

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

JUN 29 2015

The Honorable R. Markley Dennis, Jr., Circuit Court Judge of Appeals

Case No.: 2010-CP-10-9158

APPELLATE CASE No.: 2015-000111

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 Trademark Properties, Inc., and Carolina One Real Estate are the
.....Respondents.

**APPELLANT'S RETURN TO THE MOTION OF RESPONDENT TRADEMARK
PROPERTIES, INC. TO SUPPLEMENT THE RECORD ON APPEAL**

Appellant *pro se* Johnson Koola ("appellant") files his Return to the Motion of Respondent Trademark Properties, Inc. ("Trademark") to supplement the Record on Appeal.

Appellant requests this Court to suspend the filing of the Final Briefs and Record on Appeal until this Court decides on the merits of procedural and substantive questions of law raised by Trademark and appellant.

I. Respondent's Designation No. 10

Designation No. 10 is not a single document, but a collection of various individual exhibits with its own individual captions presented to the lower court. Appellant stated in his June 10, 2015 letter to this Court that he did not include Designation No. 10 in the final Record on Appeal because:

- (i) Trademark has not submitted Designation No. 10: Memorandum of Evidentiary Exhibits dated November 13, 2014 to the lower court;
- (ii) Trademark has not referenced to Designation No. 10 in its Initial Brief;
- (iii) Practically all elements in the Designation No. 10 have been individually included in the final Record on Appeal.

Trademark's June 22, 2015 Motion, however, withheld information from this Court that Trademark did not make reference to the Designation No. 10 in its Initial Brief. Intentional withholding of critical information to this Court is probably a perjury; this Court may kindly review this question.

(a) Rule 211(b)(2), SCACR

Rule 211(b)(2), SCACR, provides: The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. Appellant pro se comprehends Rule 211(b)(2), SCACR, to mean that if there are no references in the initial brief, those references shall not be included in the Record on Appeal. Trademark has not stated in its June 22 Motion whether it has referenced to Designation No. 10 in its Brief. Therefore, any supporting document that is not referenced in the brief cannot be designated as Designation of Matter to be in the Record on Appeal.

(b) Rule 209(b) and Rule 210(c), SCACR

Rule 209(b) and Rule 210(c), SCACR, provides that the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials, which may be properly included in the Record on Appeal. Rule 209(b) and Rule 210(c), SCACR did not provide that where a portion of a page of the document is to be included, the entire document shall be included. Therefore, Appellant represents to this Court that the inclusion of approximately 117 pages long Designation No. 10, which has not been referenced in the Trademark's Initial Brief, is clearly not allowed by Rule 209(b) and Rule 210(c), SCACR.

(c) Prejudice

Appellant further represents to this Court that Trademark is not prejudiced in any way because practically all the elements in the Designation No. 10 are individually represented in the Record on Appeal. A legal claim is not actionable if the party is not prejudiced. Inclusion of Designation No. 10 is duplicating the Record on Appeal, which will result in duplicate printing of nearly two thousand three hundred and forty (2340) sheets of paper, which would result in waste of judicial time and unnecessarily increase the cost of production of Record on Appeal.

Appellant respectfully requests that this Court deny Trademark's Motion to include Designation No. 10 in the Record on Appeal, which it has not referenced in its Initial Brief.

II. Respondent's Designation No. 4

Respondent argues in its June 22, 2015 Motion that during the Motion hearing on Oct. 22, 2104, the trial judge incorporated Designation No. 4; therefore, it should be included in the Record on Appeal.

The trial judge's Order incorporating Designation No. 4 is an oral Order. An oral Order of the trial judge is effective and valid only when so set forth in writing and entered by the Clerk of the Court in the records. Rule 58(a), SCRCP. Since the oral Order of the Trial Judge has not been entered into the Record by the Clerk of the Court, it is to be presumed that the trial Judge abandoned his ruling from the bench. *LaRosa v. Johnston*, 328 S.C. 293, 297, 493 S.E.2d 100, 102 (Ct.App. 1997), *Ex Parte Reichlyn: In Re: SCDHEC v. Columbia Organic Chemical Co., Inc.*, 310 S.C. 495, 499, 427 S.E.2d 661, 663 n.3 (1993), *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009). "[T]he moment....[the order] is filed by the clerk of the court, it becomes the judgment of the court and fixes the rights of the parties." *Upchurch v. Upchurch*, 367 S.C. 16, 22, 23, 624 S.E.2d 643, 646 (2006).

Appellant respectfully submits to this Court that this Court deny Trademark's Motion requesting inclusion of Designation No. 4 in the Record on Appeal, because the oral Order of the Trial Judge "incorporating" has been abandoned by the Trial Judge.

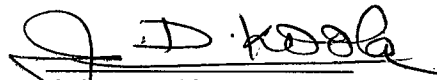
III. Statute of Limitations

On June 9, and June 10, 2015, Trademark received "notice" that appellant allegedly excluded its certain Designation of Matter to be included in the Record on Appeal. Appellant understands Rule 240, SCACR, to imply that Trademark filed its June 22, 2015 Motion to supplement the Record on Appeal outside of the 10-day period allowed for filing motions in response to appellant's action. Appellant is duty bound to file and serve the Record on Appeal on or before June 29, 2015. The three-year Statute of Limitations cannot apply here.

Appellant respectfully submits to this Court that this Court determine whether Trademark filed it's June 22, 21015 Motion requesting inclusion of Designation No. 4 in the Record on Appeal within the appropriate limitation period.

Respectfully submitted,

June 27, 2015

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

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

Plaintiff pro se

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The Honorable R. Markley Dennis, Jr., Circuit Court Judge

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Johnson Koola,.....Appellant,

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Of Whom Trademark Properties, Inc., and Carolina One Real Estate are theRespondents.

PROOF OF SERVICE

I, Johnson Koola, certify that, I have served a copy of Appellant's Return to the Motion of respondent Trademark Properties, Inc. to supplement the Record on Appeal and Proof of Service to the following Counsels of Record, by depositing a copy of the same, postage paid, in the US mailbox on June 27, 2015.

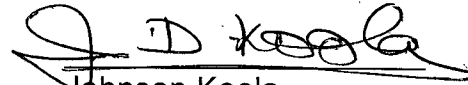
R. Michael Ethridge, Esq.
Suzanne E. Hogg, Esq.
CARLOCK COPELAND & STAIR, LLP
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Charleston, SC 29401-3351
Counsel for Trademark Properties, Inc

[Continued on next page]

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4024 Salt Pointe Parkway
Charleston, SC 29405
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June 27, 2015


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1587 Cambridge Lakes Dr
Mt. Pleasant, SC 2946

JOHNSON D KOOLA
1587 Cambridge Lakes Dr
Mt. Pleasant, SC 29464
Phone: (843) 849-9241

June 27, 2015

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

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SC Court of Appeals

Re: Johnson Koola v. Cambridge Two (2)
Appellate Case No.: 2015-CP-000111
Sub: Return to Respondent Trademark Properties, Inc. Motion to Supplement
Record on Appealed

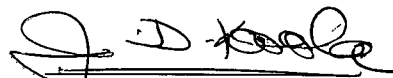
Dear Honorable Kitchings:

I am the appellant pro se in the above appeal, Johnson Koola v. Cambridge Two (2).

Appellant pro se files seven copies of appellant's Return to Respondent Trademark Properties, Inc. Motion to Supplement Record on Appeal.

Proof of Service for service on counsels of record for the respondents is also enclosed.

Sincerely yours,



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

Copy to:
R. Michael Ethridge, Esq.
Suzanne Hogg, Esq.
Attorneys for Trademark Properties, Inc.

Michael Scarafale, Esq.
David A. Collins, Esq.
Attorneys for Carolina One

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SC Court of Appeals

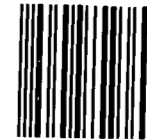
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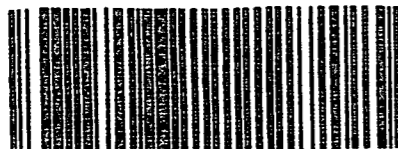
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