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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of the Master in Equity

The Honorable Mikell R. Scarborough, Master in Equity
Case No.: 2010-CP-10-6060

RECEIVED

AUG 04 2015

SC Court of Appeals

APPELLATE CASE No.: 2014-001323

Bank of America, N.A., Respondent,

v.

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

Of whom Johnson D. Koola is the Appellant.

APPELLANT'S MOTION TO FILE APPENDIX

Appellant files a Motion for leave of the Court to file Appendix in the Appellate Case No. 2014-001323, Bank of America, N.A., respondent v. Koola, appellant. Rule 212(b), SCACR, allows a party to file a motion for leave of the Court to file and serve Appendix.

In his Appeal, appellant has sought relief for an affordable mortgage loan modification under "Hope for Homeowners Program", 12 USCA §1715z-23, from the respondent Bank of America. Since the filing and service of the Record on Appeal, appellant received information about mortgage loan modification data collected by the

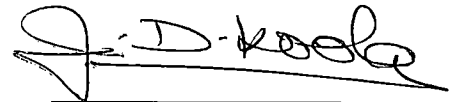
Office of the Comptroller of the Currency (OCC) under Title 12 USCA § 1715z-25 from mortgage banks and loan servicers.

Relevant data received from OCC's Quarterly Reports are compiled and presented as Appendix. Appendix emphasizes on mortgage loan modification by mortgage principal reduction.

In anticipation of the Court's Approval, appellant files and serves Appendix. Appendix is attached to each copy of the Motion.

August 3, 2015

Respectfully submitted,

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

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(843) 849-9241

Appellant pro so

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f/k/a Cambridge Lakes Horizontal Property Regime, Defendants,

Of whom Johnson D. Koola is the.....Appellant.

APPENDIX

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1. Reason for filing an Appendix

In his Briefs and in the Trial Court, appellant Johnson Koola ("appellant" or "Koola") argued that respondent Bank of America was mandated to consider his application for mortgage loan modification under the provisions of "Hope for Homeowners Program", 12 USCA §1715z-23 *et seq.* and offer him an affordable loan modification if qualified hereunder. Respondent argued that the courts have held that borrowers have no standing to assert that the bank failed to give them loan modification, and there is no duty on the part of the bank to reduce the principal and interest rate.

Courts in multiple jurisdictions have ruled that the trial period plans (TPPs) are the enforceable contracts under which banks are required to offer borrowers an affordable loan modification who have successfully complied with the terms of the trial period plans (TPPs). *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547 (7th Cir. 2012), *Corvello v. Wells Fargo Bank, N.A.*, 728 F.3d 878 (9th Cir. 2013), *In re Bank of America Home Affordable Modification Program (HAMP) Contract Litigation*, 2011 U.S. Dist. Lexis 72079, WL 2637222 (D. Mass. July 6, 2011).

Under the provisions of "Mortgage Modification Data Collecting and Reporting", 12 USCA §1715z-25 *et seq.*, mortgage banks [including respondent Bank of America] and loan servicers are mandated to file mortgage loan modification data to the Office of the Comptroller of Currency. Appellant received these data from the Office of the

Comptroller of Currency under Freedom of Information Act by accessing the Website, <http://www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/index-mortgage-metrics.html>. Appellant now files and serves relevant information compiled from OCC's quarterly data as an Appendix under Rule 212 (b) and Rule 212 (c), SCACR. This Appendix emphasizes loan modification by principal reduction.

2. **Loan Modification data compiled from OCC's Quarterly Mortgage Metrics Report**

(a) **Definitions**

As defined by OCC, **Home Retention Actions** include, *inter alia*, loan modifications, trial-period plans, and payment plans that allow borrowers to retain ownership and occupancy of their homes while attempting to return the loans to a current and performing status. **Loan modifications** include actions that contractually change the terms of mortgages with respect to interest rates, maturity, principal, or other terms of the loan. **Principal reduction modifications** include Modifications that permanently forgive a portion of the unpaid principal owed on a mortgage. **Trial period plans** are home retention actions that allow borrowers to demonstrate capability and willingness to pay their modified mortgages for a set period of time. The action becomes permanent following the successful completion of the trial period.

(b) **New Home Retention Actions**

Servicers implemented 188,816 new home retention actions during the first quarter of 2015, which included 23,765 HAMP modifications and 17,862 HAMP Trial Period Plans. OCC reports HAMP modifications and HAMP Trial Period Plans separately. OCC reported incomplete data for 2009.

The Q 1 2015 data and data for the years 2008 through 2014 are presented in Table 1. OCC reports only quarterly data, which are compiled into annual data.

Table 1. Total New Home Retention Actions including Total New HAMP Modifications, and Total New Trial Period Plans for Q 1 2015 and years 2009 through 2014.

Year	2009	2010	2011	2012	2013	2014	Q 1 2015
Total New Home Retention Actions	2,039,193	1,932,453	1,932,453	1,523,500	1,221,265	847,158	188,816
Total New HAMP Modifications	22,097	323,791	219,537	126,952	84,631	123,094	23,765
Total New Trial Period Plans	609,257	346,115	158,458	98,773	120,698	84,126	17,862

(c) Types of Modification actions

Different methods are used to change the terms for modifications, namely Capitalization, Rate Reduction, Rate Freeze, Term Extension, Principal Reduction, and Principal Deferral. Table 2 below tabulates *loan modification by principal reduction* as percentage of portfolio as well as total number of principal reduction in absolute numbers for Q 1 2015 and years 2009 through 2014. OCC reported incomplete data for 2009.

Table 2. Loan Modification by principal reduction for Q 1 2015 and years 2009 through 2014

Year	2009	2010	2011	2012	2013	2014	Q 1 2015
Principal reduction as percentage of portfolio	10.0%	3.2%	6.6%	15.7%	12.9%	6.6%	14.5%
Total number of Principal reduction in absolute numbers	40,038	29,317	35,277	77,498	55,319	15,598	7,571

(d) Changes in Monthly Payments resulting from Modifications

Monthly payments decreased as a result of loan modifications. In some cases, loan modification resulted in increase in monthly payments. ***Changes in monthly payments resulting from all types of modifications in which principal reduction*** was a factor for Q 1 2015 and years 2009 through 2014 are tabulated in Table 3.

Table 3. Changes in monthly payments as a result of loan modification

Year	2009	2010	2011	2012	2013	2014	Q 1 2015
Principal reduction by 20% or more	-36.7%	-55.2%	-53.6%	-57.0%	-60.7%	-55.6%	-55.6%
Principal reduction by 10% to less than 20%	-17.3%	-18.3%	-17.6%	-19.6%	-20.3%	-22.0%	-20.4%
Principal reduction less than 10%	-19.5%	-15.4%	-18.0%	-13.6%	-11.6%	-12.8%	-13.2%
Increase in Principal	+26.5%	+11.2%	+10.9%	+9.8%	+7.5%	+9.7%	+10.8%

Table 4 tabulates changes in monthly payments in terms of absolute dollar figures resulting from all types of Modifications for Q 1 2015 and years 2009 through 2014. OCC reported incomplete data for 2009.

Table 4. Changes in monthly payments in absolute dollar terms as a result of modification

Year	2009	2010	2011	2012	2013	2014	Q 1 2015
Principal reduction by 20% or more	N/AV	-\$676	-\$654	-\$608	-\$535	-\$417	-\$410
Principal reduction by 10% to less than 20%	N/AV	-\$188	-\$189	-\$190	-\$177	-\$155	-\$151
Principal reduction less than 10%	N/AV	-\$66	-\$61	-\$67	-\$69	-\$57	-\$53
Increase in Principal	N/AV	+\$143	+\$125	+\$154	+\$161	+\$141	+\$117

Data compiled in Tables 3 and 4 support the argument that banks have offered loan modifications by reduction in the outstanding principal.



Office of the Comptroller of the Currency

Washington, DC 20219

June 30, 2015

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

Dear Mr. Koola:

This is in response to your letter dated April 22, 2015, which was received in my office on May 1, 2015, for processing under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You requested mortgage loan modification data that was collected by the Office of the Comptroller of the Currency (OCC) under Title 12 USCA 1715z-25 and received from Bank of America for the years 2009-2014. This data should include the total number of mortgage loan modifications offered by Bank of America in each state that resulted in interest rate reductions and freezes, term extensions, and reductions of principal.

Your request for these records is denied. Individual bank mortgage data is exempt from public disclosure under 5 U.S.C. 552 (b)(8) and 12 C.F.R. 4.12(b)(8). FOIA Exemption 8 protects information that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

Although you cannot obtain the requested information for individual banks, it is available in aggregate on the OCC website at <http://www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/index-mortgage-metrics.html>.

If you consider any of the above to be an improper denial of your request, you may appeal such denial to the Comptroller of the Currency. The appeal should be filed within 35 days of the date of this letter, should state the circumstances and reasons or arguments in support of the appeal, and be submitted via our online FOIA application at <https://foia-pal.occ.gov/> or be mailed to the Manager, Disclosure Services & Freedom of Information Act Officer, Communications Division, Office of the Comptroller of the Currency, Suite 3E-218, Washington, DC 20219.

Sincerely,

Frank D. Vance, Jr.

Frank D. Vance, Jr.
Manager, Disclosure Services &
Freedom of Information Act Officer
Communications Division

#2015-00286-F

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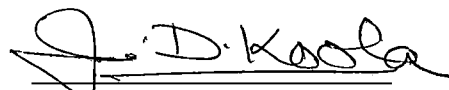
Of whom Johnson D. Koola is the..... Appellant.

PROOF OF SERVICE

I, Johnson D. Koola, Appellant *pro se*, under penalty of perjury, certify that on August 3, 2015, I served a copy of the Appellant's Appendix by mailing a true and accurate copy thereto to the counsels of record for the Respondent, Robert P. Jackman, Esq. and Dean A. Hays, Esq., Korn Law Firm, P.A., P.O. Box 12369, Columbia, SC 29211-2369.

August 3, 2015

Respectfully submitted,



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