiff. I am
3 also a *pro se* Plaintiff.

4 THE COURT: Okay.

5 MR. KOOLA: I wish to bring to -- I can show
6 the Court a few things before the motion --

7 THE COURT: If you have some things that you
8 want --

9 MR. KOOLA: Can I bring to the Court?

10 THE COURT: Yes. Just hand it to the bailiff,
11 please.

12 (Mr. Koola speaks with the bailiff off the
13 record.)

14 (The bailiff hands documents to the Judge.)

15 THE BAILIFF: This is the consent order; he
16 will be filing it today. He just got it yesterday.

17 MR. KOOLA: And I have a few more things, yes.

18 (Documents are handed to the bailiff.)

19 THE COURT: Apparently, John Jackson is no
20 longer on the case.

21 MR. PARRISH: That's correct, sir. He was
22 relieved. There was a hearing over here in front of
23 Judge Markley Dennis, about two months ago, and that was
24 granted and has taken a while for his Order to make it,
25 so -- make its rounds.

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Hearing on Motions held July 25, 2012
2010-CP-10-9158

1 THE COURT: Okay. All right. Very well.

2 (Documents are handed to the Court.)

3 MR. PARRISH: And he was relieved by consent of
4 the Plaintiff, Mr. Jackson, and all parties in the case.

5 THE COURT: Okay. And Mr. Koola --

6 MR. KOOLA: Yes.

7 THE COURT: -- provided me stuff, written, and
8 that's okay. It certainly helps with your accent.
9 Although, I can -- I think I can understand a lot of
10 things.

11 MR. KOOLA: I'm sorry, you know, my accent.

12 THE COURT: That's fine. You're trying to be
13 cooperative with the Court.

14 MR. KOOLA: Before the motion hearing, I give
15 it to all the parties.

16 THE COURT: Is this hearing today y'all's'
17 motion?

18 MR. PARRISH: Yes, sir. It's Defendants'
19 Motions to Dismiss.

20 THE COURT: Do y'all have any objection to your
21 motion -- stating your motions and going through them
22 and letting him provide a written reply, provided he
23 gives you a copy of it as well? Do you have any
24 objection to that?

25 MR. KOOLA: I can --

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1 MS. GANGI: Your Honor, we would want an
2 opportunity to respond to it. This motion has been
3 pending for a very long time, and we've been around and
4 around with trying to get this heard. We tried -- it
5 was supposed to be heard in May, and then --

6 THE COURT: We're going to hear it today.
7 We're going -- we're going to hear -- as a result of
8 this hearing, we're going to resolve it one way or the
9 other.

10 MR. PARRISH: Your Honor, I just -- as you will
11 hear in a minute, Mr. Koola has been involved in more
12 lawsuits than I have. Most of them *pro se*, so this is
13 not his first time in the courtroom. My respectful
14 suggestion would be let's do the hearing like normal,
15 and if it appears Mr. Koola has difficulty communicating
16 with the Court, we can address it at that point.

17 THE COURT: All right. We will. That's what
18 we will do. Please be seated. We'll take the first
19 motion. And what is the first motion?

20 MR. PARRISH: I believe I filed first. Again,
21 I'm David Parrish. And it's a Motion to Dismiss that I
22 filed on behalf of Cambridge Two and Albert Estes; and
23 Ms. Gangi's motion on behalf of Mr. Heape and his
24 entities is identical. The same grounds, the same
25 issues.

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2010-CP-10-9158

1 THE COURT: Okay. You want -- who wants to
2 argue it, and then I guess the other can do the "me too"
3 motion.

4 MR. PARRISH: I guess I'll go first, and she
5 can fix everything I do wrong, if that would be okay?

6 THE COURT: Okay. That's fine.

7 MR. PARRISH: Your Honor, I put on the bench --
8 on the top of the desk, before the hearing, it's a copy
9 of the Summons and Complaint in this case. I've got
10 some yellow highlighted pages. It says: Civil Action
11 Coversheet, and it's got yellow highlighting. And I put
12 in some copies of some interrogatory answers that
13 Mr. Koola filed *pro se*, in a, kind of, semi-related
14 action, and those two documents are the basis of the
15 motion. I've highlighted and tabbed them for your
16 convenience. I've already given Mr. Koola identical
17 copies, highlighted and tabbed in the same way.

18 THE COURT: All right.

19 MR. PARRISH: So I guess first off, as a
20 threshold matter to put this into context, Mr. Koola
21 was -- or I'm assuming he still is -- he had a
22 bankruptcy issue a year or two ago, owns a condominium
23 in the Cambridge Lakes Condominium Complex, which is
24 located in Mount Pleasant, South Carolina.

25 THE COURT: Okay.

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1 MR. PARRISH: The Cambridge Lakes were
2 originally apartments, and they were converted to
3 condos; and as condos tend to be, they were involved in
4 construction defects litigation. Lawsuit was filed by
5 the HOA in 2008, John Hayes, who's sitting behind the
6 bench back here, represented the HOA. The homeowners
7 association was the Plaintiff. And after several years
8 of litigation by the HOA on behalf of itself and its
9 owners, about this time last year, plus or minus, there
10 was a multi-million dollar settlement. The HOA received
11 2.5, 3 million -- maybe more than that -- dollars
12 towards these alleged construction defects.

13 At the time all this came along, Mr. Koola was
14 an owner. And there is -- if there are 200 owners, 199
15 of them all signed up as individual parties to the case.
16 There were one or two people that did not sign up, and
17 Mr. Koola was one of them. He decided he did not want
18 to participate in the lawsuit. He purchased his unit
19 out there in 2004. So we've had years of construction
20 defects litigation, big multi-million dollar settlement,
21 that case has now ended. It settled on the eve of
22 trial. Now, Mr. Koola came along and filed this lawsuit
23 today, where he is basically re-alleging the same
24 issues. He's complaining about construction defects and
25 problems with his unit. And we're here today because

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1 his lawsuit was not timely served on the Heape and Estes
2 individuals and their entities within the three-year
3 statute of limitations, which I'm now prepared to
4 discuss if it's --

5 THE COURT: All right. Yeah. Give me some
6 dates on that.

7 MR. PARRISH: First off --

8 THE COURT: We've had a lot of statute of
9 limitations this week.

10 MR. PARRISH: I don't --

11 THE COURT: We're going to become experts.

12 MR. PARRISH: I don't file a lot of 12(b)(6)s
13 and very rarely file one on the statute of limitations,
14 but I think you'll see where we're going when you take a
15 look at this. If I can first call your attention to
16 Mr. Koola's Complaint, that was filed by -- when he had
17 an attorney at that point in time, because I'm going to
18 refer you to the one that has the yellow highlighting on
19 it that I had up on the bar -- on top of your bench a
20 second ago. It should have some pink tabs on it.

21 THE COURT: Right. You have two things up
22 here.

23 MR. PARRISH: Yeah. I'll refer to the Summons
24 and the Complaint first.

25 THE COURT: All right. Got that right here.

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1 MR. PARRISH: I just -- over on the very first
2 allegation, he said he bought his unit in 2004, which he
3 did, as far as we know. And then the important part is,
4 flip over to the paragraphs numbered 14 -- it's about
5 three pages in. It's Paragraphs 14 through 18 of his
6 Complaint. And if you let me know when you're there,
7 so --

8 THE COURT: I'm here.

9 MR. PARRISH: Paragraph 14 says: In 2008,
10 the Plaintiff learned that Cambridge Lakes Homeowners
11 Association, of which he was a member --

12 THE COURT REPORTER: Can you slow down just a
13 little bit, please, sir?

14 MR. PARRISH: In 2008, the Plaintiff learned
15 that the HOA had filed the lawsuit, that I just
16 referenced earlier. Mr. Koola is a member of that
17 homeowners association by virtue of his ownership. So,
18 in his own Complaint, it says that in 2008 he learned
19 about the lawsuit, the lawsuit alleged construction
20 defects, violation of the Horizontal Property Act,
21 everything that he's alleging now in his lawsuit, he
22 says, by his own pleading, that he knew about it in
23 2008.

24 Paragraph 15, it says: The Plaintiff also
25 learned that the Defendants allegedly violated the

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1 Master Deed and the Horizontal Property Act.

2 Sixteen says: Upon learning of the lawsuit
3 that was filed in 2008, he reviewed the Builder's
4 Certificate.

5 And then 17 and 18, he determined that all
6 sorts of things were improperly done. So by his own
7 allegations, on the own four corners of his Complaint,
8 he was on notice about 2008 about allegations that had
9 been made by the HOA of which he is now copying those
10 and asserting the same allegations.

11 He filed the present lawsuit here in 2010. If
12 you want to give him the benefit of the doubt that he
13 didn't know about this until the first of 2008, normally
14 filing in 2010 would have been within two years. Here's
15 the tricky part -- or the interesting part, the lawsuit
16 was not served on Mr. Heape or Mr. Estes until January
17 of 2012. This lawsuit was filed, it was clocked in in
18 2010, but the affidavits of service that were filed in
19 this case indicate that Mr. Estes was served on January
20 17, 2012, and Mr. Heape was served on January 4, 2012.
21 There was almost a year and a half delay between the
22 filing of this lawsuit and the time they were actually
23 served. So, therefore, they were not served within
24 three years of 2008, assuming he didn't know about this
25 until the end of 2008, even though that lawsuit he knew

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1 about was filed in June of 2008 -- 2008, 2009, 2010, is
2 when the statute would have run. You want to give him
3 an extra year, say 2009, 2010, and -11. They were not
4 served until 2012. So based on the four corners of his
5 Complaint, when he claims he learned about this, right
6 there, that's time-barred under any argument based on
7 his own allegations.

8 But I'm going to take this a step further.
9 The second document I put up there, it's a set of
10 Interrogatory Answers that Mr. Koola filed *pro se*. And
11 his foreclosure action is captioned BAC Home Loans
12 versus Johnson Koola, and it's a case number of
13 2010-CP-10-6060.

14 THE COURT: All right.

15 MR. PARRISH: Mr. Koola filed these *pro se*
16 in that case, and I've highlighted just a couple of
17 provisions and tabbed them. And, once again, I've given
18 Mr. Koola the highlighted and tabbed. It's identical to
19 what you have.

20 THE COURT: All right.

21 MR. PARRISH: At the very bottom -- this
22 is *pro se*, he signed these and typed them himself.
23 At the bottom of the first page of those Interrogatory
24 Answers, and I've highlighted it, he talks about 2004 he
25 was having conversations with the HOA about water

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1 intrusion and construction defects. That's at the
2 bottom of page -- the first page of his Answers, which
3 are Number 2.

4 If you would flip over to the next tab, which
5 is over on page 6 of his Answers, he talks about, the
6 middle of the page, it says: First attempt to sell the
7 property. And I won't read it to you, but I'll just
8 paraphrase it. That he tried to sell it in June or July
9 of 2008, which was when the HOA filed this -- the
10 lawsuit I referred to. He had an agent. And then the
11 next paragraph there, he says he didn't receive any
12 offers and he learned about this lawsuit in 2008,
13 involving the construction defects and problems, and
14 that's why he couldn't sell his unit because the lawsuit
15 was going on.

16 Down at the bottom of page 6 of his
17 Interrogatory Answers, and this is probably the most
18 important part of everything. He says: In June 15,
19 2008, the Defendant HOA and the HOA's attorney sent a
20 letter, Exhibit 5, to all the owners notifying them
21 about the lawsuit, inviting all owners to attend.

22 If you go to the very last tabbed document in
23 this stack of documents, this Exhibit 5, there's a copy
24 of a letter to all the owners dated June 25, says: Dear
25 Homeowner, says, we've hired counsel to pursue these

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1 claims. Please join us if you wish to do so.

2 THE COURT: So that would be the latest date
3 that he would have known that there was a cause of
4 action available?

5 MR. PARRISH: He says: I knew about the
6 lawsuit, I even got an invitation to join, and I knew
7 about all the allegations. And this lawsuit here is
8 asserting the same thing.

9 And then, finally, because I'm winding
10 down here, if you look at page 7 of his Interrogatory
11 Answers, which I've tabbed, he says that -- he,
12 Mr. Koola -- I mean, he typed them himself -- this
13 himself. He said he studied the Builder's Certificate
14 and when he learned about that lawsuit and all these
15 alleged violations, he knew about it in June or -- or
16 earlier in 2008. And then the very last document that
17 I've attached, which is Exhibit 1, and this one is real
18 interesting. It's a letter to Mr. Koola, Exhibit 1, to
19 his Interrogatory Answers; it's addressed to Steve
20 Fisher, who is the president of the Cambridge Lakes HOA,
21 dated November 20, 2004, in the highlighted part in
22 Paragraph 2, Mr. Koola is complaining about construction
23 defects in the units. And this is in 2004.

24 But giving him the absolute benefit of the
25 doubt that he wasn't on notice until the lawsuit was

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1 filed by the HOA in June or July of 2008, he was
2 informed about it, told they hired counsel, and asked to
3 participate in it, he was clearly on notice by no later
4 than June or July of 2008 -- 2009, 2010, that would be
5 June or July of 2011. They were not served until 2012.
6 So I think under any stretch of the imagination -- or
7 any benefit -- and all benefit of the doubt to
8 Mr. Koola, he was on notice, and he did not serve this
9 within time.

10 Now, I anticipate he may make some argument
11 about his counsel, Mr. Jackson, was involved in this --

12 THE COURT: Between him and his counsel.

13 MR. PARRISH: That's between him and his
14 counsel, yes.

15 THE COURT: You can't have your counsel screw
16 up and have your statute of limitations extended because
17 of that.

18 MR. PARRISH: I'll now let Ms. Gangi correct
19 everything that I just said and done wrong, so thank you
20 for your time.

21 THE COURT: Ms. Gangi.

22 MS. GANGI: Good morning, your Honor. I really
23 don't have a whole lot to add. I would point out that
24 Rule 3(a) is the applicable rule of South Carolina Rules
25 of Civil Procedure, and I would also point out to your

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1 Honor that I'm not aware of any statute that would in
2 any way change Rule 3(a). Both Mr. Heape and Mr. Estes
3 are residents of Charleston County. They were served in
4 Charleston County. Their companies were formed and are
5 South Carolina companies, so there's no issues about out
6 of state or anything like that. So we have -- we have
7 nothing that applies to assist Mr. Koola in extending
8 the statute of limitations.

9 In addition to that, your Honor, my -- my
10 recollection is, is that Mr. Koola's attorney at the
11 time was actually at the mediation when we mediated the
12 construction defect case, and so he was -- his attorney
13 was --

14 THE COURT: And I think the key word is, was
15 not served within the statute of limitations.

16 MS. GANGI: Yes.

17 THE COURT: They would have 120 days after the
18 filing.

19 MS. GANGI: Yes, sir.

20 THE COURT: So there appears that -- there's no
21 question that this was not served within the statute of
22 limitations.

23 MR. PARRISH: Correct.

24 THE COURT: Okay.

25 MR. PARRISH: And wasn't served --

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1 THE COURT: And it wasn't served within the 120
2 days after filing.

3 MR. PARRISH: It wasn't served within 120 days.
4 It was almost served a year and a half after the date of
5 filing. It was filed in 2010; it was served in 2012.

6 MS. GANGI: And you only have two options
7 under 3(a). You've either got to file it and serve it,
8 or you've got to file it, and you've got 120 days from
9 the date you filed it.

10 THE COURT: Right.

11 MS. GANGI: And it doesn't meet either one of
12 those criteria.

13 THE COURT: All right. Mr. Koola.

14 MS. GANGI: Thank you.

15 MR. KOOLA: Your Honor, may I stand at the --

16 THE COURT: You may. Certainly.

17 MR. KOOLA: Your Honor --

18 THE COURT: Yes, sir.

19 MR. KOOLA: -- first of all, the -- for resell
20 purpose, the Cambridge, to the Defendants, my civil case
21 was filed in November of 2010 --

22 THE COURT: Yes, sir.

23 MR. KOOLA: -- by my attorney, Mr. Jackson.
24 And the Summons and Complaint was sent to the sheriff of
25 the county to all the Defendants in the party. And the

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1 sheriff could not issue the Summons and Complaint to
2 these two Defendants, Mr. Heape and Mr. Albert Estes.
3 The sheriff couldn't serve the Summons and Complaint to
4 two different entities. One is the -- Mr. -- the
5 Carolina One, Mr. Scarafile, they go by in November.
6 And then Trademark, that is represented by Mr. Frank
7 Cisa, and both of them will testify that they received
8 the Summons and Complaint in November of 2010. And the
9 Defendants of -- Mr. Heape and Mr. Albert Estes, the
10 sheriff could not issue the Summons and Complaint, and
11 they asked for Mr. -- Mr. -- my -- Jackson, my previous
12 attorney, why he's not able to do that.

13 He said that he -- he's trying to contact
14 -- find the means to do -- to do that thing. He could
15 not do that. And -- and then he ask if I -- why he
16 couldn't file a case -- make a motion in the Court to
17 file a publication (phonetic). He said that he would do
18 that. And then sometime in the month of April, 2011, he
19 sent me an E-mail, that he cannot represent me anymore.

20 In May -- in June, 2011, he sent me one more
21 E-mail, telling that he cannot represent me anymore. I
22 have copies of the E-mails here. I didn't want to
23 bother with so many E-mails, but I have all the copies
24 here. And toward the end of the -- another option, I
25 either have to remove totally or file the case -- pro se

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1 the case myself.

2 To file a case against an attorney is a very
3 serious matter, your Honor. I cannot do that very
4 easily. And then toward the end of the year, I talked
5 to Mr. Jackson -- he never talk to me since the --

6 THE COURT: But that's between you and
7 Mr. Jackson. The situation that you're talking about is
8 between you and your lawyer, not between you and these
9 companies that you are trying to sue. That's a
10 different matter. I mean, if you want to pursue an
11 action against Mr. Jackson, that's, you know, up to you,
12 for his not getting that done, and that's a different
13 matter. But this is strictly between these parties and
14 yourself, and that's what I am looking at.

15 MR. KOOLA: Yeah, but the sheriff has sent --
16 tried to serve the Summons and Complaint -- Complaint to
17 these parties, and those letters will be on the court
18 docket. I do not know what I can do because --

19 THE COURT: I don't either. I think you may
20 have to go back to your attorney, and, one, ask him, why
21 he apparently didn't get the service that he was
22 supposed to have. But -- but I've got to go by the
23 laws, I've got to go by the rules, and I have to follow
24 the rules, whether it hurts you, or helps you, hurts
25 them, or helps them. I'm bound by the law, and that's

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Official Court Reporter for the State of South Carolina

1 why we have judges to make these rulings rather than one
2 of the parties. But the law specifically says a civil
3 action is commenced when the Summons and Complaint are
4 filed in Clerk of Court: If, one, the Summons and
5 Complaint are served -- are served within the statute of
6 limitations. There -- do you deny that they were not
7 served during the statute of limitations?

8 MR. KOOLA: Well, there -- they would be
9 served.

10 THE COURT: Right, they were ultimately served,
11 but not within the statute of limitations? Would you
12 agree with me on that?

13 MR. KOOLA: Within the 120 days, no. No.

14 THE COURT: Okay. And the statute of
15 limitations, although you filed it, you would probably
16 be within the three years' statute of limitations, but,
17 again, if it wasn't served until January 17th, even
18 outside of the statute of limitations, you wouldn't even
19 have been close to having it served within that time.

20 MR. KOOLA: Now, from which day you are
21 counting, your Honor?

22 THE COURT: I'm giving you the benefit of the
23 doubt and going from June, 2008.

24 MR. KOOLA: In June, 2008, I did not want to
25 proceed with the construction defects. I wanted to

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Hearing on Motions held July 25, 2012
2010-CP-10-9158

1 start -- my civil case depends only on two, three
2 aspects. The violation of South Carolina Horizontal
3 Property Act and the South Carolina Unfair Trade
4 Practices Act --

5 THE COURT: But either way, you would have had
6 to have known that those were potential -- it's when you
7 knew or should have known. Whether you knew later
8 and didn't know it, but you should have known it
9 earlier, is -- is not for this Court to consider here.

10 MR. KOOLA: Yes, your Honor. I can tell you
11 that you have -- Cambridge Lakes Homeowners Association
12 filed a civil -- another civil case, 2008-10-CP-35 or
13 -6. They never mentioned the violation of Horizontal
14 Property Act. They just mentioned primarily the
15 construction defects, and then those kinds of things,
16 sir. Only in the year 2010, they file an Amended Third
17 Summons and Complaint where they specifically mentioned
18 the violation of South Carolina Horizontal Property Act.
19 That is the time when I knew about it. Because at -- at
20 every success, is not available for the Horizontal
21 Property Act. And, moreover, Mr. Heape gave me a
22 certificate that he is a follow -- not Mr. Heape.
23 Mr. Albert Estes me gave a certificate that he is a --
24 he is a follow through on the Horizontal Property Act.
25 And I have no reason to believe that he has violated

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Hearing on Motions held July 25, 2012
2010-CP-10-9158

1 Horizontal Property Act.

2 THE COURT: But you agree, we're not arguing
3 about that at this point? We're arguing about the fact
4 that you didn't get them served within at least three
5 years under the 120 days. Do you -- do you recognize
6 that?

7 MR. KOOLA: No. My case started only in --
8 in a -- November, 2010.

9 THE COURT: Right. But you never even served
10 these gentlemen, or whoever this -- these parties, until
11 January 17th of 2012.

12 MR. KOOLA: Yeah, because --

13 THE COURT: Which is more than three and a half
14 years after you filed your -- or you knew or should have
15 known of your actions.

16 MR. KOOLA: I do not deny that, your Honor.
17 All I can tell you, the sheriff tried to serve them;
18 they could not serve it.

19 THE COURT: The law doesn't say that if you
20 have a problem with the sheriff, the statute of
21 limitations is tolled. It doesn't say that. It's your
22 responsibility to get them served.

23 MR. KOOLA: But --

24 THE COURT: I'm not going to argue with you
25 about it. I'm going to let you present anything else

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1 that you have, I'll take it under advisement, and
2 then -- would y'all like to respond to that?

3 Is there any other issue that you have
4 concerning statute of limitations today?

5 MR. KOOLA: About this issue, I cannot tell
6 anything more, your Honor.

7 THE COURT: Okay. Very well.

8 Do you have another motion? This is the only
9 motion?

10 MS. GANGI: We each filed this same motion.

11 THE COURT: Okay. What I'm going to do is I'm
12 going to give the parties each ten days to file anything
13 written that you want me to have. If you file anything
14 in addition, I will give you an additional ten days to
15 file a response to it? All right?

16 MR. PARRISH: Thank you, your Honor.

17 MS. GANGI: Thank you.

18 MR. PARRISH: We'll anticipate, and we'll send
19 a proposed joint order, addressing both motions, and
20 we'll copy Mr. Koola.

21 THE COURT: You may. But if you have anything
22 else -- I'm going to read what you have here. I've
23 heard from you. If you have anything else that you
24 would like to submit, I will give you ten days to do
25 that. It will need to be sent to my Sumter office. And

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1 you can look it up online as to what that address is.

2 MR. KOOLA: Okay. Thank you, your Honor.

3 THE COURT: All right. Thank you.

4 MR. PARRISH: And, your Honor, for the benefit
5 of the Court, the third motion that Mr. Scarafile filed
6 on behalf of Prudential -- or Carolina Realty, he's not
7 here, so I'm assuming he's just abandoned that motion.

8 THE COURT: Okay. I would think that that
9 would be a good assumption.

10 MR. PARRISH: Thank you.

11 MS. GANGI: Thank you very much, your Honor.

12 THE COURT: Thank you.

13 (The hearing of this cause concluded at
14 10:00 a.m., on July 25, 2012.)

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Hearing on Motions held July 25, 2012
2010-CP-10-9158

R E P O R T E R ' S C E R T I F I C A T E

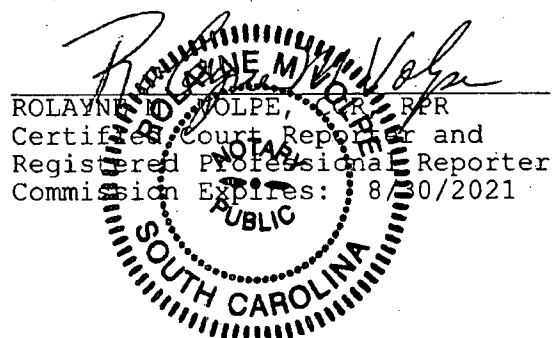
STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,
and Registered Professional Reporter, RPR, do hereby
certify that the transcript of the foregoing proceedings
accurately reflects the events that occurred before me
to the best of my ability at the time and place set out
on the caption hereto, the witnesses having been duly
cautioned and sworn, or affirmed, to tell the truth, the
whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which these proceedings were taken or to any
attorney or counsel employed by the parties hereto, nor
financially interested, directly or indirectly, in the
outcome of this action.

CERTIFIED AND SIGNED on this 1st day of April, 2013.

ORIGINAL



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060

Defendants further informed the Honorable Court that Plaintiff did not join the civil action # 2008-CP-10-3506 filed by Cambridge Lakes Homeowners Association against the said Defendants, Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities and several other Defendants for construction defects.

Plaintiff informed the Honorable Court that Plaintiff's civil action # 2010-CP-10-9158 does not deal with construction defects, rather the said civil case deals with violation of South Carolina Horizontal Property Act §27-31-430 and South Carolina Unfair Trade Practices Act, §39-5-10 et. seq., fraud and related pleadings.

Relevant sections of South Carolina Horizontal Property Act § 27-31-430 read as follows: **"Whenever the lessee, sole owner or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of disclosure to all prospective purchasers as to the physical condition of the building.....A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act."** The Statute of Limitations for these violations is 3 years. Section §39-5-150 reads as follows: **"No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject matter of the suit"**. (Extracts of the codes under citation, Exhibit 1).

South Carolina Horizontal Property Act §27-31-430 does not prohibit a developer/seller from selling condominiums converted from apartments carrying construction defects. Rather, **the act requires the developer/seller to provide a copy of the report entitled "Disclosure of Physical Condition of the Building" to every prospective buyer.** A failure to make the disclosure required by this section shall constitute a violation of South Carolina Unfair Trade Practices Act. Only in September 2010, Plaintiff discovered that the Defendants violated codes §27-31-430 and §39-5-10 et. seq.

Plaintiff bought a condominium in Cambridge Lakes subdivision in Mount Pleasant in Charleston County in February 2004. At the time Plaintiff purchased his condominium, the Defendants issued a **"Builder's certificate"** to Plaintiff and the mortgage bank which stated that **"The Structural, health & safety repairs and remodeling have been completed"**. This certificate was issued by the Defendants to satisfy the South Carolina Horizontal Property Act, §27-31-430. Only in September 2010, Plaintiff discovered that the Defendants falsified the **"Builder's Certificate"** and committed fraud. (Builder's certificate, Exhibit 2).

The Master Deed provided to the Plaintiff by Defendants at the time of purchase states as follows: "Developer submits the Property in Charleston County, State of South Carolina, described herein and on Exhibit A attached hereto and made a part thereof, including the improvements now or hereafter thereon, to the provision of the Horizontal Property Act, section 27-31-10 et. seq., South Carolina Code of Laws, 1976, (the Act), the provisions of which, unless expressly provided otherwise herein, are incorporated herein by reference and form a part of this Master Deed, for the specific purpose of creating and establishing the Cambridge Lakes Horizontal property regime (the Condominium?). Only in September 2010 did Plaintiff discovered that Defendants, Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities, violated South Carolina Horizontal Property Act, §27-31-430. (Page 1 of the Master Deed as Exhibit 3).

In view of these two signed declarations by Defendants (Builder's certificate and Master Deed), there was no reason to believe that the Defendants violated codes §27-31-430 and §39-5-10 et. seq.

Believing that the condominium is free of construction defects as sated in the Builder's certificate, Plaintiff made 10% down payment at the time of purchase. After buying, Plaintiff did not realize any construction defects in his condominium unit. Plaintiff paid another \$5,000 toward the principal before the end of 2004 and another \$2,030 toward the principal before the end of 2006. (Relevant pages of the mortgage payment history as Exhibit 4).

In June 2008, Cambridge Lakes Homeowners Association filed the first summons and complaint in civil action # 2008-CP-10-3506 against the Defendants, Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities and several other Defendants. The lawsuit was filed without the knowledge of the homeowners and without the approval of 2/3 of the homeowners as required by the provisions of Master Deed. Only after filing the civil action did the Homeowners Association inform the homeowners of the lawsuit and of construction defects. The construction defects occurred in areas like foundation, walls, roofs etc. The summons and complaint filed by the Homeowners Association in June 2008 makes absolutely no reference to any violation of South Carolina Horizontal Property Act and South Carolina Unfair Trade Practices Act by the Defendants, Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities and various other Defendants. (Cambridge Lakes HOA's civil action # 2008-CP-10-3506 first summons and complaint, as Exhibit 5)

In September 2010, the Plaintiff reviewed the third summons and complaint in civil action # 2008-CP-10-3506 filed by the Cambridge Lakes Homeowners Association in July 2010 against the

Defendants, Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities and several other Defendants. **This filing clearly stated that the Defendants have violated South Carolina Horizontal Property Act §27-31-430 and South Carolina Unfair Trade Practices Act, §39-5-10 et. seq.** (Pages 1,2, 19, 20, 29, 30 and 31 of the third amended summons and complaint filed by Cambridge Lakes HOA in civil case # 2008-CP-10-3506, as Exhibit 6).

On September 1, 2010, Plaintiff consulted an independent attorney who confirmed that the Defendants, Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities are in violation of codes §27-31-430 and §39-5-10 et. seq. and that the Defendants have falsified the builder's certificate, thereby committing fraud. Plaintiff discovered the violations of codes §27-31-430 and §39-5-10 et. seq. by the Defendants only in September 2010.

Defendants submitted copies of two memoranda to the Honorable Court during the motion hearing on July 25, 2012. Anywhere in the memoranda has Plaintiff stated that he was aware of the violation of codes §27-31-430 and §39-5-10 et. seq. by the Defendants prior to September 2010.

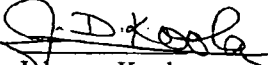
Plaintiff discovered the violation of South Carolina Horizontal Property Act §27-31-430 and South Carolina Unfair Trade Practices Act §39-5-10 et. seq. by the Defendants in September 2010. Plaintiff filed his civil action # 2010-CP-10-9158 in November 2010, well within the Statute of Limitations. **Plaintiff prays to the Honorable Judge Jeffery Young to rule that the Statue of Limitations runs from September 2010 in the Plaintiff's civil case # 2010-CP-10-9158.**

Plaintiff prays to the Honorable Judge Jeffery Young that he shall be allowed to re-file the summons and complaint and serve the Defendants Cambridge Two, LLC and Albert Estee and Cambridge Lakes, LP, Stephen Heape and related entities again.

Plaintiff prays to the Honorable Judge Jeffery Young that the current civil action # 2010-CP-10-9158 be allowed to go forward instead of refilling the same for the sake of "Just, speedy and inexpensive determination" vide Rule 1, SCRCP, as the Plaintiff is under the protection of Statute of Limitations, section §39-5-150.

A third motion filed by Defendants Carolina One and related parties was also scheduled for motion hearing on July 25, 2012. The Defendants and the attorneys did not appear in the Court. Plaintiff served summons and complaint to these Defendants within 30 days of filing. Plaintiff prays to the Honorable Judge to dismiss Defendant Carolina One's motion to dismiss Plaintiffs' civil action # 2010-CP-10-9158 on payment of costs to the Plaintiff and let the civil action go forward without any delay.

Respectfully submitted to the Honorable Judge Jeffery Young.


Johnson Koola
Pro se Plaintiff
1587 Cambridge Lakes Dr
Mt. Pleasant, SC 29464
(843) 849-9241
johnson.koola@msn.com

This the first day of August 201

Exhibits:

- Exhibit 1: Extracts of the codes §27-31-430, §39-5-10, §39-5-20 and §39-5-150
- Exhibit 2: Copy of the Builder's Certificate
- Exhibit 3: Copy of the first page of the Master Deed
- Exhibit 4: Two relevant pages of mortgage payment history to prove that Plaintiff paid extra amounts toward principal in 2004 and 2006.
- Exhibit 5: Copy of the summons and complaint in the civil action # 2008-CP-10-3506
- Exhibit 6: Copy of pages of 1,2,19, 20, 29, 30 and 31 of the third amended summons and complaint in the civil case # 2008-CP-10-3506.

Copy to:

A copy has been filed with the Office of the Charleston County Clerk of the Court.

Attorney Mr. Michael C. Scarafale, Esq.
Attorneys for Defendants Carolina One Charleston Home Tam Properties, LLC, et. al.
4930 Belle Oaks Dr
North Charleston, SC 29405

Attorney Mr. David J. Parrish, Esq.
Attorney for Cambridge Two, LLC and Albert V. Estee
NEXSEN PRUET, LLC
205 King St, Suite # 486
Charleston, SC 29402

Attorney Ms. Linda Weeks Gangi, Esq.
Attorney for the Defendants Cambridge Lakes, LP, et. al.
THOMPSON & HENRY, PA
P.O. Box 1740
Conway, SC 29528

Attorney Mr. Frank M. Cisa, Esq.
Attorney for Trademark
CISA & DODDS, LLP
858, Low Country Blvd., Suite 101
Mt. Pleasant, SC 29464

SECTION 27-31-430. Disclosure of physical condition of building.

Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a warranty and, as to an independent registered architect or engineer licensed to practice his profession in this State, shall not be deemed a representation of material fact or an inducement to purchase and shall not give rise to any cause of action at law or in equity against such architect or engineer. A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

Title 39 - Trade and Commerce

CHAPTER 5.

UNFAIR TRADE PRACTICES

ARTICLE 1.

GENERAL PROVISIONS

SECTION 39-5-10. Part title: definitions.

This article may be cited as the "South Carolina Unfair Trade Practices Act."

As used in this article.

- (a) "Person" shall include natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.
- (b) "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.
- (c) "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.
- (d) "Examination" of documentary material shall include the inspection, study or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

HISTORY: 1962 Code Section 66-71; 1971 (57) 369.

SECTION 39-5-20. Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of interpretations of Federal act.

- (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

HISTORY: 1962 Code Section 66-71.1; 1971 (57) 369.

SECTION 39-5-30. Pyramid clubs and similar operations declared unfair trade practices.

Any contract or agreement between an individual and any pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members, is hereby declared to be an unfair trade practice pursuant to Section 39-5-20 (a) of the South Carolina Unfair Trade Practices Act of 1971.

HISTORY: 1962 Code Section 66-71.2; 1971 (57) 787.

SECTION 39-5-150. Limitation of actions.

No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.

HISTORY: 1962 Code Section 66-71.14; 1971 (57) 369.

EXHIBIT 1

7/22/2012 10:23 PM

**Countrywide****HOME LOANS****BUILDER'S CERTIFICATION****1. PROJECT INFORMATION**

Project Name:	Cambridge Lakes
Project Address & Zip:	1401 Cambridge Lakes Dr. Mt. Pleasant, SC 29412
County:	Charleston
Total Number of Units & Phases/Buildings:	104 units

2. SALES DATA (please complete for whole project)

Building	#Units	#Sold or under contract	Owner Occupancy Intent			Complete YES/NO
			#Owner Occupied	#2 nd Home	#Investor	
A	8	/	HOA does not have this information			
B	24		HOA does not have this information			
C	24		HOA does not have this information			
D	24		HOA does not have this information			
E	24		HOA does not have this information			
	104	82				

Does any single investor own more than 10% of the total units in the project? ☐ Yes, ☒ No Owner/Developer**3. PROJECT CERTIFICATIONS****INITIAL at left of each item.**

Call Davidson Bernie H. Wigger	The Condominium Declaration (aka Master Deed) was recorded on _____, document # _____.
gmw	The Amendment/Supplement to the Condominium for the subject unit, Phase/Bldg _____, was recorded on _____, document # _____.
gmw	A portion of the HOA dues are designated for Replacement Reserves
gmw	Description of Recreational Amenities: pool, hot tub, workout room.
gmw	Estimated % complete: 100 %
gmw	☐ There are no known hazardous environmental conditions affecting the subject property
gmw	Indicate if any of the following statements are applicable by placing an "x" in the box: ☐ The HOA is involved in Litigation ☐ The project is a Condo or has a Rental Pool or allows Weekly Rentals ☐ Some or all of the units are considered Live-Work Units (commercial/residential use). ☐ The Association Property is on Leased Land ☐ The improvements are Manufactured Housing ☐ There are Resale Restrictions
gmw	☒ For Condo Conversions: The structural, health & safety repairs and remodeling have been completed or ☐ N/A this project is not a conversion

4. DEVELOPER'S CERTIFICATION

I hereby certify the above information is true and correct.

Signature: James M. Burren	Date: 2/17/04
Title: HOA accountant	Ph: 881-1330
Company: Cambridge Lakes	Fx or email: 881-1341
Address: 1401 Cambridge Lakes Dr.	

Please complete and return to FAX #888-458-3978. Thank you for your assistance.

Countrywide Home Loans, BUILDER DIVISION
 1401 Willow Pass Rd. Suite 840, Concord, CA 94520 Ph. 800-458-1936, Fx. 888-458-3978

revised 9/9/03

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

OK T437PG047

MASTER DEED FOR
CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME

THIS Master Deed made this 24th day of February, 2003, by Cambridge Two, LLC, a South Carolina Limited Liability Company (hereinafter referred to as the "Developer"), which does hereby declare as follows:

Developer submits the Property in Charleston County, State of South Carolina, described herein and on Exhibit A attached hereto and made a part hereof, including the improvements now or hereafter thereon, to the provision of the Horizontal Property Act, Section 27-31-10, et seq., South Carolina Codes of Laws, 1976, (the "Act"), the provisions of which, unless expressly provided otherwise herein, are incorporated herein by reference and form a part of this Master Deed for the specific purpose of creating and establishing the Cambridge Lake Horizontal Property Regime (the "Condominium"). Reference is also made to other provisions of this Master Deed and the land survey and plot plans for a description of the private elements dimensions, floor area and location of each Apartment, the location and approximate dimensions of the Common Elements, and other information required by the Horizontal Property Act, such land survey and plot plans being attached hereto as Exhibit "B" and made a part hereof (herein collectively referred to as the "Plans").

NOW THEREFORE, the Developer hereby makes the following Declarations, and specifies that the provisions hereof shall constitute covenants running with the land and shall be binding upon the Developer, its successors and assigns and all subsequent purchasers of all or any part of the Property together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

(1) PURPOSE

The purpose of the Master Deed is to submit the Property to the condominium form of ownership and use in the manner provided by the Act and the Property as that term is defined in Paragraph 5(n) hereof, is hereby submitted to the condominium form of ownership as provided for in the Act.

(2) NAME

The name by which this Condominium is to be identified is Cambridge Lake Horizontal Property Regime (the "Condominium").

EXHIBIT 3



Account Number: 52532740
 Statement Period: 02/2004 - 09/2008
 Date Prepared: 09/16/2008

Property Address:
 1587 CAMBRIDGE LAKES
 DRIVE

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				136,192.00		.00				.00
02/23/2004	MISC. POSTING	214.50	03/2004	.00	214.50	.00	.00	.00	.00	.00
02/23/2004	FHA INS CREDIT	38.59	03/2004	.00	.00	38.59	.00	.00	.00	.00
02/23/2004	INITIAL TAX DEP	295.60	03/2004	.00	.00	295.60	.00	.00	.00	.00
03/29/2004	REGULAR PAYMENT	892.49	04/2004	142.19	652.59	334.19	.00	.00	.00	.00
03/29/2004	MISC. POSTING	5,000.00	04/2004	5,000.00	.00	.00	.00	.00	.00	.00
04/20/2004	PMI PMT MONTHLY	-77.18	04/2004	131,049.81	.00	431.90	.00	.00	.00	.00
04/26/2004	REGULAR PAYMENT	895.67	05/2004	166.83	627.95	100.89	.00	.00	.00	.00
05/07/2004	MISC. POSTING	224.00	05/2004	130,882.98	.00	455.61	.00	.00	.00	.00
05/14/2004	MISC. POSTING	224.00	05/2004	130,882.98	.00	.00	.00	.00	.00	.00
05/14/2004	PMI PMT MONTHLY	-38.59	05/2004	130,882.98	.00	417.02	.00	.00	.00	.00
05/21/2004	MISC. POSTING	224.00	05/2004	130,882.98	.00	.00	.00	.00	.00	.00
05/28/2004	MISC. POSTING	224.00	05/2004	130,882.98	.00	417.02	.00	.00	.00	.00
06/01/2004	REGULAR PAYMENT	895.67	06/2004	167.63	627.15	100.89	.00	.00	.00	.00
06/01/2004	MISC. POSTING	-896.00	06/2004	130,715.35	.00	517.91	.00	.00	.00	.00
06/01/2004	MISC. POSTING	.33	06/2004	130,715.02	.00	.00	.00	.00	.00	.00



Account Number: 52532740
 Statement Period: 02/2004 - 09/2008
 Date Prepared: 09/16/2008

Property Address:
 1587 CAMBRIDGE LAKES
 DRIVE

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
12/01/2006	REGULAR PAYMENT	893.36	12/2006	204.97 122,885.55	589.81	98.58 914.49	.00	.00	.00	.00 1,116.70
12/01/2006	MISC. POSTING	-893.36	12/2006	.00 122,885.55	.00	.00 914.49	.00	.00	.00	-893.36 223.34
12/08/2006	MISC. POSTING	223.34	12/2006	.00 122,885.55	.00	.00 914.49	.00	.00	.00	223.34 446.68
12/08/2006	PMI PMT MONTHLY	-38.59	12/2006	.00 122,885.55	.00	-38.59 875.90	.00	.00	.00	.00 446.68
12/13/2006	MISC. POSTING	2,030.00 2,030.00	12/2006	2,030.00 120,855.55	.00	.00 875.90	.00	.00	.00	.00 446.68
12/13/2006	COUNTY TAX PMT	-701.89	12/2006	.00 120,855.55	.00	-701.89 174.01	.00	.00	.00	.00 446.68
12/15/2006	MISC. POSTING	223.34	12/2006	.00 120,855.55	.00	.00 174.01	.00	.00	.00	223.34 670.02
12/22/2006	MISC. POSTING	223.34	12/2006	.00 120,855.55	.00	.00 174.01	.00	.00	.00	223.34 893.36
12/29/2006	MISC. POSTING	223.34	12/2006	.00 120,855.55	.00	.00 174.01	.00	.00	.00	223.34 1,116.70
01/02/2007	REGULAR PAYMENT	893.36	01/2007	212.12 120,643.43	582.66	98.58 272.59	.00	.00	.00	.00 1,116.70
01/02/2007	MISC. POSTING	-1,116.70	01/2007	.00 120,643.43	.00	.00 272.59	.00	.00	.00	-1,116.70 .00
01/02/2007	MISC. POSTING	223.34	01/2007	223.34 120,420.09	.00	.00 272.59	.00	.00	.00	.00 223.34
01/05/2007	MISC. POSTING	223.34	01/2007	.00 120,420.09	.00	.00 272.59	.00	.00	.00	223.34 223.34
01/12/2007	MISC. POSTING	223.34	01/2007	.00 120,420.09	.00	.00 272.59	.00	.00	.00	223.34 446.68

EXHIBIT 4-B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.
MARGEL S. HENNING AND
STEVE FISCHER, AS INDIVIDUAL
HOMEOWNERS

Plaintiff(s),

vs.

BOSTIC BROTHERS CONSTRUCTION
INC., CAMBRIDGE TWO, LLC
CAMBRIDGE LAKES LP, CLASSIC
PROPERTIES, INC. OF CHARLESTON,
CAMBRIDGE CONTRACTING LP,
CAMBRIDGE LAKES
APARTMENTS, LP.

Defendant(s)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.

2008-08-10-3506

SUMMONS

(Re: Defective Construction)

(Jury Trial Demand)

2008 JUN 19 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

08-9031

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 8 Cumberland Street, P.O. Box 620, Charleston, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interests and costs.

PRITCHARD & ELLIOTT, LLC

JOHN C. HAYES, IV
Attorney(s) for Plaintiff(s)

Charleston, South Carolina
June 19, 2008

EXHIBIT S-A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CAMBRIDGE LAKES CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.
MARGEL S. HENNING AND
STEVE FISCHER, AS INDIVIDUAL
HOMEOWNERS

Plaintiff(s),

vs.

BOSTIC BROTHERS CONSTRUCTION,
INC., CAMBRIDGE TWO, LLC
CAMBRIDGE LAKES LP, CLASSIC
PROPERTIES, INC. OF CHARLESTON,
CAMBRIDGE CONTRACTING LP,
CAMBRIDGE LAKES
APARTMENTS, LP

Defendant(s)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-10-3506

COMPLAINT

(Re: Defective Construction)
(Jury Trial Demand)

2008 JUN 19 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Plaintiffs, Cambridge Lakes Condominium Homeowners Association, Inc., Margel S. Henning and Steve Fischer, as Individual Homeowners, (hereinafter collectively "Cambridge") complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Cambridge Lakes Condominiums ("Cambridge Lakes") is a group of residential structures and buildings located in Mount Pleasant, County of Charleston, South Carolina.
2. The Cambridge Lakes units are located in five buildings.
3. The Cambridge Lakes Condominium Homeowners Association, Inc., "The HOA," is the Homeowners Association for the above-referenced units and their owners.
4. Margel S. Henning and Steve Fischer are owners of residential units in Cambridge.

5. The HOA and individual Homeowners own the elements of Cambridge.
6. Defendants, Cambridge Two, LLC, Cambridge Lakes LP, Classic Properties, Inc., of Charleston, Cambridge Contracting LP, and Cambridge Lakes Apartments, LP, are South Carolina corporations, limited liability companies, or limited partnerships organized and existing under the laws of the State of South Carolina.
7. Defendant, Bostic Brothers Construction, Inc. (Bostic) is a corporation organized and existing under the laws of a state other than South Carolina and performed work during the construction and repair of Cambridge Lakes.
8. Cambridge Lakes is located in Charleston County and venue is proper in Charleston County.
9. At all relevant times herein, Defendants engaged in the business of development, sales, marketing, building construction and/or repair in Charleston County, South Carolina.
10. Defendants developed, constructed, sold, marketed and/or repaired Cambridge Lakes.
11. The development, construction, sales, marketing and repairs were performed by Defendants at the Cambridge property between 1998 to present.
12. At the time the development, construction, sales, marketing and repairs were completed by Defendants, the Cambridge Lakes Buildings and units contained many latent building defects.
13. The latent building defects have since resulted in repeated and severe water intrusion into the buildings and other damage and continue to do so through the date of this filing.
14. Defendants implicitly and/or explicitly represented the materials used were suitable for use on the Cambridge units.

15. Defendants knew or should have known that the materials used at the Cambridge Lakes units were not suitable for use on the units and said materials and improper installation of same have resulted in damage to Cambridge Lakes.
16. Defendants unsuitable construction and/or repair work and the unsuitable materials used at the Cambridge property have resulted in severe water intrusion into the units and other damage.
17. The repeated and severe water intrusion has resulted in deterioration of the buildings and consequential damages and continues to do so through the date of this filing.
18. The repeated and severe water intrusion has resulted in extensive damages to the original structures, the interior of the Cambridge units, and to the Homeowners and continues to do so through the date of this filing.
19. A preliminary inspection of the Cambridge units evidences an unsuitable sealant used around windows, unsuitable windows, improperly installed windows, improper weather-lapping, improperly installed flashing, improperly installed roofing materials, improperly installed gutter and down spouts, improper installed brick veneer, improper framing and various other building defects.
20. Defendants had a duty to construct and repair the Cambridge units in a workmanlike manner with suitable materials.
21. The aforementioned deficiencies and other evidence that Defendants breached their duty to Plaintiffs.
22. Said wrongful acts by Defendants above-described have resulted in the above-referenced building deficiencies and other consequential damages, partial loss of use, and severe mental and emotional stress.

23. Remedying the above-wrongs will result in additional damages, including loss of use. Further, the above has caused diminutions in value, both pre-and post-repairs.
24. As a direct and proximate result of the Defendants' violations of its legal duties, Plaintiffs have been damaged in an amount to be determined by the jury.

FOR A FIRST CAUSE OF ACTION
Negligence

25. Plaintiffs' repeat and reallege the above allegations as if stated verbatim herein.
26. The Defendants were negligent, careless, reckless, willful and wanton in the following particulars:
- a. in failing to properly construct the structures;
 - b. in failing to properly make repairs to the structures;
 - c. in failing to properly install windows;
 - d. in failing to properly install adequate flashing.
 - e. in failing to install adequate water barriers;
 - f. in failing to install weather proof building envelopes (exteriors);
 - g. in failing to install adequate roofing;
 - h. in failing to construct and repair the structures in accordance with due care and in accordance with standard building practices;
 - i. in failing to properly supervise the work and construction of the buildings;
 - j. in failing to hire competent subcontractors and specialty contractors;
 - k. in failing to properly coordinate the subcontractors;
 - l. in covering up deficiencies;
 - m. in misrepresenting the condition of the structures to the Plaintiffs;
 - n. in representing to Plaintiffs that Defendants had expert skills and ability;
 - o. missing and/or inadequately installed weep holes in brick veneer;
 - p. missing and/or inadequately installed sealant joints at dissimilar materials;
 - q. missing and/or inadequately installed building wrap, including failure to properly lap building wrap with other building components;
 - r. inadequately installed siding and trim along the exterior porches, bay windows and other areas;
 - s. inadequately sealed penetrations;
 - t. inadequately installed gutters;
 - u. failing to disclose condition of property during marketing and sales of same;
 - v. in failing to act as reasonable persons would in the circumstances then and there prevailing; and
 - w. in such other failures that will be shown during discovery and at trial.

27. Said failures above-described have proximately damaged the Plaintiffs in an amount to be determined by the jury.
28. As said failures were committed with gross negligence and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
Breach of Warranties

29. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
30. The construction and repair work came with express and implied warranties that the work would be performed in a careful, diligent, competent, and workmanlike manner.
31. The construction and repair work came with implied warranties of fitness, merchantability, workmanship and habitability.
32. Defendants have breached their warranties by constructing and repairing the structures in a defective manner as set forth above.
33. Said breaches have damages Plaintiffs in an amount to be determined by the trial of fact.

FOR A THIRD CAUSE OF ACTION
Unfair Trade Practice

34. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
35. At the time of construction and sale, Defendants were in the business of construction, repair, developing, selling and marketing Cambridge Lakes structures.
36. Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.
37. Defendants above described activities, including violating construction standards in the construction of the structure, violating building codes, mishandling the repair of the Plaintiffs property, concealing construction defects and consequential damages once discovered, and failing to honor warranty obligations constitute unfair and deceptive

practices in the conduct of the Defendants' trade; that such acts are capable of repetition and are injurious to the public, as the Defendants are capable of continuing such acts.

38. Defendants knew or should have known its conduct was in violation of South Carolina Code Section 39-5-20.

39. That Defendants' wrongs entitled the Plaintiffs to an award of treble damages, attorneys' fees and costs.

WHEREFORE, Plaintiff prays that:

- a. Plaintiffs recover actual damages, consequential damages, statutory damages, and punitive damages in an amount in excess of EIGHT MILLION DOLLARS (\$8,000,000.00);
- b. Plaintiffs recover the costs and expenses of this suit;
- c. Plaintiffs recover prejudgment interest; and
- d. The Plaintiffs be awarded any other remedy it is entitled to at law or at equity.

PRITCHARD & ELLIOTT, LLC

John C. Hayes, IV
8 Cumberland Street, Suite 200
Charleston, SC 29401
(843) 722-3300 FAX (843) 722-3379
ATTORNEYS FOR PLAINTIFFS

Dated this 19 day of June, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC., MARGEL
S. HENNING, STEVE FISCHER, MARK and
BRENDA SCHILLACI, GARY and BILLIE
CONLEY, GERALD DARNELL, JOHN MASCIOLI
and GLORIA HARDIN, CLINT GASKINS,
MITCHELL GASKILL, THOMAS MURPHY,
EDWARD BOGGS, BRUCE ADKINS,
CHARLESTON HOME TEAM PROPERTY, LLC.,
PAM SNYDER, LOUELLA ENK, JEREMIAH and
GLORIA MORRISON, ERIN BLEVINS, CHARLES
TAYLOR, JR., MARION RIZZARDINI, KAREN
ABRAMS, E. MIKELL CARROLL, VERNILL
ROBERTS, KIM JACKSON, META KING, JAMES
and MARGARET AYERS, MARY B. BURKE,
SEVENTH WING, LLC, RUTH CATE and
CHARLES WHITE, ROBERT and MARY ORTIZ-
ABREU, JR., LAURA LaTORRE, MARVIN and
PAULA SWINDLE, DONNA and DAVID WIGGINS,
EMILIE COLE SANDERS, PHILIP and CYNTHIA
JONES, ANDREW MOHR, ALISON SMITH,
BOBBIE FAULKNER, MARCUS and GRACE
THOMAS, DORIS SKUHRA, ROBERT and
RAGAN ALBERT, WILLIAM SILER, MARVA
CARD, SAMUEL RUBINO, MATT TATHAM,
SCOTT HERMAN, JAY and JENNIFER
MERRIMAN, MARY ELLEN OAKS, ELIZABETH
MOSELEY, ALI and MICHELLE ERFANI, EMILY
CHAPMAN, JOHN T. and LAURA L. MARTIN,
ROSEANN TECHMAN, ROBERT PRICE, HENRY
EDWARD TIENCKEN, JEAN B. WALLACE,
MICHAEL B. HARTNETT, CAROLYN CARRICO,
JENNIFER SNOWDEN, JOSHUA LONG, J.
MICHAEL and GLORIA McDONNELL, SANDRA
GIRT, JANE THOMPSON, JOHN HILL, III.,
GLENNA MCKENZIE, JEFF GARDNER,
FREEMAN THARP, PETE DUNHAM, JEANNE-
MARIE BUSUTTIL, GLADYS J. JOHNSON,
ROBERT W. SIMPSON, HEIDI J. RICHTER,
MARK COMMANDER, KATHLEEN WAITE, and
KOO HWANG as Individual Homeowners,

Plaintiffs,

vs.

BOSTIC BROTHERS CONSTRUCTION, INC.,
CAMBRIDGE TWO, LLC, CAMBRIDGE LAKES
LP a/k/a CAMBRIDGE LAKES APARTMENTS
HOMES, LP, CAMBRIDGE LAKES
APARTMENTS, LP a/k/a CAMBRIDGE LAKES
APARTMENTS HOMES, LP, CLASSIC

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2008-CP-10-3506

FILED
2010 JUL 14 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIRD
AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

Page 1 of 33

EXHIBIT 6-A

PROPERTIES, INC. OF CHARLESTON,
 CAMBRIDGE CONTRACTING LP, SELECTIVE
 INSURANCE COMPANY OF AMERICA,
 SELECTIVE INSURANCE COMPANY OF SOUTH
 CAROLINA, JOSE NINO, B & B CONSTRUCTION
 CO., INTERCOASTAL CONSTRUCTION, INC.,
 d/b/a and a/k/a INTRACOASTAL
 CONSTRUCTION, CAROLINA APARTMENT
 INTERIORS, LLC, ARMANDO MEDINA CORTEZ
 a/k/a ARMANDO MEDINA a/k/a ARMANDO
 CORTES d/b/a MJG CONSTRUCTION, VINCENT
 MORALES d/b/a V. MORALES MASONRY, MJG
 CONSTRUCTION AND HOMEBUILDERS, INC., B
 & B CONSTRUCTION OF CHARLESTON, INC.,
 SUPERSEAL MANUFACTURING, INC.,
 MAJESTIC WINDOW MANUFACTURING, LTD.
 f/k/a SOURCE WINDOWS, LTD., VWD (2008) NC,
 INC f/k/a VINYL WINDOW DESIGNS-USA, INC.
 a/k/a VINYL WINDOWS DESIGN, LTD. PEGRAM-
 WEST INC., CHASE HOMES, INC., CHASE-
 ROBERTSON BUILDERS, INC., SGM
 ARCHITECTS, INC. f/k/a SMITH, GERBER,
 MCCLURE & ASSOCIATES, INC. f/k/a SMITH
 GERBER & ASSOCIATES, INC., TRADEMARK
 PROPERTIES, INC., STEPHEN R. HEAPE,
 Individually and Independently As General Partner
 of CAMBRIDGE LAKES, LP, ALBERT V. ESTEE,
 Individually,

Defendants,

AND

BOSTIC BROTHERS CONSTRUCTION, INC.,

Third-Party Plaintiff,

vs.

JOSE NINO, INTERCOASTAL CONSTRUCTION,
 INC., CAROLINA APARTMENT INTERIORS, LLC,
 MJG CONSTRUCTION AND HOMEBUILDERS,
 INC., B & B CONSTRUCTION OF CHARLESTON,
 INC., AND V. MORALES MASONRY,

Third-Party Defendants.

The Plaintiffs, Cambridge Lakes Condominium Homeowners Association, Inc., and
 Margel S. Henning, Steve Fischer, et al. as Individual Homeowners, (hereinafter
 collectively "Cambridge") complaining of the Defendants named herein, would
 respectfully allege and show the Court as follows:

72. SGM Architects, Inc. f/k/a Smith, Gerber, McClure & Associates, Inc. f/k/a Smith Gerber & Associates, Inc. (SGM) contracted to provide professional architectural services during the construction and inspection work at Cambridge Lakes; and it approved work at Cambridge Lakes; for the intended benefit of Plaintiffs, who were intended third party beneficiaries of SGM's service contract.

73. SGM held itself out to the general public as a duly licensed architect in the State of South Carolina capable of designing and administering large construction contracts relating to the design and construction of projects such as Cambridge Lakes.

74. SGM has breached its Contract in that SGM failed to properly design and specify the Project in question and in failing to properly administer the construction performed by Bostic in that it certified payment for defective work of which the Plaintiffs were unaware and of which SGM was or should have been aware and, further, SGM provided structural design which was inadequate for the project in question. See Exhibit B.

75. As a direct and proximate result of SGM's breaches of contract as aforesaid, Plaintiffs have been proximately damaged as aforesaid in amounts to be determined at trial.

**FOR A FIFTH CAUSE OF ACTION
Unfair Trade Practice S.C.Code Ann. § 39-5-10, et seq. (Supp.2008)
(As to All Defendants)**

76. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.

77. At the time of construction and sale, Defendants were in the business of designing construction, repair, developing, converting, selling and marketing Cambridge Lakes.

78. Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. (Supp. 2008).

79. Defendants' above described activities, include: violating construction standards in the construction of the structure; violating building codes; mishandling the repair of the Plaintiffs' property; failing to comply with applicable South Carolina statutes, including but not limited to the South Carolina Horizontal Property Act S.C. Code Ann. § 27-31-10 et. seq.; concealing construction defects and consequential damages once discovered; and failing to honor warranty obligations; and these acts constitute unfair and deceptive practices in the conduct of the Defendants' trade; and such acts are capable of repetition and are injurious to the public, because the Defendants are capable of continuing such acts.

80. Defendants knew or should have known that their above described conduct violated South Carolina Code Ann. §§ 39-5-20, the Horizontal Property Act, § 27-31-30, and other applicable statutes.

81. Defendants' above described conduct entitles the Plaintiffs to an award of treble damages, attorneys' fees and costs.

**FOR A SIXTH CAUSE OF ACTION
Strict Liability/Products Liability
(As to Superseal, MWM, VWD, and PWI)**

82. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if stated verbatim herein.

126. Some or all of the said failures were committed with reckless disregard for the rights of others; and Plaintiffs are entitled to an award of special and punitive damages as a result.

**FOR AN THIRTEENTH CAUSE OF ACTION
Aiding and Abetting
(As to Albert Estee, Individually)**

127. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if stated verbatim herein.

128. Cambridge Two, LLC was engaged in the business of converting the Cambridge Lakes buildings into individual units for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code Section §§ 27-31-10 et. seq. and pursuant to the provisions thereof, and was thereby engaged in the business of building, constructing, marketing, converting, selling, renting and developing the Cambridge Lakes buildings in the state of South Carolina.

129. Cambridge Two, LLC has committed independent acts, omissions, and/or reckless wrongs in one or more ways as outlined above in the FIRST, SECOND AND FIFTH Causes of Action and realleged as if fully restated verbatim herein.

130. Albert V. Estee knew, had constructive knowledge, or was reckless in not knowing of the acts, omissions, and/or reckless wrongs that Cambridge Two, LLC was committing.

131. Albert V. Estee rendered substantial assistance in furthering the acts, omissions, and/or recklessness of Cambridge Two, LLC.

132. Albert V. Estee acted as a decision maker for Cambridge Two, LLC and was a driving force behind the acts, omissions, and/or recklessness of Cambridge Two, LLC as hereinabove described.

133. That Estee is liable to third parties for his participation in and furthering of the independent acts, omissions, and/or recklessness committed by Cambridge Two, LLC as hereinabove described.

134. That Estee has been willful, wanton, and reckless in his aiding, abetting, and furthering of the acts, omissions, and/or recklessness of Cambridge Two, LLC as hereinabove described.

135. That Albert V. Estee is liable for the losses and/or injuries to the Plaintiffs and sustained due to his aid to Cambridge Two, LLC.

136. That Estee's knowledge and/or constructive knowledge of the acts, omissions and recklessness of Cambridge Two, LLC and the assistance Estee provided to Cambridge Two, LLC has proximately damaged the Plaintiffs in amounts to be determined by the jury.

137. Some or all of the said failures were committed with reckless disregard for the rights of others; and Plaintiffs are entitled to an award of special and punitive damages as a result.

WHEREFORE, Plaintiffs pray that:

- a. Judgment be entered in favor of the Plaintiffs on all their causes of action herein;
- b. Plaintiffs recover actual damages, consequential damages, statutory damages, and punitive damages in an amount in excess of EIGHT MILLION DOLLARS (\$8,000,000.00);
- c. Plaintiffs recover all necessary and reasonable costs and expenses of this suit;

Page 30 of 33

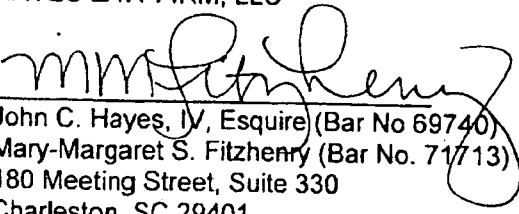
EXHIBIT 6-F

- d. Plaintiffs recover attorney's fees;
- e. Plaintiffs recover pre- and post-judgment interest at the maximum rates allowed by law, and that
- f. Plaintiffs be awarded any other remedy it is entitled to at law or at equity.

Respectfully submitted,

HAYES LAW FIRM, LLC

By:


John C. Hayes, IV, Esquire (Bar No 69740)
Mary-Margaret S. Fitzhenry (Bar No. 71713)
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: (843) 805-7003
Fax: (843) 720-5999
jhayes@hayeslaw.org
mfitzhenry@hayeslaw.org

ATTORNEYS FOR PLAINTIFFS

July 14, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE # 2010-CP-10-9158

JOHNSON KOOLA,
Plaintiff,

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 APARTMENTS, LP a/k/a
CAMBRIDGE LAKES APARTMENT
HOMES, a/k/a CAMBRIDGE LAKES
APARTMENTS, L.P, a/k/a CAMBRIDGE
LAKES APARTMENT HOMES, L.P,
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,

Defendant.

**NOTICE OF MOTION AND MOTION
FOR AMENDMENT AND
RECONSIDERATION OF THE ORDER
GRANTING SUMMARY JUDGMENT
TO DEFENDANTS**

FILED
2012 SEP 28 PM 4:07
JULIE J. ADAMS, CLERK OF COURT
BY _____

TO: ATTORNEY LINDA GANGI, Attorney for defendants Cambridge Lakes, LP a/k/a
Cambridge Lakes Apartment Homes a/k/a Cambridge Lakes Apartments, LP a/k/a
Cambridge Lakes Apartment Homes, LP Stephen Heape, and Classic Properties of
Charleston, Inc; and

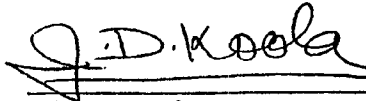
TO: ATTORNEY DAVID PARRISH, Attorney for Cambridge Two, LLC, Albert V. Estee:

PLEASE TAKE NOTICE that plaintiff Johnson Koola, pursuant to Rule 59 of the South
Carolina Rules of Civil Procedure, and upon the attached Affidavit of Johnson Koola, sworn to
September 28, 2012, will move this Court at such time and place as is convenient for the Court for
an Order amended and granting reconsideration of the September 19, 2012 Order of the Hon.
Jeffrey Young which granted defendants' motion for summary judgment. The grounds for this

Motion are that the Court failed to apprehend that there is a genuine issue of material fact as to the time that plaintiff had notice that defendants allegedly violated of South Carolina Horizontal Property Act §27-31-10 and more specifically, §27-31-430 and South Carolina Unfair Trade Practices Act §39-5-1- et. seq., and committed the fraud and other misconduct alleged in plaintiff's Complaint, and that this material fact in dispute precludes the grant of summary judgment to the defendants under Rule 56 of the South Carolina Rules of Civil Procedure.

Dated: Mount Pleasant, S.C.
September 28, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.D. Koola", is written over a horizontal line.

Johnson Koola
Plaintiff, *Pro Se*
1587 Cambridge Lakes Dr
Mt. Pleasant, SC 29464
(843) 849-9241
johnson.koola@msn.com

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE # 2010-CP-10-9158

JOHNSON KOOLA,

Plaintiff,

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 APARTMENTS, LP a/k/a
CAMBRIDGE LAKES APARTMENT
HOMES, a/k/a CAMBRIDGE LAKES
APARTMENTS, L.P, a/k/a CAMBRIDGE
LAKES APARTMENT HOMES, L.P,
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,

Defendant,

**AFFIDAVIT OF J. KOOLA IN SUPPORT
OF MOTION FOR AMENDMENT AND
RECONSIDERATION OF THE ORDER
GRANTING SUMMARY JUDGMENT
TO DEFENDANTS**

FILED
2012 SEP 28 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) S.S. :

JOHNSON KOOLA, being duly sworn, deposes and says:

1. I am the plaintiff in the above-captioned action. I am over the age of 18 years and I believe in the sanctity of an oath. I submit this Affidavit in support of plaintiff's Motion to Amendment and Reconsideration of this Court's September 19, 2012 Order granting summary judgment to the defendants. I have personal knowledge of the following facts and if before this Court in person, I would testify competently to the same.

2. On September 4, 2012, the Honorable Judge Jeffery Young signed a proposed order granting summary judgment to Defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP a/k/a Cambridge Lakes Apartment Homes a/k/a Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartment Homes, LP Stephen Heape, and Classic Properties of Charleston, Inc. on the motions filed by these Defendants to dismiss plaintiff's claims in this action.

3. This Order was entered by the Clerk of the Court on 19th day of September, 2012. The Plaintiff received the Notice of Judgment/Order from the Office of the Clerk of the Court on 24th day of September, 2012. Accordingly, the instant Motion for Amendment and Reconsideration of this Order is timely within the ten (10) day limitation set by SCRP Rule 59.

4. During the motion hearing on July 25, 2012, the Honorable Judge Jeffery Young directed the parties to the case to submit written statements in response to defendants' summary judgment motions within 10 days.

5. Plaintiff submitted to the Honorable Judge Jeffery Young that the Plaintiff's civil action DOES NOT deal with construction defects. Rather, my claims against the defendants are for defendant's alleged violations of South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, et seq. (specifically, § 27-31-430) and South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-1, et. seq., as well as, fraud and related claims each related to the moving defendants' alleged violations of the South Carolina Horizontal Property Act and South Carolina Unfair Trade Practices Act.

6. In pertinent part, relevant sections of South Carolina Horizontal Property Act §27-31-430 provide as follows: "Whenever the lessee, sole owner or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of disclosure to all prospective purchasers as to the physical condition of the building. The disclosure

shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the physical condition of all general common elements A failure to make the disclosure required by this section shall constitute a violation of South Carolina Unfair Trade Practices Act.”

7. South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-430 does not prohibit the sale of condominiums converted from apartments to prospective buyers. However, the Act demands and requires that the seller affirmatively disclose the construction defects to prospective buyers through a Report prepared by an architect or engineer in the form of Disclosure of the Physical Condition of the Building.

8. Plaintiff did not file the instant civil action, Case No. 2010-CP-10-9158, against the defendants for alleged construction defects. The defendants are not responsible for the construction defects. The builder, the builder’s contractors and subcontractors and the architect are responsible for construction defects. However, the defendants are responsible for their failure to disclose the physical condition of the buildings to prospective buyers. The claims in the instant civil action are against the moving defendants for their willful failure to disclose the physical condition of the buildings to prospective buyers, including myself, in violation of the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et seq.*

9. In my August 1, 2012 post-hearing submission to this Court, I specifically stated and set forth that I did not become aware of the moving defendants’ alleged violations of the South Carolina Horizontal Property Act and South Carolina Unfair Trade Practices Act until **September 2010**. See J. Koola Post-Hearing Submission, pp. 3-4. This contradicts and stands opposite to the claim made by the defendants that a June 2008 date should control. Again, in June 2008, I was only aware of a claim for construction defects, but I did not become aware of a claim for defendants’ violations of the S.C. Horizontal Property Regime Act until September of 2010, which is only two months after the time that the attorneys for the HOA in their case against the

moving defendants (Case No.: 2008-CP-10-3506) became aware of such claim and amended their pleadings in that case.

10 In the affidavit submitted by the moving defendants to the Honorable Judge Jeffery Young on August 20, 2012, defendants made the following statements in the second paragraph on page 2 under "FACTS": "On June 16, 2008 the HOA, on behalf of itself and the individual condominium unit owners joining in that lawsuit, filed a lawsuit against Moving Defendants and other parties. 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 27-31-1 et seq. in connection with the conversion and sale of the condominiums". **This is a total misrepresentation of fact. In the 2008 Complaint filed by the HOA, there is no mention by the HOA of alleged violations of the S.C. Horizontal Property Regime Act by the moving Defendants. By misrepresenting that the HOA brought claims in 2008 for violations of the S.C. Horizontal Property Regime Act, the moving defendants wrongfully assert that I knew or should have known that I had a claim against the defendants for violations of S.C. Horizontal Property Regime Act in 2008. This is not the case. The HOA suit against the moving defendants did not bring claims against the moving defendants for violation of S.C. Horizontal Property Regime Act until June and July of 2010.**

11. This false statement made by the moving Defendants that I should have known about the moving defendants' alleged violations of S.C Horizontal Property Regime Act in 2008 appears to have misled this Court in the following manner:

- I. To mistakenly assume and believe that the plaintiff knew about the violations of S.C. Horizontal Property Act by the Defendants as early as June of 2008, and
- II. To accept the assertion made by the moving defendants that the statute of limitations began to run from June 2008, thereby affording a basis for the moving defendants to argue that service of process after June of 2011 was beyond the three (3) year statute of Limitations.

12. As set forth above, I did not learn of the moving defendants' alleged violations of the S.C. Horizontal Property Regime Act until September of 2010. This was the time when I reviewed the HOA's Second and Third Amended Complaints in the HOA case (Case No.: 2008-CP-10-3506) dated June 28, 2010 and July 10, 2010, respectively, where the HOA plead that the moving defendants violated S.C. Horizontal Property Act. Upon review of these pleadings in September of 2010, I discovered that I would also claims against the moving defendants for violations of S.C. Horizontal Property Regime Act. At this time, I immediately consulted an independent attorney and advised him about the alleged violations of South Carolina Horizontal Property Act by the moving Defendants. At this time, I also learned from this attorney that the moving defendants have falsified a Builder's Certificate, thereby committing fraud. Subsequently, I filed the instant civil action, Case No. 2010-CP-10-9158, in November 2010. The moving defendants were all served personally by January 2012, which is well within the three (3) year state statute of limitations (accruing in September 2010) for the claims asserted against the moving defendants in this case. I am advised that a claim begins to accrue under S.C. law when the plaintiff knows or should know of the existence of his or her claim. In the instant case, the statute of limitations only began to run in September 2010.

13. To further address the positions taken by the defendants in their proposed Order signed by this Court, a brief statement of the factual background is helpful. In February of 2004, I bought a condominium in Cambridge Lakes subdivision located in Mount Pleasant. By that time, the moving defendants had issued a "Builder's Certificate" to me and my mortgage lender, stating that "The Structural, Health & Safety repairs and remodeling have been completed." Defendants issued this Certificate to comply with the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-430. At the time of my purchase of a condominium unit, I had no reason to believe that the moving Defendants had violated any South Carolina Code of Law. Again, it was

not until I reviewed the amended pleadings filed by the HOA's attorney in September 2010 that I became aware that additional claims for violations of the S.C. Horizontal Property Regime Act also existed.

14. At the time I purchased my condo, I was unaware of the defendants' fraud. This is understandable since only a week before closing, I was given a copy of the Master Deed, which stated as follows: "Developer submits the Property in Charleston County, State of South Carolina, described herein and on Exhibit "A" attached hereto and made a part thereof, including the improvements now or hereafter thereon, to the provision of the Horizontal Property Act, § 27-31-10 *et. seq.* South Carolina Code of Laws, 1976 (the Act), the provisions of which, unless expressly provided otherwise herein, are incorporated herein by reference and form a part of this Master deed, for the specific purpose of creating and establishing the Cambridge Lakes Horizontal Property regime (the Condominium)". The Master Deed is not just a signed document, but also a sworn and signed statement. Having received a sworn and signed document, I had no reason at the time to assume that the moving defendants had violated South Carolina law.

15. In their post-hearing submissions, the moving defendants submitted two exhibits which were previously offered at the July 25, 2012 motion hearing. These exhibits did not make me aware at the time that the defendants had violated the S.C. Horizontal Property Regime Act. As set forth above, I discovered the existence of my claim for violations of the S.C. Horizontal Property Regime Act in September 2010

16. As further grounds for this Court to reconsider and amend the September 19, 2012 Order, the moving defendants filed the motion to dismiss plaintiff's case in January 2012. At that time, the moving defendants failed to file any supporting affidavits contemporaneous to the filing of their motion. Under S.C. procedural law, when a motion is filed, it is to be supported by an affidavit, which shall be served with the motion. In the instant case, the moving defendants only filed affidavits and memoranda on the day of motion hearing in violation of Rule 6(d), SCRPC.

17. On July 25, 2012, Judge Young directed the parties to the motion to submit written statements within 10 days. I complied with the Court's directive by filing the written statement on August 1, 2012. The moving defendants submitted their submissions only on August 20, 2012 in violation of this Court's Order and S.C. procedural law. I respectfully submit that defendants' late filing in violation of the Court's Order should not be considered.

18. In the instant case, Case No.: 2010-CP-10-9158, I respectfully submit that the applicable Statute of Limitations only began to run from September 2010. However, as the date that I became aware or should have been aware of the existence of my claims against the moving defendants for violations of the S.C. Horizontal Property Regime Act is clearly an genuine issue of material fact, it is well established under Rule 56(c) of the South Carolina Rules of Civil Procedure that the moving defendants are not entitled to summary judgment on this issue.

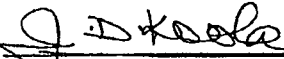
WHEREFORE, plaintiff respectfully prays that this Court grant the following relief:

- I. Vacate its September 19, 2012 Order by finding that the moving defendant are not entitled to summary judgment due to the existence of a genuine issue of material fact as when the statute of limitations started to run on plaintiff's claims for defendants' alleged violation of the S.C. Horizontal Property Regime Act;**
- II. To deny the Motion for Summary Judgment by the moving defendants; and**
- III. Reinstate the plaintiff's claims against the moving defendants.**

THE AFFIANT FURTHER SAYETH NAUGHT.

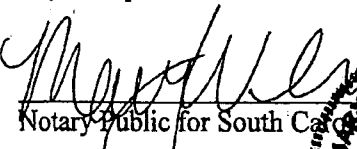
Dated: September 27, 2012

Respectfully submitted:



Johnson Koola
Plaintiff Pro Se
1587 Cambridge Lakes Dr
Mt. Pleasant, SC 29464
(843) 849-9241
johnson.koola@msn.com

Sworn to before me this 28th
Day of September, 2012 -


Notary Public for South Carolina

My Commission Expires:



10-9158

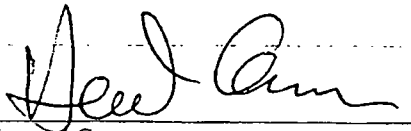
STATE OF SOUTH CAROLINA) (Charleston County)
AFFIDAVIT

JOHNSON KOOLA

VS.

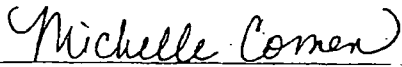
CAMBRIDGE TWO LLC ET AL

PERSONALLY APPEARED before me Howard Comen, first being duly sworn, deposes and states as follows: That he served the CIVIL ACTION COVER SHEET, SUMMONS, AND COMPLAINT on STEPHEN HEAPE. at 24 RIVER REACH WAY, CHARLESTON, SOUTH CAROLINA at 8:00 AM JANUARY 04, 2012.



Howard Comen

Sworn To before me this
20 Day of Jan. 2012



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires:

Nov. 21, 2014

FILED
2012 FEB -3 PM 12:05
JULIE J. ARMSTRONG
CLERK OF COURT

10 - 9158

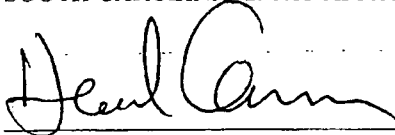
STATE OF SOUTH CAROLINA) (Charleston County)
AFFIDAVIT

JOHNSON KOOLA

VS.

CAMBRIDGE TWO LLC ET AL

PERSONALLY APPEARED before me Howard Comen, first being duly sworn, deposes and states as follows: That he served the CIVIL ACTION COVER SHEET, SUMMONS, AND COMPLAINT on ALBERT ESTEE at 1403 CAMBRIDGE LAKES DR., MT. PLEASANT, SOUTH CAROLINA at 8:03 AM JANUARY 17, 2012.


Howard Comen

Sworn To before me this
20 Day of Jan. 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires:

Nov. 21, 2014

FILED
2012 FEB -3 PM 12:05
JULIE J. ARMSTRONG
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No.: 2010-CP-10-9158

JOHNSON KOOLA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CAMBRIDGE TWO, LLC, et al.,	)
	)
Defendants.	)

NOTICE OF APPEAL

Plaintiff/Appellant Johnson Koola ("appellant") hereby appeals the September 19, 2012 Order and/or January 28, 2013 ruling of the Hon. W. Jeffrey Young, which denied appellant's Motion for Amendment and Reconsideration of the September 19, 2012 Order of W. Jeffrey Young which granted summary judgment to defendants Cambridge Two, LLC, Albert V. Estee, Cambridge Lakes, LP (a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartments Homes, LP), Stephen R. Heape, and Classic Properties of Charleston, Inc. (Collectively, "defendants/appellees") and dismissed plaintiff's claims against defendants/appellees on the grounds that said claims were barred by application of the South Carolina Statute of Limitations.

On January 28, 2013, appellant received an email of a January 28, 2013 letter from Tina M. Christmas, Administrative Assistant to the Hon. W. Jeffrey Young, informing appellant that the Hon. W. Jeffrey Young had denied appellant's Motion for Reconsideration and Amendment of Judge Young's September 19, 2012 Order granting summary judgment dismissal of appellant's claims against the defendants/appellees.

Dated: Mt. Pleasant, S.C.
February 6, 2013

Respectfully submitted,

WILLIAM B. JUNG, ESQ.
Attorney for the Plaintiff/Appellant


William B. Jung, Esq.
1156 Bowman Road, Ste. 100-D
Mt. Pleasant, S.C. 29464
(843) 416-1104

Proof of Service

I, William B. Jung, Esq., under penalty of perjury, certify that on February 6, 2013, I served a copy of plaintiff's Notice of Appeal by faxing, emailing and mailing a true and accurate complete copy thereto to the following counsel of record for the plaintiff:

Linda Weeks Gangi, Esq.
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1300 Second Avenue, Third Floor
P.O. Box 1740
Conway, S.C. 29528
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Attorneys for the Defendants/Appellees

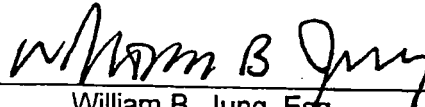
The Hon. Julie J. Armstrong
Clerk, Court of Common Pleas
Charleston County
100 Broad Street
Charleston, S.C. 29401

David J. Parrish, Esq.
Nexsen Pruet, LLC
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Charleston, S.C. 29402

Michael Scarfile, Esq.
Carolina One Realty
4024 Salt Pointe Parkway
Charleston, S.C. 29405

Frank Cisa, Esq.
Cisa & Dodds
858 Low Country Blvd., Ste. 101
Mount Pleasant, S.C. 29464

Dated: Feb. 6, 2013


William B. Jung, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
BAC Home Loans Servicing, LP f/k/a)
Countrywide Home Loans Servicing LP)

Plaintiff)

COURT OF COMMON PLEAS
CASE # 2010-CP-10-6060

ANSWER OF DEFENDANT JOHNSON D
KOOLA to Cambridge Lakes Homeowners
Association, Inc. FIRST SET OF
INTERROGATORIES

Johnson D. Koola; First Citizens Bank and)
Trust, Inc. f/k/a First Citizens Bank and)
Trust Company of South Carolina and)
Cambridge Lakes Home Owners)
Association, Inc. f/k/a Cambridge Lakes)
Horizontal Property Regime)

Defendants)

FILED
2010 MAY 23 PM 4:29
CLARK ARSTRONG
CLERK OF COURT

To

Cambridge Lakes Homeowners Association, Inc.
f/k/a Cambridge Lakes Horizontal Property Regime

Defendant Johnson D. Koola (hereinafter, defendant Koola) presents his answer to Defendant Cambridge Lakes Homeowners Association's f/k/a Cambridge Lakes Horizontal Property Regime (hereinafter, defendant HOA) first set of interrogatories to the Honorable Court and to the defendant HOA.

Interrogatory 1. If you or your attorney know of any persons who are or might be witnesses to the facts of this case, please give the following information:

- (a) What are their names and addresses?
- (b) Do you have either written or recorded statements from any of them?
- (c) If you do, please state from whom you have such statements.
- (d) If you have such statements, who is in possession of them?

Answer: **Witness #1:** Mr. Steve Fisher, Member, Board of Directors, Cambridge Lakes Homeowners Association; official address: Ravenel Associates, 3090 Highway 17 North, Mt. Pleasant, SC 29466. Defendant Koola had a meeting with Mr. Fisher on November 20, 2004 and asked him about rumors of construction defects in Cambridge Lakes condominiums. My immediate neighbor, who was working for the architect firm, which oversaw the construction of Cambridge Lakes apartments, told me in private that some of the construction defects might be for real. He would not elaborate on this matter, as he was afraid of his job with the architect firm. Defendant Koola cannot reveal his name without a court order. Defendant Koola conveyed this information (what my neighbor told me in private) to Mr. Fisher.

Mr. Fisher denied any construction defects and did not act further on my discussion with him in dereliction of his fiduciary responsibility. Four years later, defendant HOA filed a lawsuit against the builder and related parties (case # 2008-CP-10-3506); the architect firm is one of the defendants in the said case. Mr. Fisher will be required to confirm under oath about my discussion with him in 2004 and his dereliction of fiduciary responsibility.

Defendant Koola does not have a copy of the discussion that took place between Mr. Fisher and himself. However, defendant Koola does have a copy of his agenda that he prepared for his discussion with Mr. Fisher (Exhibit 1).

Witness # 2: Mr. John Martin, Member, Board of Directors, Cambridge Lakes Homeowners Association; official address: Ravenel Associates, 3090 Highway 17 North, Mt. Pleasant, SC 29466. Defendant Koola had a meeting with Mr. John Martin in early 2009 to discuss the alleged construction defects for which the defendant HOA had filed a lawsuit against builder, developer/seller and others (case # 2008-CP-10-3506); At that time, Mr. Martin explained to defendant Koola about some of the construction defects, primarily water leaks into some of the buildings. He informed defendant Koola further that he and some other homeowners had complained about water leaks into the buildings to the developer/seller at the time the Cambridge Lakes Apartments were converted into condominiums. Defendant Koola does not have any written documents about this conversation. Mr. John Martin will be required to confirm under oath about this conversation and confirm under oath that he, a board member, knew of construction defects around 2003/2004 and not in 2008.

Defendant Koola had a second meeting with Mr. Martin in November 2009 about irregularities in the defendant HOA's financial statements. On his advice, defendant Koola wrote to him and Ms. Sherry Martin, the property manager at that time (two or more e-mails and two or more letters, Exhibit 2). He will be required to answer under oath why he, as board member, did not act on defendant Koola concerns about account irregularities.

Witness # 3: Ms. Sherry Martin, (the Property Manager, Cambridge Lakes HOA during 2009) at Ravenel Associates, 3090 Highway 17 North, Mt. Pleasant, SC 29466. Ms. Martin will be required to answer under oath questions: (a) why she did not act on defendant Koola's e-mails and letters (Exhibit 2) regarding his questions about irregularities in the defendant HOA's financial statements and (b) whether she was informed of listing of his property for short sale by the real estate agent in April 2010.

Witness # 4: Ms. Janis M. Griffin, former HOA Account for Cambridge Two LLC and Cambridge Lakes Homeowners Association. (I might have misspelled her last name; I apologize to the Honorable Court and witness # 4 for this potential mistake). Defendant Koola does not have her current address.

Ms. Griffin signed off the "Builder's Certification" (Exhibit 3) on behalf of the developer/seller issued to the mortgage lender, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP. Under oath, she will be required to answer questions about her signing off the Builder's certification and condition of the Cambridge Lakes Condominiums at the time Cambridge Lakes apartments were converted to Cambridge Lakes condominiums by the developer seller and whether any of the occupants of the Cambridge Lakes apartments and whether any of the early buyers of Cambridge Lakes Condominiums have complained to her about water leaks into their unit and of any other construction defects.

Interrogatory 2. Please set forth a list of photographs, plats, sketches, or other prepared documents that might be in your possession relating to the accident in question.

Answer: (a) Defendant Koola defends his case against defendant HOA based on various provisions of the Master Deed of the Cambridge Lake Horizontal Property Regime, filed in Book T437, Charleston County RMC Office as well as various provisions of South Carolina Horizontal property Act. References have been made very clearly to those provisions of the Master Deed and South Carolina Horizontal Property Act in defendant Koola's Answer and Counterclaims to defendant HOA filed with the court on March 3, 2011 and in defendant Koola's response to defendant HOA's first set of interrogatories.

(b) Defendant Koola has made a reference to potential violation of Title 27-31-200, S.C. Code 1976 as amended, by defendant HOA with respect to the obstruction of short sale of the property to avoid foreclosure.

(c) Defendant Koola has made reference to the lawsuit filed by defendant HOA against builder, developer/seller and others, especially references made to developer/seller by defendant HOA alleging that the developer/seller has violated provisions of South Carolina Horizontal Property Act.

(d) Defendant Koola has made other references in his response to defendant HOA's first set of interrogatories, which are supported by various exhibits. Exhibits are numbered and copies of the same are attached herewith.

Interrogatory 3. Set forth an itemized statement of all direct and consequential damages claimed to have been sustained by you.

Answer: (a) Defendant Koola will present evidences before the Honorable Court that the Master Deed of the Cambridge Lake Horizontal Property Regime, filed in Book T437, Charleston County RMC Office, is legally invalid. Defendant Koola will request the Honorable Court to nullify the original sale of the condominium to him and to order the defendant HOA to return the purchase price of the condominium (\$151,325.00) to defendant Koola.

(b) There are several allegations that have been alleged by defendant Koola against defendant HOA as detailed in the Answer and Counterclaim of defendant Koola filed with the Court on March 3, 2011. Defendant HOA will have to compensate defendant Koola for these damages, if the Honorable Court upholds defendant Koola's charges.

(c) If any of the allegations are confirmed as fraud or conspiracy to commit fraud, then the actual damages paid to defendant Koola will be determined by the Honorable Court as per South Carolina rules dealing with fraud charges.

(e) Reasonable costs and expenses and legal cost of this defense.

(f) Defendant Koola will pray to the Honorable Court that he be awarded any other remedy that he is entitled to at law or at equity.

Interrogatory 4. Provide a detailed calculation of each element of damages claimed and list each document that you used to provide information to calculate these damages

Answer: Interrogatory 4 has been answered under interrogatory 3 above.

Interrogatory 5. Please list the names and addresses of any expert witnesses whom you propose to use in the trial of this case

Answer: Defendant Koola is in the discovery process to determine the complicity of defendant HOA in his foreclosure related legal cases. Only after the discovery process is completed, defendant Koola will decide upon the names of expert witnesses. At that time, defendant HOA will be provided with the names of expert witnesses who will be called upon to testify on defendant Koola's behalf.

Interrogatory 6. For each person known to Plaintiff or to counsel to be a witness concerning the facts of this case, please:

- (a) Set forth a summary of the important facts known to or observed by such witness; or
- (b) Provide a copy of any written or recorded statement taken from such witness.

Answer: For any questions related to Plaintiff, defendant HOA is requested to contact the Plaintiff directly. If that not be the case, defendant HOA is advised to approach the Honorable Court and request the Honorable Court to issue directives to defendant Koola to comply with interrogatory 6.

Interrogatory 7. From January 2006 until the date on which you respond this interrogatory, for each time you allegedly listed the Property for sale, please state:

- (a) The date on which you listed the Property for sale
- (b) The sale price of the property;
- (c) The name, address and telephone number of the real estate broker(s) who represented you in the sale; and
- (d) The names and addresses of any prospective buyers.

Answer: Fourth attempt to sell the property. Short Sale. The property was listed for short sale in April 2010. The listing information providing details of the initial sales price, name of the agent and other relevant information is attached as Exhibit 4. According to information provided to defendant Koola by the real estate agent, the real estate agent called Ms. Sherry Martin, (the Property Manager, Cambridge Lakes HOA) at Ravenel Associates, shortly after the property was listed, informed the manager about the short sale and received information about defendant Koola's alleged HOA dues. In May 2010, however, defendant HOA placed a lien on the property. Further, defendant HOA filed a lawsuit against defendant Koola in the Small Claims Court in North Charleston (case # 2010-SC-87-1646) in August 2010. At this stage, defendant Koola cancelled the short sale of the property to enable him to defend the civil case (case # 2010-SC-87-1646) as well as the foreclosure case (case # 2010-CP-10-6060). Under information and belief, defendant Koola alleges that placing a lien on the property and then filing a lawsuit against defendant Koola when the property was listed for short sale, is an act of obstruction of short sale on the part of defendant HOA and potential violation of Title 27-31-200, S.C. Code 1976, as amended.

Third attempt to sell the property: The property was listed for sale-cum-lease in July 2009. Defendant Koola does not have listing information with him now. The listing agent was Mr. Bob Curtis, Century 21; tel (843) 856-1965.

Second attempt to sell the property: Defendant Koola made an attempt to list the property for sale in June 2009 with Ms. Dianne Bloom, tel.: (843) 343-6207, Century 21. **Agent Bloom refused to list the property citing the ongoing lawsuit filed by the Defendant HOA against Builders and related parties (case # 2008-CP-10-3506).**

First attempt to sell the property: Defendant Koola listed the property for sale in June/July 2008 with the real estate agent, Mr. Bryan Crabtree, Tel.: (843) 343-4141 with Coldwell Bankers. Defendant Koola does not have listing information with him now

Defendant Koola did not receive any offer from prospective buyers to buy the property. Defendant Koola wishes to bring to the attention to the Honorable Court that defendant HOA filed the lawsuit against builders and related parties in June 2008 (case # 2008-CP-10-3506). Under information and belief, defendant Koola alleges that the ongoing lawsuit (case # 2008-CP-10-3506) and the massive construction defects as alleged in the lawsuit were the prime factors why defendant Koola did not receive a single offer from any prospective buyers.

Interrogatory 8. List and identify all documents supporting your contention that the Association failed to obtain approval from homeowners in Cambridge Lakes prior to filing the lawsuit Cambridge Lakes Homeowners Association, Inc., et al., Case No. 2008-CP-10-3506, Charleston County, South Carolina as filed on June 19, 2008.

Answer: The lawsuit (# 2008-CP-10-3506) filed by the defendant Association falsely claims that "The HOA (the defendant Association) and individual homeowners own the elements of Cambridge". The defendant Association does not own anything in the subdivision. This has been made clear in the Master deed (Section 6 para 4, Section. 12 and Section 24 para 3 (c) as well as in the SC Horizontal Property Act. Defendant Koola alleges that the defendant Association has no standing in the lawsuit # 2008-CP-10-3506.

The defendant Association can file a lawsuit on matters, which would involve special assessment, with the approval from 2/3 of the homeowners as stated in Master Deed Section 16 para 6 and Bylaws Article 5 para 7 (a). Accordingly, the defendant Association has no authority to file a lawsuit without approval from homeowners, which would result in special assessment.

On June 25, 2008, the defendant HOA and HOA's attorney sent a letter (Exhibit 5) to the homeowners informing the homeowners that a lawsuit (# 2008-CP-10-3506) has been filed against the builder, developer and others. In that letter, the homeowners were requested to "assign to the Cambridge Lakes Homeowners Association (HOA), Inc. any and all claims, rights of action or causes of action" against the defendants in the said case. The letter further asked the homeowners to agree to "collection of any special or regular assessments together with late fees through, by or on behalf of the HOA irrespective of whether any such action is currently pending, has been concluded or is initiated in the future....". Both the defendant HOA and its attorney know very well that collection of special assessment requires approval from 2/3 of the homeowners.

The defendant Association can file a lawsuit on matters, which would involve special assessment, with the approval from 2/3 of the homeowners as stated in Master Deed Section 16 para 6 and Bylaws Article 5 para 7 (a).

Interrogatory 9. List and identify all the documents supporting your contention that the Association was allegedly aware that the Developer violated any portion of the South Carolina Horizontal Property Act, S.C. Code Ann. 27-31-10. et. seq.

Answer: The lawsuit # 2008-CP-10-3506 filed by defendant HOA initially on June 19, 2008 and subsequently amended on June 26, 2010 and amended third time on July 14, 2010 has clearly alleged that developer/seller violated South Carolina Horizontal Property Act, S.C. Code Ann. 27-31-10. et. seq.

Does the defendant HOA require from defendant Koola any additional documents with respect to Interrogatory 9?

Interrogatory 10. List and identify all documents supporting your contention that the Association was allegedly aware that the developer falsified a "Builder's Certification"

Answer: Defendant Koola has a copy of the "Builder's Certification" in his possession (exhibit 3). The builder's certification was issued by the developer/seller to the mortgage company certifying that "The structural, health & safety repairs and remodeling have been completed". This certification was issued by the developer/seller to satisfy a key provision of The Horizontal Property Act, specifically Para 27-31-430, related to "Disclosure of Physical Condition of Building" and consequently South Carolina Unfair Trade Practices Act, Sections 39-5-40 et. seq. I truly believed the contents of the Builder's certification. It may be noted that "Builder's Certification is synonymous with The South Carolina Horizontal Property Act, Para 27-31-430, related to "Disclosure of Physical Condition of Building"

Defendant Koola studied the "Builder's Certification" again when the defendant HOA filed the lawsuit # 2008-CP-10-3506 against builder, developer/seller and others. Then, I studied the Master Deed of the Cambridge Lake Horizontal Property Regime, filed in Book T437, Charleston County RMC Office very, very carefully. The said Master Deed stated that "developer submits the Property in Charleston County, State of South Carolina (that is Cambridge Lakes Condominiums) to the provision of the Horizontal Property Act, section 27-31-10, et seq., South Carolina Code of Laws 1976,....." Now, it was clear the developer/seller understood the provisions of South Carolina Horizontal Property Act.

Then defendant Koola studied the South Carolina Horizontal Property Act very carefully. A key provision of The Horizontal Property Act, specifically Para 27-31-430, relates to "Disclosure of Physical Condition of Building". This provision states: "Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of a rental units to condominiums ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. A failure to make the disclosure required by this section shall constitute a violation of South Carolina Unfair Trade Practices Act."

Defendant Koola has not received a copy of the report "Disclosure of Physical Condition of Building". This convinced Defendant Koola that developer/seller has falsified the "Builder's Certification" and violated the South Carolina Horizontal Property Act.

The defendant HOA took over the responsibilities, assets and liabilities of Cambridge Lakes Homeowners Association in 2004 from the developer/seller. The defendant HOA continues to use the Master Deed registered by the developer/seller filed in the name of the Cambridge Lake Horizontal Property Regime, filed in Book T437, Charleston County RMC Office. Any violation of rules committed by the developer/seller is then transferred to the defendant HOA. And in June 2008, the defendant HOA filed the lawsuit against the builder and others including developer/seller. The claims against the developer /seller state that he violated South Carolina Horizontal Property Act (synonymous with "Builder's Certification") and South Carolina Unfair Trade practices Act. This proves that the defendant HOA was aware of the falsification of Builder's certification by the developer/seller vis-à-vis violation of South Carolina Horizontal Property Act and South Carolina Unfair Trade practices Act.

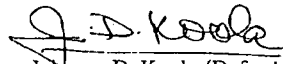
Interrogatory 11. List and identify all documents supporting your contention that the Association was allegedly aware of construction defects at Cambridge Lakes in 2004 and kept said information confidential from homeowners and prospective buyers

Answer: Interrogatory 11 has been partially addressed under interrogatory 1. Here are additional information to support my contention that the Association was allegedly aware of construction defects at Cambridge Lakes in 2004. In late 2004, there was a very, very severe weather condition and heavy rainfall in Mt. Pleasant. There were reports of water leaks into various units. Water leak into units is the most serious claim of the defendant HOA against the builder and others as filed in the lawsuit (# 2008-CP-10-3506). The defendant HOA filed the formal lawsuit on June 19, 2008. This means that the Board of Directors of the defendant HOA was discussing the construction defects before June 2008. Long before these discussions, complaints of construction defects from homeowners must pour into defendant HOA's office. Defendant Koola cannot state when these complaints poured into the defendant HOA's office. If necessary, Defendant Koola will request the Honorable Court to issue subpoena to search the office of defendant HOA for records related to construction defects.

Interrogatory 12. Identify each and every person or entity supplying information used to prepare the answers to these interrogatories or assisting in answering these interrogatories and as to each person so identified, indicate the number of the interrogatory or portion thereof, to which that person or entity supplied information and/or assisted in answering.

Answer: Defendant Koola prepared himself the answers to Defendant HOA's first set of interrogatories.

Dated this 23rd day of May 2011
Mt Pleasant, South Carolina 29464


Johnson D. Koola (Defendant)
(843) 849-9241

Mr. Steve Fisher

November 20, 2004

HOA related:

1. Electricity consumption. Change electric bulbs in the hallways with fluorescent tube lights, or the least with fluorescent bulb lights. Timer for electric lights outside the buildings.
2. Defective Building construction. Please contact the architectural firm or consultants that built this complex. It is learnt that various building code difficulties were identified at the time of construction. There were difficulties to get insurance for the building complex. This I learnt from a third party. That party may or may not reveal more information due to conflict of interest.
3. Change in management. There should be substantial savings.
4. Outside the building maintenance
5. Ponds cleaning, introducing more fish and increase the level of water
6. Planting more trees
7. Exercise room: a better treadmill with lining
8. Battery disposal
9. Street light

Personal:

1. Identify my personal AC unit
2. Maintenance work for AC, heater and water heater – recommendation
3. Insurance versus maintenance
4. Testing fire alarms

Personal, but common to all homeowners

1. Noise level – dog running at high speed. Have knocked on the door some 20 times
2. Noise level – dog just running
3. Noise level due to poor carpeting and padding
4. Solution – Personal level, city level, HOA level

EXHIBIT 1

JUNO Message Center

From: "jkoola@juno.com" <jkoola@juno.com>

To: smartin@ravenelassociates.com

Cc: bananawind1@bellsouth.net

Sent: Mon, Nov 30, 2009 12:27 PM

Subject: Cambridge Lakes HOA annual budget and monthly statements

Ms. Martin, John, I wish to bring to your kind attention my concerns about Cambridge Lakes HOA annual budgets and monthly statements for collecting monthly regime.

I went through the annual budget. I find a very large number of inconsistencies in the budget.

1. It does not show the actual regime revenue; it shows only projected income. It is now widely known that regime collection is far below the budget estimate. At the same time, the miscellaneous income and interest income show the budgeted amounts as well as the actual amounts.

2. It does not show the budget estimate and actual budget for 2008. Homeowners do not know what happened to the finances of HOA at the end of 2008.

3. Capital Reserves. It does not show the actual capital reserve at the end of 9/30/2009 as well as the carry forward amount from previous years. Also, there are no information how the money set aside under capital reserve are actually spent.

I request that a time is set up between me, the property manager and the members of the Board of Directors to discuss these inconsistencies in the budget.

Monthly statements. I used to receive monthly statements from Ravenel Associates which will tell me the regime I paid for the previous month and the regime due for the current month. I called the property manager for Cambridge Lakes HOA, four times requesting me to send the monthly statement for November 2009. In spite of that, I have not received the statement. If the Board has made any policy changes regarding mailing the monthly statements, homeowners have not been informed of this. I request you to take immediate action to send me the monthly statement.

John, there is a board meeting on Tuesday, Dec. 1. I request you to bring my concerns expressed in this mail to the board, namely inconsistencies in the budget, my request for a meeting with the property manager and the board members to discuss the budget issues and my concerns about the monthly statement.

Thank you,

Johnson Koola
1587 Cambridge Lakes Dr
jkoola@juno.com

EXHIBIT 2

<http://webmail.juno.com/webmail/new/82folder=Sent&command=print&msgList=0000...> 12/15/2009


Countrywide
HOME LOANS
BUILDER'S CERTIFICATION
1. PROJECT INFORMATION

Project Name:	Cambridge Lakes
Project Address & Zip:	1401 Cambridge Lakes Dr. Mt. Pleasant, SC 29564
County:	Charleston
Total Number of Units & Phases/Buildings:	104 units

2. SALES DATA (please complete for whole project)

Building	#Units	#Sold or under contract	Owner Occupancy Intent			Complete YES/NO
			#Owner Occupied	#2 nd Home	#Investor	
A	8	/	HOA does not have this information			
B	24		HOA does not have this information			
C	24		HOA does not have this information			
D	24		HOA does not have this information			
E	24		HOA does not have this information			
	104	88				

 Does any single investor own more than 10% of the total units in the project? ☐ Yes, ☒ No owner/Developer

3. PROJECT CERTIFICATIONS

INITIAL at left of each item.

Call Davidson Bernie H. Wagner	The Condominium Declaration (aka Master Deed) was recorded on _____, document # _____.
gmw	The Amendment/Supplement to the Condominium for the subject unit, Phase/Bldg _____, was recorded on _____, document # _____.
gmw	A portion of the HOA dues are designated for Replacement Reserves
gmw	Description of Recreational Amenities: pool, hot tub, workout room.
gmw	Estimated % complete: 100 %
gmw	☐ There are no known hazardous environmental conditions affecting the subject property
gmw	Indicate if any of the following statements are applicable by placing an "X" in the box: ☐ The HOA is involved in litigation ☐ The project is a Condotel or has a Rental Pool or allows Weekly Rentals ☐ Some or all of the units are considered Live-Work Units (commercial/residential use). ☐ The Association Property is on Leased Land ☐ The Improvements are Manufactured Housing ☐ There are Resale Restrictions
gmw	☒ For Condo Conversions: The structural, health & safety repairs and remodeling have been completed or ☐ N/A this project is not a conversion

4. DEVELOPER'S CERTIFICATION

I hereby certify the above information is true and correct.

Signature: <u>James M. Huxley</u>	Date: <u>2/17/04</u>
Title: <u>HOA Accountant</u>	Ph: <u>881-1390</u>
Company: <u>Cambridge Lakes</u>	Fx or email: <u>881-1391</u>
Address: <u>1401 Cambridge Lakes Dr.</u>	

Please complete and return to FAX #888-458-3978. Thank you for your assistance.

 Countrywide Home Loans, BUILDER DIVISION
 1401 Willow Pass Rd. Suite 840, Concord, CA 94520 Ph. 800-458-1936, Fx. 888-458-3978

revised 9/9/03

EXHIBIT 3

**TENA THOMPSON CERTIFIED DISTRESSED PROPERTY EXPERT KELLER WILLIAMS
CHARLESTON REALTY 843-860-4709**

1587 CAMBRIDGE LAKES DR

MOUNT PLEASANT, SC 29464-7300

LP: \$169,900

MLS#: 1012260m - RES - SFA Status: Active
 Area: (42) CHS-Mt.Pleasant South of Hwy.41
 TaxDistrict: CHS - 21 - Mt. Pleasant
 Bedrooms: 3 Apx SqFt: 1,336
 Bths Full/Hlf: 2/0 Tax Map#: 559-14-00-157
 Stories: 1 Story Apx YrBlt: 2000
 Address: 1587 CAMBRIDGE LAKES DR
 City: MOUNT PLEASANT Zip: 29464-7300
 Lot Size: Acres: 0.00
 Subdiv: CAMBRIDGE LAKES Subsec:
 Grade Sch: MAMIE WHITESIDES Middle Sch: LAING
 High Sch: WANDO
 Possesn: A/Closing New/Owned: Pre-owned
 Legal Desc: LEGAL: UNIT 208E IPROP_SITE_NAME: CAMBRIDGE LAKES

Click photo for additional media and enlargement



Style: Condo Fireplace: Possible Short Sale
 Roof: Foundation: W/w Carpet, Vinyl
 Cooling: Central Heat: Forced Air Utilities:
 Parking: Off-st Prkng SqFt Source: Tax Records: \$/Sqft: \$127.17
 Auction: Auction Type: Reserve Amt:

Lot Desc: Pond, Pond Site
 Exterior: Brick - solid
 Master BR: W/I Closet, Ceiling Fan
 Other Rms: Lr/dr Combo, Sun, Pantry, Laundry
 Misc. Int: Walkin Closet, 9+ Ceilings, All Wdw Trmt, Elevator, Garden Tub/Shower
 Misc. Ext: Screen Porch
 Wat/Sew: Public Water, Public Sewer
 Amenities: Cable Available, Trash Pickup, Club House, Gated Community
 Appliances: Elec Range, Microwave Built-in, Refrigerator, Dishwasher, Washer Conn, Dryer Conn, Fire Sprinkler, Garbage Disp, Ceiling Fan
 Green
 Features:

Directions: Hwy 17 S, Left @ Wando Crossing Shopping Center, R-Stuart Engals Blvd, L-Lounge Terrace, R-Cambridge Lakes, turn left, pass pool, left at first stop, take to end, Building E is last building on left.

Showing: CSS 402-7400 Schedule Appointment using CSS

Remarks: WATER VIEWS FROM EVERY ROOM!!! LOOK NO FURTHER, LARGE MASTER SUITE HAS SEPARATE TUB & SHOWER W/ WALK-IN CLOSET; SPLIT FLOOR PLAN ALLOWS FOR PRIVACY, RELAX AND ENJOY THE VIEWS OF NATURE AND THE LAGOON WHILE ENJOYING A CUP OF COFFEE ON YOUR SCREEN PORCH; THIS HOME ALSO HAS A BREAKFAST BAR, LAUNDRY ROOM AND STORAGE CLOSET; COMMUNITY FEATURES FITNESS AREA, CLUBHOUSE, BUSINESS CENTER, LARGE SIZE POOL, PUTTING GREEN, BOAT STORAGE, SECURITY CODED FRONT ENTRANCE AND ELEVATOR; CLOSE TO EVERYTHING MOUNT PLEASANT HAS TO OFFER INCLUDING SHOPPING, SCHOOLS, HIGHWAYS 17 & 526, BEACHES & DOWNTOWN. GREAT OPPORTUNITY--LOOK NO MORE!!
 If square footage is important - MEASURE!!

Agnt Notes: SHORT SALE-ALL OFFERS CONTINGENT ON THIRD PARTY APPROVAL, COMMISSIONS TO BE SPLIT 50/50; PROPERTY BEING SOLD AS IS; LAWSUIT IS PENDING INVOLVING HOA, PLEASE CALL ATTORNEY JOHN HAYES 805-7003 FOR DETAILS OR SHERRY MARTIN @ RAVENEL ASSOCIATES 886-8845. [Click here to report incomplete or inaccurate information](#)

Lease/Pur: Taxes: \$629 Prospect Ex: HOA Fee: Y \$275 Monthly Financing: Cash Assmbl: No
 Owner: KOOLA JOHNSON D Regime Fee: List Date: 4/29/2010 SpAssmt: 10/29/2010
 C/R: ContingencyRsn:

List Agent: (9131) TENA M. THOMPSON Type/Comp/SubAccept: Exclusive Right to Sell/3 %/N
 List Office: (8254) KELLER WILLIAMS REALTY CHAS. I Variable: Y
 Co-Off: () Limited Svc: N
 Contacts: Agent Mobile Agent Fax Co-Agt: ()
 843-860-4709 (843) 416-1705

-Information deemed reliable but not guaranteed-Copyright: 2010 by the Charleston Trident MLS Association of REALTORS
 WWW.TENATHOMPSON.COM
 Prepared by TENA THOMPSON of KELLER WILLIAMS REALTY CHAS. ISLAND on 4/30/2010 10:20:27 AM

EXHIBIT 4

http://ctarmls.com/ListitCharleston/ListitLib/report_builder.aspx?report=members_full_pr... 4/30/2010



Ravenel Associates

June 25, 2008

Dear Homeowner,

The Cambridge Lakes Condominium Homeowners Association, Inc., has retained John C. Hayes, IV, Esquire, with the firm of Pritchard & Elliott, LLC to represent it in connection with the construction defects at Cambridge Lakes which occurred between 1999 and 2005. Mr. Hayes and his firm have been retained on a contingency fee basis and will only be paid out of monies recovered on behalf of Cambridge Lakes. Mr. Hayes has initiated an action on behalf of the Cambridge Lakes HOA, and individual Homeowner plaintiffs against *Bostic Brothers Construction, Inc., Cambridge LLC, Cambridge Lakes LP, Classic Properties, Inc., of Charleston, Cambridge Contracting LP and Cambridge Lakes Apartments LP.*

In order to present a unified front and to avoid any potential arguments by the Defendants as to what portions of which claim belong to whom we believe it would be best for John Hayes to represent the interests of the individual homeowners as well as the Cambridge Lakes HOA. This would ensure a unified claim. In order to accomplish this, the Cambridge Lakes HOA needs for you to sign the enclosed form that assigns your claims relating to the construction defects to the Cambridge Lakes HOA. If you have a personal claim, such as, loss of use or damage to personal belongings, the assignments will be with the understanding that Cambridge Lakes HOA will pass on to you its net recovery on your behalf, if any.

The enclosed form appoints the Cambridge Lakes HOA to act as your representative in all matters relating to this litigation. Among other things, doing so will prevent defendants from contacting you directly.

The enclosed form also contains a section wherein you may join the action as a plaintiff and a representative of the individual homeowners. If you are interested in the option of joining the suit as an individual homeowner, please indicate this on the form, and someone from the attorney's office will call you to discuss the process with you prior to adding you as an individual plaintiff. It is very important that we have individual homeowners in this case.

Ravenel Associates, Inc.
Condominium and Homeowner's Association Management Services
P.O. Box 406 Isle of Palms, South Carolina 29451-2231
Telephone 843-886-8845 Fax 843-886-6950

Member: Community Association Institute

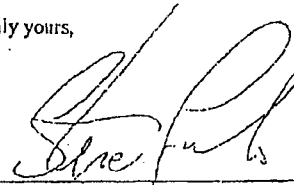
EXHIBIT 5-1

Please return the enclosed form at your earliest convenience so we can proceed with the investigation of the homes. A self addressed stamped envelope is enclosed for your convenience. Mr. Hayes may be contacted at 843-722-3300 and his mailing address is as follows:

John C. Hayes IV
Pritchard & Elliott, LLC
Post Office Box 630
Charleston, SC 29402

Very truly yours,

By:

A handwritten signature in black ink, appearing to read "Steve Fischer", written over a horizontal line.

Steve Fischer
President of Cambridge Lakes
Homeowners Association, Inc.

EXHIBIT 5-2

ASSIGNMENT OF CLAIMS

I/We, owner(s) of _____, briefly referred to as the "Unit", do hereby assign to the Cambridge Lakes Condominium Homeowners Association ("HOA"), Inc. any and all claims, rights of action, or causes of action I/we have/might have against those involved in the development, design, manufacturer of products, repair, conversion and/or construction of my/our Unit and the buildings at Cambridge Lakes in the foundation, main walls, windows, roofs, trusses, framing or any other part of the structure or building envelope and for any damages, including consequential damages, associated therewith and appoint John C. Hayes with Pritchard and Elliott, LLC to represent me/us in all matters relating to this litigation. I/We agree to waive any conflict that may arise between me/us and the HOA and/or Pritchard and Elliott, LLC relating to this litigation and to any action past, present or future initiated for the collection of any special or regular assessments together with late fees through, by, or on behalf of the HOA irrespective of whether any such action is currently pending, has been concluded or is initiated in the future and I/We acknowledge that the HOA's claims/rights supersede those of the individual homeowners.

By indication of my/our initials here _____ I/we wish to be added as a Plaintiff and representative of the individual homeowners.

NAME(S)

SIGNATURE(S)

DATE

EXHIBIT 5-3

I/We wish to receive status reports or updates regarding this matter at the email address,
fax number, or regular mail address found below:

EXHIBIT 5-4

08-9031

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CAMBRIDGE LAKES CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.
MARGEL S. HENNING AND
STEVE FISCHER, AS INDIVIDUAL
HOMEOWNERS

Plaintiff(s),

vs.

BOSTIC BROTHERS CONSTRUCTION
INC., CAMBRIDGE TWO, LLC
CAMBRIDGE LAKES LP, CLASSIC
PROPERTIES, INC. OF CHARLESTON,
CAMBRIDGE CONTRACTING LP,
CAMBRIDGE LAKES
APARTMENTS, LP.

Defendant(s)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.

2008-CP-10-3506

SUMMONS

(Re: Defective Construction)

(Jury Trial Demand)

FILED
2008 JUN 19 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 8 Cumberland Street, P.O. Box 620, Charleston, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interests and costs.

PRITCHARD & ELLIOTT, LLC

JOHN C. HAYES, IV
Attorney(s) for Plaintiff(s)

Charleston, South Carolina
June 19, 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CAMBRIDGE LAKES CONDOMINIUM)
HOMEOWNERS ASSOCIATION, INC.)
MARGEL S. HENNING AND)
STEVE FISCHER, AS INDIVIDUAL)
HOMEOWNERS)

Plaintiff(s),)

vs.)

BOSTIC BROTHERS CONSTRUCTION,)
INC., CAMBRIDGE TWO, LLC)
CAMBRIDGE LAKES LP, CLASSIC)
PROPERTIES, INC. OF CHARLESTON,)
CAMBRIDGE CONTRACTING LP,)
CAMBRIDGE LAKES)
APARTMENTS, LP)

Defendant(s))

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-10-3506

COMPLAINT

(Re: Defective Construction)
(Jury Trial Demand)

FILED
2008 JUN 19 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, Cambridge Lakes Condominium Homeowners Association, Inc., Margel S. Henning and Steve Fischer, as Individual Homeowners, (hereinafter collectively "Cambridge") complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Cambridge Lakes Condominiums ("Cambridge Lakes") is a group of residential structures and buildings located in Mount Pleasant, County of Charleston, South Carolina.
2. The Cambridge Lakes units are located in five buildings.
3. The Cambridge Lakes Condominium Homeowners Association, Inc., "The HOA," is the Homeowners Association for the above-referenced units and their owners.
4. Margel S. Henning and Steve Fischer are owners of residential units in Cambridge.

5. The HOA and individual Homeowners own the elements of Cambridge.
6. Defendants, Cambridge Two, LLC, Cambridge Lakes LP, Classic Properties, Inc., of Charleston, Cambridge Contracting LP, and Cambridge Lakes Apartments, LP, are South Carolina corporations, limited liability companies, or limited partnerships organized and existing under the laws of the State of South Carolina.
7. Defendant, Bostic Brothers Construction, Inc. (Bostic) is a corporation organized and existing under the laws of a state other than South Carolina and performed work during the construction and repair of Cambridge Lakes.
8. Cambridge Lakes is located in Charleston County and venue is proper in Charleston County.
9. At all relevant times herein, Defendants engaged in the business of development, sales, marketing, building construction and/or repair in Charleston County, South Carolina.
10. Defendants developed, constructed, sold, marketed and/or repaired Cambridge Lakes.
11. The development, construction, sales, marketing and repairs were performed by Defendants at the Cambridge property between 1998 to present.
12. At the time the development, construction, sales, marketing and repairs were completed by Defendants, the Cambridge Lakes Buildings and units contained many latent building defects.
13. The latent building defects have since resulted in repeated and severe water intrusion into the buildings and other damage and continue to do so through the date of this filing.
14. Defendants implicitly and/or explicitly represented the materials used were suitable for use on the Cambridge units.

15. Defendants knew or should have known that the materials used at the Cambridge Lakes units were not suitable for use on the units and said materials and improper installation of same have resulted in damage to Cambridge Lakes.
16. Defendants unsuitable construction and/or repair work and the unsuitable materials used at the Cambridge property have resulted in severe water intrusion into the units and other damage.
17. The repeated and severe water intrusion has resulted in deterioration of the buildings and consequential damages and continues to do so through the date of this filing.
18. The repeated and severe water intrusion has resulted in extensive damages to the original structures, the interior of the Cambridge units, and to the Homeowners and continues to do so through the date of this filing.
19. A preliminary inspection of the Cambridge units evidences an unsuitable sealant used around windows, unsuitable windows, improperly installed windows, improper weather-lapping, improperly installed flashing, improperly installed roofing materials, improperly installed gutter and down spouts, improper installed brick veneer, improper framing and various other building defects.
20. Defendants had a duty to construct and repair the Cambridge units in a workmanlike manner with suitable materials.
21. The aforementioned deficiencies and other evidence that Defendants breached their duty to Plaintiffs.
22. Said wrongful acts by Defendants above-described have resulted in the above-referenced building deficiencies and other consequential damages, partial loss of use, and severe mental and emotional stress.

23. Remedying the above-wrongs will result in additional damages, including loss of use. Further, the above has caused diminutions in value, both pre-and post-repairs.
24. As a direct and proximate result of the Defendants' violations of its legal duties, Plaintiffs have been damaged in an amount to be determined by the jury.

FOR A FIRST CAUSE OF ACTION
Negligence

25. Plaintiffs' repeat and reallege the above allegations as if stated verbatim herein.
26. The Defendants were negligent, careless, reckless, willful and wanton in the following particulars:
- a. in failing to properly construct the structures;
 - b. in failing to properly make repairs to the structures;
 - c. in failing to properly install windows;
 - d. in failing to properly install adequate flashing.
 - e. in failing to install adequate water barriers;
 - f. in failing to install weather proof building envelopes (exteriors);
 - g. in failing to install adequate roofing;
 - h. in failing to construct and repair the structures in accordance with due care and in accordance with standard building practices;
 - i. in failing to properly supervise the work and construction of the buildings;
 - j. in failing to hire competent subcontractors and specialty contractors;
 - k. in failing to properly coordinate the subcontractors;
 - l. in covering up deficiencies;
 - m. in misrepresenting the condition of the structures to the Plaintiffs;
 - n. in representing to Plaintiffs that Defendants had expert skills and ability;
 - o. missing and/or inadequately installed weep holes in brick veneer;
 - p. missing and/or inadequately installed sealant joints at dissimilar materials;
 - q. missing and/or inadequately installed building wrap, including failure to properly lap building wrap with other building components;
 - r. inadequately installed siding and trim along the exterior porches, bay windows and other areas;
 - s. inadequately sealed penetrations;
 - t. inadequately installed gutters;
 - u. failing to disclose condition of property during marketing and sales of same;
 - v. in failing to act as reasonable persons would in the circumstances then and there prevailing; and
 - w. in such other failures that will be shown during discovery and at trial.

27. Said failures above-described have proximately damaged the Plaintiffs in an amount to be determined by the jury.
28. As said failures were committed with gross negligence and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
Breach of Warranties

29. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
30. The construction and repair work came with express and implied warranties that the work would be performed in a careful, diligent, competent, and workmanlike manner.
31. The construction and repair work came with implied warranties of fitness, merchantability, workmanship and habitability.
32. Defendants have breached their warranties by constructing and repairing the structures in a defective manner as set forth above.
33. Said breaches have damages Plaintiffs in an amount to be determined by the trial of fact.

FOR A THIRD CAUSE OF ACTION
Unfair Trade Practice

34. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
35. At the time of construction and sale, Defendants were in the business of construction, repair, developing, selling and marketing Cambridge Lakes structures.
36. Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.
37. Defendants above described activities, including violating construction standards in the construction of the structure, violating building codes, mishandling the repair of the Plaintiffs property, concealing construction defects and consequential damages once discovered, and failing to honor warranty obligations constitute unfair and deceptive

practices in the conduct of the Defendants' trade; that such acts are capable of repetition and are injurious to the public, as the Defendants are capable of continuing such acts.

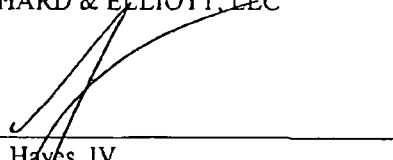
38. Defendants knew or should have known its conduct was in violation of South Carolina Code Section 39-5-20.

39. That Defendants' wrongs entitled the Plaintiffs to an award of treble damages, attorneys' fees and costs.

WHEREFORE, Plaintiff prays that:

- a. Plaintiffs recover actual damages, consequential damages, statutory damages, and punitive damages in an amount in excess of EIGHT MILLION DOLLARS (\$8,000,000.00);
- b. Plaintiffs recover the costs and expenses of this suit;
- c. Plaintiffs recover prejudgment interest; and
- d. The Plaintiffs be awarded any other remedy it is entitled to at law or at equity.

PRITCHARD & ELLIOTT, LLC



John C. Hayes, IV
8 Cumberland Street, Suite 200
Charleston, SC 29401
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Dated this 17 day of June, 2008
Charleston, South Carolina

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,

vs.

CAMBRIDGE TWO, LLC, et al.,

Respondents.

CERTIFICATION OF COUNSEL PURSUANT TO RULE 210(g)

The undersigned, counsel for the appellant, certifies under penalty of perjury that the above Record of Appeal includes all matters proposed to be included by any of the parties and not any other material.

Oct. 28, 2013


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Court of Common Pleas

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The Honorable W. Jeffrey Young,
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JOHNSON KOOLA,

Appellant,

vs.

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 LAKES APARTMENT HOMES, LP, CLASSIC PROPERTIES OF CHARLESTON, INC., CAMBRIDGE CONTRACTING, LP, TRADEMARK PROPERTIES, INC., CAROLINA ONE CHARLESTON HOME 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.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT'S CLAIMS AGAINST RESPONDENTS FOR VIOLATIONS OF THE SOUTH CAROLINA HORIZONTAL PROPERTY ACT, UNFAIR TRADE PRACTICES ACT AND FRAUD ACCRUED WHEN APPELLANT KNEW OF ALLEGED CLAIMS AGAINST RESPONDENTS FOR CONSTRUCTION DEFECTS IN HIS CONDOMINIUM COMPLEX?
2. DID THE TRIAL COURT APPLY THE PROPER STANDARD GOVERNING APPELLANT'S BURDEN OF PROOF TO SHOW THAT A GENUINE ISSUE OF MATERIAL FACT EXISTED AS TO WHEN APPELLANT KNEW OR SHOULD HAVE KNOWN OF HIS CLAIMS AGAINST THE RESPONDENT AT ISSUE IN THIS CASE?

STATEMENT OF THE CASE

This is an appeal from the trial court's order granting summary judgment, affirmed by denial of a motion for reconsideration, which found that the claims of appellant Johnson Koola's ("Koola" or appellant) against respondents were time barred. (R. pp. 1-9).

In the case at bar, Koola brought claims against respondents alleging that they had violated provisions of the South Carolina Horizontal Property Act (S.C. Code Ann. §§ 27-31-10, et seq.) (the "HPA"), which, *inter alia*, requires a person converting apartments into condominiums obtain and disclose to purchasers a certified written report from an engineer or architect about the condominium common areas. S.C. Code Ann. § 27-31-430. (R. pp. 23-29). A violation of the disclosure requirements of § 27-31-430 of the HPA is an express violation of the South Carolina Unfair Trade Practices Act (the "UTPA"). *Id* ("A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.") (S.C. Code Ann. §§ 39-5-10, et seq.).

Koola has also alleged claims against respondents for fraud, negligence and negligence *per se* and breach of contract and warranty. (R. pp. 26-28). However, the crux of all of Koola's claims against respondents is essentially that: (i) respondents violated the HPA by failing to obtain certified engineering or architectural reports and failing to make the required disclosures; and (ii) respondents had falsely and fraudulently reported to Koola that they had complied with the HPA when Koola purchased a condominium from respondents in 2004. (R. pp. 23-2).

Koola filed his summons and complaint on November 4, 2010 (R. p. 22); however, service of process upon respondents was not made until January 2012. (R. pp. 94-95). By February 2012, respondents filed SCRCP Rule 12 motions to dismiss on the grounds that Koola's claims were time barred by application of a three year statute of limitation. (R. pp. 30, 32). In support, respondents argued that Koola knew or should have known of the existence of his claims against respondents by July 2008, when Koola admittedly learned that his condominium HOA and other condominium owners had filed suit¹ against respondents and other builders and subcontractors for construction defects in the Cambridge Lakes subdivision.

Koola does not dispute that a three year statute of limitations applies to his claims in this action, nor does he dispute that in July 2008 he knew his HOA had brought a lawsuit against respondents and others for alleged construction defects. However, in the case at bar, Koola has not brought any claim against respondents for alleged construction defects. (R. pp. 23-29). Again, Koola's claims are only that

¹ The 2008 litigation filed by the Cambridge Lakes Condominium HOA against respondents and certain contractors was entitled, *Cambridge Lakes Condominium Homeowners Association, et al., v. Bostic Brothers Construction, Inc., Cambridge Two, LLC, et al.*; Case No.: 2008-CP-10-3506 (the "HOA Litigation") (R. pp. 71, 77).

respondents violated the HPA (and thereby the UTPA) by failing to make certain disclosures required by the HPA, by failing to obtain certified engineering or architectural reports and by falsely and fraudulently reporting that they had complied with the HPA. *Id.*

At the hearing on respondents' motions to dismiss, which were converted into motions for summary judgment, and afterwards in post-hearing submission and motion for reconsideration, Koola repeatedly and unequivocally stated that he did not know that respondents committed violations of the HPA and UTPA or had misrepresented their purported compliance with the HPA until September of 2010. (R. pp. 55, 62-63, 85, 88, 90-92). It was only in September 2010, Koola represented, that he reviewed a Third Amended Complaint filed on July 14, 2010 in HOA Litigation against respondents and saw that new claims against respondents for their failure to comply with the HPA, UPA and fraud in misrepresenting that their purported compliance with the HPA had been added in its Third Amended Complaint. *Id.*

As a claim accrues for purposes of commencing the statute of limitation when a plaintiff knows or should know about the existence of said claim or grounds thereof, Koola maintained that his claims for violations of the HPA, UTPA and common law claims only accrued in September 2010. (R. pp. 55, 62-63, 85, 88, 90-92). Therefore, when the summons and complaint were served upon respondents in January 2012, Koola's claims against respondents were within the applicable three year statute of limitations and thereby timely. In sum, it is Koola's contention that the trial court: (i) misapplied the proper accrual date triggering the running of Koola's claims against the respondents; and (ii) failed to apply the proper standard of proof and production

required in showing that a genuine issue of material fact existed as to when Koola's claims against respondents accrued. In either case, the trial court's grant of summary judgment, dismissing Koola's claims on the grounds that said claims are untimely, was clear error.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In February 2004, Koola purchased a condominium unit located in Mount Pleasant, South Carolina from respondents. (R. p. 23). Prior to that time, the unit in question had been one of 104 individual apartments owned and leased by respondents Cambridge Two, LLC, Cambridge Lakes, L.P. and other business entities either owned or operated by Albert V. Estee ("Estee") and Stephen R. Heape ("Heape"). (R. p. 24) Between 2002 and 2004, Estee and Heape converted these apartment premises, known as the Cambridge Lakes subdivision, into individual condominium units and offered those condominiums for sale to the general public. (R. pp. 24-25).

As required by the South Carolina Horizontal Property Act, when apartments into condominiums, the respondents were obligated to obtain and tender to purchasers a written disclosure statement certifying that respondents had obtained a written report from an independent registered architect or engineer describing the present condition of the common elements, the expected useful life for each individual common element and a list and notice of any uncured violations of building codes and violations, together with a list of the estimated cost of remedying such violations. S.C. Code Ann. § 27-31-430.

In 2008, Koola learned that the Cambridge Lakes Home Owners Association (the "HOA") had filed suit against the respondents, as well as, building

contractors involved in the original construction of the apartment complex for negligent construction practices and defects (the "HOA Litigation"). (R. p. 25). Most of the individual owners of the Cambridge Lakes condominiums joined this lawsuit as individual plaintiffs; however, Koola did not. *Id.*

After initiation of the HOA Litigation against respondents, Koola reviewed his closing documentation and found that defendants had indeed represented that they had complied with the requirements of the HPA, including the filing of a Master Deed and having certified reports from an engineer or architect regarding the common areas. (R. pp. 79-80). However, in September 2010, Koola discovered that the plaintiffs in the HOA Litigation had filed a Third Amended Complaint, which now alleged new claims that respondents had violated the HPA (and thereby the UTPA) by "failing to comply with applicable South Carolina statutes, including but not limited to the South Carolina Horizontal Property Act (citations omitted)...". (R. pp. 79-80, 55, 62-63, 85, 88, 90-92).

On November 4, 2010, Koola filed a complaint against respondents Cambridge Two, LLC and Albert V. Estee, as well as, Stephen R. Heape, Cambridge Lakes, L.P. and a number of affiliated entities, alleging that these respondents violated the HPA (S.C. Code Ann. §§ 27-31-10, et seq.), the UTPA (S.C. Code Ann. §§ 39-5-10, et seq.), as well as, committed common law fraud, negligence, negligence *per se* and committed breach of contract and warranty. (R. pp. 23-29). Again, the crux of Koola's claims was that respondents failed to comply with the HPA (and thereby violated the UTPA) and falsely and fraudulently reported that they had complied with the HPA. (R. pp. 25-26).

Service of Koola's November 4, 2010 Summons and Complaint was not made upon respondents until January of 2012. (R. pp. 94-95). In response, both respondents Cambridge Two/Estee and Cambridge Lakes/Heape filed motions to dismiss, asserting that all of Koola's claims against them were time barred by application of a three year statute of limitations. (R. pp. 30-33). No affidavits or memoranda were filed by either respondent contemporaneously with the filing of these motions. *Id.* The motions to dismiss were scheduled for hearing before Circuit Court Judge W. Jeffrey Young on July 25, 2010. (R. pp. 33-37). Again, no affidavits or memoranda were filed by respondents prior to or at the hearing. (R. pp. 37-58) However, in argument, respondents maintained that because Koola knew by July 2008 that there were claims for construction defects against the respondents regarding the Cambridge Lakes condominiums, Koola's claims for HPA and UTPA violations also started to accrue in July 2008 and were time barred by the time that service of process was effectuated upon respondents in January 2012. (R. pp. 40-51).

In response, Koola maintained during the July 25, 2012 hearing that while he knew there were potential claims for construction defects in July 2008, he did not know that the respondents had additionally violated the HPA and UTPA until discovering that HPA/UTPA claims were the subject of a third amended complaint filed on July 14, 2010 in the HOA Litigation. (R. p. 55). The trial court allowed the parties ten days to file any additional submissions (R. p. 57) and Koola filed a Post-Hearing Memorandum with exhibits on August 1, 2012 (R. pp. 60-83). In this memorandum, Koola expressly and repeatedly pointed out to the trial court that he did not learn of the

existence of any claim against respondents for violations of the HPA and UTPA until September 2010. (R. pp. 61-63).

Notwithstanding that Koola met his summary judgment burden of clearly identifying a genuine factual dispute as to when he learned that respondents had committed violations of the HPA and UTPA, the trial court issued a September 18, 2012 Order finding that by July 2008, Koola was on notice that "some right of his had allegedly been invaded by the Moving Defendants or that some claim against the Moving Defendants might exist." (R. p. 8). Finding that Koola's claims against respondents accrued in July 2008, the trial court held that by the time service was effectuated against respondents three and half years later in January 2012, the three year statute of limitations had already expired. (R. pp. -89).

On September 28, 2012, Koola filed a Motion for Amendment and Reconsideration of the trial court's September 18, 2012 Order. (R. p. 84). In support of that motion for reconsideration, Koola filed a September 28, 2012 affidavit, in which he reiterated his position that he did not know or have any reason to know that he might have had claims against respondents for violations of HPA and UTPA before reading the Third Amended Complaint in the HOA Litigation sometime in September 2010. (R. pp. 86-93). Koola also pointed out that his knowledge in July 2008 that the HOA Litigation for constructed defects had been commenced was wholly irrelevant because Koola was not maintaining any claim in the present case against respondents for construction defects. *Id.*

On January 13, 2013, Koola was advised by the Chambers of the trial court that his motion for reconsideration had been considered; however, said motion was denied. (R. p. 10). Koola filed a timely Notice of Appeal on February 3, 2013. (R. pp. 96-97).

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 the SCRPC. *Nexsen v. Haddock*, 353 S.C. 74, 77, 576 S.E.2d 183, 185 (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 therefrom should be viewed in the light most favorable to the nonmoving party." *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (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, 232, 195 S.C.2d 385, 387 (1973).

ARGUMENT

- I. THE TRIAL COURT ERRED IN FINDING THAT APPELLANT'S CLAIMS AGAINST RESPONDENTS FOR VIOLATIONS OF THE SOUTH CAROLINA HORIZONTAL PROPERTY ACT, UNFAIR TRADE PRACTICES ACT AND FRAUD ACCRUED AT THE SAME TIME WHEN APPELLANT KNEW OF CLAIMS AGAINST RESPONDENTS FOR CONSTRUCTION DEFECTS.

It is well established that a party must commence an action within three years of the date that a cause of action arises. S.C. Code Ann. § 15-3-530 (2005).

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). “Under the discovery rule, the three-year clock begins ticking on the date that the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.” *Holly Woods Association of Residential Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787 (Ct.App. 2004) (Quoting, *Martin v. Companion Health Care*, *supra*). The test for whether the injured party knew or should have known about the cause of action is objective rather than subjective. *Id.* Therefore, the test before the trial court is “whether the circumstances of the case would have put a person of common knowledge on notice that “some right of his has been invaded or that some other claim against another party might exist. *Holly Woods Association v. Hiller*, *Id* at 183-84, citing *Young v. S.C. Dept. of Corrs.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

In the case at bar, the trial court held that Koola knew by July 2008 that he had claims against respondents that are the subject of his present complaint. The trial court’s reasoning was based on the fact that Koola knew that the Cambridge Lakes HOA had filed suit against respondent for construction defects by July 2008. The trial court’s September 18, 2012 Order states: “[Koola]... was on notice that **some right** of his had allegedly been invaded” by the respondents. (R. pp. 8-9). Again, the evidence cited by the trial court to support this finding all deal with the fact that by 2008, Koola was aware of pending claims for construction defects against the respondents as alleged in the HOA Litigation at that time. (R. pp. 7-8).

Simply put, Koola's knowledge of the existence of claims for construction defects does not equate with knowledge of the existence of other claims against respondents for their violations of the HPA, the UTPA and common law fraud. Under the HPA, there is no bar preventing an apartment converted into a condominium from being offered for sale or sold with construction defects. The clear purpose behind the disclosure requirements in Section 27-31-430 of the HPA is to place an affirmative obligation on the part of the seller to disclose the current state of the common areas, including identifying any construction defects, so that perspective purchasers can evaluate their future liability and exposure through shared future HOA expenses and dues necessary to address those defects. *Id.* Certainly, if the sale of a condominium converted from an apartment with construction defects at the time of the sale is an automatic violation of Section 27-31-430 of the HPA, then the legislature would have expressly included language creating that liability in the statute. It did not. Moreover, if the legislature intended such a result, it most certainly would not have written provisions requiring the seller to obtain certified engineering or architectural reports and to disclose the findings of those reports to perspective buyers before such sales could take place. See, Section 27-31-430 of the HPA.

Moreover, in the case at bar, respondents gave Koola written certification at the time of his condominium purchase that they had complied with the HPA. (R. pp. 55-56, 25, 61-62, 66-67). By implication, the argument that Koola should have known in July of 2008 that respondents had also violated the HPA simply because litigation over construction defects had been started by the HOA would require some showing that Koola was privy to the fraudulent conduct committed by respondents in failing to

comply with the HPA and falsely reporting that they had complied with said law. No evidence was presented to the trial court that Koola should have been able to uncover respondent's fraud² before Koola reviewed the "Third Amended Complaint" in the HOA Litigation. Indeed, the plaintiffs in the HOA Litigation presumably did not discover that the respondents had additionally violated the HPA until July 2010, when they filed a "Third Amended Complaint" adding such claims to their previously filed claims for construction defects. (R. pp. 77-83). Further, no evidence was presented to the trial court that respondents ever acknowledged or cured their misrepresentation to the Cambridge Lakes condominium owners before the HOA plaintiffs discovered the same through, presumably, discovery in the HOA Litigation. Finally, no evidence was presented to the trial court that Koola should not have been entitled to rely on the representations found in the Master Deed and closing documents that respondents had complied with the HPA.

In sum, simply because Koola discovered in July 2008 that construction defects were the subject of ongoing HOA Litigation does not equate or support the proposition that Koola either knew or should have known that the respondents had additionally violated the HPA by never obtaining the required certified engineering or

² Even if Koola's claims for violations of the HPA, UTPA and fraud arose sometime before September 2010, the doctrine of equitable tolling may also be applicable to Koola's claims against the respondents under the facts of this case. In *Magnolia North Property Owner's Association v. Heritage Communities, Inc.*, this Court held that a defendant will be stopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that would otherwise give operation to the statute has been induced by the defendant's conduct." *Id.* 397 S.C.2d 348, 372, 725 S.E.2d 112, 125 (Ct. App. 2012). In *Magnolia North*, this Court further commented that the doctrine of "equitable tolling is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's *intentional* misrepresentation, *but* deceit is not an essential element of estoppel." *Id.* at 373 (Emphasis in the original). In the case at bar, Koola has alleged and brought to the trial court's attention the fact that respondents misrepresented their purported compliance with the HPA at the time Koola purchased his unit.

architectural reports and by misrepresenting that they had. Therefore, since Koola's claims for violations of the HPA, the UTPA, fraud, etc. which are the subject of the instant complaint against respondents accrued in September 2010, the statute of limitations applicable to such claims would not expire until August 2013. Thus, service of summons and complaint upon respondents in January 2012 was not beyond the three-year statute of limitation as proscribed under S.C. Code Ann. § 15-3-530 (2005) and applicable to the claims that Koola brought in this action against respondents. It is respectfully submitted that the trial court's holding otherwise was erroneous.

II. THE TRIAL COURT FAILED TO APPLY THE PROPER STANDARD GOVERNING APPELLANT'S BURDEN OF PROOF TO SHOW THAT A GENUINE ISSUE OF MATERIAL FACT EXISTED AS TO WHEN APPELLANT KNEW OR SHOULD HAVE KNOWN OF HIS CLAIMS AGAINST THE RESPONDENTS TO PRECLUDE THE GRANT OF SUMMARY JUDGMENT ON THIS ISSUE.

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that moving party is entitled to a judgment as a matter of law." *Id.* Under well established law, "Summary judgment is inappropriate when further inquiry into the facts is desirable to clarify proper application of the law. Summary judgment is not appropriate if the facts are conflicting, or if the inferences to be drawn from the facts doubtful. Summary judgment should not be granted even when the evidentiary facts are not in dispute, if there is dispute as to the conclusion to be drawn from those facts. In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in a light most favorable to the non-moving party. Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will

be improperly deprived of a trial on the disputed factual issues.” *Wade v. Berkeley County*, 339 S.C. 513, 518, 529 S.E.2d 743, 746 (Ct. App. 2000) (citations omitted).

In *Hancock v. Mid-South Management Co.*, 381 S.C.326, 330-31, 673 S.E.2d 801, 803 (2009), the Supreme Court upheld the application of the “scintilla standard” governing the determination of motions for summary judgment where, as here, a plaintiff’s claims must be met by the preponderance of the evidence:

“[W]e hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand summary judgment.”

Id. South Carolina has defined the evidence which meets the scintilla standard as “any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror.” *Young v. Hyman Motors, Inc.*, 199 S.C. 233, 242-43, 19 S.C.2d 109, 113 (1942).

Applying these well established principles to the evidence which was before the trial court for consideration on respondents’ motions for summary judgment, it is very clear that a genuine factual dispute, material to Koola’s claims, existed as to when Koola knew or should have known that he had the claims against the respondents which were alleged in the complaint. First and foremost, Koola repeatedly represented to the trial court that he did not discover that respondents may have also violated the HPA, the UTPA and committed fraud until he reviewed the “Third Amended Complaint”³ from the HOA Litigation in September 2010. (R. pp. 55, 61-63, 87-92).

The respondents countered that he knew or should have known of his claims in July 2008 based on Koola’s knowledge that his HOA had commenced the

³ The Third Amended Complaint, in which the HOA added claims against the respondents for violations of the HPA and UTPA, was only filed on July 14, 2010. (ROA, Koola Post-Hearing Submission, Exh. 6-A).

HOA Litigation for construction defects. As stated previously, Koola had not brought claims for construction defects against respondents in the case at bar, thus Koola's knowledge in July 2008 that the respondents may be liable for construction defects is completely irrelevant. In any event, the determination of whether Koola knew or should have known he had the claims at issue brought against defendants in July 2008 or in September 2010 is directly material to whether those claims were time-barred given.

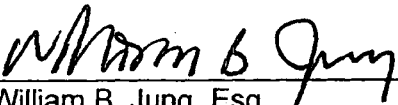
The trial court may have misapprehended the distinction between claims for construction defects versus claims for violations of the HPA/UTPA. Nonetheless, Koola repeatedly attempted to convey his position to the trial court. Counting the July 25, 2012 oral argument, the August 1, 2012 Post-Hearing Submission and his September 28, 2012 motion for reconsideration, Koola made the trial court aware of the distinction between his knowing about claims for construction defects versus his knowing about claims for violations of the HPA in a very unequivocal manner on three separate occasions. Koola's position statements to the trial court, as well as his September 28, 2012 affidavit averments, coupled with the evidence of the timing of the "Third Amended Complaint" in the HOA Litigation, far exceeded the mere scintilla evidentiary standard of producing sufficient evidence of a genuine issue of material fact in dispute to preclude grant of summary judgment on the issue which respondents claimed that they were entitled to summary judgment. Accordingly, it is respectfully submitted that it was clear error for the trial court to grant summary judgment to the respondents.

CONCLUSION

Based upon the foregoing points and authorities, the appellant respectfully submits that the September 4, 2012 Order of the trial court granting summary judgment to the respondents should be reversed and that appellant's claims against respondents restored and remanded to the trial court.

Dated: November 6, 2013

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young
Charleston County
Trial Court Case No.: 2010-CP-26-9158

APPELLATE CASE NO.: 2013-000279

Johnson Koola, ... Appellant,

vs.

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 Lakes 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, Cambridge Lakes, LP
a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a
Cambridge Lakes Apartments Homes, LP, Stephen R. Heape, and Classic Properties of
Charleston, Inc. are Respondents.

RESPONDENTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT CORRECTLY HOLD THAT THE APPELLANT'S CLAIMS AGAINST THE RESPONDENTS ARE BARRED BY THE STATUTE OF LIMITATIONS?**
- II. DID THE TRIAL COURT APPLY THE CORRECT STANDARD GOVERNING THE GRANTING OF SUMMARY JUDGMENT IN THIS ACTION?**

STATEMENT OF FACTS

Plaintiff's claims in this lawsuit are based on his ownership of a condominium unit in the Cambridge Lakes condominium development located in Mount Pleasant, South Carolina. The Cambridge Lakes development was originally constructed and operated as a rental apartment complex. The development was subsequently converted to condominiums and the converted condominium units were sold to individual buyers. Cambridge Lakes Condominium Homeowners Association, Inc. (the "HOA") manages and controls the condominium complex pursuant to its master deed.

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., in connection with the conversion and sale of the condominiums. (ROA p. 115)

The Cambridge Lakes development consists of 104 units, and all but ten or so of the unit owners elected to join the HOA's lawsuit and were named as parties in the HOA's lawsuit. The Plaintiff purchased a condominium unit in Cambridge Lakes in 2004, and Plaintiff was one of the approximately ten unit owners who did not join the HOA's lawsuit. In 2011, the HOA settled the lawsuit on the eve of trial.

STATEMENT OF CASE

The Plaintiff filed this lawsuit on November 4, 2010, alleging that construction defects and violations of the S.C. Horizontal Property Regime Act made his unit not “fit, habitable, and marketable.” (ROA pp. 22 - 27) The Plaintiff served his Complaint on the Respondents, Stephen R. Heape, Classic Properties, and Cambridge Lakes, LP, on January 4, 2012, and on the Respondents, Cambridge Two, LLC or Albert V. Estes, on January 17, 2012, fourteen (14) months after suit was brought. (ROA pp. 94 - 95)

The Respondents filed Rule 12(b)(6) motions to dismiss Plaintiff's complaint based on the three-year statute of limitations. (ROA pp. 30 - 33) During the July 25, 2012 hearing on that motion, and with prior notice to the Plaintiff,¹ the Respondents submitted and cited to the discovery responses filed by the Plaintiff with the Court in another lawsuit in which the Plaintiff is a party. The presentation of matters outside of Plaintiff's Complaint in effect converted the Rule 12(b)(6) motion to a motion for summary judgment, and the trial Court treated and disposed of the motion pursuant to Rule 56, SCRPC.² Summary Judgment was granted. (ROA p. 1 - 9) This appeal followed.

¹ The Motion filed by Albert Estee and Cambridge, Two, LLC states: “This motion is based on the pleadings and other matters of record in this case, and may be supplemented by matters filed by the Plaintiff in Case Number 2010-CP-10-6060 and Case Number 2010-SC-87-1646[.]”

² See Rule 12(b), SCRPC (“If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.”)

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT THE APPELLANT'S CLAIMS AGAINST THE RESPONDENTS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Appellant's claims are governed by a three-year statute of limitations. S.C. Code Ann. § 15-3-530. The three-year limitations period is governed by the "discovery rule," under which a claim must be brought within three-years from the date a plaintiff knew or, with the exercise of reasonable diligence, should have known that a right had been violated or that a claim existed. S.C. Code Ann. § 15-3-535. The statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005). The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of the wrongdoer. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). Under the discovery rule, the statute of limitations begins to run when the facts and circumstances would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333, 334 (1981); Burgess v. American Cancer Society, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989). The statute of limitations begins to run at that point and not when advice of counsel is sought or a full-blown theory of discovery is developed. Id. "The date on which discovery should have been made is an objective rather than subjective question." Dorman v. Campbell, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998).

“Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (citation omitted). Statutes of limitations promote justice by forcing parties to pursue a case in a timely manner and to act before memories dim, before evidence grows stale or becomes nonexistent, and before people act in reliance on what they believe is a settled state of affairs. State ex. rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408, 413-14 (2000).

In the present matter, and after viewing the Appellant’s evidence and all reasonable inferences therefrom in the light most favorable to the Appellant by June 2008 at the latest, the Appellant was on notice of the claims he is asserting in this lawsuit. For example, Plaintiff’s Complaint states:

14. In 2008 Plaintiff learned that the Cambridge Lakes Homeowners Association and several individual unit owners filed a lawsuit against the defendant’s named in this matter (excluding William E. Jenkinson, IV, and Carolina One) and various contractors and subcontractors for various construction defects. (ROA P. 25)
15. The Plaintiff also learned that the Defendants named herein did not file with the master deed or provide copies of a report required by the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et. seq.* (ROA p. 25)

The interrogatory responses filed by the Appellant in his lender’s mortgage foreclosure lawsuit³ on his condominium unit include the following assertions by the Appellant:

- “Defendant Koola had a meeting with Mr. Fisher [a member of the POA board] on November 20, 2004 and asked him about rumors of construction defects in Cambridge Lakes condominiums. My immediate neighbor, who was working for the architect firm, which oversaw the construction of Cambridge Lakes apartments, told me in private that some of the construction defects might be for real.” (ROA p. 99)
- On November 20, 2004, Mr. Koola sent a letter to one of the HOA’s board members, which states in pertinent part:

2. Defective Construction. Please contact the architectural firm or consultants that built this complex. It is learnt that various building code

³BAC Home Loans Serving v. Johnson D. Koola, et al., Case No.: 2010-CP-10-6060.

difficulties were identified at the time of construction. There were difficulties to get insurance for the building complex. . . .” (ROA p. 106)

- “Defendant Koola listed the property for sale in June/July 2008 Defendant Koola did not receive any offer from prospective buyers. . . . Under information and belief, defendant Koola alleges that the ongoing lawsuit (case #2008-cp-10-3506) and the massive construction defects claims as alleged in the lawsuit were the prime factors why defendant Koola did not receive a single offer.” (ROA pp. 102 - 103)

- “On June 25, 2008, the defendant HOA and HOA’s attorney sent a letter (Exhibit 5) to the homeowners informing the homeowners that a lawsuit (#2008-cp-10-3506) has been filed against the builder, developer, and others. . . .” (ROA p. 103)

- “Defendant Koola studied the “Builder’s Certification again when the Defendant HOA filed the lawsuit # 2008-cp-10-3506 against the builder, developer/seller and others. Then I studied the Master Deed of the Cambridge Lakes Horizontal Property Regime, filed in Book T437, Charleston County RMC Office very, very carefully. The said Master Deed stated that “developer submits the Property to the provision of the Horizontal Property Act, section 27-1-31-10, et seq., South Carolina Code of Laws 1975. . . .” Now it was clear the developer/seller understood the provisions of South Carolina Horizontal Property Act.” (ROA P. 104)

The above-quoted allegations contained in the Appellant’s Complaint in this action and the Appellant’s discovery responses in the foreclosure action indicate that as early as 2004, but certainly by 2008, the Appellant was on notice that some right of his had allegedly been invaded by the Respondents or that some claim against the Respondents might exist. The three-year statute of limitations began to run at that point. The Plaintiff filed this lawsuit in 2010; however, the Plaintiff failed to serve his Complaint on the Respondents until January 2012, at which point the three-year statute of limitations had expired. (ROA pp. 23 - 29, 94 and 95) See Mims v. Babcock Center, Inc., 379 S.C. 341, 732 S.E.2d 395(2012) (holding that under S.C. Code Ann. § 15-3-20 and Rule 3(a), SCRCP, if a complaint is filed but not served within the statute of limitations, then service must be made within 120 days of filing).

II. THE TRIAL COURT APPLIED THE CORRECT STANDARD GOVERNING THE GRANTING OF SUMMARY JUDGMENT IN THIS ACTION.

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." S.C. Prop. & Cas. Guar Ass'n v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). When, as here, the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror is the evidence required to meet the scintilla standard. Young v. Hyman Motors, Inc., 199, S.C 233, 242, 19 S.E. 2d 109 (1942). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Id. Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Id. at 558-59, 671 S.E.2d at 85.

Rather, the nonmoving party must present specific facts showing a genuine issue for trial. Id. at 559, 671 S.E.2d at 85.

In the case at bar, the Plaintiff plead in his Complaint that he learned in 2008 that Cambridge Lakes Homeowners Association and several individual unit owners filed a lawsuit against the Respondents. (ROA p. 25). The Plaintiff also alleges in his Complaint in this action that he learned that the Respondents did not file with the Master Deed or provide copies of a report required by the South Carolina Horizontal Regime Act, S. C. Code Ann. § 27-31-10 et seq. (ROA p. 25) The Plaintiff also filed answers to discovery requests in the foreclosure action brought against him regarding his condominium. In those answers, the Plaintiff admits that as early as November 20, 2004, he sent a letter to the Property Owners Association Board Members regarding the defective construction. (ROA p. 106) He also readily admits in those answers that on June 25, 2008, the Homeowners Association and its attorney sent a letter to the homeowners informing them of the construction defect's lawsuit. (ROA p. 103) The Respondents relied on the Plaintiff's Complaint and the Plaintiff's answers to discovery requests in the foreclosure action as the basis for the Motion to Dismiss for failure to timely commence this action. There is no question but that the statute of limitations ran prior to the service of the Complaint on the Respondents in January of 2012. There is no evidence contradicting that conclusion. There is no material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror. Thus, the scintilla standard was not met by the Plaintiff. The trial Court's granting of summary judgment was appropriate.

CONCLUSION

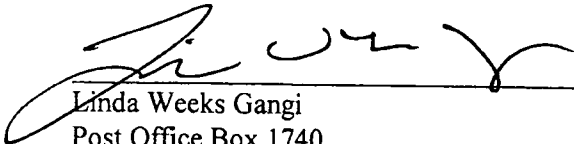
Based on the Plaintiff's Complaint and the Plaintiff's answers to discovery requests in the foreclosure action filed against the Plaintiff, the Plaintiff clearly had knowledge that he had a potential claim against the Respondents as early as 2004. Thus, the statute of limitations ran prior to the Plaintiff bringing this suit. If this Court believes that the Plaintiff did not know or should have known that he had claims against the Respondents until 2008, the statute of limitations still ran before service of process on the Respondents. The Complaint was filed in November of 2010 but was not served on the Respondents until January of 2012, fourteen (14) months after this action was commenced. The Plaintiff's claims against the Respondents are barred by the statute of limitations based on his failure to file and serve his Complaint within the statute of limitations or within 120 days of the filing of his Complaint. Accordingly, the Respondents are entitled to summary judgment, and the trial Court's decision should be upheld.

Respectfully submitted,

Conway, South Carolina

THOMPSON & HENRY, P.A.

November 18, 2013



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THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young
Charleston County
Trial Court Case No.: 2010-CP-26-9158

APPELLATE CASE NO.: 2013-000279

Johnson Koola, ... Appellant,

vs.

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 Lakes 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, Cambridge Lakes, LP
a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a
Cambridge Lakes Apartments Homes, LP, Stephen R. Heape, and Classic Properties of
Charleston, Inc. are Respondents.

RULE 211 CERTIFICATE OF COMPLIANCE

In preparing the Final Brief of the Respondents, it came to the attention of the undersigned that footnote 3 which simply contains a cite to a case the Appellate was a party to was erroneously omitted in the Initial Brief. It has been added to the Final Brief. The undersigned hereby certify that except as set forth above, the Final Brief of the Respondents is in compliance with Rule 211(b) of the South

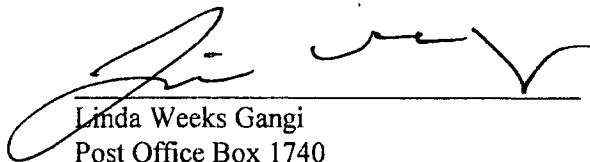
Carolina Rules of Appellate Procedure.

Conway, South Carolina

November 18, 2013

Respectfully submitted,

THOMPSON & HENRY, P.A.

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', is written over a horizontal line.

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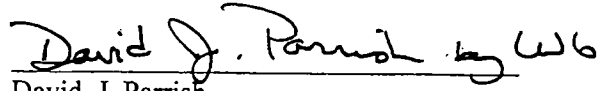
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A handwritten signature in black ink, reading "David J. Parrish by W6". The signature is written in a cursive style and is positioned above a horizontal line.

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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

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

JOHNSON KOOLA,

Appellant,

vs.

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 LAKES APARTMENT HOMES, LP, CLASSIC PROPERTIES OF CHARLESTON, INC., CAMBRIDGE CONTRACTING, LP, TRADEMARK PROPERTIES, INC., CAROLINA ONE CHARLESTON HOME 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.

REPLY BRIEF OF APPELLANT

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- II. THERE WAS A CLEAR, GENUINE ISSUE OF MATERIAL FACT ON THE QUESTION OF WHEN KOOLA DISCOVERED THAT HE HAD A CLAIM FOR VIOLATIONS OF THE HPA AND UTPA WHICH PRECLUDED GRANT OF SUMMARY JUDGMENT 2

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The South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, et seq	<i>passim</i>

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ARGUMENT

- I. KOOLA HAS NEVER ALLEGED THAT RESPONDENTS ARE LIABLE FOR CONSTRUCTION DEFECTS; THEREFORE, WHEN KOOLA DISCOVERED THE EXISTENCE OF CONSTRUCTION DEFECTS IN HIS CONDOMINIUM COMMON AREAS IS WHOLLY IRRELEVANT TO THE ACCRUAL TIME OF KOOLA'S CLAIMS AGAINST RESPONDENTS FOR VIOLATIONS OF THE HPA, UTPA AND FOR COMMON LAW FRAUD, BREACH OF WARRANTY AND NEGLIGENCE.

In his Initial Brief, Koola addressed at length the fact that his claims against respondents never included their alleged liability for construction defects regarding the Cambridge Lakes condominium complex ("Cambridge Lakes"). Koola's Complaint simply alleged that respondents violated the Horizontal Property Act ("HPA"), the Unfair Trade Practices Act ("UTPA") by failing to have an architect or engineer inspect the Cambridge Lakes Apartment complex and report and file a certified report detailing the findings regarding the conditions of the common areas, their useful life expectancy, etc., as required by the HPA. (R. pp. 25-26). Koola also alleged that respondents are liable for fraud in falsely reporting to Koola that they had obtained a certified report from an architect or engineer about the common area conditions when no such report was ever obtained. (R. p. 28).

Respondents' Brief entirely fails to address or respond to Koola's argument on appeal that a claim for construction defects is separate and distinct from a claim for violations of the HPA and, thereby, the UTPA. In South Carolina appellate jurisprudence, when an appellate raises and supports an issue that the respondent fails to argue against, the appellate court may determine that said issue is uncontested and decide the same in favor of the appellant. *E.g., U.S. Fid. & Guar. Co. v. First Nat. Bank of S.C. of Columbia*, 244 S.C. 436, 454, 137 S.E.2d 582, 590 (1964); *see also*, 5 Am.

Jur. 2d Appellate Review § 512 (2013) ("If an appellee fails to respond to an issue in its brief, the [appellate] court may treat the failure to respond as a confession that the appellant's position is correct.").

Notwithstanding an apparent conscious decision to ignore the critical issue in this appeal, *i.e.*, that a claim for construction defects is separate and distinct from a claim for the violation of the HPA, respondents must admit that Koola's knowledge of the existence of claims for construction defects does not mandate that he had simultaneous knowledge that respondents had also allegedly violated the HPA and, thereby, the UTPA. Reference is made to pages 10-12 of Koola Initial Brief on the distinctions between claims for construction defects and HPA violations. In sum, Koola's admitted knowledge in 2008 that there was a claim for construction defects available against the respondents is irrelevant to the issues on appeal when no such claim was brought against respondents by Koola in the underlying case at bar.

II. THERE WAS A CLEAR, GENUINE ISSUE OF MATERIAL FACT ON THE QUESTION OF WHEN KOOLA DISCOVERED THAT HE HAD A CLAIM FOR VIOLATIONS OF THE HPA AND THE UPTA WHICH PRECLUDED GRANT OF SUMMARY JUDGMENT.

As set forth repeatedly in Koola's submissions to the trial court and at oral argument, Koola did not discover that respondents had allegedly violated the HPA until September 2010, when he reviewed a "Third Amended Complaint" filed on July 14, 2010 by the Cambridge Lakes HOA in its Construction Defects Litigation against the respondents and others. (R. pp. 55, 62-63). Indeed, in the record before this Court, there is no unambiguous or direct evidence that demonstrates that Koola actually knew or should have known – at any time prior to September 2010 – the respondents had

allegedly violated the HPA, the UTPA and committed common law torts related to the false certification with HPA compliance.

In attempt to rebut Koola's clear and unequivocal denial that he knew of respondents' alleged violations of the HPA prior to September 2010, respondents offer citation to Koola's original complaint at paragraph 15, which states in full: "The plaintiff also discovered that the Defendants did not file with the master deed or provide copies of a report required by the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, et seq." (R. 25). However, nothing in this pleading¹ states when Koola discovered that respondents failed to file a report required by the HPA. *Id.* Certainly, Koola had to have discovered this fact before he could file a Summons and Complaint alleging respondents' HPA violation. In fact, nothing in par. 15 of Koola's complaint make any reference to an actual time period that Koola discovered the irregularities concerning the Master Deed. (R. 23-29). Moreover, respondents offered no evidence to the trial court from either a response to a Request to Admit, Interrogatory or deposition testimony from Koola on the point when Koola discovered he had a claim for a HPA violation -- if not, as Koola maintained, in September 2010.

As set forth above, Koola's repeatedly advised the trial court that he discovered a potential claim for violations of the HPA only after reviewing the July 2010 filing of the Third Amended Complaint in the HOA Construction Defect Litigation. (R. 55, 88-92). Indeed, nowhere in the original complaint filed by the HOA in its Construction

¹ Respondents' Brief at page 5 quotes paragraph 14 of Koola's complaint which pleads that Koola learned of claims for construction defects in 2008. However, that fact that Koola admits his awareness in 2008 that the HOA had filed a claim construction defects against respondents does not concede or mandate that Koola discovered or should have known that the respondents had also violated the HPA in 2008. Paragraph 15 of Koola's complaint, discussing Koola's discovery of respondents' failure to file certified architectural or engineering reports, does not include any mention of when Koola gained such knowledge. (R. 25).

Defects Litigation against the respondents is there any mention of alleged violations of the HPA by anyone. (R. 115-120). Clearly, if the HOA did not know that respondents had violated the HPA in June 2008 when it commenced litigation against respondents, Koola cannot be charged with that knowledge absent some affirmative evidence to the contrary. As set forth above, there is no direct evidence contradicting Koola's position that his discovery coincided with and was caused by his review of the HOA's Third Amended Complaint² against respondents in September 2010.

Seeking possible inferential value, respondents also cite to the interrogatory responses made by Koola in his lender's mortgage foreclosure action, wherein Koola refers to a 2004 meeting with a Cambridge Lakes HOA Board of Director member, who told him in 2004 that construction defects might be present on the premises. (R. 99-100). Respondents further cite that Koola's same interrogatory responses to show that he knew of actual construction defects in July 2008, when the HOA Construction Defect Litigation commenced. Last, respondents cite that these interrogatory responses also show that Koola had reviewed the Master Deed, which reported (falsely, as Koola later discovered) that respondents had filed the required

² Page 2 of respondent's Brief states that "On June 16, 2008 the HOA ... filed a lawsuit claims in against respondents and other entities for alleged construction defects. In the lawsuit, the HOA asserted claims based on alleged violations of the S.C. Horizontal Property Act." Significantly, respondents fail to disclose the fact that the HOA's original complaint did not include any claims or even mention of respondent's alleged HPA violations and that a claim for HPA violations was not raised until plead in the Third Amended Complaint filed against respondents on July 14, 2010. (R. 77-83, 115-120). This, of course, is consistent with Koola's position that he discovered a claim for an HPA violation in September 2010 after reviewing the Third Amended Complaint in the HOA Construction Litigation.

certifications³ with the Master Deed upon the Cambridge Lakes condominium conversion.

However, none of these citations to Koola's discovery responses in his lender's mortgage foreclosure suit shows or provides supporting evidence that Koola knew or should have known before 2010 that the respondents had violated the HPA. In any event, although respondents maintained Koola knew or should have know about a HPA violation, a UTPA violation or alleged fraud by July 2008, while Koola maintained that he discovered such claim only in September 2010, it should have been very clear to the trial court that there was a genuine issue of material fact over time that Koola's claims against respondents accrued, and this issue of fact precluded the availability of summary judgment on the issue of the statute of limitation.

Conclusion

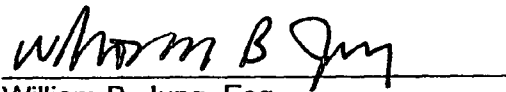
It is possible that the trial court assumed, based upon counsel's hearing argument at motion for summary judgment, that because Koola conceded knowing in 2008 that construction defects claim existed against the respondents, it also is true that 2008 must be the accrual date for any and all claims had by Koola against respondents. It is respectfully submitted that such an assumption was unwarranted and violates the principals of the "discovery rule," whereby the statute of limitations "begins ticking on the date that the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Holly Woods Association of Residential Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787

³ The fact that Koola read respondents' certification that respondents had complied with the HPA provides no support to the respondents' contention that Koola should have known this certification was false without additional evidence offered to show that Koola was previously aware - prior to September 2010 - that respondents' certification in the Master Deed was indeed false. No such evidence was presented by respondents to the trial court.

(Ct.App. 2004) (*Quoting, Martin v. Companion Health Care, supra*). In the case at bar, there is an obvious question of fact over whether - in July 2008 or in September 2010 - Koola discovered or should have discovered the existence claims against respondents for causes of action unrelated to construction defects. This being true, it is respectfully submitted that the trial court erred by granting summary judgment to respondents on this issue.

Dated: November 6, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William B. Jung", is written over a horizontal line.

William B. Jung, Esq.
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Mount Pleasant, S.C. 29464
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Attorney for the Appellant



The South Carolina Court of Appeals

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November 26, 2014

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Mr. David Jay Parrish, Esquire
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Re: Johnson Koola v. Cambridge Two
Appellate Case No. 2013-000279

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in black ink that reads "Jenny Abbott Kitchings". The signature is stylized with a large, sweeping "J" and a long, horizontal stroke at the end.

CLERK

cc: The Honorable W. Jeffrey Young

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

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 Lakes
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, and Stephen R.
Heape, Individually and as General Partner of Cambridge
Lakes, LP are the Respondents.

Appellate Case No. 2013-000279

Appeal From Charleston County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2014-UP-422
Submitted October 1, 2014 – Filed November 26, 2014

AFFIRMED

William B. Jung, of William B. Jung, Esq., LLC, of Mt. Pleasant, for Appellant.

Linda Weeks Gangi, of Thompson & Henry, PA, of Conway, for Respondents Cambridge Lakes, LP and Stephen R. Heape; and David Jay Parrish, of Nexsen Pruet, LLC, of Charleston, for Respondents Cambridge Two, LLC and Albert V. Estee.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in concluding the statute of limitations barred Johnson Koola's claims: *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) (providing a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"); *id.* ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP."); S.C. Code Ann. § 15-3-530 (2005) (providing a three-year statute of limitations for an action upon a liability created by a statute); *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) ("Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party *might* exist. *The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.*" (citations omitted)); *Dorman v. Campbell*, 331 S.C. 179, 184-85, 500 S.E.2d 786, 789 (Ct. App. 1998) (providing the injured party does not have to obtain "actual knowledge of either the potential claim or of the facts giving rise thereto" and it is irrelevant

whether he fully comprehends the extent of the damage); *id.* at 184, 500 S.E.2d at 789 (stating the date to determine when discovery of an injury should have been made is an objective rather than subjective question); Rule 3(a), SCRCF (providing if a complaint is filed but not served within the statute of limitations, then service must be made within 120 days of filing).¹

2. As to whether the trial court applied the proper standard for summary judgment: *Froneberger v. Smith*, 406 S.C. 37, 46, 748 S.E.2d 625, 629 (Ct. App. 2013) ("The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, . . . the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.").

AFFIRMED.²

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ As to whether the trial court erred in failing to apply the doctrine of equitable tolling: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review).

² We decide this case without oral argument pursuant to Rule 215, 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 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.

PETITION FOR REHEARING

Appellant pro se, Johnson Koola, ("Koola") files this Petition for Rehearing of the Court of Appeal's 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 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 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 the 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 SCHPA violations in June 2008, therefore, the statute of limitations began to run 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 construction 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 24, 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. p. 045, lines 5-6); and (vi) Koola was on notice about 2008 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 SCHPA.

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 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 SCHPA. There is no mention of no 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' SCHPA 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' SCHPA 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 SCHPA violations by the Respondents.

The Respondents continue further to the bottom of the 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 SCHPA 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 received 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. 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' SCHPA 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 SCHPA. 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 SCHPA because these common elements are jointly and severally owned by all 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 said 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. 27, line 5), Fraud, Deceit and Negligent Misrepresentation (R. p. 028, line 1) resulting from the violation of SCHPA as can be 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 include, 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 SCHPA 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 Court 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.*, 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 when 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 SCHPA 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 SCHPA 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 in 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 Statue 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 cause of action] and Respondents' SCHPA violations came to be known in 2010 [which are the cause of action].

IV. EQUITABLE TOLLING

The Court of Appeals did not consider the application of the doctrine of equitable tolling to the petitioner's cause of action as the issue was not preserved for appellate review. Petitioner prays to this Court to reconsider the petitioner'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 Kola knew about the violations of SCHPA 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. (R. p. 056, lines 24-25). Koola

realized that any further representations 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, 2012 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, and 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 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 courtroom. For this reason, Koola request this Court to consider his failure to preserve the issue of the doctrine of equitable tolling for appellate review during the motion hearing as an excusable neglect.

In *Hooper v. Ebenezer Sr. Services and Rehabilitation Ctr.*, 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

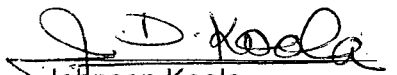
developed by the Court are applied to toll the applicable limitations period. Specifically the Court states that the Courts apply doctrine of equitable tolling in order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, equitable tolling stems 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 the 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 interests of justice favor the equitable tolling when appropriate. The Supreme Court reversed the lower Court's 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 SCHPA violations 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 this Court in the case at bar would support the cause of public policy of this state.

CONCLUSION

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

Respectfully submitted


Johnson Koola
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(843) 849-9241
Appellant pro se

December 10, 2014

TABLE OF AUTHORITIES

CASES

<i>Gibson v. Bank of America, N.A.</i> , 383 S.C. 498, 680 S.E.2d 778 (Ct.App. 2009).....	08
<i>Grillo v. Speedrite Products, Inc.</i> , 340 S.C. 498, 532 S.E.2d 1 (Ct.App. 2000).....	07
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<i>Hooper v. Ebenezer Sr. Services and Rehabilitation Ctr.</i> , 386 S.C. 108, 687 S.E.2d 29, 32-34 (2009).....	10
<i>Prince v. Liberty Life Ins. Co.</i> , 390 S.C. 166, 700 S.E.2d 280 (Ct.App. 2010).....	08
<i>Rump v. Massachusetts Mut. Life Ins. Co.</i> , 357 S.C. 386, 593 S.E.2d 183 (Ct.App. 2004).....	08
<i>Ross v. Ross</i> , 394 S.C. 261, 715 S.E.2d 359 (Ct.App. 2011)	

STATUTE

S.C. Horizontal Property Act, S.C. Code Ann 27-31-10 et seq. (1976).....	passim
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RULE

Rule 211(b)(1), SCACR.....	2
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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

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.

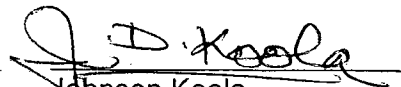
PROOF OF SERVICE

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 counsels of record for the respondents:

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December 10, 2014


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

The South Carolina Court of Appeals

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 Lakes
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, and Stephen R.
Heape, Individually and as General Partner of Cambridge
Lakes, LP, are the Respondents.

Appellate Case No. 2013-000279

ORDER

Appellant has filed a petition for rehearing and a motion to supplement the record on appeal, which this court will construe as an additional petition for rehearing. After careful consideration of the petition for rehearing and the motion to supplement the record on appeal, this court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing and the motion to supplement the record on appeal are denied.

H. B. W. J.

John D. Latta J.

Stephane P. McGonigal J.

Columbia, South Carolina

cc: William B. Jung, Esquire
Linda Weeks Gangi, Esquire
David Jay Parrish, Esquire
The Honorable W. Jeffrey Young

FILED

January 26, 2015