

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

APPELLATE CASE No.: 2015-000399

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

PETITIONER'S AMENDED REPLY TO RETURN  
TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Did the Courts Lower err because the Courts failed to apprehend that the respondents lied or perjuringly misrepresented in their Brief stating that the HOA asserted SCHPA violations in its 2008 lawsuit, and petitioner asserted construction defects in his 2010 lawsuit?
2. Did the Courts Lower err because the Courts failed to apprehend that the petitioner's cause of action is for the respondents' SCHPA violations and applied incorrect standard governing Statute of Limitations?
3. Did the Courts Lower err because the Courts failed to apprehend that petitioner's cause of action is for the respondents' SCHPA violations and incorrectly applied the standard governing Summary Judgment?
4. Did the Courts Lower err because the Courts did not apply the proper burden of proof standard to show that a genuine issue of material fact existed to preclude the grant of Summary Judgment to petitioners?
5. Did the Court of Appeals fail to apply the Doctrine of Equitable Tolling as established in *Hooper v. Ebenezer Sr. Services and Rehabilitation Center* to the petitioner's claims?

## STATEMENT OF THE CASE

This is a Petition for a Writ of Certiorari following Court of Appeals' denial of petitioner's Appeal and denial of the Petition for Rehearing.

On November 4, 2010, petitioner Johnson Koola (the "petitioner") brought claims against respondents for alleged violations of the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et seq.*, ("SCHPA"), more specifically S.C. Code Ann. § 27-31-430 ("SCHPA § 27-31-430") and the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*, ("SCUPTA") and for fraud, negligence and negligence per se and breach of contract and warranty. (R/A. pp. 25-28). In the adjudication of the case, the Courts Lower did not review evidences available in the record to determine the facts of the case, to set out accompanying legal analysis to permit meaningful appellate review, and to state the rationale

applied in granting summary judgment to respondents, which necessitated this Petition for a Writ of Certiorari.

## ARGUMENT

### I. THE COURTS LOWER FAILED TO APPREHEND THAT THE RESPONDENTS LIED OR PERJURIOUSLY MISREPRESENTED IN THEIR BRIEF THAT THE HOA ASSERTED SCHPA VIOLATIONS IN ITS 2008 LAWSUIT, AND PETITIONER ASSERTED CONSTRUCTION DEFECTS IN HIS 2010 LAWSUIT.

In his Petition for a Writ of Certiorari and Petition for Rehearing, petitioner argued that the respondents willfully lied or perjurally misrepresented in their Brief when stating that the HOA asserted SCHPA violations and construction defects against the respondents in its lawsuit filed in June 2008, (Petition, pp. 6-10, R/A. p.145, lines 10-14, pp. 171-172), and the petitioner asserted construction defects in his lawsuit filed in November 2010. (Petition, pp. 6-10, R/A. p. 146, lines 2-5, pp. 171-172). The facts supported by the evidences are that:

- (i). The HOA did not assert SCHPA violations and construction defects against the respondents in its lawsuit filed in June 2008. (R/A. pp.115-120);
- (ii). The HOA asserted only: (a) First Cause of Action: Negligence; (b) Second cause of Action: Breach of Warranties; and (c) Third Cause of Action: Unfair Trade Practice against the respondents in June 2008. (R/A. p. 118, line 5-6, p. 119, lines 5-6, lines 15-16);
- (iii). The HOA asserted claims for construction defects against builder and contractors only and not against the respondents. (R. pp. 115-120);
- (iv). The HOA first asserted the respondents' SCHPA violations in its Second and Third Amended Complaint filed in June/July 2010. (R/A. p. 80, lines 8-10, p. 81, lines 11-12); and

(v). The petitioner did not assert construction defects in his lawsuit filed in November 2010, but asserted respondents' SCHPA violations. (R/A. pp. 23-29, p. 025, line 29-p. 26, line 13). Any representations by the respondents contrary to these evidentiary facts are intentional lies or perjurious misrepresentations.

"It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State." S.C. Code Ann. § 16-9-10(A)(2) (2003). Giving false information in a document or report required by the laws of the State is "perjury". *State v. Stanley*, 365 S.C. 24, 35, 615 S.E.2d 455, 460. The respondent shall be bound by the matters stated or alleged in his statement of the Case. Rule 208(b)(2), SCACR.

The respondents chose: (i) Not to address this issue of perjury in their Return to the Petition for Writ of Certiorari; (ii) Not to file Return to Petition for Rehearing; and (iii) Not to deny perjury charges. In South Carolina appellate jurisprudence, if an appellee fails to respond to an issue in its brief, the [appellate] court may determine that said issue is uncontested and may treat the failure to respond as a concession that the appellant's position is correct. (R/A. p. 160, lines 20-p. 161. line 3). *U.S. Fid. & Guar. Co. v. First Nat. Bank of S. C. of Columbia*, 244 S.C. 436, 443, 454, 137 S.E.2d 582, 585, 590 (1964); 5 Am. Jur. 2d, Appellate Review § 512 (2013).

In *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651-52, 661 S.E.2d 791, 795 (2008), this Court was concerned whether the counsel for appellant/respondent made a false representation to the Courts Lower that she did not receive Notice of Entry of Judgment. Rule 407(1), Rule 3.3(a)(1), Rule 4.1(a), Rule 8.4(d), RPC, Rule 407, SCACR. This Court determined that the counsel for appellant/respondent was credible in explaining her delay in filing the Motion.

In *Regions Bank v. Strawn*, 399, S.C. 530, 536-37, 732 S.E.2d 230, 233 (Ct.App. 2012), involving a claim against the Bank for its failure to mark satisfied a mortgage on the property pursuant to S.C. Code Ann. §§ 29-3-310, 320 (2007), the petitioners testified that they hand-delivered a payoff letter with a payoff check requesting the mortgage be satisfied within three months. Bank denied receiving the said letter. These conflicting statements raised the possibility that one of the parties is making a misrepresentation to the Court, a perjury. The Trial Court reviewed the evidences to determine the facts and found that evidences supported the respondents' testimony and held the Bank liable to petitioners.

In the case at bar, petitioner and respondents made conflicting statements in the Court that the HOA asserted SCHPA violations and construction defects against the respondents in its lawsuit filed in June 2008, (Petition, pp. 6-10, R/A. p. 145, lines 10-14, pp. 171-172), and the petitioner asserted construction defects in his lawsuit filed in November 2010. (Petition, pp. 6-10, R/A. p. 146, lines 2-4 3, pp. 171-172). The Courts Lower did not review the evidences to determine the facts, presumed that the petitioner knew about the respondents' SCHPA violations in June 2008 and erroneously granted Summary Judgment to the respondents. The intentional lie or the perjurious misrepresentation by the respondents is a *per se* violation of S.C. Code Ann. § 16-9-10(A)(2). To honor the legislative intent of this code, this Court is bound to rule that the respondents committed perjury which then would establish that the petitioner knew about the respondents' SCHPA violation only in September 2010, and which would be dispositive to the remaining causes of action asserted by the petitioner.

**II. THE COURTS LOWER FAILED TO APPREHEND THAT PETITIONER'S CAUSE OF ACTION IS FOR THE RESPONDENTS' SCHPA VIOLATIONS AND ERRED BY NOT APPLYING THE CORRECT STANDARD GOVERNING STATUTE OF LIMITATIONS.**

The Courts Lower failed to recognize that the petitioner's cause of action is for the respondents' SCHPA violations. The relevant facts of the case are (i) HOA asserted Negligence; Breach of Warranties; and Unfair Trade Practices only against the respondents in June 2008. (R/A. pp. 115-120); (ii) The HOA and petitioner never ever asserted claims for construction defects against the respondents. (R/A. pp. 23-29); (iii) The HOA first asserted SCHPA violations against the respondents in June and July 2010. (R/A. p. 80, lines 8-10, p. 81, lines 11-12); and (iv) Petitioner asserted SCHPA violations against the respondents in November 2010. (R/A. p. 025, line 29-p. 26, line 13).

In the Return to the Petition for Writ of Certiorari, the respondents argue (Return, pp 6-8):

- i. **Petitioner's Complaint** stated that in 2008, the petitioner learned that HOA filed a lawsuit against the respondents and various other parties for various construction defects. (Return, p. 6, lines 12-15).
- ii. **Petitioner's Complaint** stated that he learned that the respondents did not file with the Master Deed or provide copies of a report required by SCHPA. (Return, p. 6, lines 16-18).
- iii. In the **discovery requests in his foreclosure actions**, petitioner met with and sent a letter to an HOA Board member regarding the construction defects in Cambridge Lakes. (Return, p. 6, lines 21-25, p. 7, lines 1-6).
- iv. In the **discovery requests in his foreclosure actions**, petitioner admitted that he did not receive any offers from prospective buyers when he listed his condominium for sale in June/July 2008 because of the HOA's lawsuit. (Return, p. 7, lines 7-11).
- v. In the **discovery requests in his foreclosure actions**, petitioner stated that on June 25, 2008, the HOA and its attorney sent a letter to the homeowners stating that the HOA filed a lawsuit against various parties. (Return, p. 7, lines 12-14).

- vi. In the **discovery requests in his foreclosure actions**, petitioner stated that he studied the Builder's Certification when the HOA filed its lawsuit and then the Master Deed and realized that the developer/seller (respondents) understood the provisions of the SCHPA. (Return, p. 7, lines 15-22).

Whether petitioner knew about construction defects in 2004 or 2008 are wholly irrelevant to the case at bar because the petitioner's cause action against the respondents is not for construction defects. Respondents did not establish that petitioner knew about the respondents' SCHPA violations and did not point put to any statement by the petitioner that he knew about respondents' SCHPA violations in 2008. By perjuringly misrepresenting to the Courts Lower that the HOA asserted both SCHPA violations and constructions defects in 2008 against the respondents, and petitioner asserted the same SCHPA violations and constructions defects in his November 2010 lawsuit against the respondents, the respondents induced the Courts Lower to believe that petitioner knew or should have known about the respondents' SCHPA violations in 2008. *Holy Loch Distributors v. Hitchcock*, 332 S.C. 247, 254-59, 503 S.E.2d 787, 791-94 (Ct.App. 1998). Respondents falsely affirmed in the Master Deed that they complied with the provisions of SCHPA. (R/A. p. 067, lines 10-16). They fraudulently certified in the Builder's Certification that they have completed all the necessary structural, health & safety repairs. (R/A. p. 66, lines 39-40). Therefore, petitioner did not discover that the respondents violated SCHPA before September 2010. The Courts Lower did not review the evidences to determine the facts, presumed that the petitioner knew about the respondents' SCHPA violations in June 2008, and closed the courtroom doors to the petitioner and erroneously granted Summary Judgment to the respondents. *Moriarty v. Garden Sanctuary Church*, 341 S.C. 320, 534 S.E. 2d 672, 678-79 (2000).

The respondents' arguments herein include serious deceptive representations in addition to perjurious misrepresentations:

(i). The respondents did not cite to the specific page and line numbers in the record to prove that the HOA's June 2008 lawsuit included a claim for SCHA violations, the HOA asserted construction defects against the respondents in 2008, and petitioner asserted construction defects in his November 2010 Complaint and where petitioner admitted that he knew about the respondents' SCHA violations before September 2010. Rule 211(b); SCACR; 4, C.J.S. § 728 References to record, 662 (2007).

(ii) Respondents affirmatively stated that the HOA filed its Complaint in June 2008, petitioner met with and wrote a letter to the HOA Board Member in November 2004 regarding construction defects, and HOA sent a letter in June 2008 to petitioner and homeowners informing them of the HOA's lawsuit. Respondents intentionally withheld information when petitioner filed his Complaint against the respondents alleging that they did not file with the Master Deed or provide copies of a report required by SCHA, and when petitioner filed his discovery requests in his foreclosure actions discussing the Builder's certification and SCHA violations in Master Deed. The factual chronological history is very critical for determination of Statute of Limitations. *Froneberger v. Smith*, 406 S.C. 37, 41-44, 748 S.E.2d 625, 627-28 (Ct.App. 2013)

(iii) Respondents did not cite to HOA's Third Amended Complaint filed in July 2010 wherein HOA alleged SCHA violations. (R/A. p. 80, lines 8-10, p. 81, 11-12).

For record, petitioner knew about the respondents SCHA violations in September 2010 when he read about it in the HOA's Third Amended Complaint filed

in July 2010, filed his Complaint in November 2010, (R/A. pp. 023-029), and filed his discovery requests in the foreclosure action in May 2011. (R/A. p. 099-105). These dates are very critical in determining the Statute of Limitations in the case at bar and the respondents intentionally omitted this information in their Return. There are two sets of facts here: construction defects known in 2008 or before and SCHPA violations known in or after September 2010. By withholding information that petitioner knew about SCHPA violations in or after September 2010, respondents induced the Courts Lower to believe that petitioner knew about construction defects and SCHPA violations in 2008, and therefore Statute of Limitations began to accrue from 2008.

Respondents and the Courts Lower failed to apprehend the distinction between construction defects and SCHPA violations. Builder and building contractors are liable for construction defects. Neither petitioner nor HOA has asserted claims for construction defects against the respondents. Violations of SCHPA and S.C. Code Ann. § 27-31-430 arose because the respondents failed to provide the "Disclosure of the physical condition of the building" report mandated by S.C. Code Ann. § 27-31-430 to petitioner when they sold converted condominiums under the provisions of SCHPA to petitioner. This is a *per se* statutory violation, which makes the violators automatically liable for violation of SCUPTA.

Only the HOA is authorized to maintain, repair, and pursue construction defects remedies. *Queen's Grant Villas Horizontal Property Regimes I-IV v. Daniel Internat'l Corp.*, 286 S.C. 555, 556, 335 S.E.2d 365, 366 (S.C. 1985). On the contrary, the petitioner, as an individual condominium owner, can pursue a cause of action against the respondents for negligent misrepresentation in the Master Deed,

(R. p. 067, lines 10-16), for violation of SCPHA § 27-31-430 and for providing a falsified and fraudulent Builder's Certification, (R. p. 066, 39-40), to petitioner. A Court would rule a construction defects lawsuit against the respondent by petitioner frivolous. *Grillo v. Speedrite Products, Inc.*, 340 S.C.498, 508, 532 S.E.2d 1, 6 (Ct.App. 2000),

“At the summary judgment stage of the 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). In the adjudication of cases, the Courts Lower is bound to review evidences available in record to determine the facts of the case, to set out accompanying legal analysis to permit meaningful appellate review and to state the rationale applied in granting summary judgment. *Bowen v. Lee Process Systems Co.*, 342 S.C. 232, 236, 238, 36 S.E.2d 86, 88, 89 (Ct.App. 2000). The Courts Lower failed in these respects.

It is a question of fact to be determined whether: (i) Petitioner knew about respondents SCHPA violations in 2010 or 2008; (ii) Facts and circumstances of HOA's construction defects lawsuit against builder and contractors would put a person of common knowledge and experience on notice that the respondents violated SCHPA and would tend to establish an issue in the mind of a reasonable juror that the respondents violated SCHPA; and (iii) Respondents induced petitioner to believe that they have not violated SCHPA through their affirmative statements in the Master Deed, (R/A. p. 067, lines 10-16), and the Builder's Certification. (R/A. p. 066, lines 39-40). Facts and circumstances of HOA's construction defects lawsuit against builder and contractors did not put HOA and nearly two hundred Cambridge Lakes homeowners on notice that the respondents violated SCHPA. The Courts

Lower ruled that facts and circumstances of HOA's 2008 construction defects lawsuit put petitioner on notice that the respondents violated SCHPA in 2008. As to all factual issues passed on by trial judge in law case question for Supreme Court is whether there is any evidence to support findings actually made, not whether evidence would support contrary findings. *United States Fid. & Guar. Co. v. First Nat. Bank of S.C. of Columbia, supra*, 443, 137 S.E. 2d 582, 585, (1964).

In denying petitioner's appeal and petition for rehearing, the decision of the Court of Appeals is in conflict with its own prior decisions. In *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 184, 708 S.E.2d 787, 793-94 (Ct.App. 2012), appellants argued that the respondent Association is barred from bringing an action in 2005 for problems in the development's common areas under Statute of Limitations because those problems existed prior to 2002. The respondent Association maintained and testified that the problems the Association experienced during 2002-2005 were different from those, which existed prior to 2002. Therefore, the *Holly Woods Ass'n of Residence Owners* Court reasoned and affirmed the lower court's decision stating:

"We find it is a jury question as to whether the damages the Association claimed in 2005 were different from those it experienced in the past. There is evidence....that the problems, though similar in nature, were different. Therefore, we find the circuit court did not err in denying Appellant's directed verdict motion based on the statute of limitations".

*Id.*

In *Grillo v. Speedrite Products, Inc., supra*, 500-03, 508, 532 S.E.2d 1, 2-3, (Ct.App. 2000), the Trial Court denied the appellant's claims against the respondent for the injury caused by the use of carcinogenic chemicals stating the appellant first experienced temporary symptoms of injury in May 1992 and filed the lawsuit only in December 1995, and the statute of limitations barred the claims. The Court of

Appeals reversed the Trial Court's Decision stating that: (i) The fundamental test ... in determining whether a cause of action has accrued[ ] is whether the party asserting the claim can maintain an action to enforce it, (ii) a key element in the reasonable diligence test is "notice", which is an objective, not a subjective, determination, (iii) Institution of an action based upon temporary symptoms would likely have been premature and possibly frivolous.

The Court of Appeals failed to apply the Court's reasoning in *Holly Woods Ass'n of Residence Owners and Grillo* to petitioner's arguments that construction defects are not the same as SCHPA violations, SCHPA violations by the respondents came to be known to the HOA in July 2010 and to petitioner in September 2010.

**III. THE COURTS LOWER FAILED TO RECOGNIZE THAT PETITIONER'S CAUSE OF ACTION IS FOR THE RESPONDENTS' SCHPA VIOLATIONS AND ERRED BY NOT APPLYING THE CORRECT STANDARD GOVERNING SUMMARY JUDGMENT.**

The Courts Lower failed to recognize that the petitioner's cause of action is for the respondents' SCHPA violations.

Petitioner has set out the relevant facts of the case in Argument II, *supra*, p. 5-11; they are not repeated here for judicial economy. In the Return to the Petition for Writ of Certiorari, the respondents argue that the Courts Lower applied the correct standard governing the granting of Summary Judgment in this action. (Return, p. 9-10). However, they present the same arguments and deceptive representations, which they presented in arguments I-III for determining standard for Statute of Limitations. (Return, pp 6-8). In argument IV, the respondents state:

- i. **Petitioner's Complaint** stated that in 2008, the petitioner learned that HOA filed a lawsuit against the respondents. (Return, p. 10, lines 3-5).

- ii. **Petitioner's Complaint** stated that he learned that the respondents did not file with the Master Deed or provide copies of a report required by SCHPA. (Return, p. 7, lines 6-7).
- iii. In the **discovery requests in his foreclosure actions**, petitioner met with and sent a letter to an HOA Board member regarding the construction defects in Cambridge Lakes. (Return, p. 7, lines 8-11).
- iv. In the **discovery requests in his foreclosure actions**, petitioner stated that on June 25, 2008, the HOA and its attorney sent a letter to the homeowners stating that the HOA filed a lawsuit against various parties. (Return, p. 10, lines 11-13).

Petitioner has analyzed each of these statements of the respondents in his Argument II, *supra*, pp 5-8) and pointed out the deceptive representations; they are not repeated here to save judicial time. In summary, respondents misrepresented and induced the Courts Lower to believe that petitioner knew about construction defects and SCHPA violations in 2008. Consequently the Courts Lower applied the **incorrect standard** while granting Summary Judgment to the respondents.

**IV. THE COURTS LOWER DID NOT APPLY THE PROPER STANDARD GOVERNING PETITIONER'S BURDEN OF PROOF TO SHOW THAT A GENUINE ISSUE OF MATERIAL FACT EXISTED TO PRECLUDE THE GRANT OF SUMMARY JUDGMENT ON THIS ISSUE.**

South Carolina Rules of Civil Procedure and numerous Appellate Court decisions have established multiple standards for the grant of summary judgment. In the Petition for a Writ of Certiorari filed on February 24, 2015, petitioner has detailed these standards, (Petition, Argument IV, pp. 18-21), and they are not repeated here for judicial economy. Petitioner makes one final statement:

It is a question of fact to be determined whether: (i) Petitioner knew about respondents SCHPA violations in 2010 or 2008; (ii) Facts and circumstances of HOA's construction defects lawsuit against builder and contractors would put a

person of common knowledge and experience on notice that the respondents violated SCHPA and would tend to establish an issue in the mind of a reasonable juror that the respondents violated SCHPA; and (iii) Respondents induced petitioner to believe that they have not violated SCHPA through their affirmative statements in the Master Deed (R/A. p. 067, lines 10-16) and the Builder's Certification (R/A. p. 066, lines 39-40). Facts and circumstances of HOA's construction defects lawsuit against builder and contractors did not put HOA and nearly two hundred Cambridge Lakes homeowners on notice that the respondents violated SCHPA. The Courts Lower ruled that facts and circumstances of HOA's 2008 construction defects lawsuit put petitioner on notice that the respondents violated SCHPA in 2008. As to all factual issues passed on by trial judge in law case question for Supreme Court is whether there is any evidence to support findings actually made, not whether evidence would support contrary findings. *United States Fid. & Guar. Co. v. First Nat. Bank of S.C. of Columbia, supra*, 443, 137 S.E. 2d 582, 585, (1964).

**V. THE COURT OF APPEALS FAILED TO APPLY THE DOCTRINE OF EQUITABLE TOLLING AS ESTABLISHED IN *HOOPER V. EBENEZER SR. SERVICES AND REHABILITATION CENTER* TO PETITIONER'S CLAIMS.**

Equitable tolling is a nonstatutory tolling theory, which the courts invoke to suspend the statutory period to ensure fundamental practicality and fairness and to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits. *Hooper v. Ebenezer Sr. Services and Rehabilitation Center*, 386 S.C. 108, 114-119, 687 S.E.2d 29, 32-34 (2009), *Ross v. Ross*, 394 S.C. 261, 264-66, 715 S.E.2d 359, 360-62 (Ct.App. 2011).

i. During the motion hearing in the Trial Court on July 25, 2012, when the petitioner repeated his position to the Trial Judge that petitioner knew about the

respondents' SCHPA violations only in September 2010, the Trial Judge remarked that the petitioner is arguing with the Trial Judge. (R/A. p. 056, lines 24-25). Arguing with the Trial Judge in an open Court is a defiance of the Trial Judge. Law-abiding citizens in a democracy should not defy Judges. Therefore petitioner did not make any representations, including doctrine of equitable tolling, to the Trial Judge. Petitioner prays to this Court to consider the petitioner's failure to preserve the issue of doctrine of equitable tolling as an excusable neglect.

ii. Shortly after the petitioner filed his lawsuit in November 2010, (R. pp. 22-29), petitioner's then counsel of record wanted to withdraw representation in the case and did not advance the case further<sup>1</sup>. (R. p. 049). Nevertheless, Service of the Summons and Complaint on the respondents was completed in January 2012. (R. p. 94-95). If this Court determines that petitioner knew about the respondents' SCHPA violations in September 2010, and the Statute of Limitations in the case at bar accrued from September 2010 (this Reply to the Return, Argument II, *supra*, pp. 5-11), then the service was completed within the limitations period.

iii. Respondents intentionally lied or perjuriously and deceptively misrepresented facts of the case to the Courts Lower and received Summary Judgment. (This Reply to the Return, Argument I, *supra*, pp. 2-5, Argument II, *supra*, pp. 6-8).

iv. Respondents falsely affirmed in the Master Deed that they complied with the provisions of SCHPA (R/A. p. 067, lines 10-16). They fraudulently certified in the Builder's Certification that they have completed all the necessary structural, health & safety repairs. (R/A. p. 66, lines 39-40). Thus, the respondents induced petitioner to believe that they did not violate SCHPA and did not falsify the Builder's Certification

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<sup>1</sup> This Court has since then placed the counsel on interim suspension. Appellate case No. 2014-002076 and 002077.

until he knew about them in September 2010. Therefore, these circumstances should toll the limitations period. *Holy Loch Distributors v. Hitchcock*, *supra*, 254-59, 503 S.E.2d 787, 791-94 (Ct.App. 1998).

v. The respondents (a) Sold a condominium to the petitioner on the express representation that they have complied with SCHPA. (R/A. p. 067, lines 10-16); (b) Willfully and wantonly violated South Carolina Codes. (R/A. p. 22-29); and (c) Provided a fraudulently certified "Builder's Certification" to the petitioner. (R/A. p. 066, lines 39-40). Petitioner and all the Cambridge Lakes condominium buyers suffered gross wrong at the hands of the respondents. (R/A. p. 120, lines 8-10). Nearly 30% of the homeowners lost their homes to short sales and foreclosures. Petitioner faces imminent foreclosure. (R/A. p. 180, lines 20-21). The intervention of this Court in the case at bar would support the cause of public policy of this state.

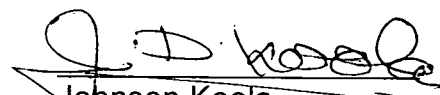
It is within the discretion and authority of this Court to review and grant petitioner's request to toll the limitations period, provided sufficient facts presented herein justify its use in the appeal at bar.

### CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a Writ of Certiorari.

April 10, 2015

Respectfully submitted,

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

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

APPELLATE CASE No.: 2015-000399

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

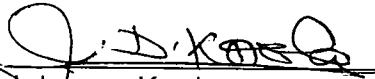
PROOF OF SERVICE

I, Johnson Koola, under penalty of perjury, certify that on April 10, 2015, I mailed a copy of Petitioner's Amended Reply to the Return to Petition for Certiorari by mailing a true and accurate copy thereto to the following counsels of record for the respondents:

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

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

April 10, 2015

  
Johnson Koola  
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Mt. Pleasant, SC 29464

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

**RECEIVED**

APR 13 2015

April 10, 2015

**S.C. Supreme Court**

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re.: Appellate Case No. 2015-000399

Sub: Amended Reply to the Return to Petition for Writ of Certiorari

Dear Honorable Mr. Shearouse,

I am the petitioner pro se in the above Petition. On April 3, 2015 petitioner filed a Motion for Extension of Time to April 7, 2015 to file and serve the Reply to the Return to Petition for Writ of Certiorari. On April 7, petitioner filed and served Reply to the Return.

On April 8, 2015, petitioner received the Courts Order extending time till April 10, 2015 to file and serve the Reply to the Return. When petitioner completed the Reply for filing on April 7, he did not have sufficient time to proof read the Reply. Petitioner pro se is not a professional attorney, is a 71 year old senior citizen, and requires sufficient time to complete an error-free Court document. Since the Court granted petitioner time till April 10, 2015 petitioner requests the permission of the Court to file and serve an Amended Reply to the Return.

Enclosed please find seven copies of Petitioner's Amended Reply to the Return to Petition for Writ of Certiorari and proof of service. Please cancel the April 7 Reply and substitute it with the April 10 Reply.

I thank you in advance for your kind actions.

Sincerely,

  
Johnson Koola

Copy to:  
David J. Parish, Esq.  
Attorney for Respondents  
Cambridge Two, LLC and Albert Estee

Linda Weeks Gangi, Esq.  
Attorney for Respondents  
Cambridge Lakes, LP and S. R. Heape