

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. Supreme Court

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

Circuit Court Case No.: 2010-CP-10-9305

Appellate Case No.: 2013-001632

Unpublished Opinion No.: 2015-UP-391 (S.C. Ct.App. filed Aug. 5, 2015)

Cambridge Lakes Homeowners Association,.....Respondent,

v.

Johnson Koola,.....Petitioner.

APPENDIX

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

Petitioner *pro se*

Other Counsels of record:

Eugene P. Corrigan III, Esq.
Corrigan & Chandler, LLC
16 Charlotte St., St. B
Charleston, SC 29403

Lydia Pruitt Brooks, Esquire
Krawcheck and Davidson, LLC
9 State Street
Charleston, SC 29401

Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Circuit Court Case No. 2010-CP-10-9305

APPELLATE CASE NO.: 2013-001632

Cambridge Lakes HOA,..... Respondent,

v.

Johnson Koola,..... Appellant.

RECORD ON APPEAL

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

Eugene P. Corrigan III, Esq.
Corrigan & Chandler, LLC
16, Charlotte St., St. B
Charleston, SC 29403
(843) 577-5410
Attorney for Respondent

Lydia P. Brooks, Esq.
Krawcheck and Davidson
9 State Street
Charleston, SC 29401
(843) 577-2577
Attorney for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-9305

Cambridge Lakes
PLAINTIFF(S)

Koola
DEFENDANT(S)

Submitted by:	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: Plaintiff's Motion for Summary Judgment was granted, therefore Defendant's counterclaims are dismissed and Plaintiff's Motion to Compel is now moot. Formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

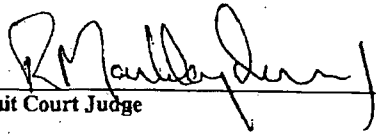
Additional Information for the Clerk : _____

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

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

2060
Judge Code

2/21/13
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)

CAMBRIDGE LAKES HOA,)

Plaintiff,)

v.)

JOHNSON KOOLA,)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-9305

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

FILED
2013 MAR 15 PM 2:40
CLERK OF COURT
J. ARMSTRONG

This matter comes before the Court pursuant to Plaintiff Cambridge Lakes HOA Motion for Summary Judgment. On November 6, 2012, the parties appeared before this court and arguments were heard from attorneys for all parties. The Honorable R. Markley Dennis issued an order on November 14, 2012 informing the parties he was taking the motion under advisement. Based on the arguments set forth at the motion hearing, Plaintiff's memorandum in support of their Motion for Summary Judgment, affidavits submitted in conjunction with said memorandum, and the laws of South Carolina, the Plaintiff's Motion for Summary Judgment is hereby granted.

STATEMENT OF THE CASE

This case was filed on July 29, 2010 and involves a collection action against Defendant Johnson Koola ("Koola") for the payment of homeowner's assessments. Defendant Koola asserted counterclaims against Cambridge Lakes HOA (the "Association") for civil conspiracy and breach of fiduciary duty seeking damages in excess of one hundred-thousand (\$100,000.00) dollars. (Am. Countercl., June 8, 2012.) As a result of these

Rm 977/1

counterclaims, the case was transferred from Charleston County Small Claims Court to Charleston County Court of Common Pleas on November 9, 2010.

Koola alleges that the Association obstructed his efforts to dispose of his property through a short sale by filing a lien against his property and later filing this action. (Id. at 14-15.) Next, Koola alleges the Association did not need to file a lien against his property as S.C. Code Ann. § 27-31-200 protected it by requiring the payment of all unpaid assessments at the time of sale. (Id. at 15.)

Regarding the breach of fiduciary claim, Koola alleges the Association failed to notify prospective purchasers, including him, about certain known construction defects in violation of S.C. Code Ann. § 27-31-430 of the South Carolina Horizontal Property Act. (Id. at 5.) Koola also alleges that the Association filed a construction lawsuit without obtaining permission of the homeowners and that the construction lawsuit caused a special assessment to be levied against him. (Id. at 6, 8.) Additionally, Koola claims that the construction lawsuit prevented him from selling his property. (Id. at 9.) Ultimately, Koola claims the Association breached its fiduciary duty by failing to keep him informed of construction defects to his property and potential increases in assessments related to the construction lawsuit. (Id. at 12.) Koola's claims are not supported, and Motion for Summary Judgment is granted as there is no genuine issue of material fact. Therefore, Plaintiff is entitled to judgment as a matter of law as determined under Rule 56 of the South Carolina Rules of Civil Procedure based upon the pleadings, affidavits, and current South Carolina law.

Rm07/2

A. KOOLA'S CLAIM FOR CIVIL CONSPIRACY FAILS AS A MATTER OF LAW BECAUSE THE PURPOSE OF THIS LAWSUIT WAS NOT TO INJURE HIM.

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and-causing special damage to the plaintiff." Pridgen v. Ward, 391 S.C. 238, 243, 705 S.E.2d 58, 61 (Ct. App. 2010). "It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage." Id. "[I]t is not necessary for a plaintiff asserting a civil conspiracy cause of action to allege an unlawful act in order to state a cause of action." City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund, 382 S.C. 535, 546, 677 S.E.2d 574, 581 (2009).

Cambridge Lakes Horizontal Property Regime was established through the filing of a Master Deed dated March 24, 2003 and recorded on February 24, 2003 in the RMC Office for Charleston County, South Carolina at Book T437, Page 047 and re-recorded on April 3, 2003 at Book Z442, Page 422 ("Master Deed"). Under Article 5, Section M of the Master Deed, "[m]embership in the Association shall be confined to those persons who hold a fee-type ownership interest in any apartment. Article 16, Section 1 provides that "assessments, together with interest thereon and costs of collection thereof, shall be charged against, and the Association shall have therefore a continuing lien upon, each Apartment against which such assessment is made." Next, Article 16, Section 8 provides that "the Association may bring suit to recover a money judgment for the unpaid assessment against the Owner personally obligated to pay the same . . . and/or file a lien . . . against such Owner's apartment."

RM-077/3

There is no civil conspiracy in this case. First, Koola's reliance on S.C. Code Ann. § 27-31-200 is misplaced. Although this section provides for the payment of outstanding assessments upon the sale or conveyance of a property, it does not prevent the Association from filing a lien and/or filing a collections action against Koola. Rather, both the Master Deed and S.C. Code Ann. § 27-31-170 authorize the Association to institute an action against Koola for noncompliance with the Master Deed. The Association, like all horizontal property regimes, relies on the collection of all fees and assessments from all homeowners to operate. No individual owner can stop making payments because doing so would cause the remaining unit owners to bear additional costs, for any length of time of their choosing. Further, the Association has not singled out Koola for nonpayment of assessments. Rather, accounting records and court records show that it has been assessing late fees, filing liens and lawsuits and obtaining judgments against homeowners for several years. (See Fischer Aff. at 10-12, Feb. 4, 2012; Henning Aff. at 5-10, Feb. 7; Martin Aff. at 5-9, Jan. 30, 2012; Blevins Aff. at 5-9, Feb. 28, 2012; see generally Cambridge Lakes HOA v. Michael B. Hartnett, 2010-CP-10-9146 (Charleston County) (Nov. 3, 2010) (Judgment for Plaintiff in the amount of \$7,580.00); Cambridge Lakes HOA v. Charles W. Taylor, Jr., 2011-CP-10-39 (Charleston County) (Jan. 4, 2011) (Judgment for Plaintiff in the amount of \$3,690.46); Cambridge Lakes HOA v. The Naws, LLC, et al., 2011-CP-10-2767 (Charleston County) (April 15, 2011) (Judgment for Plaintiff in the amount of \$7,644.42); Cambridge Lakes HOA v. Geoff G. Forbes, SC872010002259 (Charleston County Small Claims Court) (Dec. 20, 2010) (Judgment for Plaintiff in the amount of \$5,105.99); Cambridge Lakes HOA v. The Naws, LLC, 2012-CP-10-4714 (Charleston County) (July 19, 2012) (Judgment for Plaintiff in the amount of \$4,120.82). Koola's civil conspiracy claim fails for lack of

evidence of a legal conspiracy where there is no evidence showing that the Association's purpose was to injure him in some special capacity or in any other manner than can naturally be expected exercising its legal obligations under the Master Deed and By-Laws.

Next, Koola claims that the filing of this action hindered his ability to sell the property or obtain loans for refinancing his property. However, a Lis Pendens and Summons and Complaint for Mortgage foreclosure was filed against Koola on July 27, 2010, two weeks before the Association's collection action was filed. See BAC Home Loans Servicing LP v. Koola, et al., Case No. 2010-CP-10-6060, Charleston County, South Carolina, filed July 27, 2010. The filing of the Lis Pendens alone served as public notice that the property was subject to litigation and any sale would require resolution of the claims by the mortgage holder. Additionally, the foreclosure action would follow reports of nonpayment to credit bureaus. Whether Koola could obtain refinancing either under conventional loans or any of the emergency programs set up by the federal government was not based on his failure to pay his regime fees.

Koola cannot establish that the Association's board members conspired against him. "A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." Pridgen at 244, 705 S.E.2d at 62. Therefore, "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." Id. Although it is true that "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties," this presumes that the agents are acting in their individual capacities, not in their official capacities. Prigden, 391 S.C. at 244, 705 S.E.2d at 62.

RM 7/15

Additionally, in cases where this principal has applied, at least one alleged conspirator was named as a defendant. See Id. (where individually named defendants allegedly conspired against plaintiff outside the scope of their employment); Lee v. Chesterfield Gen. Hosp., 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct.App. 1986) (where it is alleged that a named individual defendant conspired with other members of the hospital medical staff.) Here, Koola only sued the Association itself. None of its agents, members or directors has been sued in their individual capacities.

Finally, at all times relevant to this lawsuit, the board members were acting in their official capacities and in the best interests of the Association by instituting this collection action against Koola. (Fischer Aff at 6; Henning Aff at 4; Martin Aff. at 4; Blevins Aff. at 4.) Simply put, Koola was not singled out and there was no conspiracy to harm him. Indeed, the board members discussed several delinquent homeowners at board meetings, including Defendant, before making any decisions to pursue legal action. (Fischer at 10; Henning Aff at 8; Martin Aff. at 8; Blevins Aff. at 8.) Additionally, the object of filing this action was to recover payment of delinquent assessments from Koola, an action the Association was required to take to preserve its assets. (Fischer at 9; Henning Aff. at 7; Martin Aff. at 7; Blevins Aff. at 7); see S.C. Code Ann. § 33-31-830(a)(3) ("A director shall discharge his duties as a director . . . in a manner the director reasonably believes to be in the best interests of the corporation."). Under the undisputed facts of this case, to hold that the Association somehow engaged in a civil conspiracy against Koola would strip the boards of horizontal property regimes and similar entities from fulfilling their fiduciary duties and leave Associations without funds to pay for insurance, legal fees, maintenance, landscaping, or any of its other responsibilities.

propr

For the foregoing reasons, Koola's counter claim for civil conspiracy fails as a matter of law and the Association is entitled to summary judgment.

B. KOOLA'S CLAIM FOR BREACH OF FIDUCIARY DUTY FAILS AS A MATTER OF LAW BECAUSE THE ACTIONS OF THE CAMBRIDGE LAKES BOARD OF DIRECTORS ARE PROTECTED BY THE BUSINESS JUDGMENT RULE.

A director is required to discharge their duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation. See S.C. Code Ann. § 33-31-830(a). In discharging their duties, a director is entitled to rely on information, opinions, reports or statements prepared or presented by legal counsel. See S.C. Code Ann. § 33-31-830(b)(2). Next, "[i]n a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." Goddard v. Fairways Development General Partnership, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993).

In this case, the Association has not breached its fiduciary duty to Koola. First, Koola alleges that the Association's Board of Directors violated S.C. Code Ann. § 27-31-430 as it knew about construction defects affecting his condominium in 2004 when it took control of the association from the developer but failed to disclose these defects to him at the time of his purchase of the condominium. (Am. Countercl. at 5-6.) However, S.C. Code Ann. § 27-31-430 only applies to the lessee, sole owner, or co-owner of a building seeking to convert rental units into condominium units. Here, the statute would apply to Cambridge

Rm 0717

Two, LLC, the developer of Cambridge Lakes and the entity that sold the condominium to Koola. See Deed from Cambridge Two, LLC to Johnson D. Koola, filed Feb. 24, 2004 (attached as Exhibit "8"). Under Section 27-31-430, Cambridge Two, LLC had the duty to provide a written disclosure to all prospective purchasers as to the physical condition of the buildings within thirty (30) days of recording the Master Deed, not the Association. Next, Koola purchased his condominium on February 24, 2004. Id. However, Cambridge Two, LLC did not turn over control of the Association to the members until October 2004, over seven months after Koola purchased his condominium. (Fischer Aff. at 14.) Thus, any obligation to notify Koola of construction defects affecting his condominium at the time of his purchase fell solely on Cambridge Two, LLC, not the Association.

Next, Koola alleges that the Association failed to obtain approval from the homeowners before filing a construction lawsuit and that it filed the construction lawsuit without permission of the members. (Am. Countercl. at 6.) Pursuant to its by-laws, the Association has the power to maintain, repair, replace and operate the common elements at Cambridge Lakes. (Fischer Aff. at 17; Henning Aff. at 10; Blevins Aff. at 10). The Association also has the power to retain legal counsel. (Fischer Aff. at 18; Henning Aff. at 11; Blevins Aff. at 11.) Next, the Association has the power to sue. See S.C. Code Ann. § 33-31-302(1). During March-April 2008, the Board of Directors first learned of potential construction defects to the Association's property. (Fischer Aff. at 15.) The defects were not disclosed by the developer when the Association was turned over to the members. (Fischer at 16.) Because of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf. (Fischer at 19; Henning Aff. at 12; Blevins Aff. at 12.)

RM-07/18

Koola incorrectly presumes that the Association levied special assessments against its members to fund the expense of this construction lawsuit. He relies on Section 16, Paragraph 6 of the Master Deed, which requires the Association to obtain a two-thirds (2/3) vote of the members prior to levying a special assessment for capital improvements. Here, not only is this provision inapplicable to the Association's ability to file a lawsuit, it is also irrelevant because the Association did not levy a special assessment against the members to fund the construction lawsuit. (Fischer at 20; Henning Aff. at 13; Martin Aff. at 13; Blevins Aff. at 13.) Rather, all expenses related to the construction lawsuit were paid out of the Association's Reserve Accounts. (Fischer at 21; Henning Aff. at 14; Martin Aff. at 14; Blevins Aff. at 14.) Finally, since January 2007, there have only been three (3) increases to the monthly regime fee from \$210.00 to \$285.00 per month. (Blevins Aff. at 20-22.) These increases were due to increases in insurance premiums on the common areas of Cambridge Lakes. (Id.)

Koola also alleges that the Association put pressure on its members to assign their rights in the construction lawsuit to it through a letter sent by their attorney, Mr. Hayes. (Am. Countercl. at 7.) He further alleges that the letter sent by Mr. Hayes exaggerated the construction defects and caused him damage by stigmatizing his property. (Id.) Next, Koola claims that the Association has refused to discuss certain financial matters with him, including whether a special assessment has been charged to him or whether his monthly assessments have increased as a result of the construction lawsuit. (Id. at 8.) Finally, Koola claims that the filing of the construction lawsuit prevented him from selling his condominium and caused him to suffer damages. (Id. at 9.)

However, Koola's allegations are unfounded. First, Koola has met with at least one Board Member regarding the Association's finances. (Martin Aff. at 11.) Next, the Association's letter referenced by Koola does not pressure or require members to assign their rights in the construction lawsuit to the Association. (Fischer Aff. at 22.) Rather, the letter offered members the opportunity to join the construction lawsuit. (Id.) Further, the letter is clear that Mr. Hayes was retained on a contingency fee basis and would only be compensated out of monies received on behalf of the Association. (Id.) By compensating Mr. Hayes on a contingency basis, the Association did not levy any special assessments against its members to pay for the lawsuit. (Fischer Aff. at 20-21; Henning Aff. at 13; Martin Aff. 13; Blevins Aff. at 13.) Members were under no obligation to join the construction lawsuit. (Fischer Aff. at 24; Henning Aff. at 17; Martin Aff. at 17; Blevins Aff. at 17.) Indeed, some members, including Koola, declined to join the lawsuit.

Here, even though Koola did not participate in the lawsuit, he will benefit directly from the settlement proceeds as all windows in his condominium will be replaced at no charge to him. (Fischer Aff. at 25; Henning Aff. at 18; Martin Aff. at 18; Blevins Aff. at 18.) Next, while Koola's counterclaim makes it seem that the Association has waged a personal attack against him, such is not the case. In fact, every homeowner was affected by the construction lawsuit as no one was able to refinance their condominium while the lawsuit was ongoing. (Fischer Aff. at ¶ 26.) However, it was necessary to file the construction lawsuit to protect the commons elements, including the exteriors of the buildings. (Fischer Aff. at 27; Henning Aff. at 19; Martin Aff. at 19; Blevins Aff. at 19.)

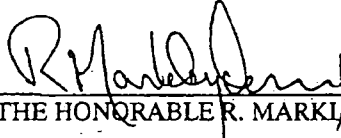
The acts of the Board of Directors were taken in the best interests of the Association and, despite Koola's failure to participate, their actions improved his property.

Rmpt 7/10

Additionally, Koola has not and cannot show bad faith, dishonesty, or incompetence on the part of the Association or its directors. (Fischer Aff. at 28; Henning Aff. at 20; Martin Aff. at 21; Blevins Aff. at 23.) Therefore, their actions are protected by the business judgment rule and Koola's claim for breach of fiduciary duty fails as a matter of law.

For the reasons set above, IT IS HEREBY ORDERED THAT Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendant's Counterclaims are hereby dismissed with prejudice.

AND IT IS SO ORDERED!



THE HONORABLE R. MARKLEY DENNIS, JR.

Moncks Corner, South Carolina

March 12, 2013

RM/11

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Cambridge Lakes HOA,

Plaintiff,

vs.

Johnson Koola,

Defendants.

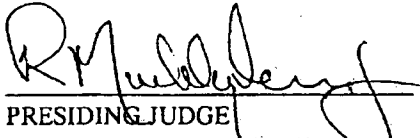
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-9305

FILED
2013 JUN 18 AM 8:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY: 1

ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER

This matter comes before me upon Motion to Reconsider filed by Shawn M. French, Esquire, Attorney for Defendant Johnson Koola on April 5, 2013. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion to Reconsider is respectfully DENIED;

AND IT IS SO ORDERED!


PRESIDING JUDGE
The Honorable R. Markley Dennis, Jr.
Ninth Judicial Circuit

Moncks Corner, South Carolina
June 13, 2013

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

Project Name:	Cambridge Lakes
Project Address & Zip:	1401 Cambridge Lakes Dr. Mt. Pleasant, SC 29464
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: <u>pool, hot tub, workout room</u>
	Estimated % complete: <u>100 %</u>
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>Don M. Bunker</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>881-1341</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



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 united 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

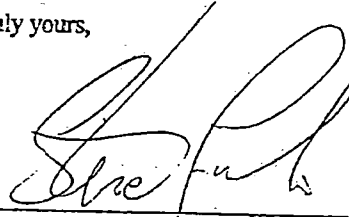
Member: Community Association Institute

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.

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



BP0124400

RMC BK 0124 Pg 400 : Pg 1 *

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) NOTICE OF LIEN

YOU WILL PLEASE TAKE NOTICE that the Cambridge Lakes Horizontal Property Regime does hereby file the within Notice of Lien in accordance with the *Master Deed* recorded in Book T437 at Page 47 in the RMC Office for Charleston County for delinquent assessments in the amount of One Thousand Nine Hundred Sixty-Three Dollars and Fifty-Two Cents (\$1,963.52), plus any other costs and attorney fees, which amount is justly due and owed the Cambridge Lakes Horizontal Property Regime, which has not been paid upon the premises described herein below and carried on the records of the undersigned in the name of:

Johnson D. Koola

The premises affected by the Lien are described as follows:

1587 Cambridge Lakes Dr.
Mt. Pleasant, SC 29464
Cambridge Lakes HPR, Unit 208E
TMS No. 559-14-00-157

IN WITNESS WHEREOF, the Cambridge Lakes Horizontal Property Regime has hereunto set its hand and seal this 24th day of May, 2010.

IN THE PRESENCE OF:

Caroline Cutler
Danielle S. Walker

Cambridge Lakes HPR

By: Sasha H. Nettles
Sasha H. Nettles
Edward K. Pritchard, III
Attorneys for Cambridge Lakes Horizontal
Property Regime
129 Broad Street
Charleston, SC 29401

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, the undersigned witness, and made oath that (s)he saw the within named Cambridge Lakes Horizontal Property Regime, by Samia H. Nettles, its Attorney, sign, seal and as his act and deed deliver the within written instrument, and that (s)he with the other witness subscribed above, witnessed the execution thereof.

Caroline B. Cotten

Sworn to and Subscribed before me
this 24th day of May, 2010.

Danielle J. Walker

Notary Public for South Carolina
My commission Expires: August 28, 2018

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

PRITCHARD & ELLIOTT
129 BROAD ST
PO BOX 830
CHARLESTON SC 29401

MAKER:

KOOLA JOHNSON D

RECIPIENT:

CAMBRIDGE LAKES HPR

Original Book:

Original Page:

Note:

RECORDED

Date: May 25, 2010

Time: 2:06:10 PM

Book

0124

Page

400

Doc Type

Notice/Ln

Charlie Lybrand, Register
Charleston County, SC

of Pages: 3

of Sets:

of References:

Recording Fee

\$ 10.00

Extra Reference Cost

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Extra Pages

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,

Plaintiff,

v.

JOHNSON KOOLA,

Defendant.

) IN THE COURT OF COMMON PLEAS

) C.A. No. 2010-CP-10-9305

) CAMBRIDGE LAKES HOA
) ANSWERS TO DEFENDANT
) JOHNSON KOOLA'S REQUEST
) FOR ADMISSIONS TO THE
) PLAINTIFF
)

TO: DEFENDANT JOHNSON D. KOOLA, *PRO SE*:

Defendant Cambridge Lakes Homeowners' Association, Inc. f/k/a Cambridge Lakes Horizontal Property Regime (hereinafter "Association"), by and through its undersigned attorney, hereby responds to Plaintiff's Requests to Admit pursuant to Rule 36 of the South Carolina Rules of Civil Procedure as follows:

1. Please admit or deny that the Master Deed of plaintiff HOA (hereinafter Master Deed), is the same one as that registered by the developer/seller, Mr. Albert Estee and/or Cambridge Two, LLC and/or Cambridge Lakes Horizontal Property Regime in the Charleston County RMC office in book T-437; Page 407.

ANSWER: Admit so much of this request as the Master Deed was filed by Developer, Cambridge Two, LLC and, upon information and belief, Albert Estee was a member of Developer.

2. Please admit or deny that the plaintiff HOA has taken over the assets, liabilities and responsibilities of Cambridge Lakes Homeowners Association from

Cambridge Lakes Horizontal Property Regime and/or Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC.

ANSWER: Admit that the Developer identified in the Master Deed turned over control of the Homeowners Association to the Members of the Association.

3. Please admit or deny that the Master Deed of the plaintiff HOA is subjected to the Provisions of South Carolina Horizontal Property Act, 27-31-10 et. seq.

ANSWER: Admit that the Horizontal Property Regime Act is the statutory basis for the creation of a horizontal property regime by and through the recording of a Master Deed.

4. Please admit or deny that Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC, violated the South Carolina Horizontal Property Act, 27-31-10.

ANSWER: Objection. Plaintiff is not in a position to make such a determination as a matter of law. Additionally, Mr. Estee and Cambridge Two, LLC are not members of the Plaintiff nor are they parties to this action.

5. Please admit or deny that Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC, violated the section 27-31-430 of the South Carolina Horizontal Property Act, 27-31-10.

ANSWER: Objection. Plaintiff is not in a position to make such a determination as a matter of law. Additionally, Mr. Estee and Cambridge Two, LLC are not members of the Plaintiff nor are they parties to this action.

6. Please admit or deny that the plaintiff HOA was aware of the violation of South Carolina Horizontal Property Act, 27-31-10, by Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC, before the plaintiff HOA filed the civil case # 2008-CP-10-3506.

ANSWER: Denied.

7. Please admit or deny that the plaintiff HOA was aware of the violation of section 27-31-430 of South Carolina Horizontal Property Act, 27-31-10, by Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC, before the defendant HOA filed the civil case # 2008-CP-10-3506.

ANSWER: Denied.

8. Please admit or deny that the plaintiff HOA withheld information from homeowners that Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC, violated provisions of South Carolina Horizontal Property Act, 27-31-10.

ANSWER: Denied.

9. Please admit or deny that the plaintiff HOA withheld information from homeowners that Mr. Albert Estee, the developer/seller and/or Cambridge Two, LLC, violated Section 27-31-430 of South Carolina Horizontal Property Act, 27-31-10.

ANSWER: Denied.

10. Please admit or deny that Mr. Albert Estee, developer/seller and/or Cambridge Two, LLC, sold condominiums in Cambridge to the public initially through Trade Mark Properties, Inc. and later through Prudential Carolina Real Estate.

ANSWER: Plaintiff is unable to make any representations as to the actions of third party individuals or entities.

11. Please admit or deny that the plaintiff HOA named only Trademark Properties, Inc. as a defendant in the case # 2008-CP-10-3506, but excluded Prudential Carolina Real Estate, Inc. as defendant from the said civil case.

ANSWER: Admit in so much as reference to the cited case shows.

12. Please admit or deny that the plaintiff HOA was informed of defendant Koola's effort to sell his condo in Cambridge through a short sale by his real estate agent who listed the property for short sale.

ANSWER: Admit.

13. Please admit or deny that the plaintiff HOA placed lien on the property of defendant Koola in Cambridge and filed a lawsuit in the small claims court after learning of defendant Koola's effort to short sell his property.

ANSWER: Timing of events notwithstanding, Plaintiff denies any negative implication of a connection between the two events. The Lien and collection action were filed as authorized by the Master Deed due to Koola's violation of his obligation to pay assessments.

14. Please admit or deny that plaintiff HOA obstructed the short sale of defendant Koola's condo in Cambridge.

ANSWER: Denied.

15. Please admit or deny that Title 27-31-200 of S.C. Code 1976 legally protects the interest of the plaintiff HOA as this law requires the payment of unpaid assessments to the plaintiff HOA whether the sale is completed in an open market sale or through a short sale.

ANSWER: Objection. This is solely a statement setting forth a matter of law and not a fact of this case. Further the statute does not fully protect the Association's interest in payment of the monies owed.

16. Please admit or deny that the plaintiff HOA failed to give prompt notice of default to the holder of defendant Koola's First Mortgage when defendant Koola did not pay the monthly assessment fees for more than 30 days.

ANSWER: Objection. This inquiry refers to the rights of a third party Mortgagee that are not at issue in this matter.

17. Please admit or deny that a real estate property when sold in a foreclosure auction will receive lowest amount of net proceedings compared to a short sale or a sale in the open market.

ANSWER: Objection. The request is impossible to answer as it relies on hypothetical conditions. To the extent that an answer is required, then such request is denied.

18. Please admit or deny that the obstruction of short sale of defendant Koola's condo in Cambridge by the plaintiff HOA was a premeditated action with the objective of inflicting greater damage on defendant Koola.

ANSWER: Denied.

19. Please admit or deny that it would be extremely difficult to sell real estate in any subdivision when the Homeowners Association of that subdivision has filed a lawsuit against the developer/seller and/or builder alleging construction defects.

ANSWER: Objection. The request is impossible to answer as it relies on hypothetical conditions. To the extent that an answer is required, then such request is denied.

20. Please admit or deny that real estate value will decline to variable extend than under normal marketing conditions when construction defects in the buildings are alleged or established.

ANSWER: Denied.

21. Please admit or deny that alleging construction defects without verification and without any basis is stigmatization of the real estate property.

ANSWER: Objection. This request is not clear as stated and relates no fact to law regarding this case.

22. Please admit or deny that stigmatization of real estate property is against the South Carolina Real Estate Laws..

ANSWER: Objection. This request is not clear as stated and relates no fact to law regarding this case.

23. Please admit or deny that the plaintiff HOA avoided and/or refused to discuss the financial matters of plaintiff HOA with defendant Koola in violation of Article V para 1 of the registered by-laws of the plaintiff HOA in spite of defendant Koola's repeated request for a discussion of the financial matters of Plaintiff HOA.

ANSWER: Denied.

24. Please admit or deny that the plaintiff HOA haven't furnished copy of the annual budget of the plaintiff HOA to homeowners who do not attend the annual meeting of the plaintiff HOA during the years 2004 to 2010 in violation of Article V para 3 of the registered by-laws of the plaintiff HOA.

ANSWETR: Denied.

25. Please admit or deny that the plaintiff HOA haven't furnished copy of the annual statement of the receipts and expenses of the plaintiff HOA to homeowners in violation of Article V para 3 of the registered by-laws of the plaintiff HOA.

ANSWER: Denied.

26. Please admit or deny that the plaintiff HOA spent several thousands of dollars to investigate construction defects and to initiate the lawsuit # 2008-CP-10-3506.

ANSWER: Investigation is still on going and Defendant will supplement its Answer shortly. In the event an answer is required at this time, Defendant denies Request to Admit 26.

27. Please admit or deny that the money spent by the plaintiff HOA to investigate construction defects and to initiate the lawsuit # 2008-CP-10-3506 was not a budgeted item.

ANSWER: Investigation is still on going and Defendant will supplement its Answer shortly. In the event an answer is required at this time, Defendant denies Request to Admit 27.

28. Please admit or deny that spending money from the budget on non-budgeted items without approval of 2/3 majority of the homeowners is a violation of Section 16 paragraph 6 of the Master Deed.

ANSWER: Investigation is still on going and Defendant will supplement its Answer shortly. In the event an answer is required at this time, Defendant denies Request to Admit 28.

29. Please admit or deny that the defendant Association (sic) is pursuing legal action against defaulting homeowners selectively and discriminatorily in violation of Section 20 para 8 of the Master Deed.

ANSWER: Denied.

30. Please admit or deny that the plaintiff HOA deliberately did not inform the homeowners what will happen to those homeowners who do not join the lawsuit # 2008-CP-10-3506 and to those homeowners who do not assign their rights to the plaintiff HOA in order to facilitate the lawsuit # 2008-CP-10-3506.

ANSWER: Denied. These matters are for the Court and the lawyers.

31. Please admit or deny that the plaintiff HOA deliberately did not inform the homeowners about the negative consequences of an active lawsuit on matters such as real estate transactions and home prices.

ANSWER: Denied. The Homeowners Association must act to protect the property.

32. Please admit or deny that the plaintiff HOA deliberately withheld information about the construction defects from the homeowners and public until after the lawsuit # 2008-CP-10-3506 was filed.

ANSWER: Denied.

33. Please admit or deny that the plaintiff HOA let the real estate sales in Cambridge flourish in spite of very serious construction defects.

ANSWER: Denied.

34. Please admit or deny that withholding information about the construction defects from the homeowners in order to promote real estate sales in Cambridge is a violation of South Carolina Unfair Trade Practices Act.

ANSWER: Denied that action occurred or that any actions give rise to such violation.

35. Please admit or deny that publication of information about defaulting homeowners by the plaintiff HOA in the buildings of Cambridge is a violation of privacy laws.

ANSWER: Denied.

36. Admit or deny that a contract, which has been written or signed based on violated State or Federal Laws, can be nullified by a Court of Law.

ANSWER: Objection. Request simply states defendants' view of a matter of law.

37. Please admit or deny that the plaintiff HOA has claimed that construction defects as described in civil case 2008-CP-10-3506, Cambridge Lakes HOA vs. Bostic Brothers Construction et al, have caused diminutions in value of the property, both pre- and post-repairs.

ANSWER: Denied.

38. Please admit or deny that construction defects, whether alleged or confirmed, affected the sale of condominium units in Cambridge negatively.

ANSWER: Denied.

39. Please admit or deny that the lawsuit filed by the plaintiff HOA (# 2008-CP-10-3506) in June 2008 has named the plaintiff HOA and just two homeowners (out of 104 homeowners) as plaintiffs.

ANSWER: Denied.

40. Please admit or deny that discussion of construction defects and filing of lawsuit by plaintiff HOA with just two homeowners rather than with all the homeowners is a violation of Section 20 para 8 of the Master Deed.

ANSWER: Denied.

41. Please admit or deny that defendant Association (sic) has submitted insurance claims to the insurance company for repair work related to property damage in Cambridge.

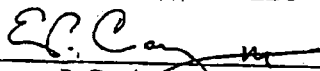
ANSWER: Investigation is still on going and Defendant will supplement its Answer shortly. In the event an answer is required at this time, Defendant denies Request to Admit 41.

41. Please admit or deny that anyone associated with plaintiff HOA including the plaintiff HOA's attorney or the Attorney Firm has financial stake or ownership in the Management Company of the plaintiff HOA.

ANSWER: In answer to second request number "41," denied.

(SIGNATURE ON FOLLOWING PAGE)

CORRIGAN & CHANDLER LLC


Eugene P. Corrigan III
12 Exchange Street
Charleston, South Carolina 29401
(843) 577-5450 (phone)
(843) 577-5650 (fax)
rick@corriganhandler.com

ATTORNEYS FOR THE COUNTER-
DEFENDANT CAMBRIDGE LAKES HOA ON
COUNTER-CLAIMS

Charleston, South Carolina

August 15, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-10-9305

Cambridge Lakes HOA,

PLAINTIFF

v.

Johnson D. Koola,

DEFENDANT

FILED

JUN 08 2012

**JULIE J. ARMSTRONG
CLERK, C.P. & G.S.**

AMENDED ANSWER AND
COUNTER CLAIM

Defendant Johnson D. Koola answers the Complaint of the above named Plaintiff as follows, stating that each and every allegation of the Complaint not herein expressly admitted or explained, is denied.

FOR A FIRST DEFENSE

1. Paragraph 1 requires no response from the Defendant.
2. In response to Paragraph 2, Defendant denies the allegations therein.
3. In response to Paragraph 3, Defendant denies Plaintiff is entitled to the relief requested.

FOR A FIRST CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY)

4. Each assertion not inconsistent with the following is incorporated herein
5. The Plaintiff has a contractual duty to keep owners informed of any and all actions affecting their property interest, and is bound by virtue of the Covenant and Restrictions of the property regime. Upon information and belief, the Plaintiff had prior knowledge, dating back as far as 2004, when it took control of the regime, of property defects; but on information and belief, did not bring these to the attention of the current property owners or new property owners as they purchased their properties, therefore failing in its fiduciary responsibility by not acting on the potential defects. Defendant had no knowledge of the defects upon his purchase, and

to the contrary, was assured in his closing documents, that an inspection had been made finding the properties free from defects. This was in clear violation of Section 27-31-430 of the SC Horizontal Property Act, which requires disclosure of the physical condition of the building.

6. In June 2008, Plaintiff and two individual homeowners filed suit against Bostic Brothers Construction, Inc. and others alleging defects in workmanship and materials used in the construction and repair of Cambridge Lakes Condominiums. Plaintiff included only two individual homeowners in the lawsuit as Plaintiffs. Plaintiff failed to notify other owners about the potential defects, advise them to look for any construction defects in their units, compile all reported defects, and then get approval from the owners to file a lawsuit, since there would be monetary expenses related to such legal action. Upon information and belief, Plaintiff filed without permission of all owners required under the HOA's controlling documents.
7. That upon information and belief, the Plaintiff put pressure on the homeowners, through a letter from their construction attorney, dated June 25, 2008. The letter requested homeowners to sign their rights to the HOA. The letter overstating the defects that were known about from 1999-2005, e/g/, exaggerated the construction problems, by saying that there were numerous defects, such as problems with the foundation. What the letter did not do was notify owners of the negative consequences of the lawsuit. It did not reveal the information concerning cost of litigation, cost of repairs should the lawsuit fail, or the effect of real estate sales during the litigation. From that point forward the properties were stigmatized, and Defendant was severely damaged.
8. That upon information and belief, the Plaintiff's construction attorney asked the homeowners through the letter dated June 25, 2008, to agree to collection of special assessment by the Plaintiff HOA in connection with the lawsuit, although apparently, the attorney knew that any special assessment may only be collected after getting approval from 2/3 of the homeowners. The Defendant has repeatedly requested from the HOA Board members whether or not additional monies were and are currently being assessed by virtue of the legal action, and has not received a sufficient response although assessments have increased without explanation.
9. That this construction action occurred at a time where in the Defendant had planned to sell his property, but was informed by his Realtor that it would be impossible to sell with a lawsuit pending, particularly one involving defects in the foundation. This caused substantial damage to the Defendant, as he knew that his financial situation would not lend itself to continued support of the property for an extended period of

time. Had the defects been revealed at the time of purchase or later throughout the years, he could have sold when the market was strong; when he was in a stronger financial status, and prior to the HOA engaging in a legal action concerning the defects. The actions of the Plaintiff HOA created hardship, and the opportunity to sell his property was lost.

10. That on information and belief, the only sales that have taken place are short sales and foreclosure sales. The Plaintiff HOA and the HOA real estate management company should have known of the negative impact of the lawsuit on the home prices and home sales in the regime.
11. Pursuant to Article V Section 1 of the By-laws, the Plaintiff HOA is required to allow resident owners to examine the financial records kept by the HOA on demand. Contrary to its duty to Defendant property owner, Plaintiff has repeatedly avoided disclosing financial records to Defendant and Defendant continues to suffer financial losses, not only in his inability to sell the property, but in increasing monthly regime fees and without being informed of the increases or the purpose of the increase.
12. That the Plaintiff has severely breached its duty to keep the Defendant informed of possible construction defects and of assessments related to the lawsuit, and Defendant is entitled to Consequential damages in amounts in excess of one hundred thousand (\$100,000) dollars.

FOR A SECOND CAUSE OF ACTION

(CIVIL CONSPIRACY)

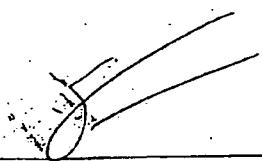
13. Defendant incorporates herein by reference all the allegations and statements contained in Paragraph 1-12.
14. Defendant alleges that all assessments owed to Plaintiff would have been paid to Plaintiff, but for Plaintiff's obstruction of a "short sale" of the Defendant's property, occurring when Defendant's Realtor notified Plaintiff HOA that this property was listed for a short sale prior to the filing of the lien and of this action. Defendant was advised to list his property on short sale by his first mortgage holder, as a means to avoid foreclosure and as a means of being able to pay his property related debts. The sale would have allowed Defendant to pay the HOA

assessments to the Plaintiff, and to satisfy his mortgages, and was Defendant's only possible way of paying off mortgage related debts and HOA assessments.

15. Defendant alleges that because Plaintiff knew or should have known that Title 27-32-200, S.C. Code 1976 as amended, requires payment of unpaid assessments to be made at the time of sale, and since they had knowledge of the sale status, Plaintiff filed the within assessment action, knowing that such action was unnecessary and knowing that such an action would do harm to Defendant by potentially being awarded a personal judgment against him. A personal judgment against the Defendant is unnecessary, as Plaintiff's interest is legally protected under the law, whether there is a sale on the open market, or a sale via foreclosure, whereas a judgment can only harm Defendant's ability to not only sell the property or otherwise obtain loans for repayment of these assessments, refinance of his mortgage loans, and the like.
16. That upon information and belief, the within action was taken, pursuant to a decision of individual Board members, who acted as agents of the HOA corporation. According to the laws of South Carolina, corporate agents are legally capable of civilly conspiring among themselves.
17. That because of the actions of the corporate agents, which include this action and actions contained in previous allegations, Defendant has suffered special damages from Plaintiff's actions. At time of the short sale, Defendant's Realtor valued the property at \$199,000 had it sold, but Defendant will soon be faced with bottom value at foreclosure sale, which he understands could be in the range of \$60,000, resulting in a substantial loss of approximately \$130,000 to Defendant.

WHEREFORE, having fully answered the Complaint herein, the Defendant

- (1) Requests that this matter be heard before a Jury;
- (2) Expressly denies that the Plaintiff is entitled to any relief requested;
- (3) Prays that the Plaintiff's Complaint be dismissed with prejudice;
- (4) That Defendant's costs and attorneys' fees be taxed against the Plaintiff;
- (5) And for such other and further relief as this Court may deem Just and Proper.



Shawn M. French
Attorney for Johnson Koola
SC BAR No.: 75007
100 Ellis Ave, Ste. B
Lexington, SC 29072
803-462-4141

I, the undersigned, so hereby certify that I have this ~~8th~~ day of December, 2011 caused the Notice of Appearance for Defendant Johnson D. Koola to be served on the Attorneys of record by depositing in the US MAIL, postage prepaid, addressed as follows:

Corrigan & Chandler LLC
Attn: Eugene P. Corrigan III
12 Exchange Street
Charleston, SC 29401

Shawn M. French

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,

Plaintiff,

v.

JOHNSON KOOLA,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2010-CP-10-9305

**REPLY TO DEFENDANT'S
AMENDED ANSWER AND
COUNTERCLAIMS**

2012 JUN 18 PM 4:09
JULIUS STRONG
CLERK OF COURT

FILED

The Plaintiff, Cambridge Lakes HOA, by and through its undersigned attorneys and pursuant to South Carolina Rules of Civil Procedure, hereby replies to Defendant's Amended Answer and Counterclaims and shows unto this Court as follows:

FOR A FIRST DEFENSE

1. Every allegation of the Defendant's Counterclaim not hereinafter specifically admitted is denied.
2. No response is required of Plaintiff to Paragraphs 1 through 3 of Defendant's Amended Answer and Counterclaim because these paragraphs are Defendant's answers to the allegations of Plaintiff's Complaint or are affirmative defenses to Plaintiff's Complaint. To the extent a response is required, Plaintiff denies the same and demands strict proof thereof.

ANSWERING DEFENDANT'S FIRST COUNTERCLAIM

(Breach of Fiduciary Duty)

3. In response to the allegations of Paragraph 4 of Defendant's Amended Answer and Counterclaims, Plaintiff incorporates all of its responses above.
4. Plaintiff admits so much of Paragraph 5 of Defendant's Amended Answer and Counterclaims that it is controlled by the terms of the Master Deed for Cambridge Lakes

Horizontal Property Regime, as amended from time to time (the "Master Deed"). Plaintiff denies the remaining allegations of Paragraph 5 of Defendant's Amended Answer and Counterclaims and demands strict proof thereof.

5. Plaintiff admits so much of Paragraph 6 of Defendant's Amended Answer and Counterclaims that in June 2008, it filed a construction lawsuit against Bostic Brothers Construction, Inc. and other defendants. Plaintiff further admits that its initial Complaint included Plaintiff and two individual homeowners and that it later filed an Amended Complaint in October 2009, which listed several additional homeowners. The remaining allegations of Paragraph 6 of Defendant's Amended Answer and Counterclaims are denied and strict proof is demanded.

6. Paragraphs 7, 8, 9 and 10 of Defendant's Amended Answer and Counterclaims are denied and strict proof is demanded.

7. Plaintiff admits so much of Paragraph 11 of Defendant's Amended Answer and Counterclaims that pursuant to Article V, Section 1 of the By-Laws of Cambridge Lakes Condominium Homeowners Association, Inc. it is required to maintain certain financial records. The remaining allegations of Paragraph 11 of Defendant's Amended Answer and Counterclaims are denied and strict proof is demanded.

8. Paragraph 12 of Defendant's Amended Answer and Counterclaims is denied and strict proof is demanded.

ANSWERING DEFENDANT'S SECOND COUNTERCLAIM
(Civil Conspiracy)

9. In response to the allegations of Paragraph 13 of Defendant's Amended Answer and Counterclaims, Plaintiff incorporates all of its responses above.

10. Paragraphs 14 - 17 of Defendant's Amended Answer and Counterclaims are denied and strict proof is demanded.

11. Plaintiff denies the paragraph in Defendant's Amended Answer and Counterclaims immediately following Paragraph 17 and beginning with the words "WHEREFORE," including all subparts, and demands strict proof thereof.

FOR A SECOND DEFENSE

12. Defendant fails to state a cause of action against Plaintiff for which relief may be granted.

FOR A THIRD DEFENSE

13. Plaintiff has no legal duty to provide the specific financial records regarding the delinquency of other homeowners pursuant to S.C. Code Ann. §§ 33-31-1601(e), 33-31-1602(b), and 33-31-1620.

FOR A FOURTH DEFENSE

14. Pursuant to Article (16), Section (8) of the Master Deed and S.C. Code Ann. § 27-31-170, Plaintiff had the right to institute this action against Defendant for unpaid assessments.

FOR A FIFTH DEFENSE

15. S.C. Code Ann. § 27-32-200 does not prevent Plaintiff from instituting this action against Defendant and does not require Plaintiff to wait until Defendant sells his condominium before attempting to collect unpaid assessments.

FOR A SIXTH DEFENSE

16. Any allegation that Plaintiff violated S.C. Code Ann. § 27-31-430 is not supported by law as this section only applies to a lessee, sole owner, or co-owner of a building that declares the undertaking of a conversion of rental units to condominium ownership through

the recordation of a master deed or master lease. Since the Master Deed was initially filed on February 24, 2003 and the Plaintiff was not legally created until April 25, 2003, it is impossible for Plaintiff to have violated S.C. Code Ann. § 27-31-430.

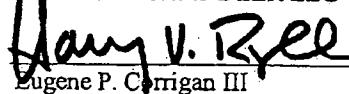
FOR A SEVENTH DEFENSE

17. To the extent Defendant alleges a cause of action against Plaintiff's board members, they are immune from liability pursuant to the Business Judgment Rule and S.C. Code Ann. § 33-31-834.

FOR A EIGHTH DEFENSE

18. Plaintiff has not engaged in selective enforcement against Defendant as it has filed numerous collections lawsuits and secured numerous judgments against other similarly situated owners besides Defendant.

CORRIGAN & CHANDLER LLC


Eugene P. Corrigan III

Harry V. Ragsdale

12 Exchange Street

Charleston, South Carolina 29401

(843) 577-5450 (phone)

(843) 577-5650 (fax)

rick@corriganhandler.com

harry@corriganhandler.com

KRAWCHECK & DAVIDSON LLC

Lydia Pruitt Brooks, Esquire

9 State Street

Charleston SC 29401

(843) 577-2577 (phone)

(843) 723-9951 (fax)

lbrooks@krawdavlav.com

ATTORNEYS FOR PLAINTIFF

June 15, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,

Plaintiff,

v.

JOHNSON KOOLA,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2010-CP-10-9305

CERTIFICATE OF SERVICE

FILED
2012 JUN 18 PM 4:09
JULIE J. ARMSTRONG
CLERK OF COURT

This is to certify that the undersigned served the **REPLY TO DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIMS** upon the parties listed below by mailing a copy of the same to the address listed below, postage prepaid, on June 15, 2012.

Shawn M. French, Esquire
The French Law Firm, LLC
100 Ellis Avenue, Suite B
Lexington SC 29072

CORRIGAN & CHANDLER LLC

Harry V. Rell

12 Exchange Street
Charleston, South Carolina 29401
(843) 577-5450 (phone)
(843) 577-5650 (fax)

ATTORNEYS FOR PLAINTIFF

June 15, 2012

CORRIGAN & CHANDLER LLC

ATTORNEYS AT LAW

Harry V. Ragsdale
(843) 577-5420 (direct)
harry@corriganchandler.com

June 15, 2012

VIA U.S. MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Suite 106
Charleston, SC 29401

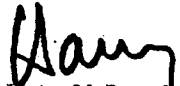
Re: *Cambridge Lakes HOA v. Johnson Koola*
Case No. 2010-CP-10-9305
Our File No. C1001.M0142

Dear Ms. Armstrong:

Enclosed for filing, please find an original and one (1) copy of Plaintiff's *Reply to Defendant's Amended Answer and Counterclaims* in the above-referenced lawsuit. Kindly file the original and return a file-stamped copy to my office in the enclosed self-addressed stamped envelope.

With best regards, I am

Yours very truly,


Harry V. Ragsdale

Enclosure

cc: Shawn M. French, Esq. (w/enclosure)
Lydia P. Brooks, Esq. (w/enclosure)

12 EXCHANGE STREET • POST OFFICE BOX 547 (29402) • CHARLESTON, SOUTH CAROLINA 29401
PHONE 843-577-5410 • FAX 843-577-5650

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-10-9305

Cambridge Lakes HOA,

PLAINTIFF

v.

Johnson D. Koola,

DEFENDANT

Motion to Compel

BY
JULIE J. ARMSTRONG
CLERK OF COURT

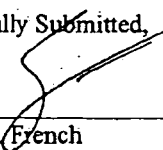
2012 AUG 15 PM 4:44
FILED

TO: HARRY RAGSDALE, ATTORNEY FOR DEFENDANT AMERIS BANK:
YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, will move before the Court of Common Pleas, Ninth Judicial Circuit as soon as counsel can be heard for an Order to Compel responses to Plaintiffs' Requests for Production, Interrogatories, and Admissions pursuant to Rule 37(a)(2) of the South Carolina Rules of Civil Procedure.

This motion is based on the South Carolina Rules of Civil Procedure and the pleadings in this case.

Pursuant to Rule 11(a), South Carolina Rules of Civil Procedure, Plaintiff's counsel certifies that there was insufficient time to consult with opposing counsel prior to the filing of this motion.

Respectfully Submitted,


Shawn M. French
Attorney for Johnson Koola
SC BAR No.: 75007
100 Ellis Ave, Ste. B
Lexington, SC 29072
803-462-4141

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CAMBRIDGE LAKES HOA)

Plaintiff)

v.)

JOHNSON KOOLA)

Defendant)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL DISTRICT
CASE # 2010-CP-10-9305

DEFENDANT KOOLA'S REPLY TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

FILED
JAN -2 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT

TO: EUGENE P. CORROGAN III, ESQ., ATTORNEY FOR THE PLAINTIFF

By and through his attorney, Shawn M. French, Defendant Koola, submits his Reply to Plaintiff's Motion for Summary Judgment.

FACTS

Cambridge Lakes was originally an apartment complex, which was converted into condominiums through a recordation of a Master Deed on February 24, 2003. Mr. Koola states that he the Developer, predecessor in interest of the plaintiff, never provided the proper disclosure report necessary for conversion of an apartment building into a condominium. Mr. Koola first became aware of this issue in 2008 when the Association filed a law suit against the developers and builders for construction defects.

Cambridge Lakes Condominium Homeowners Association f/k/a/ Cambridge Lakes Horizontal Property Regime (hereinafter the "Association") originally filed a civil action # 2010-SC-87-1646 against Mr. Koola in the Small Claims Court on August 10, 2010. Mr. Koola answered and Counterclaimed. The Honorable Magistrate transferred the case to the Court of Common Pleas on November 8, 2010. The original case was then continued as case number 2010-CP-10-9305. On December 15, 2010 a foreclosure action was filed by Bank of America at case number 2010-CP-10-6060. The plaintiff brought a cross claim against Mr. Koola in this action. Mr. Koola filed a timely response and counterclaim to the cross-claim. On January 4, 2011 and March 18, 2011, the Association filed motions to dismiss Mr. Koola's counterclaims against the Association, which were denied by the Honorable Court on July 26, 2011. In June 2011 the Association served

discovery on Mr. Koola; Mr. Koola responded to the discovery proceedings in a timely manner. In July 2011 Defendant Koola served discovery on the Association. The Association responded to Mr. Koola's Request for First Set of Admission on August 15, 2011. The Association served responses to Mr. Koola's First Set of Interrogatories and First Set of Requests for Production on September 26, 2011.

The two civil cases were subsequently combined into a single action, #2010-CP-10-9305 through a Court order on December 5, 2011. On June 8, 2012 Defendant Koola filed an Amended Answer and Counter Claim. The Association filed an Answer to the Amended Answer and Counter Claim on June 15, 2011. The Association filed a Motion for Summary Judgment to dismiss Defendant Koola's counterclaims on August 1, 2012, which is being heard now.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

In Angus v. Burroughs & Chapin Co., Court of Appeals of South Carolina after analysis of case laws has reconfirmed the Standard of Review for summary judgment as follows: "*Summary judgment is proper where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts. 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. Summary judgment should be invoked cautiously to avoid improperly denying a party a trial on the disputed factual issues*". 358 S.C. 498, 596 S.E.2d 67, 69 (Ct.App. 2004) (Reversed by the Supreme Court on other grounds.) (Internal citations omitted). (Emphasis added).

INVALID MASTER DEED

The Association's claims are based on a Master Deed that is invalid and unenforceable. Its action number 2010-CP-10-9305 against Mr. Koola alleges non-payments of assessments assessed against Mr. Koola on the basis of the Master Deed of the Association. The said Master Deed was created and recorded by the Association's predecessor, Cambridge Lakes Horizontal Property Regime and Cambridge Two, LLC (developer/seller), in Charleston County RMC Office in Book T0437, page 047 in 2003 on February 24, 2003. The Master Deed was registered according to provisions of South Carolina Horizontal Property Act, South Carolina Code 27-31-10 *et seq.* (Exhibit 1, Master Deed of the Association, at page 1). It states:

"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 Code of Laws, 1976, (the "Act"), provisions of which, part of this Master Deed, for the specific purpose of creating and establishing the Cambridge Lakes Horizontal Property Regime (the "Condominium").

However, the Master Deed violated a key provision of the Horizontal Property Act, specifically §27-31-430, related to "Disclosure of Physical Condition of Building" and consequently South Carolina Unfair Trade Practices Act, Sections §39-5-20 et. seq.¹ The Horizontal Property Act §27-31-430 states:

"Whenever the lessee or 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

¹ South Carolina Unfair Trade Practices Act §39-5-20 states: "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 this 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".

with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a warranty deed 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." (Emphasis added).

The Court of Appeals of South Carolina in Harrington v. Blackstone, 319 S.C. 1, 459 S.E.2d 309, 312 (Ct.App. 1955) states, "*Because a condominium is creature of statute, strict compliance with Horizontal Property Act is required to create horizontal property regime*". Strict compliance with the Horizontal Property Act was not met. Without this, the Master Deed is unenforceable and legally void and the Association cannot enforce fees against Mr. Koola.

FRAUD COMMITTED BY THE ASSOCIATION'S PREDECESSOR

In February 2004 the Association's predecessor, Cambridge Lakes Horizontal Property Regime and Cambridge Two, LLC (the developer/seller), sold a condominium to Defendant Koola on the basis of a legally void Master Deed. Before the Association's predecessor and the developer/seller sold the condominium to Defendant Koola, the Association's predecessor and the developer/seller issued a "Builder's Certificate" (Exhibit 2) to Defendant Koola and his Mortgagee. The said Builder's certificate stated, "*For Condo Conversions: The structural, health & safety repairs and remodeling have been completed*".

This document was issued to the condominium purchasers and their Mortgagees to confirm that the Association's Predecessor satisfied the South Horizontal Property Act §27-31-430 as cited above. Subsequently it was established that the Association's predecessor and developer/seller falsified the said "Builder's certificate". It is an act of fraud. The Association's predecessor and the developer/seller sold a condominium to Defendant Koola on the basis of an invalid Master Deed and a falsified Builder's certificate.

The falsification of "Builder's Certificate" by the Association's Predecessor mentioned above satisfies the elements defining fraud: (1) the wrongdoer made a knowingly false representation of material fact. (2) The wrongdoer had knowledge that the representation was false and intended to

deceive the innocent party. (3) The innocent party justifiably relied on the misrepresentation. (4) The innocent party was injured.

S.C. Horizontal Property Act §27-31-430 is an absolute statute without any qualifications. South Carolina Legislature has made the Association's predecessor solely responsible to obey the South Carolina Horizontal Property Act §27-31-430. In case the act is violated, the violation is subjected to South Carolina Unfair Trade Practices Act §39-5-10 et seq. Several South Carolina Supreme Court and Appellate Court decisions have categorically ascertained that "Courts should ascertain the legislative intent primarily from the plain language of the statute" and "Terms that are clear and unambiguous on their face value leave no room for statutory construction and we must apply the statute according to its literal meaning".

Condominium Law in South Carolina, Second Edition, Douglas Scott MacGregor, Esquire, South Carolina Bar, 2007, at page 12 has noted that the South Carolina Horizontal Property Act is a "first generation statute" enacted in 1962. Florida, as the South Carolina Court of Appeals has acknowledged, is "cited approvingly in jurisdictions throughout the country" and "when faced with unresolved questions in horizontal property law, courts often look to Florida law". (*Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 363, 628 S.E.2d 902, 914 n.12 (Ct.App. 2006).

In *Ryals v. Anderson*, 180 Ga.App. 568, 349 S.E.2d 801 (Ga.App. 1986), the Court of Appeals of Georgia after analysis of case laws has acknowledged that **the purchaser of a condominium has a statutory right to rescind a sales contract of a condominium if the purchaser did not receive statutorily required documents.** (Emphasis added). The case was decided by a Florida law (West's F.S.A. 718.503), as the property was located in Florida.

In *State v. C & L Corp. Inc.*, 280 S.C. 519, 525, 313 S.E.2d 334 (Ct.App. 1984)) Court of Appeals of South Carolina has held that ***"Unfair Trade Practices Act creates new substantive rights by making unlawful conduct which was not actionable under common law; therefore, proof of common-law fraud is not required to establish a violation of Act", and "The Unfair Trade Practices Act should not be construed to increase plaintiff's burden of proving liability, since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to prove than it would be under common-law principles"*** (Code 1976, §§ 39-5-10 et seq., 39-5-20(a) and (b). (Emphasis added). In the said case, the Court of Appeals affirmed the imposition of civil penalty under Unfair Trade Practices Act against the defendants.

The Association's predecessor violated the South Carolina Horizontal Property Act, §27-31-430 and committed fraud while issuing a falsified "Builder's Certificate". Mr. Koola states that the Association's motion for Summary Judgment should be denied.

**THE ASSOCIATION IS THE TRUE SUCCESSOR OF
CAMBRIDGE LAKES HORIZONTAL PROPERTY REGIME**

The Association, Cambridge Lakes Homeowners Association, took over the control of the property regime from its predecessor, Cambridge Lakes Horizontal Property Regime, in October 2004. Through this action the Association inherited the assets and liabilities of its predecessor. In Holly Woods Association of Residence Owners v. Hiller, 392 S.C. 172, 708 S.E.2d. 787 (Ct.App. 2011) Court of Appeals of South Carolina after analysis of case laws has confirmed the definition of a successor as "*a person who succeeds to the office, rights and responsibilities or place of another*" [Black's Law Dictionary (9th ed.2009)]. Supreme Court of South Carolina has reached similar conclusion in The Battery Homeowners Ass'n v. Lincoln Financial Services, Inc., 309 S.C. 247, 422 S.E.2d 93. (2009). The Association is a true successor of its predecessor, Cambridge Lakes Horizontal Property Regime.

The violation of South Carolina Horizontal Property Act §27-31-430 by the Association's predecessor and the sale of condominium units to homeowners on the basis of an invalid Master Deed were two of the liabilities that the Association inherited from the Predecessor. The right to charge assessments on homeowners and the right to take appropriate legal actions to collect those assessments from defaulting members under article 16 section (3) "Annual Assessments for Common Expenses" of the Master Deed (Exhibit 1, Master Deed of the Association at page 11) were two of the rights that the Association inherited from its Predecessor. Both the Association and Mr. Koola have to accept these facts. The Association cannot arbitrarily exercise the inherited rights without answerable and accountable for the inherited liabilities.

If the Association did not inherit the liabilities of its predecessor, the Association should have filed and recorded a new and independent Master Deed freeing itself from the liabilities of its predecessor. This precedent has been confirmed in Holly Woods Ass'n of Residence Owners v. Joe W. Hiller (392 S.C. 172, 708 S.E.2d. 787 (2012)). Defendant Koola purchased his condominium on the express representation that the Master Deed is registered according to the provisions of South Carolina Horizontal Property Act and the subject matter of the Master Deed was a sworn statement and signed and notarized. By invoking South Carolina Horizontal Property Act, the Association

and/or its predecessor offered Defendant Koola the assurances of the State of South Carolina, its Legislature and its Judiciary in his purchase of condominium. In the absence of these assurances Mr. Koola would not have bought his condominium unit. Since these conditions were not met, the condominium purchase was void. The Association has no legal right to use provisions of an invalid Master Deed to take actions against Defendant Koola while not accounting for its inherited liabilities.

During the trial, Defendant Koola will request the Court and the Jury to rescind the condominium purchase, to order the Association to buy back the Condominium from Defendant Koola and to pay Defendant Koola any damages that he suffered because of the condominium purchase. After this is accomplished and if the Court and the Jury decide that assessments are due from Defendant Koola, he will obey the orders and pay the dues.

In the Motion for Summary Judgment at page 7, the Association advises Defendant Koola that Association's Predecessor alone, and not the Association, is solely responsible for the violations of South Carolina Horizontal Property Act §27-31-430 and South Carolina Unfair Trade practices Act §39-5-20 against Defendant Koola. Rather, Defendant Koola will assert that the Association inherited the said liabilities from its predecessor. The Association can, if it so desires, bring its predecessor to this civil action through a cross claim on the predecessor. Or, it can take independent civil action against its predecessor to recover any losses.

Under South Carolina Real Estate Laws the rescission of a real estate property is allowed if the transaction involved the following occurrences: (1) Contract signed by a minor (2) Contract signed by an incompetent person and (3) Fraud committed in the transaction and any violations of the statutes. It may also be noted that under South Carolina Real Estate Laws a real estate transaction may be rescinded even after multiple transactions, if the original transaction involved a minor or an incompetent person or fraud and statute violations.

THE ASSOCIATION'S CONSTRUCTION DEFECTS LITIGATION AND ITS EFFECT ON THE HOMEOWNERS

In June 2008, the Association initiated a civil action # 2008-CP-10-3506 for construction defects in the common areas of Cambridge Lake. The Association alleged massive construction defects. According to the summons and complaint, the Association estimated the total cost to repair these construction defects at \$8 million. This translates into approximately \$76,920 per unit.

Because of the prolonged litigation involving massive construction defects, the real estate transactions in the subdivision were completely frozen. Many homeowners could not sell their units and could not pay off the mortgage related debts. Many defaulted on their mortgage related payments. This forced many homeowners to sell their condominiums by short sale or through foreclosure. Approximately, 35% of the homeowners lost their homes. In the motion for Summary Judgment at page 10, the Association makes a simple statement as: **".....In fact, every homeowner was affected by the construction lawsuit as no one was able to refinance their condominium while the lawsuit was ongoing....."** (Emphasis added). This is an understatement as it is silent on large numbers of foreclosures and short sales and people who lost their homes in Cambridge Lakes.

Defendant Koola initially listed his property for sale in May/June 2008. In June 2008, the Association filed the civil action for construction defects. As the news of the construction litigation slowly spread through Charleston County, Defendant Koola could not sell his property in 2008. This forced Defendant Koola to file for Chapter 7 Bankruptcy in March 2009. Defendant Koola was discharged from Bankruptcy in July 2009. This bankruptcy case was subsequently reopened to add the claims against the Plaintiff. Nevertheless, Defendant Koola was paying all the mortgage related payments. In June 2009 Defendant Koola made an attempt to sell the property for the second time. This time the real estate agents refused to list the property citing the prolonged construction litigation. In July 2009, Defendant Koola made an attempt to sell the property by listing the property for sale cum lease. This attempt for sale cum lease was also not successful. By the end of 2009, Defendant Koola could not pay mortgage related payments anymore without sale of his condominium and defaulted on mortgage related payments. In 2010 on the advice of the Mortgagee, Defendant Koola attempted to sell his condominium through short sale. Due to the obstruction of short sale by the Association as detailed below, Defendant Koola withdrew his listing for short sale. In summary, the litigation initiated by the Association made defendant Koola completely insolvent.

**OBSTRUCTION OF MR. KOOLA'S SHORTSALE OF HIS UNIT
IS AN ACT OF CONSPIRACY AND VIOLATION OF
SOUTH CAROLINA AND FEDERAL FAIR HOUSING LAWS**

Defendant Koola was advised by his Mortgagee to sell his condominium unit through short sale in order to mitigate any mortgage related dues. Defendant Koola listed his property for short sale through a real estate agent in April or May 2010. When Defendant Koola listed his property for short sale, he announced to the public and the creditors that: (1) Defendant Koola is insolvent (2) Defendant Koola proposes to pay off the creditors through the proceeds of the short sale and (3) Defendant Koola does not want to engage in any litigations against creditors. The real estate agent informed the Association of the short sale efforts. On May 24, 2010, the Association placed a lien on his unit (Exhibit 3). This prompted the first Mortgagee and the second Mortgagee to file foreclosure actions against Defendant Koola on July 27, 2010 and October 1, 2010 respectively to establish lien priorities. On August 10, 2010, the Association filed a civil action to collect dues from Defendant Koola in the Small Claims Court. Because of these adversarial actions, Defendant Koola cancelled the short sale efforts of his unit.

During the recent financial crisis, federal regulators, federal lending agencies and financial institutions have formulated definite policies how the mortgage related defaults can be recovered from insolvent debtors: (1) Foreclosure (2) Deed in lieu of sale (not applicable for those with second mortgages) and (3) Short sale. Short sale was the best option for Defendant Koola as he had become insolvent due to his inability to sell his condominium unit in Cambridge Lakes and to pay off his debts. The proceeds of the short sale will be distributed among the creditors as per regulations or negotiations between the payees. The South Carolina Horizontal Property Act §27-31-200 states:

"Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro rata share expenses to which Section 27-31-190 refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

- (a) Assessments, liens and charges for taxes past due and unpaid on the apartment;*
and
- (b) Payments due under mortgage instruments or encumbrances duly recorded".*

Any payee can initiate civil actions for any default judgment after short sale or foreclosure.

It was the policy of the Association to collect any unpaid regime fees from (insolvent) homeowners through short sale as recorded in the minutes of the meeting of the Board of Directors

on August 25, 2009. The report under the paragraph " Delinquent Report" (Exhibit 4 at page 1) states as follows:

"..... If the bank wants to pursue "short sales" in which the bank obtains real estate brokers to sell the property while still in the name of delinquent owner it works to our benefit. All parties including the bank have to negotiate a settlement to affect the sale. Normally the homeowner's association only has to forgive the late fees.....". (Emphasis added).

It is quite evident from the statement that a short sale works to the best advantage of the Association to collect dues from insolvent homeowners. The Association could maximize its income without any costly litigation. After the short sale and after collecting the unpaid assessments from the bank, the Association can pursue legal action for collection of late fees, if it so desires. By obstructing the short sale, the Association violated its own policy with respect to short sale in the case of Defendant Koola as well as the guidelines of Federal regulators, Federal lending agencies and financial institutions.

In May 2010, Defendant Koola might have approximately \$1,700 unpaid regime plus late fees and fines. After short sale, the bank would have delivered the Association \$1,700 as its due share of the unpaid assessments. As of December 2012, Defendant Koola would have approximately \$10,300 and late fees and fines as unpaid regime. Today because of his insolvency Defendant Koola is not in apposition to pay off any dues even if a judgment is granted to the Association. Even a person with negative IQ will testify in the Court that it was in the best interest of the Association to collect the unpaid regime from Defendant Koola through short sale in 2010 rather than through litigation and through deficiency judgment in 2013. By obstructing the short sale, **the Association acted with malice, prejudice and in bad faith and against Business Judgment Rules.** Defendant Koola alleges that the only goal of the Association in litigating against Koola was to **inflict special damage on him even at the risk of not collecting any dues.**

At the time when Defendant Koola attempted to sell his unit through short sale, his neighbor two doors down (# 1583 Cambridge Lakes Dr) had also put his unit for short sale. It was sold through short sale in February/March 2010. At that time the neighbor had regime dues of \$13,673.23. RMC records indicate that the lien placed on his unit is not cleared even today. There are no Court records showing any civil action pending against the neighbor. This means that the Association let the neighbor to sell his property without satisfying the lien. The Association wrote

off the neighbor's dues against homeowner's regime payments. At the same time, the Association obstructed Defendant Koola's short sale and initiated multiple civil actions.

In 2008/2009, the Association was pursuing a civil action (# 2008-CP-10-000471) against another Cambridge Lakes homeowner. On April 14, 2009 the case was dismissed as a voluntary nonsuit without prejudice.

Financial statements received from the Association in its responses to Mr. Koola's discovery requests indicate that three homeowners in Cambridge Lakes at 1423, Cambridge Lakes Dr., 1455 Cambridge Lakes Dr. and 1491 Cambridge Lakes Dr. had several thousand dollars in unpaid dues. The Association does not inform Defendant Koola in its motion for Summary Judgment what actions the Association is pursuing in these three case. There are more similar cases where the Association is not pursing actions against homeowners with dues.

These actions on the part of the Association would show to the Court and the Jury that the Association was acting discriminatorily against Defendant Koola. Defendant Koola further alleges that the Association together with the Cambridge Lakes Property Management (Ravenel Associates) and the Association attorney conspired against Defendant Koola. The parties wanted to take revenge against Defendant Koola as he asked the Association and the Management Company to provide him with the financial statements of the Association to discover any financial irregularities. Also, Defendant Koola once questioned the Association about the Association's new policy regarding renting the condominiums, which infuriated the Association, its management company and the Association's attorney. The Association, through a conspiracy, managed to cause special damage to the Defendant.

In Pridgen v. Ward, 391 S.C. 238, 705 S.E2d. 58 (Ct.App. 2010), the Court of Appeals of South Carolina after analysis of case laws has emphasized civil conspiracy as follows: (1) A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the opposing part (2) A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation; as a result, no conspiracy can exist if the conduct of the alleged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment. (3) Although the corporation cannot conspire with itself, the agents of a corporation are legally capable as individuals, of conspiracy among themselves or with third parties. (4) It is an issue for jury in suit for civil conspiracy alleging that employees met, schemed, planned and conspired and put together an agenda to purposely harm a complainant. (5)

Civil conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interest of the alleged conspirators, and other relevant circumstances.

Defendant Koola further alleges that the actions of the Association toward Defendant Koola were discriminatory and prejudiced based on race, color and national origin and is in violation of South Carolina Fair Housing Law §31-20-10 et seq, and more specifically §31-21-40 (2)(3) as well as Federal Fair Housing Law, Title VIII (1968 Federal Fair Housing Act). Defendant Koola is personally known to two members of the Board of the Directors of the Association as they live in the same block; the directors know that Defendant Koola belongs to a different race, color and national origin.

South Carolina Fair Housing Law 31-20-40(2) states, *It is to unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it, because of race, color, religion, sex, familial status, or national origin*".

Defendant Koola requests the Court to refer the conspiracy and discriminatory allegations against the Association to the Jury.

In the Motion for Summary Judgment at page 4 the Association states that the Association has been granted judgment against five defaulting homeowners. It does not state whether the Association has collected any of those judgments. It has to be presumed that the Association hasn't collected any judgment from these homeowners. Until the Association provides complete information about defaults, which include information about the dues from all defaulted homeowners, liens placed on those homeowners, civil actions initiated against those defaulted homeowners, and the judgment collected from those civil actions, Defendant Koola will present to the Court and the Jury that the Association was discriminatory in its actions against Defendant Koola, and that the Association violated State and Federal Fair Housing Laws.

STIGMATIZATION OF CAMBRIDGE LAKE CONDOMINIUMS

In June 2008, the Association filed a lawsuit (# 2008 CP-10-3506) against the developers/sellers, real estate agents and builders and related contractors alleging construction defects in Cambridge Lakes. After filing the lawsuit, the Association president and the Association attorney sent a letter to the homeowners informing them of the already filed lawsuit requesting the homeowners to assign their rights and claims to the Association and stating the following causes of action: "..... causes of action I/We have or 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,....." (Emphasis added). Defects in the foundation of a multistoried building such as Cambridge Lakes are serious construction defects, and affects the security and personal lives of the homeowners.

Defendant Koola studied the summons and complaint filed by the Association in connection with the lawsuit and noted that many of the alleged construction defects, especially the defects in the foundation, were not pleaded. The actions of the Association amount to stigmatization of the property. When a Cambridge Lakes homeowner sells his/her home, he/she is obligated by the South Carolina Law, S.C. Code Ann. §27-50-65 (2007) to disclose all the material defects that were made known to him/her by the Association: "That there are defects 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".

During jury trial, Defendant Koola will testify what kind of impact these exaggerated construction defects statements will provoke in a prospective buyer. Mr. Koola attempted to sell his property during May/June 2008 through September 2010 four times, but could not sell it. The exaggerated construction defects and the prolonged construction litigation were the prime factors that Defendant Koola could not sell his property.

The severity of the stigmatization of the Cambridge Lakes Properties can be viewed from the following real estate sales data. In 2006, a three-bedroom unit in Cambridge Lakes was sold for approximately \$245,000. In 2010, condominiums in Cambridge Lakes were sold for approximately \$125,000. In the summons and complaint in the said civil action (#2008-CP-10-3506) the Association had estimated the total cost of the repair of the alleged defects were \$8 million. This translates into \$76,920 construction defects per unit. The Real Estate market discounted the approximate cost of potential repairs. The drop in the sales price of Cambridge Lakes condos reflects the effect of the stigmatization of the properties by the Association.

The Association settled the case number 2008-Cp-10-3506 around June 2011. As the case is settled, the Association can recover at the most \$8 million as claimed. The Association would have paid \$2.4 million to the Attorney as attorney fees. The Association is left with \$5.6 million for repairs. As a matter of fact, it is understood that the Association did not recover \$8 million, but

substantially less. In any case, there is shortfall in the money available for repairs. Due to lack of money, the Association cannot complete all the repairs as claimed. In another words, the Cambridge Lakes condominiums are left with lot of incomplete repair works related to construction defects; these properties are stigmatized forever.

Many Cambridge Lakes homeowners could not sell their units due to the construction defects lawsuit and the stigmatization of the properties for a fair market price. Many lost their homes (an estimated 35 homeowners out of 104) to short sales and foreclosure sales and moved away. These actions of the Association made Defendant Koola financially insolvent and caused him to default on the mortgage related dues and made him face the current litigation.

THE ASSOCIATION'S CONSTRUCTION DEFECTS LITIGATION AND CONSPIRACY AND NEGLIGENCE

In June 2008, the Association initiated a civil action # 2008-CP-10-3506 for construction defects in the common areas of Cambridge Lake alleging massive construction defects. This litigation was filed without the knowledge and authorization from the homeowners. In the Motion for Summary Judgment at page 8, the Association states, "..... During March-April 2008, the Board of Directors first learned of potential construction defects to the Association's property..... Because of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf". (Emphasis added). The Association filed the lawsuit in June 2008.

The April 2008 Minutes of the Board of Directors of the Association (Exhibit 5 at page 2) makes the following statement:

"New Business Homeowner Request: The water intrusion for unit 1487 will be checked. Ms. Moore will get estimates to check the damages from inside of the unit as well as the interior unit".

This is the only mention of any issues and is insufficient for the Association to proceed with litigation. The minutes for the months of May and June 2008 do not mention anything about defects and repairs. There are no references in these minutes that the Association authorized Attorney Mr. John C. Hayes, IV, to file the civil action # 2008-CP-10-3506. To date, Mr. Koola has not been supplied with the information regarding when this litigation was authorized and by whom. The discussion about these defects, and the decision to file the lawsuit were held outside of the official business of the Association, as there are no references in the minutes of any meeting.

On November 20, 2004 Defendant Koola met with Mr. Stephen Fisher, Member, Board of Directors of the Association and asked him about the rumors of construction defects in Cambridge Lakes. Defendant Koola's immediate neighbor, who was working for the Architect firm, which oversaw the construction of Cambridge Lakes told Defendant Koola in private that some of the rumored constructions defects may be for real. He would not elaborate on this matter, as he was afraid of his job with the architect firm. Defendant Koola conveyed this information to Mr. Fisher during the meeting. Mr. Fisher denied any construction defects in Cambridge Lakes and did not act further on the information provided to him. Defendant Koola believed Mr. Fisher and was convinced that the rumors about construction defects are without any basis. Defendant Koola invested more and more in his condominium toward principal balance of the mortgage. Four years later, the Association filed the civil action # 2008-CP-10-3506 alleging massive construction defects; the architect firm was one of the defendants in the said case. After another three more years from 2008, Defendant Koola became insolvent, thanks to the Association.

Defendant Koola alleges that Mr. Fisher violated the fiduciary responsibilities. Also, Mr. Fisher was grossly negligent in not pursuing the information about the construction defects. Had Mr. Fisher, as a member of the Board, had investigated the potential construction defects based on Defendant Koola's information, he would have saved many homeowners from the loss of their homes. Defendant Koola will request the jury to decide whether this involves violation of fiduciary responsibilities and negligence. Court of Appeals of South Carolina in Island Car Wash, Inc. v. Norris III, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.) 1987 after case law analysis confirms: "*Confidential or fiduciary relationship exists when one reposes special confidence in another, so that latter, in equity and good conscience, is bound to act in good faith and with due regard to interest of one reposing confidence*".

Defendant Koola further alleges that the decision to file the lawsuit was an act of conspiracy between the Members of the Board of Directors of the Association, the management company (Ravenel Associates) and the Association attorney. The lawsuit was filed in June 2008, just before the expiration of the Statute of Limitations to file civil actions in cases related to construction defects. In South Carolina, civil actions for construction defects must be initiated within eight years. The Cambridge Lakes were ready for occupation sometime in 1999/2000. After the June 2008 deadline, no Cambridge Lakes homeowners can file for construction defects related case. That means the Association and its attorney have the exclusive jurisdiction to file the case. The civil case involved damages worth \$8 million. Therefore, the attorney stands to gain around \$2.4 million as

attorney fee. Further, the case involves violations of Unfair Trade Practices Act, which can triple the monetary awards. In that case, the attorney can reap anywhere between 4 and 6 million dollars as attorney fee.

**THE ASSOCIATION'S CIVIL CASE RELATED TO CONSTRUCTION DEFECTS
IS WITHOUT AUTHORIZATION FROM THE HOMEOWNERS**

In June 2008, the Association filed a lawsuit (# 2008-CP-10-3506) against the developers/sellers, real estate agents and builders and related contractors alleging construction defects in Cambridge Lakes. After filing the lawsuit, the Association president and the Association attorney sent a letter (Exhibit 6) to the homeowners informing them of the already filed lawsuit requesting the homeowners to assign their rights and claims to the Association to continue the construction litigation. The letter specifically asked the homeowners "..... to agree to waive any conflict that may arise between me/us and the HOA and/or Pritchard and Elliot, 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". (Emphasis added)

Putting aside the argument that the Master Deed is invalid for the sake of this argument, Mr. Koola asserts that the Association has no right under the Master Deed to pursue construction defects related litigation without the approval of 2/3 majority of the homeowners. The Association's action caused irreparable damage to Defendant Koola. No record of a vote obtaining the required approval has been provided to Mr. Koola.

There are conflicting Court decisions regarding who owns the common elements in a condominium, who is authorized to maintain the common elements, who has authority to pursue legal action in regard to construction defects in common elements.

It is widely accepted in real estate practice that a party has a standing in a legal action if the party owns the property. Court of Appeals of South Carolina in Lee, Jr. v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986) after analysis of case laws stated that "*In order to have a standing to sue, a party must have a personal stake in the subject matter of the lawsuit*" (Internal citations omitted). In Roundtree Villas Association, Inc. v. 4701 Kings Corp., 282

S.C. 415, 321 S.E.2d. 46 (1984) the Supreme Court of South Carolina after analysis of case laws has made the following categorical, unquestionable statement: *"The rights and authority of the Regime must be gleaned from the Horizontal Property Act and from the master deed. From these we may determine (1) the property owned by the individual condominium owners and (2) the rights of the Regime."* Court of Appeals of South Carolina as late as 2008 in Baumann v. Long Cove Club Owners Ass'n, 380 S.C. 131, 668 S.E.2d 420 (Ct.App. 2008) has clearly stated that *"The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions hereof"*. The decision by the Court of Appeals of South Carolina in 2008 in the same case has confirmed the opinion that *"the homeowners association is bound to obtain homeowners approval if the covenants of the association so demands it"*. (Emphasis added). Court of Appeals of South Carolina in Harrington v. Blackstone, 319 S.C.1, 459 S.E.2d 309 (Ct.App.1995) after analysis of case laws states: *"When controversy regarding rights of condominium unit owners arises, court must examine all relevant provisions of Horizontal Property Act, master deed, and allied documents, regarding those provisions together, in relation to each other and harmonized, if possible"*. (Internal citation omitted).

The Horizontal Property Act §27-31-20 (b) and (c) state:

"Condominium ownership" means the individual ownership of a particular apartment in a building and the common right to share, with other co-owners, in the general and limited common elements of the Property. "Co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building".

Furthermore, section 27-31-60 (a). Property Rights of Apartment Owner:

"An apartment owner shall have the exclusive ownership of his apartment and shall have a common right to share, with other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the individual apartment, with relation to the value of the whole property...."

The Master Deed of the Association paragraph (12) Exclusive Ownership (Exhibit 1 at page 8) states:

"Each co-Owner shall have exclusive ownership and possession of his Apartment. He shall have an undivided interest in the common elements in the percentages

expressed in this Master Deed and as set forth in Exhibit "C", which percentages of undivided interest of each Co-Owner shall have a permanent character and shall not be altered without the consent of all Co-owners expressed in an amended Master Deed duly recorded....."

The Association, in its reply to the Defendant Koola's first set of interrogatories answered as follows: "..... Subject to this objection, to the extent this interrogatory refers to the "Common Elements", Plaintiff submits that the Common Elements are owned by the members of the Association pursuant to their percentage interests as set forth in the governing documents".

It is established that the Association does not own the Common Elements in Cambridge Lakes.

The question whether the Association, which does not own any elements in Cambridge Lakes, but have responsibility to maintain the common elements, has the right to sue for construction defects in the common elements has to be answered. In Roundtree Villas Ass'n Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d. 46 (1984) the Supreme Court of South Carolina after analysis of case laws has made the following categorical, unquestionable statement: "The rights and authority of the Regime must be gleaned from the Horizontal Property Act and from the master deed".

The Horizontal Property Act does not address this issue. The Master Deed of the Association Paragraph (16) (6) Special Assessments for Capital Improvements (Exhibit 1 at page 12) states:

"In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, special assessments for the purpose of defraying, in whole or in part, the cost or any portion thereof of any construction or reconstruction, repair or replacements of a capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto, which the Association cannot pay out of the funds held in the capital account, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Co-Owners, including the developer, not less than ten (10) days nor more

than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Each Co-Owner's share of any special assessment shall be in proportion to his percentage of undivided interest in and to the Common Elements."

The foregoing statement makes it clear that the Association shall receive approval from two-thirds (2/3) majority of the vote of the Co-Owners voting in person or proxy at a meeting duly called for the purpose in advance of the initiation of the construction defects related litigation.

These were the actions of the Association. (Exhibit 6)

(1) The Association filed the civil action # 2008-CP-10-3506 on June 8, 2008 without informing the homeowners.

(2) On June 18, 2008, the Association and the Association attorney sent a letter to the homeowners informing them of the already initiated civil action and asking the homeowners to assign their rights and claims in the civil action to the Association.

(3) The Association asked the homeowners to agree 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.

(4) The Association further asked the homeowners to acknowledge that the HOA's claims/rights supersede those of the individual homeowners. Assertion number 4 has whatsoever no basis in the Horizontal Property Act or the Master Deed.

(5) In March 2009, the Association diverted several thousands of dollars from the regular budget to a special capital reserve fund to investigate construction litigation and to pay for legal expenses. Homeowners were not informed of this transaction. This was an illegal action taken in order to circumvent the requirement of the 2/3rds majority needed to obtain the funds for the litigation.

(6) The homeowners were told that the Association's litigation attorney will conduct the civil action on a contingency basis, but were never properly informed that they would be required to bear the costs of litigation.

(7) The homeowners were not informed who will pay the bill to repair the alleged construction defects if the Association lost the construction defects lawsuit. This explains why the Association asked the homeowners to agree to collection of special assessments on demand.

The response of the homeowners to the demands of the Association to assign their rights and claims to the Association was very, very limited. In September 2008 the Association called for a general meeting of the homeowners and pleaded to the homeowners to succumb to the demands of the Association. Still, the approval of the homeowners was very limited. Later on, the Association attorney wrote to the Association requesting them to assign their rights and claims to the Association. Due to construction litigation, real estate transactions in Cambridge Lakes were practically frozen except for short sales and foreclosures. Slowly, more and more homeowners, but not all, assigned their rights and claims to the Association. It is needless to state that nearly 35% of the homeowners lost their homes to short sale and foreclosure.

The Association's Motion for Summary Judgment at page 8 makes the following statements: (1) The Association did not force anyone to join the lawsuit. (2) The Association did not collect any special Assessment. (3) The Association spent money for litigation from a Special Capital reserve.

Once the lawsuit was filed, many homeowners realized that they were helpless as the construction lawsuit will have serious consequences on the real estate value. Whether they assigned their rights to the Association or not, it did not matter anymore. Furthermore, the Association made an offer to the homeowners: "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 recovery on our behalf, if any". (Exhibit 6). Those who assigned the rights to the Association, agreed to pay on demand unspecified amount of future special assessments. This was equivalent agreeing to perpetual and uncontrolled special assessments. If the Association lost the civil case, then the Association would have assessed the homeowners a special assessment to undertake the repair work. They would have also demanded the homeowners, who did not join the lawsuit, to come up with special assessment. For the purpose of meeting the litigation expenses, the Association transferred funds from the General Reserve (which belongs to the homeowners) to Special Reserve Fund. This transfer was a misappropriation of funds and is a special assessment.

The Motion for Summary Judgment at page 8 makes the following statement: "Next, the Association has the power to sue. See S.C. Code Ann. §33-31-302(1)". The Association is informed that Code §33-1-302(10) deals with General Powers of a Corporation. What the Association does not realize is that under the present context the "Corporation" is a Condominium regime which is strictly governed by the South Carolina Horizontal Property Act §27-31-10 et. seq. and the Master Deed of the Association. Mr. Koola craves reference to the Supreme Court decision cited earlier: Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d. 46 (1984).

Mr. Koola states that even if you consider all the facts of presented by the Association, the court should not grant the Assciaiton's Motion for Summary Judgment. .

UNAUTHORIZED SPENDING OF MONTHLY REGIME FEES FOR LITIGATION EXPENSES

During the Discovery process and Defendant Koola's Request for First Set of Admissions to the Association, the Defendant Koola requested the Association to admit or deny that Association spent several thousand dollars to investigate construction defects and to initiate the lawsuit # 2008-CP-10-3506. (Cambridge Lakes HOA Answers to Defendant Johnson Koola's Request for Admissions to the Plaintiff No. 26) The Association denied this allegation. The Association's Motion tells a different story.

The Association has in the Motion for Summary Judgment admitted that the Association spent the money for litigation related expenses from the Capital Reserve Fund. As a matter of fact, the Association created a Special Reserve Fund in March 2009 after initiation of the litigation (Exhibit 8 Balance Sheet at page 9); this action is in violation of the provisions of the Master Deed.

In the motion for Summary Judgment, Mr. Stephan Fisher has furnished an affidavit (Exhibit 9 at page 3). The affidavit # 13 states: "**The annual budget does not change during the calendar year**". If that is the case, how can the Association create a Capital Reserve Fund in March 2009 in the middle of the year? The Association created a new budget item in the middle of the year and diverted regular reserve money to Special Capital Reserve Fund and spent that money for litigation expenses. By 2008 and 2009, the Association realized that it has to collect special assessment to pay for litigation expenses or divert funds from General Reserve Fund. If the Association and Members of the Association were truthful and faithful to the interests of the homeowners, they should have added the Special Capital Reserve in the Annual Budget presented to the homeowners convened by the end of 2008 and informed the homeowners that money is diverted from the General reserve Fund meant for the regular expenses to a Special Capital Fund Reserve Fund to spend toward litigation expenses. As a matter of the fact, none of the homeowners know about these clandestine diversions of the fund from General Reserve Fund to the Special Capital Reserve Fund. They believe that all the litigation expenses were recovered from the lawsuit.

**THE ASSOCIATION'S CONSTRUCTION DEFECTS RELATED LITIGATION
AND SELECTIVE PROSECUTION OF POSSIBLE WRONGDOERS.**

The Association filed the lawsuit # 2008-CP-10-3506 against Albert Estee and Stephen Heape and related entities as developers/sellers and Trademark Real Estate Inc. as one of the real estate agents and the builder and various subcontractors. The Association was selective and discriminatory in its pursuit of legal action. The developer/seller initially engaged Trade Mark as an exclusive selling agent. Trademark sold approximately 30 units out of possible 104 units in the subdivision. Later, the developer/seller replaced Trademark with Prudential Carolina Real Estate, currently Carolina One, which sold approximately 65 units in the subdivision. The Plaintiff pursued legal action against Trademark for violation of South Carolina Horizontal property Act §27-31-10 et. seq. However, the Plaintiff did not pursue any legal action against Prudential Carolina Real Estate even though Prudential was also equally in violation of South Carolina Horizontal property Act §27-3-110 et. seq.

For more than three years from June 2008 till the middle of 2011, the Association pursued civil action against Albert Estee and Stephen Heape as developers/sellers and related entities. However after three years and in mid-2011, the Association dismissed the case against Albert Estee and Stephen Heape as developers and sellers and related entities with prejudice. This is another example for the pursuit of civil actions against various entities and serious wrongdoers selectively and discriminatorily. The Association has not informed the homeowners and Defendant Koola why the case against developers/sellers was dismissed after three years of pursuing the legal action.

By these actions, the Association showed bad faith, dishonesty and incompetence and bad business judgment.

IRRULARITES IN THE ANNUAL BUDGET STATEMENTS

The relevant sections of the annual budgets provided to the homeowners by the Association for certain years are reproduced below:

The budget for the year 2007 has the following entry:

CAMBRIDGE LAKES HOMEOWNERS ASSOCIATION					
YEAR TO DATE AS OF SEPTEMBER 30, 2007					
COMPARED TO 2007 BUDGET					
	Current Year to Date				
	Actual	Budget	Variance	Annual Budget	Budget Remaining
INCOME					
Operating	\$205,977.29	\$201,420.00	\$4,557.29	\$268,560.00	\$62,582.71

The budget for the year ended December 31, 2009 has the following entry:

CAMBRIDGE LAKES						
PROJECT RECAP						
9 MOS ACTUAL 3 MOS PROJECTION YEAR ENDING DECEMBER 31, 2009						
	Cambrid ge Lakes	Income/Expense 9/30/2009	3 Mos Projection Oct-Dec. 09	Total Projected 12/31/2009	Annual budget 2009	Budget Variance Proj 2009
		ACTUAL INCOME				
4100	Regime revenue	\$210,600	\$70,200	\$280,800	\$280,800	0

The budget information provided to the homeowners for 2013 contains the following information:

CAMBRIDGE LAKES			
APPROVED OPERATING BUDGET 2013			
INCOME	2011 Actual	2012 8 Months Actual	2013 Approved
OPERATING			
Regular Assessments	\$284,880.00	\$136,200.00	\$284,880.00
Late Fees	\$2,000.00	\$1,870.00	\$500.00
Comcast Royalties		\$3,590.00	\$4,400.00
Interest on Operating/Reserve	\$1,953.76	\$2.39	\$996.00

Total Operating Revenue	\$288,833.76	\$141,662.39	\$290,776.00

None of the Annual Budgets of the Association presented above shows any dues outstanding from any homeowners. If so, the Association's claim that Defendant Koola is indebted to the Association for the non-payment of monthly regime assessments is not substantiated and established. For this reason, Mr. Koola requests this Honorable Court dismiss the Association's claims against Defendant Koola.

The other alternative is that the Association is providing wrong and manipulated budget information to homeowners. This serves to hide any wrongdoing in book keeping. Also, these annual budgets are intended to show prospective new homebuyers and lending institutions that Cambridge Lakes is operating perfectly well without any dues from homeowners - a method employed to artificially raise the home prices to let insiders sell property at huge premium. The Association stands to gain as it can levy higher sales transfer fee from new homebuyers. The Association does not follow the **Generally Accepted Accounting Practices** and appears to be manipulating the books. The manipulations of the information in the account book are possible violations of Unfair Trade Practices Act.

During the General Body meeting of the Association in November 2009, Mr. Koola asked the property manager to explain some accounting irregularities in the budget. The manager advised Defendant Koola to send an e-mail to the Manager. Within the next few days, Defendant Koola met with one of the Board members, Mr. John Martin to discuss the irregularities in the budget. He told Mr. Kool that he could not explain them. He advised Mr. Koola to write to the property manager. On Nov. 30, 2009, Defendant Koola sent an e-mail to the Property Manager with copy to the Mr. John Martin, the Board member (Exhibit 10). No response was received. Mr. Koola sent two to three additional e-mails to the property manager and copy to Mr. John Martin. Again, no responses. In the Motion for Summary Judgment at page 9, the Association states: **".....Koola has met with at least one Board Member regarding the Association's finances"**. This statement was complemented by an Affidavit from Mr. Martin, which states (Exhibit 11, Affidavit # 11 at page 2): **"On numerous occasions, I personally met with Mr. Koola and reviewed several Association balance sheets and annual budgets with him"**. Mr. Koola states this is inaccurate.

South Carolina Horizontal Property Act §27-31-180 states:

"Records of receipts and expenditures. The administrator or the board of administration, or other form of administration specified in the bylaws, shall keep a book with a detailed account, in chronological order, of the receipts and expenditures affecting the property and its administration, and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. **Both the book and vouchers accrediting the entries made thereon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge**". (Emphasis added).

PRIVACY LAWS

During the Discovery process, the Mr. Koola requested the Association to produce the list of names of homeowners who are in default of the monthly regimes, the list of names of homeowners against whom the Association has filed lien and a list of names of homeowners against whom the Association have initiated legal action for the collection of dues and a list of names of homeowners from whom judgments were received. The Plaintiff refused to provide this information to Defendant Koola stating privacy reasons. This is contrary to their prior actions. In 2009, the Association published the names of defaulting homeowners by placing these names on the entrance door of the units, in the lobby and by the pool. As a matter of fact, this act was authorized by the Board of Directors of the Association during the board meeting on September 30, 2009 (Exhibit 12). Further, the President's annual report of 2011, provided to the homeowners during the annual meeting of the Association (Exhibit 13), publicly revealed to attendees the unit numbers and names of all defaulting homeowners.

MINUTES OF THE MEETINGS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

During the Discovery Process Mr. Koola, in his First Set of Requests for Production to the Association, requested the Association to provide Defendant Koola with the minutes of the monthly meetings of the Board of Directors for the period January 2007 to July 2011. The Plaintiff did not provide Defendant Koola the minutes of each of these monthly meetings. Minutes of certain critical

months when the Board discussed Mr. Koola's delinquencies in 2010 and 2011 and when the Board discussed the litigation issues related to construction defects have not been provided to Mr. Koola.

IRREGULARITIES IN THE FINANCIAL STATEMENTS

Mr. Koola's First Set of Requests for Production to the Association, Defendant Koola requested the Plaintiff to provide the Defendant with details of financial statements for the Association from the period January 2005 to August 2011. The Plaintiff did not provide Defendant Koola with financial statements for several months. Further, many of the monthly statements were incomplete even by the standards set by the Association. **Some of the statements were either modified or altered, possibly committing perjury;** accuracy and truthfulness of the financial statements are uncertain and could not be determined.

The Association has established in the construction lawsuit # 2008-CP-10-3506 that the total cost for the repair of construction defects at \$8 million. The case was settled around June 2011. The recovery from the lawsuit has not been entered into the account books as the budget estimate for the year 2012 does not show this figure. The Association is handling the recovery money and repair works off the account books.

DAMAGES INFLICTED ON DEFENDANT KOOLA

In his counterclaim, Mr. Koola has alleged that because of the Association's initiation of the construction defects based litigation without the approval from 2/3 majority of the homeowners, Defendant Koola became insolvent. He could not sell his condominium to pay off the mortgage related debts. He was forced to default on those debts. Currently he faces foreclosure and various civil actions. Mr. Koola holds the Association responsible for all these damages.

In its Motion for Summary Judgment at page 10, the Association claims that every homeowner was affected by the construction lawsuit as no one was able to refinance their condominium while the lawsuit was ongoing. The fact that Mr. Koola was not the only one affected by the actions of the Association is irrelevant to the damages he has sustained as a result of this litigation. It is therefore quite evident that the acts of the Board of Directors were not taken in the best interests of the majority of the homeowners. The Board of Directors has shown bad faith, dishonesty and incompetence and negligence.

On page 9 of the Motion for Summary Judgment, the Association claims: "Here, even though Koola did not participate in the lawsuit, he will benefit directly from the settlement proceeds

as all windows in his condominium will be replaced at no charge to him". Defendant Koola reminds the Association that the Association diverted General reserve Fund to Special Capital Reserve Fund in March 2009 in the middle of the budget year. The money diverted from the General Reserve Fund in March 2009, had contribution of Mr. Koola's regime payments. Mr. Koola did pay for the litigation expenses

BREACH OF FIDUCIARY RESPONSIBILITIES AND BUSINESS JUDGMENT RULES

Under the business judgment rule, "a court will not review the business judgment of corporate governing board when it acts within its authority, and it acts without corrupt motives and in good faith..... The business judgment rule requires directors to act reasonably and in good faith. However, the rule does not apply if the directors have engaged in self-dealing and fraud or other unconscionable conduct". *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 538 S.E.2d 15 (Ct.App. 2000).

The undisputed facts of this case give rise to a legitimate question of fact whether or not the Association showed bad faith, dishonesty and incompetence. The Association has violated fiduciary responsibilities toward Mr. Koola and other homeowners. The Association has violated South Carolina Horizontal Property Act and South Carolina Home Housing law. The Association, therefore, cannot seek protection under Business Judgment Rules.

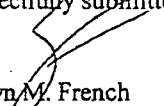
Mr. Koola has shown to the Court:

1. The Association is pursuing civil action on Defendant Koola based on an invalid Master Deed as it was created in violation of South Carolina Horizontal Property Act, §27-31-430. This is subject to South Carolina Unfair Trade Practices, §39-5-20.
2. The Association is the true successor of its predecessor, Cambridge Lakes Horizontal Property Regime. The Association has inherited both the liabilities and rights of its predecessor. The Association shall not arbitrarily exercise the inherited rights without answerable for the inherited liabilities.
4. The Association initiated a construction lawsuit in June 2008 without information to and authorization from 2/3 majority of the homeowners as required by the provisions of the Master Deed. The Association's action made Defendant Koola insolvent, who is now facing foreclosure and civil actions. It also caused many homeowners to lose their homes to foreclosure, short sale and sale for a capital loss.

5. The Association is pursuing civil action selectively and discriminatorily against Mr. Koola. The undisputed facts present a question as to whether the Association has been involved in conspiracy and violation of South Carolina Fair Housing Law.
6. The Association pursued construction lawsuit selectively and discriminatorily, by not pursuing actions against two key wrongdoers and showed bad faith, dishonesty and incompetence.
7. The Association has committed serious financial irregularities and violations of various statutes.
8. The Association has shown bad faith, dishonesty and incompetence, which were against Business Judgment Rules.

WHEREFORE, Defendant Koola prays to the Court to deny the Association's Motion for Summary Judgment.

Respectfully submitted,


Shawn M. French
Attorney for Defendant Johnson Koola
SC BAR No.: 75007
1476 Ben sawyer Blvd, Ste 3
Mt. Pleasant, SC 29464
(843) 606-6440

Summary Judgment came for hearing before the Court on November 6, 2012. The Honorable R. Markley Dennis questioned the Plaintiff Association whether it had filed any affidavit or any evidentiary document in support of the Motion for Summary Judgment. The Plaintiff Association answer that it had not. The Honorable R. Markley Dennis directed the Plaintiff Association to file necessary affidavits and evidentiary documents within thirty (30) days, and directed Defendant Koola to file an Answer to the Motion for Summary Judgment thereafter. The Plaintiff Association filed the Amended Motion for Summary Judgment on December 7, 2012. Defendant Koola filed an Answer to the Amended Motion for Summary Judgment on January 2, 2013.

The Honorable R. Markley Dennis decided on the Motion for Summary Judgment in his chambers without a hearing. On March 12, 2012, the Honorable R. Markley Dennis signed a proposed order granting Summary Judgment to the Plaintiff Association. The Order prepared by the Plaintiff Association on behalf of the Court did not address any of the material facts and statement of laws presented by Defendant Koola in his reply to Plaintiff Association's Amended Motion for Summary Judgment. Accordingly, the proposed order signed by the Honorable R. Markley Dennis does not address any of the material facts and statement of laws raised by Defendant Koola in his reply to Plaintiff Association's Amended Motion for Summary Judgment.

The Clerk of the Court entered the Order on March 15, 2013. The the Notice of Entry Judgment/Order from the Charleston Clerk of Court was received on Monday March 25 by Mr. Koola's Counsel.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

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". Id.

The Appellate Courts of South Carolina have applied additional Standards of Review to determine the motions for summary judgment. In Angus v. Burroughs & Chapin Co., Court of Appeals of South Carolina, after analysis of case laws, has reconfirmed the Standard of Review for summary Judgment as follows:

"Summary judgment is proper where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts. 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. Summary judgment should be invoked cautiously to avoid improperly denying a party a trial on the disputed factual issues". 358 S.C. 498, 596, S.E.2d 67, 69 (Ct.App. 2004) (Reversed by the Supreme Court on other grounds). (Internal citations omitted). (Emphasis added).

In Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d. 496 (Ct.App. 2004), the Supreme Court of South Carolina has affirmed that:

"Summary Judgment is not appropriate where further inquiry into facts of the case is desirable to clarify the application of law.....All ambiguities, conclusions and inferences arising from the evidence must be construed most sternly against the moving party.....Moreover, Summary Judgment is a drastic remedy which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed issues". (Internal citations omitted). (Emphasis added).

SHORT SALE OF DEFENDANT KOOLA'S CONDOMINIUM WAS THE ONLY WAY FOR DEFENDANT KOOLA TO CLEAR HIS UNPAID DUES TO PLAINTIFF ASSOCIATION.

The Plaintiff Association, in its Amended Motion for Summary Judgment, states that the Plaintiff "Association, like all horizontal property regimes, relies on the collection of all fees and assessments from all homeowners to operate. No individual owner can stop making payments

because doing so would cause the remaining unit owners to bear additional costs, for any length of their choosing”.

Defendant Koola answers Plaintiff Association that he did not stop paying his association dues **intentionally and voluntarily**. Since 2007, Defendant Koola's source of income was his limited Social Security benefits which would not cover all the mortgage related payments, association dues and living expenses. Defendant Koola became insolvent because of his inability to sell his condominium in 2008 and 2009 when the Plaintiff Association initiated construction defects related lawsuit in 2008, **which was filed without the approval of homeowners and by not following the due process of law as detailed below**. Without selling his condominium, Defendant Koola was not able to pay the mortgage related payments and association dues. This will show to the Court and the Jury that Defendant Koola did not stop paying his association dues **intentionally and voluntarily**. In 2010, Defendant Koola listed his condominium for short sale. When Defendant Koola listed his property for short sale, he announced to the public and the creditors that: (1) Defendant Koola is insolvent (2) Defendant Koola proposes to pay off the creditors through the proceeds of the short sale and (3) Defendant Koola does not want to engage in any litigations against creditors. The proceeds of the short sale was the next best way for Defendant Koola to clear all mortgage related dues including association dues. But the Plaintiff Association decided to obstruct Defendant Koola's short sale by filing lien and multiple civil actions against Defendant Koola to collect dues. When the Plaintiff Association placed lien on Defendant Koola's condominium, the Mortgagees also filed foreclosure actions against Defendant Koola. Defendant Koola could not sell his condo even through a short sale because of these adversarial civil actions. Due to multiple civil actions against Defendant Koola, he became **irrevocably insolvent**. Defendant Koola's life is now in the hands of the civil courts. The Plaintiff Association must

now wait for the outcome of all these civil actions to collect any unpaid dues, if any, after offsetting any payment of damages to Defendant Koola as detailed below.

**THE MASTER DEED OF THE ASSOCIATION IS LEGALLY VOID AND
THE ASSOCIATION CANNOT USE A LEGALLY VOID MASTERS DEED
TO ENFORCE FEES AGAINST MR. KOOLA.**

The Plaintiff Association filed the civil action # 2010-CP-10-9305 against Defendant Koola alleging non-payment of assessments assessed against Defendant Koola on the basis of the Master Deed of the Plaintiff Association which was created and recorded by Plaintiff Association's predecessor, Cambridge Lakes Horizontal Property Regime and Cambridge Two, LLC (developer/seller) in Charleston County RMC Office in Book T0437, page 047 on February 24, 2003. The said Master Deed was registered according to provisions of the South Carolina Horizontal Property Act, South Carolina Code §27-31-10 et seq. This fact is clearly stated on the very first page of the said Master Deed. However, the said Master Deed violated a key provision of the Horizontal Property Act, specifically §27-31-430, related to the 'Disclosure of Physical Condition of Building' and is consequently subjected to South Carolina Unfair Trade Practices Act, Sections §39-5-20 et seq. as per §27-31-430. The said Master Deed is legally void and unenforceable, and the Plaintiff Association cannot enforce fees against Defendant Koola.

The Court of Appeals of South Carolina in Harrington v. Blackstone, 319 S.C. 1, 459 S.E.2d 309, 312 (Ct.App. 1995) states, "*Because a condominium is a creature of statute, strict compliance with Horizontal Property Act is required to create horizontal property regime*". (Internal citations omitted).

South Carolina Courts have not decided this issue, but there is a decision from Georgia that parallels this case. In Ryals v. Anderson, 180 Ga.App. 568, 349 S.E.2d 801 (Ga.App. 1986), the Court of Appeals of Georgia after analysis of case laws has acknowledged that **the purchaser of a**

condominium has a statutory right to rescind a sales contract of a condominium if the purchaser did not receive statutorily required documents. (Emphasis added). The case was decided by a Florida law (West's F.S.A. 718.503), as the property was located in Florida.

FRAUD COMMITTED BY PLAINTIFF ASSOCIATION'S PREDECESSOR IS ALSO ATTRIBUTABLE TO THE PLAINTIFF AS SUCCESSOR.

In February 2004 the Plaintiff Association's predecessor, Cambridge Lakes Horizontal Property Regime and Cambridge Two, LLC (the developer/seller), issued a "Builder's Certificate" to Defendant Koola and his Mortgagee before the predecessor sold the condo to Defendant Koola. The said Builder's Certificate stated, "For Condo Conversions: The structural, health & safety repairs and remodeling have been completed". Subsequently it was established that the Plaintiff Association's predecessor and developer/seller falsified the said "Builder's Certificate". It is an act of fraud and committed to conceal the violation of S.C. Horizontal Property Act §27-31-430. Additionally, the Master Deed was a sworn and signed document by its creator and witnessed and notarized. The Plaintiff Association's predecessor and developer/seller sold a condominium to Defendant Koola on the basis of an invalid Master Deed and a falsified, fraudulent "Builder's Certificate". The nature of this relationship is one that has not been factually determined and there is still a question for the fact finder to decide.

THE ASSOCIATION LIABLE FOR THE STATUTE VIOLATIONS OF ITS PREDECESSOR

The Plaintiff Association took over the control of the property regime from its predecessor, Cambridge Lakes Horizontal Property Regime, in October 2004. The Plaintiff Association is a true successor of its predecessor, Cambridge Lakes Horizontal Property Regime. Holly Woods Ass'n of

Residence Owners v. Hiller, 392 S.C. 172, 708 S.E.2d. 787 (Ct.App. 2011); Battery Homeowners Ass'n v. Lincoln Financial Services, Inc., 309 S.C. 247, 422 S.E.2d 93. (1992).

The violation of South Carolina Horizontal Property Act §27-31-430 by the Plaintiff Association's predecessor and the sale of condominium units to homeowners on the basis of an invalid Master Deed were two of the liabilities that the Plaintiff Association inherited from its predecessor. The right to charge assessments on homeowners and the right to take appropriate legal actions to collect those assessments from defaulting members under article 16 section (3) "Annual Assessments for Common Expenses" of the Master Deed were two of the rights that the Plaintiff Association inherited from its predecessor. Both the Plaintiff Association and Defendant Koola have to accept these facts. The Plaintiff Association cannot arbitrarily exercise the inherited rights without answerable and accountable for the inherited liabilities.

If the Plaintiff Association had not inherited the liabilities of its predecessor, the Plaintiff Association should have filed and recorded a new and independent Master Deed freeing itself from the liabilities of its predecessor. This precedent has been confirmed in Holly Woods Ass'n of Residence Owners v. Joe W. Hiller (392 S.C. 172, 708 S.E.2d. 787 (2011)).

The violation of South Carolina Horizontal Property Act §27-31-430 by the Plaintiff Association's predecessor and the sale of condominium units to homeowners on the basis of an invalid Master Deed were two of the liabilities that the Plaintiff Association inherited from the predecessor. The right to charge assessments on homeowners and the right to take appropriate legal actions to collect those assessments from defaulting members under article 16 section (3) "Annual Assessments for Common Expenses" of the Master Deed were two of the rights that the Plaintiff Association inherited from its predecessor. Both the Association and Defendant Koola have to accept these facts. The Association cannot arbitrarily exercise the inherited rights without answerable and accountable for the inherited liabilities.

Defendant Koola purchased his condominium on the express representation that the Master Deed is registered according to the provisions of South Carolina Horizontal Property Act §27-31-10 et seq. and the subject matter of the Master Deed was a sworn statement and signed and notarized. By invoking South Carolina Horizontal Property Act, the Plaintiff Association and/or its predecessor offered Defendant Koola the assurances of the State of South Carolina, its Legislature and its Judiciary in his purchase of condominium. In the absence of these assurances Defendant Koola would not have bought his condominium unit. Since these conditions were not met, the condominium purchase was void. The Plaintiff Association has no legal right to use provisions of an invalid Master Deed to take actions against Defendant Koola while not accounting for its inherited liabilities.

During the trial, Defendant Koola will request the Court and the Jury to rescind the condominium purchase, to order the Plaintiff Association to buy back the Condominium from Defendant Koola and to pay Defendant Koola any damages that he suffered because of the condominium purchase. The Plaintiff Association can recover any losses from its predecessor, Cambridge Lakes Horizontal Property Regime and Cambridge Two, LLC (the developer/seller). After this is accomplished and if the Court and the Jury decide that any assessments are due from Defendant Koola, he will obey the orders and pay the dues.

If the Court has difficulty to issue a blanket order invalidating the Master Deed of the Association, then the Court can invalidate the said Master Deed in the specific case of Defendant Koola. This is valid and lawful because only defendant Koola has challenged the validity of the Master Deed based on provisions of the statute. In the Motion for Summary Judgment at page 7, the Plaintiff Association advises Defendant Koola that the Plaintiff Association's Predecessor alone is solely responsible for the violations of South Carolina Horizontal Property Act §27-31-430 and South Carolina Unfair Trade practices Act §39-5-20 against Defendant Koola. Rather, Defendant

Koola will assert that the Plaintiff Association inherited the said liabilities from its predecessor. An entity that assumes the rights of a predecessor also assumes its rights and responsibilities. The Plaintiff Association knew or should have known the violations of statute and the fraud committed by its predecessor when it took over the powers of the regime from its predecessor. The Plaintiff Association can, if it so desires, bring its predecessor to this civil action through a cross claim on the predecessor. Or, it can take independent civil action against its predecessor to recover any losses.

**THERE EXISTS AN ISSUE OF FACT AS TO WHETHER OR NOT THE
ASSOCIATION OBSTRUCTED THE SHORT SALE OF DEFENDANT
KOOLA'S CONDOMINIUM**

Defendant Koola listed his property for sale in or about June 2008 as a means to pay off mortgage related dues. In June 2008, the Plaintiff Association filed the civil action # 2008-CP-10-3506 for construction defects. According to the summons and complaint, the Plaintiff Association estimated the total cost to repair these construction defects at \$8 million. This translates into approximately \$76,920 per unit on the average. As the news of the construction litigation slowly spread through Charleston County, Defendant Koola could not sell his property in 2008. This forced Defendant Koola to file for Chapter 7 Bankruptcy in March 2009. Defendant Koola was discharged from Bankruptcy in July 2009. This bankruptcy case was subsequently reopened to add the claims against the Plaintiff Association. Nevertheless, Defendant Koola was paying all the mortgage related payments. In June 2009 Defendant Koola made another attempt to sell the property for the second time. This time the real estate agents refused to list the property citing the prolonged construction litigation. In July 2009, Defendant Koola made a third attempt to sell the property by listing the property for sale cum lease. This attempt for sale cum lease was also not successful. By the end of 2009, Defendant Koola could not pay mortgage related payments anymore without sale of his condominium and defaulted on mortgage related payments.

Defendant Koola was advised by his Mortgagee to sell his condominium unit through short sale in order to mitigate any mortgage related dues. Defendant Koola listed his property for short sale through a real state agent in April or May 2010. When Defendant Koola listed his property for short sale, he announced to the public and the creditors that: (1) Defendant Koola is insolvent (2) Defendant Koola proposes to pay off the creditors through the proceeds of the short sale and (3) Defendant Koola does not want to engage in any litigations against creditors. The real estate agent informed the Plaintiff Association of the short sale efforts. On May 24, 2010, the Plaintiff Association placed a lien on his unit. This prompted the first Mortgagee and the second Mortgagee to file foreclosure actions against Defendant Koola on July 27, 2010 and October 1, 2010 respectively to establish lien priorities. On August 10, 2010, the Plaintiff Association filed a civil action to collect dues from Defendant Koola in the Small Claims Court. On December 15, 2010 the Plaintiff Association initiated foreclosure proceedings against Defendant Koola. Because of these adversarial actions, Defendant Koola cancelled the short sale efforts of his unit.

Had the Plaintiff Association not obstructed the short sale, the proceeds of the short sale would be distributed among the creditors as per regulations or negotiations between the payees as defined in the South Carolina Horizontal Property Act §27-31-200. It was the policy of the Plaintiff Association to collect any unpaid regime fees from homeowners through short sale as recorded in the minutes of the meeting of the Board of Directors on August 25, 2009 which states:

"..... If the bank wants to pursue "short sales" in which the bank obtains real estate brokers to sell the property while still in the name of delinquent owner it works to our benefits. All parties including the bank have to negotiate a settlement to affect the sale. Normally the homeowner's association only has to forgive the late fees....."

It is quite evident from the statement that "a short sale works to the best advantage of the Plaintiff Association to collect dues from insolvent homeowners". The public policy, at least in 2010, was that the homeowners associations recover any unpaid dues from of the homeowners from

the Mortgagee at the end of a short sale. Also, the Plaintiff Association collects all the dues without any costly litigation. After collecting the unpaid assessments from the bank at the conclusion of short sale, the Plaintiff Association could have pursued legal action for collection of late fees, if it so desires. By obstructing the short sale, the Plaintiff Association violated its own policy with respect to short sale in the case of Defendant Koola as well as the guidelines of Federal regulators, Federal lending agencies and financial institutions.

In May 2010, Defendant Koola might have approximately \$1,700 unpaid regime plus late fees and fines. After short sale, the bank would have delivered the Plaintiff Association \$1,700 as its due share of the unpaid assessments. As of December 2012, Defendant Koola would have approximately \$15,000 as unpaid regime, late fees and fines. Today because of his insolvency Defendant Koola is not in apposition to pay off any dues even if a judgment is granted to the Plaintiff Association. By obstructing the short sale, the Plaintiff Association acted with malice, prejudice and in bad faith and against Business Judgment Rules. Defendant Koola alleges that the only goal of the Plaintiff Association in litigating against Koola was to inflict special damage on him even at the risk of not collecting any dues.

**THE FACTS REGARDING CONSPIRACY ARE SUCH THAT SUMMARY
JUDGEMENT SHOULD NOT BE GRANTED.**

At the time when Defendant Koola attempted to sell his unit through short sale, his neighbor two doors apart (# 1583 Cambridge Lakes Dr) had also put his unit for short sale. It was sold through short sale in February/March 2010. At that time the neighbor had regime dues of \$13,673.23. RMC records indicate that the lien placed on his unit is not cleared even today. There are no Court records showing any civil action pending against the neighbor. This means that the Plaintiff Association let the neighbor to sell his property without satisfying the lien. The Plaintiff

Association wrote off the neighbor's dues against homeowners' regime payments. At the same time, the Association obstructed Defendant Koola's short sale and initiated multiple civil actions.

In 2008/2009, the Plaintiff Association was pursuing a civil action (# 2008-CP-10-000471) against another Cambridge Lakes homeowner. On April 14, 2009 the case was dismissed as a voluntary nonsuit without prejudice.

Incomplete Financial Statements received from the Association indicate that three homeowners in Cambridge Lakes at 1423, Cambridge Lakes Dr., 1455 Cambridge Lakes Dr. and 1491 Cambridge Lakes Dr., had several thousand dollars in unpaid dues. The Plaintiff Association does not inform Defendant Koola in its Motion for Summary Judgment what actions the Plaintiff Association is pursuing in these three cases. According to information and belief, there are more similar cases where the Plaintiff Association is not pursuing actions against homeowners with dues.

In the Motion for Summary Judgment at page 4 the Plaintiff Association states that the Plaintiff Association has been granted judgment against five defaulting homeowners. It does not state whether the Plaintiff Association has collected any of those judgments. Therefore, It has to be presumed that the Plaintiff Association hasn't collected any judgment from these homeowners.

These actions on the part of the Plaintiff Association would show to the Court and the Jury that the Plaintiff Association was acting discriminatorily against Defendant Koola while obstructing the short sale of condominium. Defendant Koola further alleges that the Plaintiff Association together with the Cambridge Lakes Property Management (Ravenel Associates) and the Association's attorney conspired against Defendant Koola. The parties wanted to take revenge against Defendant Koola because he asked the Association and the Management Company to provide him with the financial statements of the association to discover any financial irregularities, and Defendant Koola did not join the Plaintiff Associations construction defects related law suit and did not assign his rights to the Association. Also, Defendant Koola once questioned the Plaintiff

Association about the Association's new policy regarding renting condominiums, which infuriated the Plaintiff Association, its management company and the Plaintiff Association's attorney. In the civil case # 2010-CP-10-9158, Koola v. Cambridge Two, LLC, the Plaintiff Association's attorney has joined as co-consul for Cambridge Two, LLC et al. to oppose Defendant Koola's civil action against Cambridge Two LLC. et al. for violation of South Carolina Horizontal Property Act, §27-31-430. The Association's attorney has attorney-client relationship with Defendant Koola as member of the homeowners association; in spite of this, attorney chose to act as co-consul against Koola.

In Pridgen v. Ward, 391 S.C. 238, 705 S.E.2d 58 (Ct.App. 2010), the Court of Appeals of South Carolina after analysis of case laws has emphasized civil conspiracy as follows: (1) A civil conspiracy is a combination of two or more persons joining for the purposes of injuring and causing special damage to the opposing party. (2) A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation; as a result, no conspiracy can exist if the conduct of the alleged is a simple act by a single corporation acting exclusively through its directors, officers, and employees, each acting within the scope of his employment. (3) Although the corporation cannot conspire with itself, the agents of a corporation are legally capable as individuals, of conspiracy among themselves with itself, the agents of a corporation are legally capable as individuals, of conspiracy among themselves or with third parties. (4) It is an issue for jury in suit for civil conspiracy alleging that employees met, schemed and conspired and put together an agenda to purposely harm a complainant. (5) Civil conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interest of the alleged conspirators, and other relevant circumstances.

Defendant Koola further alleges that the actions of the Association toward Defendant Koola were discriminatory and prejudiced based on race, color and national origin and is in violation of

South Carolina Fair Housing Law §31-20-10 et seq, and more specifically §31-21-40 (2)(3) as well as Federal Fair Housing Law, Title VIII (1968 Federal Fair Housing Act). Defendant Koola is personally known to two members of the Board of the Directors of the Plaintiff Association as they live in the same block; the directors know that Defendant Koola belongs to a different race, color and national origin.

**THE ASSOCIATIONS ACTIONS STIGMATIZED THE PROPERTY
MAKING A SALE IMPOSSIBLE.**

In June 2008, the Plaintiff Association filed a lawsuit (# 2008 CP-10-3506) against the developers/sellers, real estate agents and builders and related contractors alleging construction defects in Cambridge Lakes. After filing the lawsuit, the Plaintiff Association's president and the Plaintiff Association's attorney sent a letter to the homeowners informing them of the already filed lawsuit requesting the homeowners to assign their rights and claims to the Plaintiff Association and stating the following causes of action: "..... causes of action I/We have or 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,...." Defects in the foundation of a multistoried building such as Cambridge Lakes are serious construction defects, and affects the security and personal lives of the homeowners.

Defendant Koola studied the summons and complaint filed by the Plaintiff Association in connection with the lawsuit and noted that many of the alleged construction defects, especially the defects in the foundation, were not pleaded. The actions of the Plaintiff Association amount to stigmatization of the property (South Code §40-57-180). When a Cambridge Lakes homeowner

sells his/her home, he/she is obligated by the S.C. Code Ann. §27-50-65 (2007) to disclose all the material defects that were made known to him/her by the Plaintiff Association: "That there are defects 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". The exaggerated construction defects and the prolonged construction litigation were the prime factors that Defendant Koola could not sell his property in 2008, 2009 and 2010.

The severity of the stigmatization of the Cambridge Lakes Properties can be viewed from the following real estate sales data. In 2006, a three-bedroom unit in Cambridge Lakes was sold for approximately \$245,000. In 2010, condominiums in Cambridge Lakes were sold for approximately \$125,000. The drop in the sales price of Cambridge Lakes condos reflects the effect of the stigmatization of the properties by the Association.

The Plaintiff Association settled the civil action # 2008-CP-10-3506 around June 2011. The Plaintiff Association did not recover \$8 million as damages as claimed in the Complaint of the civil action, #2008-CP-10-3506, but substantially less, approximately \$1.6 million after attorney fees. In any case, there is severe shortfall in the money available for repairs. Due to lack of money, the Plaintiff Association cannot complete all the repairs as claimed. In another words, the Cambridge Lakes condominiums are left with lot of incomplete repair works related to construction defects; these properties are stigmatized forever.

**THE CONSTRUCTION DEFECTS LITIGATION WAS NOT PROPERLY
AUTHORIZED.**

In June 2008, the Plaintiff Association initiated a civil action # 2008-CP-10-3506 for construction defects in the common areas of Cambridge Lakes. This litigation was filed without the

knowledge and authorization from the homeowners. In the Motion for Summary Judgment at page 8, the Association states "..... During March-April 2008, the Board of Directors first learned of potential construction defects to the Association's property..... Because of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf". (Emphasis added). The April 2008 Minute of the Meeting of Board of Directors of the Plaintiff Association makes the following statement: "New Business Homeowner Request: The water intrusion for unit 1487 will be checked. Ms. Moore will get estimates to check the damages from inside of the unit as well as the interior unit". This is the only mention of any issues related to defects and is insufficient for the Plaintiff Association to proceed with litigation. The minutes for the months of May and June 2008 do not mention anything about defects and repairs. There are no references in these minutes that the Plaintiff Association authorized Attorney Mr. John C. Hayes, IV, to file the civil action # 2008-CP-10-3506. To date, Defendant Koola has not been supplied with the information regarding when this litigation was authorized and by whom. The discussion about these defects, and the decision to file the lawsuit were held outside of the official business of the Plaintiff Association, as there are no references in the minutes of the meeting.

THE ASSOCIATION VIOLATED ITS FIDUCIARY DUTIES BY NOT PROPERLY INVESTIGATING THE CONSTRUCTION DEFECTS.

On or about November 20, 2004 Defendant Koola met with Mr. Stephen Fisher, Member, Board of Directors of the Plaintiff Association and asked him about the rumors of construction defects in Cambridge Lakes. Defendant Koola's immediate neighbor, who was working for the Architect firm, which oversaw the construction of Cambridge Lakes, told Defendant Koola in private that some of the rumored constructions defects may be for real. He would not elaborate on this matter, as he was afraid of his job with the architect firm. Defendant Koola conveyed this

information to Mr. Fisher during the meeting. Mr. Fisher denied any construction defects in Cambridge Lakes and did not act further on the information provided to him. Defendant Koola believed Mr. Fisher and got convinced that the rumors about construction defects are without any basis. He paid additional money toward mortgage principal balance. Four years later, the Plaintiff Association filed the civil action # 2008-CP-10-3506 alleging massive construction defects; the architect firm was one of the defendants in the said case. Consequent to these actions, Defendant Koola became insolvent, thanks to the Association.

Defendant Koola alleges that Mr. Fisher and the Plaintiff Association violated the fiduciary responsibilities. Also, Mr. Fisher and the Plaintiff Association was grossly negligent in not pursuing the information about the construction defects. Had Mr. Fisher, as a member of the Board, had investigated the potential construction defects based on Defendant Koola's information, he would have saved many homeowners from the loss of their homes. Defendant Koola will request the jury to decide whether this involves violation of fiduciary responsibilities and negligence.

Defendant Koola further alleges that the decision to file the lawsuit was an act of conspiracy between the Members of the Board of Directors of the Plaintiff Association, the management company (Ravenel Associates) and the Plaintiff Association's attorney. The lawsuit was filed in June 2008, just before the expiry of the Statute of Limitations to file civil actions in cases related to construction defects. In South Carolina, civil actions for construction defects must be initiated within eight years. The Cambridge Lakes were ready for occupation sometime in 1999/2000. After the June 2008 deadline, no Cambridge Lakes homeowners can file for construction defects related case. That means the Plaintiff Association and its attorney have the exclusive jurisdiction to file the case. The civil case involved damages worth \$8 million. Therefore, the attorney stands to gain around \$2.4 million as attorney fee. Further, the case involves violations of Unfair Trade Practices

Act, which can triple the monetary awards. In that case, the attorney can reap around \$7 million as attorney fee.

**THE CONSTRUCTION LITIGATION WAS NOT BEGUN WITH THE
PROPER AUTHORIZATION FROM THE HOMEOWNERS.**

In June 2008, the Association filed a lawsuit (# 2008-CP-10-3506) against the developers/sellers, real estate agents and builders and related contractors alleging construction defects in Cambridge Lakes. After filing the lawsuit, the Plaintiff Association's president and the Plaintiff Association's attorney sent a letter to the homeowners informing them of the already filed lawsuit and requesting the homeowners to assign their rights and claims to the Plaintiff Association to continue the construction litigation. The letter specifically asked the homeowners "..... to agree to waive any conflict that may arise between me/us and the HOA and/or Pritchard and Elliot, 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".

Putting aside the argument that the Master Deed is invalid for the sake of this argument, Defendant Koola asserts that the Plaintiff Association has no right under the Master Deed to pursue construction defects-related litigation without the approval of 2/3 majority of the homeowners. The Plaintiff Association's action caused irreparable damage to Defendant Koola. No record of a vote obtaining the required approval has been provided to Defendant Koola.

The Horizontal Property Act §27-31-20 (b) and (c) and the Horizontal Property Act §27-31-60 (a) have clearly established that the condominium owners own the common elements of a

horizontal property regime. The Plaintiff Association, since it has responsibility to maintain the common areas, has right to sue for construction defects in common areas subject to the directives set by the Supreme Court of South Carolina. In Roundtree Villas Ass'n Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d. 46 (1984) the Supreme Court of South Carolina, after analysis of case laws, has made the following categorical, unquestionable statement: "*The rights and authority of the Regime must be gleaned from the Horizontal Property Act and from the master deed*". The Horizontal Property Act does not directly address the issue of litigation related to construction defects in common areas. However, the Master Deed of the Association, Paragraph (16) (6) 'Special Assessments for Capital Improvements', makes it abundantly clear that the Association shall receive approval from two-thirds (2/3) majority of the vote of the Co-Owners voting in person or proxy at a meeting duly called for the purpose in advance of the initiation of the construction defects related litigation.

The Plaintiff Association did not follow the due process of law while pursuing construction defects related litigation.

These were the actions of the Association. (1) The Plaintiff Association filed the civil action # 2008-CP-10-3506 on June 8, 2008 without approval from 2/3 majority of the homeowners. (2) On June 18, 2008, the Plaintiff Association and the Plaintiff Association's attorney sent a letter to the homeowners informing them of the already initiated civil action and asking the homeowners to assign their rights and claims in the civil action to the Association. (3) The Association asked the homeowners to agree 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. [Those who assigned the rights to the Association, agreed to pay on demand unspecified amount of future special assessments. This was equivalent agreeing to perpetual and uncontrolled special

assessments]. (4) The Association further asked the homeowners to acknowledge that the HOA's claims/rights supersede those of the individual homeowners. (5) In March 2009, the Association diverted several thousands of dollars from the regular budget to a special capital reserve fund to investigate construction litigation and to pay for legal expenses. Homeowners were not informed of this transaction. This transfer was a misappropriation of funds and is a special assessment. In the motion for Summary Judgment, Mr. Stephan Fisher, President of Plaintiff Association, has furnished an affidavit. The affidavit # 13 states: " The annual budget does not change during the calendar year". If that is the case, how can the Plaintiff Association create a Capital Reserve Fund in March 2009 in the middle of the year? (6) The homeowners were told that the Plaintiff Association's litigation attorney will conduct the civil action on a contingency basis. (7) The homeowners were not informed who will pay the bill to repair the alleged construction defects if the Plaintiff Association lost the construction defects lawsuit. This explains why the Plaintiff Association asked the homeowners to agree to collection of special assessments on demand. The homeowners did not realize the trap laid out for them.

The Motion for Summary Judgment at page 8 makes the following statement: "Next, the Association has the power to sue. See S.C. Code Ann. §33-31-302(1)". The Plaintiff Association is informed that Code §33-1-302(10) deals with General Powers of a Corporation. What the Plaintiff Association does not realize is that under the present context the "Corporation" is a Condominium regime which is strictly governed by the South Carolina Horizontal Property Act §27-31-10 et. seq. and the Master Deed of the Association. Defendant Koola craves reference to the Supreme Court decision cited earlier: Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d. 46 (1984).

The Plaintiff Association was selective and discriminatory in its pursuit of legal action # 2010-CP-10-3506. The Plaintiff Association pursued legal action against Trademark Properties,

Inc., but did not pursue any legal action against Carolina One f/k/a Prudential Real Estate, even though Prudential was also equally in violation of South Carolina Horizontal property Act §27-31-430. For more than three years from June 2008 till the middle of 2011, the Plaintiff Association pursued civil action against Albert Estee and Stephen Heape as developers/sellers and related entities. However, after three years and in mid-2011, the Plaintiff Association dismissed the cases against Albert Estee and Stephen Heape as developers and sellers and related entities with prejudice. In the Motion for Summary Judgment at page 7, the Plaintiff Association advises Defendant Koola that the Plaintiff Association's Predecessor alone is solely responsible for the violations of South Carolina Horizontal Property Act §27-31-430 and South Carolina Unfair Trade practices Act §39-5-20 against Defendant Koola. In spite of this assertion to Defendant Koola, the Plaintiff Association did not pursue legal action against the perpetrators of violation of South Carolina Horizontal Property Act. The Plaintiff Association has not informed the homeowners and Defendant Koola why the cases against developers/sellers were dismissed after three years of pursuing the legal action.

By these actions, the Plaintiff Association showed bad faith, dishonesty and incompetence and bad business judgment.

**IRREGULARITIES IN FINANCIAL STATEMENTS AND VIOLATION OF
SOUTH CAROLINA HORIZONTAL PROPERTY ACT §27-31-180 BY THE
PLAINTIFF ASSOCIATION**

The Annual Budgets of the Plaintiff Association presented to the homeowners show a large number of irregularities. The Plaintiff Association does not follow the Generally Accepted Accounting Practices. If the Plaintiff Association were a public company, Securities Exchange Commission will take the Plaintiff Association to Court and make the Plaintiff Association pay hefty fines.

During the General Body meeting of the Plaintiff Association in November 2009, Defendant Koola asked the property manager to explain some accounting irregularities in the budget. The

manager advised Defendant Koola to send an e-mail to the Manager. Within the next few days, Defendant Koola met with one of the Board members, Mr. John Martin, to discuss the irregularities in the budget. He told me that he could not explain them to Defendant Koola. He advised Defendant Koola to write to the property manager. On Nov. 30, 2009, Defendant Koola sent an e-mail to the Property Manager with copy to Mr. John Martin, the Board member. No response was received. Defendant Koola sent two to three additional e-mails to the property manager with copy to Mr. John Martin. Again, no responses were received.

According to South Carolina Horizontal Property Act §27-31-180 "both the book and vouchers accrediting the entries made thereon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge".

DID THE PLAINTIFF ASSOCIATION VIOLATE PRIVACY LAWS?

During the Discovery process, the Defendant Koola requested the Plaintiff Association to produce the list of names of homeowners who are in default of the monthly regimes, the list of names of homeowners against whom the Plaintiff Association has filed lien and a list of names of homeowners against whom the Plaintiff Association has initiated legal action for the collection of dues and a list of names of homeowners from whom judgments were received. The Plaintiff Association refused to provide this information to Defendant Koola stating privacy reasons. In 2009, the Plaintiff Association published the names of defaulting homeowners by placing these names on the entrance door of the units, in the lobby and by the pool. As a matter of fact, the Board of Directors of the Plaintiff Association authorized this act during the board meeting on September 30, 2009. Further, the President's annual report of 2011, provided to the homeowners during the annual meeting of the Plaintiff Association, revealed the unit numbers and names of all defaulting homeowners to attendees..

**THE PLAINTIFF ASSOCIATION DID NOT RESPOND TO DISCOVERY
QUESTIONS BY DEFENDANT KOOLA**

During the Discovery Process and Defendant Koola's First Set of Requests for Production to the Plaintiff Association, Defendant Koola requested the Plaintiff Association to provide Defendant Koola with details of financial statements for the Plaintiff Association from the period January 2005 to August 2011. The Plaintiff Association did not provide Defendant Koola with several months' financial statements. Further, many of the monthly statements were incomplete even by the standards set by the Plaintiff Association. Some of the statements were either modified or altered, possibly committing perjury; accuracy and truthfulness of the financial statements are uncertain and could not be determined.

During the Discovery Process and Defendant Koola's First Set of Requests for Production to the Plaintiff Association, Defendant Koola requested the Plaintiff Association to provide Defendant Koola with the minutes of the monthly meetings of the Board of Directors for the period January 2007 to July 2011. The Plaintiff Association did not provide Defendant Koola the minutes of several monthly meetings. Minutes of meetings of certain critical months when the Board discussed Defendant Koola's delinquencies in 2010 and 2011, and when the Board discussed the litigation issues related to construction defects were not provided to Defendant Koola. A Motion to Compel was filed by Mr. Koola, but it was never heard when the Motion for Summary Judgment was heard. Baird v. Charleston County ruled that "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery," 333 S.C. 519, 539, 511 S.E.2d 69 (1999). In this case there was still outstanding discovery that was dispositive to the facts of the case.

THE PLAINTIFF'S ACTIONS DAMAGED MR. KOOLA

In his counterclaim, Defendant Koola has alleged that because of the Plaintiff Association's failure and gross negligence to investigate potential construction defects based on the information that Defendant Koola provided to Mr. Stephen Fisher, a Member of the Board, and because of the initiation of the construction defects based litigation without the approval from 2/3 majority of the homeowners, stigmatization of Cambridge Lakes condominiums and the consequent loss in value of property, Defendant Koola became insolvent. He could not sell his condominium to pay off the mortgage related debts. He was forced to default on those debts. He was forced to file for bankruptcy. Currently he faces foreclosure and various civil actions. Defendant Koola holds the Plaintiff Association responsible for all these damages.

In its Amended Motion for Summary Judgment at page 10, the Plaintiff Association claims that every homeowner was affected by the construction lawsuit as no one was able to refinance their condominium while the lawsuit was ongoing. The Plaintiff Association's Presidential Report to the Homeowners in 2011 reveals that there were twenty six homeowners out of 104 on default of association dues in 2011. The Plaintiff Association has not revealed how many homeowners defaulted before 2011 and after 2011. The Plaintiff Association has not revealed the number of homeowners who lost their homes due to foreclosure and short sale. Defendant Koola estimates that about 30% of the homeowners in Cambridge Lakes lost their homes due to foreclosure and short sale. The Plaintiff Association has not denied this statement. It is therefore quite evident that the acts of the Board of Directors were not taken in the best interests of the majority of the homeowners.

MR KOOLA PAID FOR THE CONSTRUCTION DEFECTS LITIGATION

On page 9 of the Motion for Summary Judgment, the Plaintiff Association claims: " Here, even though Koola did not participate in the lawsuit, he will benefit directly from the settlement proceeds as all windows in his condominium will be replaced at no charge to him". Defendant Koola reminds the Association that the Association diverted General Reserve Fund to Special Capital Reserve Fund in March 2009 in the middle of the budget year in a clandestine way. The money diverted from the General Reserve Fund in March 2009, had contribution of Defendant Koola's regime payments. Defendant Koola did indeed pay for the litigation expenses.

THE ASSOCIATION COMMITTED A BREACH OF FIDUCIARY AND DID NOT ADHERE TO THE STANDARD NECESSARY TO CLAIM A DEFENSE UNDER THE BUSINESS JUDGMENT RULE.

Under the Business judgment rules, "a court will not review the business judgment of corporate governing board when it acts within in its authority, and it acts without corrupt motives and in good faith..... The business judgment rules requires directors to act reasonably and in good faith. However, the rule does not apply if the directors have engaged in self dealing and fraud or other unconscionable conduct". Kuznik v. Bees Ferry Associates, 342 S.C. 579, 538 S.E.2d 15 (Ct.App. 2000).

The undisputed facts of this give rise to a legitimate question of fact whether or not the Plaintiff association showed bad faith, dishonesty and incompetence. The Plaintiff Association has violated fiduciary responsibilities toward Mr. Koola and other homeowners. The Plaintiff Association and or its predecessor has violated South Carolina Horizontal Property Act. The Plaintiff Association violated South Carolina Fair Housing Law.

Defendant Koola has shown to the Court:

1. Defendant Koola did not stop payment of association dues intentionally and voluntarily. Plaintiff Association's actions rendered Defendant Koola irrevocably insolvent. Because of that he could not pay association dues.
2. The Plaintiff Association is pursuing civil action on Defendant Koola based on an invalid Master Deed as it was created in violation of South Carolina Horizontal Property Act, §27-31-430. This is subject to South Carolina Unfair Trade Practices, §39-5-20.
3. The Plaintiff Association is the true successor of its predecessor, Cambridge Lakes Horizontal Property Regime. The Plaintiff Association has inherited both the liabilities and rights of its predecessor. The Plaintiff Association shall not arbitrarily exercise the inherited rights without answerable for the inherited liabilities.
4. The Plaintiff Association violated its fiduciary responsibilities and shown negligence toward Defendant Koola by not investigating the construction defects in 2004 when Defendant Koola informed a Board member of the potential construction defects in 2004.
5. The Plaintiff Association initiated a construction lawsuit in June 2008 without information to and authorization from 2/3 majority of the homeowners as required by the provisions of the Master Deed. The Plaintiff Association's actions made Defendant Koola insolvent, who is now facing foreclosure and various civil actions. It also caused many homeowners to lose their homes to foreclosure, short sale and sale for a capital loss.
6. The Plaintiff Association is pursuing civil action selectively and discriminatorily against Defendant Koola. It has been shown to be an act of conspiracy and violation of South Carolina Fair Housing Law.

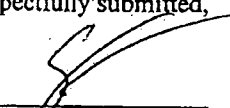
7. The Plaintiff Association pursued construction lawsuit selectively and discriminatorily, by not pursuing actions against two key wrongdoers and showed bad faith, dishonesty and incompetence.
8. The Plaintiff Association has committed serious financial irregularities and violations of various statutes.
9. The Plaintiff Association has shown bad faith, dishonesty and incompetence, which were against Business Judgment Rules.
10. Defendant Koola has reopened his bankruptcy case.

Defendant Koola prays that this Court grant the following relief:

- I. Vacate its March 12, 2013 Order by finding that the Plaintiff Association is not entitled to a Summary Judgment due to the existence of a genuine issue of material fact.
- II. To deny the motion for Summary Judgment by the Plaintiff Association.
- III. Reinstate Defendant Koola's counterclaims against the Plaintiff Association.

Dated: Mt. Pleasant, SC
April 2, 2013.

Respectfully submitted,


Shawn M. French
Attorney for Defendant Johnson Koola
SC BAR No.: 75007
1476 Ben sawyer Blvd, Ste 3
Mt. Pleasant, SC 29464
(843) 606-6440

Cambridge Lakes
Board of Director's Meeting
Tuesday, August 25, 2009
6:30 P.M.
Cambridge Lakes Clubhouse
Mt. Pleasant, SC

MINUTES

Call to order

The meeting was called to order by Steve Fischer, President. Present were Directors John Martin, Jay Merriman and Erin Blevins. Also present was Sherry Martin, representing Ravenel Associates.

Approval of Minutes

The minutes of the board meeting from July 28, 2009 were approved as written.

Property Manager's Report

Financial Report: The board had already reviewed the financial report of July 31, 2009. There were no questions about the report as submitted.

We will be holding a financial meeting on Tuesday, September 1, 2009 to review the budget for 2010.

Delinquent Report: We currently have \$28,400.95 in outstanding debt with 7 owners. All are in stages of foreclosure or have judgments pending. One owner is deceased and we are waiting for the bank to take that unit over. If the banks take over the property, we will be forced to write the total amount off until the official date of the Master in Equity of Charleston County's Deed. If the bank wants to pursue "short sales" in which the bank obtains real estate brokers to sell the property while still in the name of the delinquent owner it works to our benefit. All parties including the bank have to negotiate a settlement to affect the sale. Normally the homeowner's association only has to forgive the late fees. We are hopeful this will be the case in our foreclosures pending. Sherry will continue to work on the collections and keep the board apprised of further developments.

Ms. Blevins wanted to know if the sales transfer fee had been received from the Laura Head closing. Sherry advised we have contacted the closing attorney and they have assured they are taking care of it. Sherry will keep the board apprised.

Project List Update

Door repairs – Advance Doors has worked on the doors and has one more item to attend to on the proposal he has submitted.

Elevator Service – We have sent the cancellation notice to Schnidler for the contract expiration date of October 31, 2010. We will be bidding for the new service beginning in June of 2010.

Painting of foyers/hallways – Mr. Martin advised they are still working on some hallways but with the clean work that the new janitorial service has done painting is not necessary in all building. The board has approved the paint reimbursement only.

Spa Drains – Mr. Martin and Mr. Fischer want to meet with Rick of Shotcrete Pool prior to the annual meeting in October to obtain some options for the spa replacement.

Pine straw/Plantings and Irrigation Water – The pine straw is being put down. Mr. Martin was able to negotiate a lower bid at \$8.50 per bale including spreading. Mr. Fischer will be working with H.M. Northcutt on the ponds and wells to assist with our high water bill since the Town of Mt. Pleasant has now installed a new irrigation meter and our bills are extremely high.

HVAC – After review of the updated spreadsheet of August 17, 2009, the board approved unit # 3 – Add R-22(5) cost \$234.80; # 24 (not operational) Leak Search, Schrader Cap cost between \$88 to \$880; # 26 (not operational) replace fan motor \$478 and then to request an estimate of moving the condenser unit from # 31 to # 28 for the board's review.

OLD BUSINESS

Status of HVAC repairs – covered in project list update.

Judgments on Delinquent Owners – covered in delinquent report.

Clubhouse Rental Issues

Revised Agreement form – After review the board has approved the clubhouse rental form assuring that there will be a \$100.00 clean up fee, no tenants may rent the facilities unless the owner rents it and the owner is present for the entire function and there is still a \$250.00 deposit that is returned should the clubhouse be left in good order with no damages and all wet garbage is disposed of in the dumpster. The letter now makes it clear that the pool cannot be reserved or utilized during the function.

Return of deposit to unit 1531 – Approved.

Fitness center HVAC thermostat relocation – once the repairs were made the fitness center has been cooler. The matter has been tabled at this time.

Spa replacement – covered in project list update.

4/22/2008 Cambridge Lakes HOA Board Meeting Minutes

The Cambridge Lakes Home Owners Association Board met on April 22, 2008 at the Clubhouse in Mount Pleasant, South Carolina.

Present : Blevins, Erin; Fischer, Steve; Henning, M. "Ann" ; Martin, John;
Merriman, Jay
Management: Moore, Joy

The meeting was called to order by President Fischer at 6:20P.M.

Minutes The minutes for March 25, 2008 were approved as read.

Reports

Management

Budget The budget was discussed. Several financial questions were brought up and discussed.

Motion

Cd renewal Ms. Blevins suggested that the current Certificate of Deposit be renewed (reinvested) for another six months' period.

The motion carried.

Delinquent Several homeowners are in the process of being foreclosed. This is a lengthy process.

Mr. Fischer will speak to the lawyers for court dates, etc.

Unfinished Business

Pool signs Required signs will be installed by Mr. Fischer and Martin.

Motion *

pool hours Mr. Fischer requested that the pool hours be changed to 7 A.M.-10 P.M. (Ms. Moore will have the gate access changed to reflect these times.)

The motion carried.

Insurance

Costs The renewal of our insurance came with an increase of \$10,000 . Ms. Moore will get back to the Board about the increase.

Pg.2
Unfinished
Business, Cont.

Spa Due to the huge increase in usage of gas for the spa heater, Ms. Moore will contact
 Berkley Gas & Electric to notify them to not fill the tank automatically. Mr. Fischer or
Martin will check the levels and notify Ms. Moore when to call for a refill. The heater
will be turned off from May to October to help cut down on costs.

New Business
Homeowner
request The water intrusion for unit 1487 will be checked. Ms. Moore will get estimates to
 check the damages from the inside of the unit as well as the interior of the unit
just
 above unit 1487.

Adjournment President Fischer adjourned the meeting at 8:35 P.M.

Next meeting: May 27 at 6 P.M.

Secretary M. "Ann" Henning

M. "Ann" Henning

Cash Disbursement by Vendor
Cambridge Lakes HOA
Sun Mar 01, 2009 thru Tue Mar 31, 2009

User: btyrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>Myles Glick Architect, LLC</u>					
Check Date: 03/10/2009	Bank: not used-NBSC	Check Number: 00010001	Check Amount: 16,900.00		
	228 - 9025 - Property Evaluation/Consulting - Fund #2		03/09/2009 Non & Destructive Testing, Report		16,900.00
			Total for Myles Glick Architect, LLC		16,900.00
<u>Ravenel Associates, Inc</u>					
Check Date: 03/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010003	Check Amount: 1,742.00		
	228 - 5020 - Management Fees		03/01/2009 Monthly Mgmt Fee		1,742.00
Check Date: 03/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010011	Check Amount: 325.95		
	228 - 5000 - Stationery & Office Supplies		03/01/2009 Monthly Billing/Supply		14.13
	228 - 5000 - Stationery & Office Supplies		03/19/2009 03/09 Copies		90.60
	228 - 5005 - Postage		03/19/2009 03/09 Postage		50.72
	228 - 6035 - Maintenance		03/25/2009 Damage assessment		87.75
	228 - 6035 - Maintenance		03/25/2009 repair hole in elevator		58.50
	228 - 6035 - Maintenance		03/25/2009 Install screen		24.25
			Total for Ravenel Associates, Inc		2,067.95
<u>Royall Ace Hardware</u>					
Check Date: 03/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010004	Check Amount: 57.51		
	228 - 6035 - Maintenance		03/09/2009 Paintbrush, paint		10.71
	228 - 6035 - Maintenance		03/09/2009 Spackle		7.73
	228 - 6035 - Maintenance		03/09/2009 Bulbs		36.93
	228 - 6035 - Maintenance		03/09/2009 Bulb		2.14
			Total for Royall Ace Hardware		57.51
<u>S.C. Dept. Of Revenue</u>					
Check Date: 03/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00001008	Check Amount: 36.00		
	228 - 5080 - State Income Tax Expense		03/13/2009 2009 Estimated State Tax		36.00
			Total for S.C. Dept. Of Revenue		36.00
<u>SCB&T</u>					
Check Date: 03/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00001007	Check Amount: 209.00		
	228 - 5055 - Federal Income Tax Expense		03/13/2009 2009 Estimated Federal Tax		209.00
			Total for SCB&T		209.00

Fri Sep 16, 2011 11:58 am
Report: dwr_ap_check_disbursement2

Cash Disbursement by Vendor
Cambridge Lakes HOA
Mon Nov 01, 2010 thru Tue Nov 30, 2010

User: blyrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>Thomas J. Carlson</u>					
Check Date: 11/12/2010	Bank: First Citizens	Check Number: 00000003	Check Amount: 0.00		
	228 - 9030 - Legal Expense Fund #2		11/10/2010 *VOID* depo vol 1 4/8/10 rfp #1		(1,978.20)
	228 - 9030 - Legal Expense Fund #2		11/10/2010 depo vol II 8/25/10 rfp #1		1,754.20
	228 - 9030 - Legal Expense Fund #2		11/10/2010 *VOID* depo vol II 8/25/10 rfp #1		(1,754.20)
Check Date: 11/22/2010	Bank: First Citizens	Check Number: 00000004	Check Amount: 13,732.40		
	228 - 9030 - Legal Expense Fund #2		11/22/2010 pymt on acct: RFP #8		10,000.00
	228 - 9030 - Legal Expense Fund #2		11/22/2010 depos vol I 4/8/10 RFP #1		1,978.20
	228 - 9030 - Legal Expense Fund #2		11/22/2010 depos vol II 8/25/10 RFP #1		1,754.20
			Total for Thomas J. Carlson		13,732.40
<u>Two Guys With An Eye</u>					
Check Date: 11/24/2010	Bank: South Carolina Bank & Trust	Check Number: 00010426	Check Amount: 1,650.00		
	228 - 6260 - Janitorial Contract		11/01/2010 Monthly Janitorial Contract		1,650.00
			Total for Two Guys With An Eye		1,650.00
<u>Waste Industries, Inc.</u>					
Check Date: 11/12/2010	Bank: South Carolina Bank & Trust	Check Number: 00010424	Check Amount: 792.40		
	228 - 6265 - Refuse Collection		11/10/2010 October	000029852	792.40
			Total for Waste Industries, Inc.		792.40
			Total for Cambridge Lakes HOA		75,955.61

Fri Sep 18, 2011 11:44 am
Report: dwr_sp_check_disbursement2

Cash Disbursement by Vendor
Cambridge Lakes HOA
Wed Apr 01, 2009 thru Thu Apr 30, 2009

User: btyrrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>John Martin</u>					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust	Check Number: 00010028	Check Amount: 225.00		
	228 - 6415 - Landscape Maintenance - Misc.	04/22/2009	Reimb. owner (Lowes)		225.00
				Total for John Martin	225.00
<u>Lowcountry Pool Boy</u>					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust	Check Number: 00010029	Check Amount: 685.00		
	228 - 6300 - Pool Contract	04/01/2009	Monthly Pool Service		685.00
				Total for Lowcountry Pool Boy	685.00
<u>Mead's Tree Service, Inc.</u>					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust	Check Number: 00010030	Check Amount: 480.00		
	228 - 6415 - Landscape Maintenance - Misc.	04/22/2009	Remove tree/fertilize/haul debris		480.00
				Total for Mead's Tree Service, Inc.	480.00
<u>Mount Pleasant Waterworks</u>					
Check Date: 04/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010016	Check Amount: 89.14		
	228 - 6400 - Water - Irrigation	04/09/2009	03/11/09		89.14
				Total for Mount Pleasant Waterworks	89.14
<u>Pritchard & Elliott, LLC</u>					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust	Check Number: 00010031	Check Amount: 297.50		
	228 - 5035 - Legal - Lien	04/22/2009	CL Liens		297.50
				Total for Pritchard & Elliott, LLC	297.50
<u>Pro-Legal Copies Inc.</u>					
Check Date: 04/10/2009	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010001	Check Amount: 85.46		
	228 - 8145 - Reserve Expenditure - Fund #2	04/09/2009	Copies for Lawsuit		85.46
				Total for Pro-Legal Copies Inc.	85.46
<u>Ravenel Associates, Inc</u>					
Check Date: 04/08/2009	Bank: South Carolina Bank & Trust	Check Number: 00010014	Check Amount: 1,756.13		
	228 - 5000 - Stationery & Office Supplies	04/01/2009	Monthly Billing/Supply		14.13
	228 - 5020 - Management Fees	04/01/2009	Monthly Mgmt Fee		1,742.00
Check Date: 04/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010018	Check Amount: 58.50		
	228 - 6035 - Maintenance	04/08/2009	Slide Exit Doors WO# 88		58.50
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust	Check Number: 00010032	Check Amount: 70.63		
	228 - 5000 - Stationery & Office Supplies	04/22/2009	Supplies/Forms		8.84

Fri Sep 16, 2011 11:50 am
Report: dwr_ap_check_disbursement2

Cash Disbursement by Vendor
Cambridge Lakes HOA
Mon Jun 01, 2009 thru Tue Jun 30, 2009

User: btyrrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>East Coast Pest Management, Inc.</u>					
Check Date: 08/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010071	Check Amount: 152.00		
	228 - 6245 - Pest Control		08/01/2009 Monthly Pest Control		152.00
			Total for East Coast Pest Management, Inc.		152.00
<u>East Cooper Lock And Safe, Inc.</u>					
Check Date: 08/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010072	Check Amount: 65.00		
	228 - 6035 - Maintenance		08/25/2009 Service Call		65.00
			Total for East Cooper Lock And Safe, Inc.		65.00
<u>Hayes Law Firm, LLC</u>					
Check Date: 08/25/2009	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010008	Check Amount: 200.88		
	228 - 9145 - Reserve Expenditure - Fund #2		08/25/2009 CBL v Bostic Brothers		65.00
	228 - 9145 - Reserve Expenditure - Fund #2		08/25/2009 Corr. to Richard Davis		135.88
			Total for Hayes Law Firm, LLC		200.88
<u>Hillier Systems, Inc.</u>					
Check Date: 08/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010058	Check Amount: 510.00		
	228 - 6035 - Maintenance		08/10/2009 Bldg 1-after hours emergency call		510.00
Check Date: 08/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010073	Check Amount: 380.00		
	228 - 6035 - Maintenance		08/25/2009 Low Batteries on Panel Bldg A		380.00
			Total for Hillier Systems, Inc.		890.00
<u>Lowcountry Pool Boy</u>					
Check Date: 08/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010074	Check Amount: 685.00		
	228 - 8300 - Pool Contract		08/01/2009 Monthly Pool Service		685.00
			Total for Lowcountry Pool Boy		685.00
<u>Maintain, Inc.</u>					
Check Date: 08/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010075	Check Amount: 85.00		
	228 - 6035 - Maintenance		08/25/2009 Check HVAC line 1495		85.00
			Total for Maintain, Inc.		85.00
<u>Mount Pleasant Waterworks</u>					
Check Date: 08/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010059	Check Amount: 244.13		
	228 - 8400 - Water - Irrigation		08/10/2009 Water		244.13
			Total for Mount Pleasant Waterworks		244.13

Cash Disbursement by Vendor
Cambridge Lakes HOA
Wed Jul 01, 2009 thru Fri Jul 31, 2009

User: btyrrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>Ravenel Associates, Inc</u>					
Check Date: 07/24/2009	Bank: South Carolina Bank & Trust	Check Number: 00010101	Check Amount:	73.32	
	228 - 5000 - Stationery & Office Supplies	07/23/2009	Copies		2.60
	228 - 6005 - Postage	07/23/2009	Postage		46.47
	228 - 6035 - Maintenance	07/23/2009	Place Extension on Gutter Spout		24.25
			Total for Ravenel Associates, Inc		1,863.82
<u>Royall Ace Hardware</u>					
Check Date: 07/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00010090	Check Amount:	75.02	
	228 - 6035 - Maintenance	07/13/2009	Paper Towels/Trash Bags		54.14
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	198513	5.81
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	198018	4.64
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	195371	6.57
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	194995	3.86
			Total for Royall Ace Hardware		75.02
<u>SCE&G</u>					
Check Date: 07/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00010091	Check Amount:	3,371.81	
	228 - 6210 - Electricity	07/13/2009	05/21/09-06/23/09		3,371.81
			Total for SCE&G		3,371.81
<u>Schindler Elevator Corporation</u>					
Check Date: 07/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00010092	Check Amount:	2,829.80	
	228 - 6070 - Elevator Maintenance	07/13/2009	Preventive Maint.		2,829.60
			Total for Schindler Elevator Corporation		2,829.60
<u>The Greenery, LLC</u>					
Check Date: 07/24/2009	Bank: South Carolina Bank & Trust	Check Number: 00010102	Check Amount:	2,265.00	
	228 - 6410 - Landscape Maintenance Contract	07/01/2009	Monthly Landscape Contract		2,265.00
			Total for The Greenery, LLC		2,265.00
<u>Thomas J. Carlson</u>					
Check Date: 07/27/2009	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010007	Check Amount:	2,150.00	
	228 - 9145 - Reserve Expenditure - Fund #2	07/27/2009	Destructive Testing Equipment Rental		2,150.00
Check Date: 07/27/2009	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010008	Check Amount:	4,480.48	
	228 - 9145 - Reserve Expenditure - Fund #2	07/27/2009	Roofing Inspections		4,480.48

Fri Sep 16, 2011 11:58 am
Report: dwr_ap_check_disbursement2

Cash Disbursement by Vendor
Cambridge Lakes HOA
Sat May 01, 2010 thru Mon May 31, 2010

User: vphillips
Vickie Phillips

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>State Farm Insurance Companies</u>					
Check Date: 05/12/2010	Bank: South Carolina Bank & Trust	Check Number: 00010291	Check Amount:	7,049.83	
	228 - 5085 - Insurance Expense		05/11/2010 Acct 0467-5848-27	Insurance	7,049.83
			Total for State Farm Insurance Companies		7,049.83
<u>Thomas J. Carlson</u>					
Check Date: 05/04/2010	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010025	Check Amount:	0.00	
	228 - 9145 - Reserve Expenditure - Fund #2		04/30/2010 Construction Consultant	Case 2008 CP 10 3506	10,000.00
	228 - 9145 - Reserve Expenditure - Fund #2		04/30/2010 "VOID" Construction Consultant	Case 2008 CP 10 3506	(10,000.00)
Check Date: 05/05/2010	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010026	Check Amount:	10,000.00	
	228 - 9145 - Reserve Expenditure - Fund #2		05/05/2010 Construction consulting	Misc	10,000.00
			Total for Thomas J. Carlson		10,000.00
<u>Two Guys With An Eye</u>					
Check Date: 05/26/2010	Bank: South Carolina Bank & Trust	Check Number: 00010300	Check Amount:	1,650.00	
	228 - 6260 - Janitorial Contract		05/01/2010 Monthly Janitorial Contract		1,650.00
			Total for Two Guys With An Eye		1,650.00
<u>Waste Industries, Inc.</u>					
Check Date: 05/18/2010	Bank: South Carolina Bank & Trust	Check Number: 00010294	Check Amount:	792.40	
	228 - 6265 - Refuse Collection		05/18/2010 April service period	Refuse collection	792.40
			Total for Waste Industries, Inc.		792.40
			Total for Cambridge Lakes HOA		40,526.14

Case No: 10-SC-87-1646

Filed:

Served:

Default:

Hearing:

CASE NO: 2010-SC-87-1646

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA

Plaintiff

3090 HIGHWAY 17 NORTH
Street Address

MT. PLEASANT SC 29466
City State Zip

843-352-0300
Phone

4045 BRIDGE VIEW DRIVE
PO BOX 70235
NORTH CHARLESTON, SC 29405

JOHNSON KOOLA

Defendant

1537 CAMBRIDGE LAKES DR
Street Address

MT. PLEASANT SC 29466
City State Zip

Phone

AGENT:

2010-CP-10-9305

SMALL CLAIMS COURT
SUMMONS

DATE: August 11, 2010

TO: JOHNSON KOOLA, Defendant

FILED
2010 NOV -9 PM 3:07
JULIE J ARMSTRONG
CLERK OF COURT

YOU ARE SUMMONED and required to answer the allegations of the attached complaint within thirty (30) days from the first day after receipt of the summons. Your answer must be received by the magistrate's court located at 4045 BRIDGE VIEW DRIVE, North Charleston, South Carolina 29405.

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 interest and costs. Your answer must be filed in writing to the Small Claims Court prior to the expiration of the thirty (30) days. A clerk is available to assist you at the Small Claims Court from 8:30 a.m. to 4:30 p.m., Monday through Friday.

The Court will mail you a hearing date on this claim at the time your answer is received. If you have witnesses, books, receipts or other writings bearing on this claim, you must bring them with you at the time of the hearing or they will not be considered. If you wish to have witnesses called to court, see the Clerk of the Small Claims Court for assistance.

If you have a claim against the Plaintiff arising out of the same matter, you must file it with the Court at the time you file your answer.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2010-CP-10-9305

IN THE SMALL CLAIMS COURT

Cambridge Lakes HOA

Plaintiff

3090 Highway 17 North

Street Address

Mt. Pleasant SC 29406

City

State

Zip

843-352-0300

Phone

Johnson Koola

Defendant

1587 Cambridge Lakes Dr.

Street Address

Mt. Pleasant SC 29404

City

State

Zip

Phone

Case No: 10-SC-89-1646

Filed:

Served:

Default:

Hearing:

I, the plaintiff in this civil action, make the following claim against the defendant:

- 1.) I believe that the defendant is a resident of _____.
- 2.) Check a, b, or c to indicate the type of suit and supply documents required.
 - a. () This is a suit on a note; Two (2) copies of note attached. Defendant has defaulted in payment of said note with balance of \$ _____ now due and payable.
 - b. (X) This is a suite on an account; Two (2) copies of statement attached. Swearing to statement and have your signature notarized.

FILED IN CHARLESTON COUNTY

SWORN and subscribed before me this

_____ day of _____ 20 _____

AUG 10 2010

Attached to this complaint is a statement of account which I swear to be true and correct, with no part of the balance having been paid.

NOTARY PUBLIC, State of South Carolina
My Commission Expires: _____

Meri Lemieux

Affiant's Signature (Plaintiff)

c. (X) OTHER. This is a claim based on the following facts: (Describe Complaint)

Failure to pay monthly assessments, which is required by the governing documents. Please see attached.

(attach supplement if necessary)

3.) I believe because of the following information, that I am entitled to, and request a judgment for

\$ 2,912.03 and/or other relief:

(Include any costs resulting from this action. (Example: court costs, legal fees, interest)

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

07/29/10

Date

Meri Lemieux

Signature of Plaintiff or Attorney

FORM C32-5270

Account History Report Cambridge Lakes HOA

Johnson D Koola

00112-1467

Community Address: 1587 Cambridge Lakes Drive
Mt. Pleasant, SC 29464

Date Settled:
Unit Type: 01 - Unit Type 01

Mailing Address: 1587 Cambridge Lakes Drive
Mt Pleasant, SC 29464-7300

Last payment date: Mon Oct 26, 2009
Last payment amount: 275.00
Current balance: 2,541.03

Trans Date	Transaction	Charges	Payments	Balance	Date Billed	Reference	Comments
	Opening Balance			0.00			
03/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 03/01/2009
03/16/2009	Check		-275.00	0.00		1155	Payment: Thank You.
04/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 04/01/2009
04/24/2009	Check		-275.00	0.00		1163	Payment: Thank You.
05/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 05/01/2009
05/30/2009	Late Fee	1.83		276.83		Late Fee	Late Fee: 05/30/2009
06/01/2009	Assessment	275.00		551.83		Monthly Charges	Recurring Charges: 06/01/2009
06/01/2009	Lockbox		-275.00	276.83		1165	Lock Box: 06/01/2009
06/02/2009	Late Fee Credit		-1.83	275.00		Waive LF	Per Sherry
06/25/2009	Lockbox		-275.00	0.00		1167	Lock Box: 06/25/2009
07/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 07/01/2009
07/21/2009	Lockbox		-275.00	0.00		1168	Lock Box: 07/21/2009
08/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 08/01/2009
08/25/2009	Lockbox		-275.00	0.00		1171	Lock Box: 08/25/2009
09/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 09/01/2009
09/24/2009	Lockbox		-275.00	0.00		1173	Lock Box: 09/24/2009
10/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 10/01/2009
10/26/2009	Lockbox		-275.00	0.00		1175	Lock Box: 10/26/2009
11/01/2009	Assessment	275.00		275.00		Monthly Charges	Recurring Charges: 11/01/2009
11/30/2009	Late Fee	1.83		276.83		Late Fee	Late Fee: 11/30/2009
12/01/2009	Assessment	275.00		551.83		Monthly Charges	Recurring Charges: 12/01/2009
12/31/2009	Late Fee	3.67		555.50		Late Fee	Late Fee: 12/31/2009
01/01/2010	Assessment	275.00		830.50		Monthly Charges	Recurring Charges: 01/01/2010
01/31/2010	Late Fee	5.50		836.00		Late Fee	Late Fee: 01/31/2010
02/01/2010	Assessment	275.00		1,111.00		Monthly Charges	Recurring Charges: 02/01/2010
02/28/2010	Late Fee	7.34		1,118.34		Late Fee	Late Fee: 02/28/2010
03/01/2010	Assessment	275.00		1,393.34		Monthly Charges	Recurring Charges: 03/01/2010
03/31/2010	Late Fee	9.17		1,402.51		Late Fee	Late Fee: 03/31/2010
04/01/2010	Assessment	275.00		1,677.51		Monthly Charges	Recurring Charges: 04/01/2010
04/30/2010	Late Fee	11.01		1,688.52		Late Fee	Late Fee: 04/30/2010
05/01/2010	Assessment	275.00		1,963.52		Monthly Charges	Recurring Charges: 05/01/2010
05/31/2010	Late Fee	12.84		1,976.36		Late Fee	Late Fee: 05/31/2010
06/01/2010	Assessment	275.00		2,251.36		Monthly Charges	Recurring Charges: 06/01/2010
06/30/2010	Late Fee	14.67		2,266.03		Late Fee	Late Fee: 06/30/2010
07/01/2010	Assessment	275.00		2,541.03		Monthly Charges	Recurring Charges: 07/01/2010

Association cannot pay out of the funds held in the capital account; provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Co-Owners, including the Developer, not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Each Co-Owner's share of any special assessment shall be in proportion to his percentage of undivided interest in and to the Common Elements.

- (7) Date of Commencement of Annual Assessments and Due Dates: The annual assessments shall be established on a fiscal year basis and shall commence as to each Apartment conveyed to a Co-Owner on the date of each such conveyance, with the adjustment for the first assessment according to the number of days remaining in the fiscal year. That portion of each such adjusted assessment attributable to the month following the month of conveyance shall be due and payable at the time of such conveyance, and the balance of such adjusted assessment shall be paid, except as provided in Paragraph 16(8) below, by the Co-Owner in equal monthly installments commencing on the first day of the second month following such conveyance. Unless otherwise provided by the Board of Directors and except as provided in Paragraph 16(8) below, one-twelfth (1/12) of the annual assessment for each Apartment shall become due and payable on the first day of each month during the assessment period. The association shall, upon demand by any Co-Owner or purchaser of an Apartment prior to the completion of a voluntary sale or upon demand by any holder of a mortgage or other lien of any Apartment at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on such Co-Owner's Apartment have been paid as of a specific date within ten (10) days after request therefor. A reasonable charge may be made by the Board of Directors for the issuance of such certificate, which shall be conclusive evidence of payment of any assessment therein stated to have been paid, and any person other than the Co-Owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability for such unpaid assessments shall be limited to the amounts set forth in such certificate.

- (8) Effect of Non-Payment of Assessments Payable Directly to the Association and Remedies of the Association: Any assessment which is not paid when due shall be delinquent. If the payment of any assessment for an Apartment is not paid within ten (10) days after the due date, the Owner of such Apartment shall be in default and the Association may declare the balance of the entire assessment for such Apartment immediately due and payable. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a rate of eight percent (8%) per annum, and the Association may bring suit to recover a money judgment for the unpaid assessment against the Owner personally obligated to pay the same without waiving the lien, and/or file a lien claim against such Owner's Apartment, in either of which events, interests, costs and attorney's fees equal to fifteen percent (15%) of the principal and interest due shall be added to the amount of such assessment as may then be due. Further, if the assessment is not paid within thirty (30) days after the date of default, the Association shall

give prompt notice of default to the holder of a first mortgage, if any, upon such Apartment. The establishment of any such lien and the satisfaction thereof shall be in accordance with Section 27-31-210 of the Act. Each Co-Owner, by his acceptance of a deed to an Apartment from the Developer or from any subsequent Owner of an Apartment, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose such lien in a suit brought in the name of the Association and shall be for the benefit of all other Co-Owners. The Association, acting on behalf of the Co-Owners, shall have the power to bid-in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association shall provide written notice of its intention to foreclose any such lien to the holder of a first mortgage lien upon such Apartment, not less than sixty (60) days prior to the date of the foreclosure sale. Non-use of the Common Elements or abandonment of an Apartment shall not constitute a defense against any action on account of any unpaid assessment.

- (9) Exempt Property: Each Apartment owned by the Developer shall be exempt from the assessments created herein until the termination of control of the Association by the Developer. In lieu of the payment of such assessments, Developer shall be responsible for payment to the Association each month of the amounts as provided in Paragraph 16(5) above. Except as provided herein, no Apartment shall be exempt from said assessments.
- (10) Mechanic's Liens: Each Apartment Owner shall only be liable for the cost of repairs and replacements to his Apartment, and for his proportionate share of the Common Expenses. In the event any mechanic's or other lien is filed which, in the opinion of the Board may constitute a lien against the Property, the Common Elements, or any Apartment, the Board may cause the Association to discharge such lien, and the Association shall thereupon assess each Co-Owner or Co-Owners in the amount of their proportionate share of the Association's expense in discharging such lien, including any costs and attorney's fees incurred in connection therewith, such assessment to be secured by a lien on each Apartment responsible for payment thereof in accordance with the Act, said lien to be enforced in accordance with the provision of the Act, Master Deed, and By-Laws. No Apartment Owner shall be liable for the liens of other Co-Owner's except as provided for by the Act and this Master Deed.
- (11) Repairs and Improvements by a Mortgagee of Record: Any first mortgagee of an Apartment shall be entitled to cause repairs to be made and routine maintenance to be performed with respect to an Apartment, or the Common Elements, in the event said mortgagee provides said Co-Owner and other Co-Owners affected, and the Association, with thirty (30) days prior written notice of repairs or routine maintenance required to be performed. In the event such repairs shall not have been made or such routine maintenance satisfactorily performed within any such thirty (30) day period, then such mortgagee is hereby deemed authorized by such Co-Owner and any other Co-Owner affected, and by the Association, to complete such repairs or perform such maintenance, and such mortgagee shall be promptly reimbursed by the Association for the costs thereof. In the event any payments are made by the Association to the mortgagee of an Apartment in accordance with the terms of this Paragraph, the

Case # 10-SC-87-1646
State of South Carolina
County of Charleston
4045 Bridge View Drive
North Charleston, SC 29405

Small Claims Court Summons

The complaint under reference is related to mortgage foreclosure, which is in progress in Charleston County Civil Court.

As a prelude to foreclosure, the Cambridge Lakes HOA (the plaintiff) has already placed a lien on my property in Charleston County RMC office. The first mortgage holder has already started foreclosure proceedings against me vide court case # 2010-CP-106060. Consequently, the jurisdiction of this case has shifted to Charleston County Civil Court where foreclosure cases are handled. Under these circumstances, I request the Honorable Judge to transfer the complaint under reference to civil court where foreclosure proceedings will begin shortly. Otherwise, I will be put on trial for the same complaint twice simultaneously.

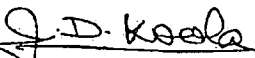
I wish to bring to the kind attention of the Honorable Judge my understanding that filing a case for the same complaint in two different courts at the same time in the same county may be against the principles of law.

However, if this case against me is allowed to continue in the Small Claims Court, I request a jury trial with an opportunity to file counterclaims against the plaintiff.

Honorable Judge, I am forced to foreclosure because of a lawsuit filed by the plaintiff against the real estate developer and others (Case # 2008-CP-10-3506). As a consequence of this lawsuit, I am unable to sell my property and pay off the mortgage debts. The HOA has, according to my understanding, violated various fiduciary responsibilities and committed potential fraud charges in filing and proceeding with this case, 2008-CP-10-3506. This has caused me serious damages financially, hence my request for a counterclaim.

I sincerely hope that a jury trial would do justice to all the parties concerned.

At the time of first hearing, I will bring to court all the evidences I do have.


Johnson Koola
1587 Cambridge Lakes Dr
Mt Pleasant, SC 29464

FILED IN CHARLESTON COUNTY

SEP 02 2010

SMALL CLAIMS COURT

2010-CP-10-9305

SEP

FILED
CLERK OF COURT

2010 NOV -9 PM 3:07

FILED

OCT 13 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE SMALL CLAIMS COURT
) CASE NO.: 2010-SC-87-1646

SMALL CLAIMS COURT

2010-CP-10-9305

CAMBRIDGE LAKES HOA,
Plaintiff

vs

JOHNSON KOOLA,
Defendant

) MOTION TO TRANSFER
) ACTION TO CIRCUIT COURT OR IN
) THE ALTERNATIVE TO HOLD ACTION
) IN ABEYANCE UNTIL CIRCUIT COURT
) ACTION IS DISPOSED OF

2010-10-9
J. ARMSTRONG
CLERK OF COURT
PM 3:06

FILED

TO: LYDIA P. COWAN, KRAWCHECK & DAVIDSON, LLC,

PLEASE TAKE NOTICE that the defendant in this action will appear before the Honorable James A. Turner on the _____ day of _____, 2010, to move to the Court for the following relief:

- 1) To transfer this action to the Court of Common Pleas, for consolidation with bank foreclosure action:

2010-CP-10-6060: BAC Loan Servicing, LP f/k/a Countrywide Home Loans Servicing LP v. Johnson Koola, First Citizens Bank and Trust, 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.

- 2) Alternatively, Defendant moves to hold the within action in abeyance until his above referenced mortgage foreclosure case with financial institutions and Cambridge Lakes HOA is heard.

The basis of this Motion is as follows:

- A. Plaintiff in this action, Cambridge Lakes Condominium Homeowners Association, Inc., f/k/a Cambridge Lakes Horizontal Property Regime HOA, is a party in the Common Pleas action. Consolidating the actions would further judicial economy, so

as not to duplicate efforts of the parties and the Courts. Plaintiffs' interest in this action is similar if not identical to its interest that it is protecting and defending in the circuit court action, 2010-CP-10-6060.

- B. Defendant must prepare defenses in both actions, and should be able to ask one court to consider how his alleged delinquencies should be handled, i.e., what the priority of payments will be, etc. Defendant believes that the Common Pleas action takes priority over the within action, and encompasses the issues of the within action.
- C. Any and all unpaid assessments allegedly owed by Defendant in the within action are subordinate to any and all proceeds that will be due and ordered to be paid at the Common Pleas level to the First mortgage holder, B. A. C. Services, and Second mortgage holder, First Citizens;
- D. As Plaintiff Cambridge Lakes HOA placed the lien on Defendant's property May 24, 2010, and petitioned to foreclose the lien, its rights are secured and will not be prejudiced if handled in circuit court;
- E. Transferring this action to circuit court may benefit Plaintiff by precluding the mortgage holder(s) ability to take subsequent action against Plaintiff HOA to recoup any proceeds that may be awarded if this action goes forward prior to the bank foreclosure action is heard;
- F. Article 16 Paragraph 2 of the parties' Master Deed specifically defines how an assessment lien placed by HOA will be treated under foreclosure conditions:

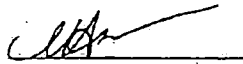
"The lien against any Apartment for assessments in favor of the Association shall be prior and superior to all other liens *except* any lien for taxes, *the lien of any mortgage* or any other lien recorded prior to the time of recording of the claim of the Association's lien."
- G. Further, Article V of the Cambridge Lakes HOA By-laws further states:

"Said (assessment lien) shall be prior to all other liens except tax liens on the apartment, in favor of any assessing unit, mortgages, and other liens recorded prior to the recordation of the Association's lien."

- H. Based upon the prescribed hierarchy of payments owed to the various entities described above, and by and through all applicable laws of the state of South Carolina, if this case is allowed to go forward at this time, and a judgment is rendered in favor of Plaintiffs, it will prejudice the rights of mortgage holders and tax collecting authorities (Federal, State and County Governments), and will prejudice Defendants' right to have an overall judicial consideration of all alleged debts.
- 3) Defendant's delinquency in payment of his mortgages and HOA assessments were due to litigation involving the HOA and construction defects, and Defendant has been unable to sell his property and pay off said debts while the litigation is pending. Any such counterclaims would exceed this Court's jurisdictional limits.

Respectfully submitted:

FINKEL LAW FIRM, LLC

BY: 

Melinda A. Lucka
(Of Counsel)
P.O. Box 225
Charleston, SC 29402
(843) 577-5460 Facsimile: 577-5135
MLucka@FinkelLaw.com

October 6, 2010
North Charleston, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,
Plaintiff

vs

JOHNSON KOOLA,
Defendant

2010-CP-10-9305
) IN THE SMALL CLAIMS COURT
) CASE NO.: 2010-SC-87-1646
)
)
)
)
)
)
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)
)

COUNTERCLAIM
FILED IN CHARLESTON COUNTY

NOV 05 2010

SMALL CLAIMS COURT

2010 NOV -9 PM 3:04
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: LYDIA PRUITT COWEN, ESQUIRE and LYDIA PRUITT DAVIDSON, ESQUIRE,
KRAWCHECK AND DAVIDSON, ATTORNEYS FOR PLAINTIFF

Having answered the Complaint, Defendant would now allege and assert the following
claims against Plaintiff:

**FIRST CAUSE OF ACTION
(CIVIL CONSPIRACY)**

- 1) Defendant alleges that all assessments owed to Plaintiff would have been paid to Plaintiff, but for Plaintiff's obstruction of a "short sale" of the Defendant's property, when Defendant's Realtor notified Plaintiff HOA that this property was listed for a short sale prior to the filing of the lien and of this action. Defendant was advised to list his property on short sale by his first mortgage holder, as a means to avoid foreclosure and as a means of being able to pay his property related debts. The sale would have allowed Defendant to pay the HOA assessments to the Plaintiff, and to satisfy his mortgages, and was Defendant's only possible way of paying off mortgage related debts and HOA assessments.

- 2) Defendant alleges that because Plaintiff knew or should have known that Title 27-31-200, S.C. Code 1976 as amended, requires payment of unpaid assessments to be made at the time of sale, and since they had knowledge of the sale status, Plaintiff filed the within assessment action, knowing that such action was unnecessary due to 27-31-200, S.C. Code, and knowing that such an action would do harm to Defendant by potentially being awarded a personal judgment against him. A personal judgment against Defendant is unnecessary, as Plaintiff's interest is legally protected under the law, whether there is a sale on the open market, or a sale via foreclosure, whereas a judgment can only harm Defendant in his ability to not only sell the property or otherwise obtain loans for repayment of these assessments, refinance of his mortgage loans, and the like.
- 3) That upon information and belief, the within action was taken, pursuant to a decision of individual Board members, who acted as agents of the HOA corporation. Under the law in this state, corporate agents are legally capable of civilly conspiring among themselves.
- 4) That because of the actions of the corporate agents, which include this action and actions contained within allegations which follow, Defendant has suffered special damages from Plaintiff's actions. Defendant's Realtor valued the property at \$199,000 if it had sold on short sale, but will soon be faced with bottom value at foreclosure sale, which he understands could be in the range of \$60,000. This is a loss of approximately \$130,000, a substantial damage to Defendant.

**FOR A SECOND CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)**

- 5) All the prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.
- 6) That Plaintiff HOA has a contractual duty to keep owners, specifically Defendant, informed of any and all actions affecting their property interest, and is bound to Defendant, by virtue of the Covenant and Restrictions of the property regime. Upon information and belief, the Plaintiff HOA had prior knowledge, dating back as far as 2004, when it took control of the regime, of property defects, but on information and belief, did not bring these to the attention of the property owners as they purchased their properties, failing in its fiduciary responsibility by not acting on the potential defects. Defendant was not notified of these defects upon his purchase, and to the contrary, was assured in his closing documents, that an inspection had been made finding the properties free from defects. This was violative of Section 27-31-430 of the SC Horizontal Property Act, which requires full disclosure of the physical condition of the building.
- 7) That the Plaintiff HOA some years later, in 2008, alarmed Defendant and other property owners by announcing that in fact, there were defects in the properties; however, the Plaintiff failed to do a property-by-property inquiry amongst the homeowners in order to determine the extent of possible defects in their respective units.

- 8) The HOA should have informed the owners about the potential defects, advising them to look for any construction defects in their units, compiling all reported defects, and then should have gotten approval from the homeowners to file a lawsuit, since there would be monetary expenses related to such legal action. Instead, upon information and belief, Plaintiff filed without permission of owners.
- 9) That upon information and belief, the Plaintiff HOA put pressure on the homeowners, through a letter from their construction attorney, requesting homeowners to assign their rights to the HOA. The letter overstating the defects that were known about from 1999-2005, e.g., exaggerating the construction problems, by saying that there were *numerous* defects, such as problems with the foundation. From that point forward, the properties were stigmatized, and Defendant was severely damaged.
- 10) That upon information and belief, the Plaintiff HOA's construction attorney asked the homeowners to agree to collection of special assessment by HOA in connection with the lawsuit, although apparently, the attorney knew that any special assessment may be collected after getting approval from 2/3 of the homeowners. Defendant has made numerous requests from the HOA Board members whether or not additional monies were and are currently being assessed by virtue of the legal action, and he has not been given sufficient response. Assessments have increased without explanation.
- 11) That this construction action occurred at a time wherein Defendant had planned to sell his property, but his Realtor informed him that it would be impossible to sell with a lawsuit pending, particularly involving defects in the foundation. This caused

substantial damage to Defendant, as he knew that his financial situation would not lend itself to continued support of the property for an extended period of time. Had he known upon his purchase or later throughout the years, about these defects, he could have sold when the market was strong, when he was in a better financial status, and before the Plaintiff engaged in a legal action over the defects. The actions of the Plaintiff created a hardship, and he lost the opportunity to sell his property.

- 12) That on information and belief, the only sales that have taken place are short sales and foreclosure sales. Defendant will have expert Realtor and appraiser testimony that will show that the construction case froze sales. The Plaintiff HOA and the HOA real estate management company should have known of the negative impact of lawsuit on the home prices and home sales in the regime.
- 13) Further, on information and belief, Defendant believes from discussion by other residents, that Plaintiff HOA has expended several thousands of dollars to investigate the construction defects and to initiate the lawsuit, but they refuse to inform him as to whether his assessments have increased due to the construction suit.
- 14) That the Plaintiff, pursuant to Article V Section 1 of the By-laws, the Plaintiff HOA is required to allow resident owners to examine the financial records kept by the HOA by homeowners on demand. Plaintiff, contrary to its duty to Defendant property owner, has repeatedly avoided discussing financial matters with Defendant, and Defendant continues to suffer financial losses, not only in his inability to sell the property, but in increasing monthly regime fees and without being informed of the increases or the purpose of the increases.

15) That HOA severely breached its duty to keep Defendant informed of possible construction defects and of assessments related to the lawsuit, and is entitled to consequential damages in amounts in excess of one hundred-thousand (\$100,000) dollars.

16) Defendant would ask this Court make a determination that the action and counterclaim be transferred to Circuit Court, as damages contained within the Counterclaim exceed the jurisdictional limit of this court.

FINKEL LAW FIRM, LLC

BY:



Melinda A. Lucka

(Of Counsel)

P.O. Box 225

Charleston, SC 29402

(843) 577-5460 Facsimile: 577-5135

MLucka@FinkelLaw.com

November 3, 2010
North Charleston, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 2010-CP-10-9305

CAMBRIDGE LAKES HOA,)

Plaintiff,)

v.)

JOHNSON KOOLA,)

Defendant.)

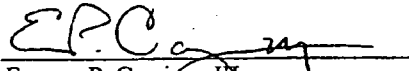
MOTION TO DISMISS
COUNTERCLAIM

FILED
2011 JAN -4 PM 2:34
JULIE J. ARMSTRONG
CLERK OF COURT

2011-68

Cambridge Lakes HOA (Cambridge) moves for an Order dismissing the Counterclaims filed by Johnson Koola in this action on the grounds that he has raised the same issues in Case No.: 2010-CP-10-6060 filed in a previous case. This Motion is made so as to prevent the same issues being addressed in the two separate actions between the same parties. This action was initially filed by Cambridge Lakes HOA in Magistrates Court on July 29, 2010. The case regarding the foreclosure on this same property was filed July 27, 2010 in the Court of Common Pleas. The Answer filed by Koola asserts irregularities and improper action by Cambridge in the Circuit Court Case as do the counterclaims in this case. This motion is made pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

CORRIGAN & CHANDLER LLC



Eugene P. Corrigan III
12 Exchange Street
Charleston, South Carolina 29401
(843) 577-5450 (phone)
(843) 577-5650 (fax)
rick@corriganhandler.com

ATTORNEYS FOR THE COUNTER-
DEFENDANT CAMBRIDGE LAKES HOA ON
COUNTER-CLAIMS

Charleston, South Carolina
January 4, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CAMBRIDGE LAKES HOA

Plaintiff

v.

Johnson Koola

Defendant

COURT OF COMMON PLEAS

CASE # 2010-CP-10-9305

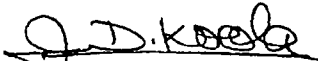
ANSWER OF DEFENDANT JOHNSON KOOLA
TO THE MOTION FILED BY PLAINTIFF
CAMBRIDGE LAKES HOA TO DISMISS
COUNTERCLAIM

FILED
JUL 19 PM 3:58
JULIE J. ARMSTRONG
CLERK OF COURT

1. Defendant Johnson Koola requests the honorable court to dismiss the motion filed by plaintiff Cambridge Lakes HOA to dismiss defendant's counterclaim filed in connection with the case # 2010-CP-10-9305.
2. Plaintiff filed the motion to dismiss defendant's counterclaim on January 4, 2011 on the grounds that defendant has filed a counterclaim in connection with Plaintiff's another case # 2010-CP-10-6060 filed against the defendant, and that both counterclaims have raised same issues.
3. Defendant Koola brings to the kind attention of the honorable Court that the summons in the case # 2010-CP-10-6060 was served on defendant Koola only on February 3, 2011.
4. Defendant Koola filed the answer as a counterclaim to the summons in the case # 2010-CP-10-6060 only on March 3, 2011.
5. Plaintiff's argument that defendant has filed a counterclaim in the case # 2010-CP-10-6060 on January 4 is untenable, unreasonable and incomprehensible.
6. Defendant Koola brings to the kind attention of the honorable Court that the counterclaims filed by defendant Koola in the case # 2010-CP-10-6060 are substantially different from the counterclaims filed in the case # 2010-CP-10-9305.
7. Plaintiff has filed another motion on March 18 to dismiss the counterclaims filed by defendant in the case # 2010-CP-10-6060 on the grounds that defendant has filed a counterclaim in connection with Plaintiff's another case # 2010-CP-10-9305 and that both counterclaims have raised same issues.
8. Defendant Koola brings to the kind attention of the honorable Court that the legal issue here is not that defendant has filed two counterclaims, but that the Plaintiff has filed two summons and complaints and/or cross-claims against defendant.

9. Defendant Koola was required by the Plaintiff and by the law to file an answer in each case within thirty (30) days.
10. If the plaintiff's motion to dismiss defendant's counterclaims is dismissed, then defendant will not be in a position to defend himself in the court. This amounts to punishment by decree rather than punishment by a court of law after a trial.
11. Plaintiff has stated in the motion that "The Answer filed by Koola asserts irregularities and improper action by Cambridge....." If defendant's counterclaim is dismissed, then the irregularities and improper action by Cambridge cannot be addressed by law.
12. Defendant Koola prays to the honorable Court to dismiss the plaintiff's motion to dismiss defendant's counterclaims filed in connection with the case # 2010-CP-10-9305.

Dated 19th July 2011
Mt Pleasant, SC 29464


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

Copy to:
Attorney Mr. Eugene P. Corrigan III
12 Exchange St
Charleston, SC 29401

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,

Plaintiff,

v.

JOHNSON KOOLA,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
)

) NINTH JUDICIAL CIRCUIT
)
)

) CASE NO. 2010-CP-10-9305
)
)

) PLAINTIFF'S MOTION
) FOR SUMMARY JUDGMENT
)
)

TO: SHAWN M. FRENCH, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Cambridge Lakes HOA, and through its undersigned attorneys, will move before the Presiding Judge of the Charleston County Court of Common Pleas on the tenth (10th) day after service, or as soon as counsel be heard pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order entering summary judgment in favor of the Plaintiff and dismissing the allegations of Defendant's Amended Counterclaims in so much as there is no genuine issue as to any material fact which would entitle the Defendant to recover against the Plaintiff and because the Defendant has failed to state a claim for which relief may be granted.

This motion is based upon the South Carolina Rules of Civil Procedure, common law, supporting affidavits, memorandum and exhibits to be filed.

Please be present to attend if so minded.

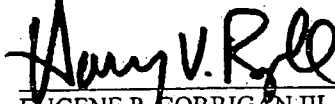
[SIGNATURE PAGE TO FOLLOW]

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2012 AUG - 1 PM 3:25
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

CORRIGAN & CHANDLER LLC

A handwritten signature in black ink, appearing to read "Eugene P. Corrigan III", is written over a horizontal line.

EUGENE P. CORRIGAN III

HARRY V. RAGSDALE

P.O. BOX 547

CHARLESTON, SC 29402

PHONE: (843) 577-5420; FAX: 843-577-5650

KRAWCHECK & DAVIDSON LLC

LYDIA P. BROOKS

9 STATE ST.

CHARLESTON, SC 29401

ATTORNEYS FOR PLAINTIFF

July 30, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-9305

Cambridge Lakes HOA
PLAINTIFF(S)

Johnson Koola
DEFENDANT(S)

Submitted by:

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: Defendant's Motion to Name Defendant Pro Se and Motion for Summary Judgment were withdrawn. Defendant's Motion to Compel and Plaintiff's Motion for Summary Judgment were taken under advisement with Judge Dennis retaining jurisdiction over these motions. Formal order to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

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)
n/a	n/a	\$n/a
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order.		

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.

SCRPC Form 4C (12/2011)

2060

11/08/12

Page 1

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CAMBRIDGE LAKES HOA,)

Plaintiff,)

v.)

JOHNSON KOOLA,)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-9305

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

2012 DEC -7 PM 12:46
FILED
BY J. J. ARMSTRONG
CLERK OF COURT

TO: SHAWN M. FRENCH, ESQ., ATTORNEY FOR THE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Cambridge Lakes HOA will, within ten (10) days of the service of this notice, or as soon thereafter as possible move before the Court for an Order granting Summary Judgment as to the Defendant Johnson Koola's ("Koola") counter claims. This motion is being made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

In a summary judgment motion, the Court may take into consideration evidence beyond the allegations in the pleadings. This case was filed on July 29, 2010 and involves a collection action against Koola for the payment of homeowner's assessments. On November 9, 2010, this case was transferred from Charleston County Small Claims Court. Koola has asserted counter claims against Cambridge Lakes HOA (the "Association") for civil conspiracy and breach of fiduciary duty. (Am. Countercl., June 8, 2012.)

Regarding the claim of civil conspiracy, Koola alleges that the Association obstructed his attempt to short sale his property by filing a lien against his property and later filing this action. (Id. at 14-15.) Next, Koola alleges the Association did not need to file a

lien against his property as S.C. Code Ann. § 27-31-200 protected it by requiring the payment of all unpaid assessments at the time of sale. (Id. at 15.)

Regarding the breach of fiduciary claim, Koola alleges the Association failed to notify prospective purchasers, including him, about certain known construction defects in violation of S.C. Code Ann. § 27-31-430 of the South Carolina Horizontal Property Act. (Id. at 5.) Next, Koola alleges that the Association filed a construction lawsuit without obtaining permission of the homeowners and that the construction lawsuit caused a special assessment to be levied against him. (Id. at 6, 8.) Additionally, Koola claims that the construction lawsuit prevented him from selling his property. (Id. at 9.) Ultimately, Koola claims the Association breached its fiduciary duty by failing to keep him informed of construction defects to his property and potential increases in assessments related to the construction lawsuit. (Id. at 12.)

ARGUMENT

A. KOOLA'S CLAIM FOR CIVIL CONSPIRACY FAILS AS A MATTER OF LAW BECAUSE THE PURPOSE OF THIS LAWSUIT WAS NOT TO INJURE HIM.

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." Pridgen v. Ward, 391 S.C. 238, 243, 705 S.E.2d 58, 61 (Ct. App. 2010). "It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage." Id. "[I]t is not necessary for a plaintiff asserting a civil conspiracy cause of action to allege an unlawful act in order to state a cause of action." City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund, 382 S.C. 525, 546, 677 S.E.2d 574, 581 (2009).

Cambridge Lakes Horizontal Property Regime was established through the filing of a Master Deed dated March 24, 2003 and recorded on February 24, 2003 in the RMC Office for Charleston County, South Carolina at Book T437, Page 047 and re-recorded on April 3, 2003 at Book Z442, Page 422 ("Master Deed"). Under Article 5, Section M of the Master Deed, "[m]embership in the Association shall be confined to those persons who hold a fee-type ownership interest in any apartment." See Exhibit "1." Article 16, Section 1 provides that "assessments, together with interest thereon and costs of collection thereof, shall be charged against, and the Association shall have therefor a continuing lien upon, each Apartment against which such assessment is made." See Exhibit "2." Next, Article 16, Section 8 provides that "the Association may bring suit to recover a money judgment for the unpaid assessment against the Owner personally obligated to pay the same . . . and/or file a lien . . . against such Owner's apartment." See Exhibit "3."

There is no civil conspiracy in this case. First, Koola's reliance on S.C. Code Ann. § 27-31-200 is misplaced. Although this section provides for the payment of outstanding assessments upon the sale or conveyance of a property, it does not prevent the Association from filing a lien and/or filing a collections action against Koola. Rather, both the Master Deed and S.C. Code Ann. § 27-31-170 authorize the Association to institute an action against Koola for noncompliance with the Master Deed. The Association, like all horizontal property regimes, relies on the collection of all fees and assessments from all homeowners to operate. No individual owner can stop making payments for a length of time of their choosing. Further, the Association has not singled out Koola for nonpayment of assessments. Rather, accounting records and court records show that it has been assessing late fees, filing liens and lawsuits and obtaining judgments against homeowners for several

years. (See Fischer Aff. at 10-12, Feb. 4, 2012 (attached as Exhibit "4"); Henning Aff. at 5-10, Feb. 7, 2012 (attached as Exhibit "5"); Martin Aff. at 5-9, Jan. 30, 2012 (attached as Exhibit "6"); Blevins Aff. at 5-9, Feb. 28, 2012 (attached as Exhibit "7"); see generally Cambridge Lakes HOA v. Michael B. Hartnett, 2010-CP-10-9146 (Charleston County) (Nov. 3, 2010) (Judgment for Plaintiff in the amount of \$7,580.00); Cambridge Lakes HOA v. Charles W. Taylor, Jr., 2011-CP-10-39 (Charleston County) (Jan. 4, 2011) (Judgment for Plaintiff in the amount of \$3,690.46); Cambridge Lakes HOA v. The Naws, LLC, et al., 2011-CP-10-2767 (Charleston County) (April 15, 2011) (Judgment for Plaintiff in the amount of \$7,644.42); Cambridge Lakes HOA v. Geoff G. Forbes, SC872010002259 (Charleston County Small Claims Court) (Dec. 20, 2010) (Judgment for Plaintiff in the amount of \$5,105.99); Cambridge Lakes HOA v. The Naws, LLC, 2012-CP-10-4714 (Charleston County) (July 19, 2012) (Judgment for Plaintiff in the amount of \$4,120.82). Koola's civil conspiracy claim fails for lack of evidence of a legal conspiracy where there is no evidence showing that the Association's purpose was to injure him in some special capacity or in any other manner than can naturally be expected exercising its powers under the Master Deed and By-Laws.

Next, Koola claims that the filing of this action would harm his ability to sell the property or otherwise obtain loans for repayment of his property. However, a Lis Pendens and Summons and Complaint for Mortgage foreclosure was filed against Koola on July 27, 2010, two weeks before the Association's collection action was filed. See BAC Home Loans Servicing LP v. Koola, et al., Case No. 2010-CP-10-6060, Charleston County, South Carolina, filed July 27, 2010. The filing of the Lis Pendens alone served as public notice that the property was subject to litigation and would have interfered with Koola's ability to

sell his property. Additionally, the foreclosure action may have harmed Koola's ability to obtain loans as it tends to show Koola's inability to pay off his debts.

Finally, Koola cannot establish that the Association's board members conspired against him. "A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." Pridgen at 244, 705 S.E.2d at 62. Therefore, "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." Id. Although it is true that "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties," this presumes that the agents are acting in their individual capacities, not in their official capacities. Pridgen, 391 S.C. at 244, 705 S.E.2d at 62. Additionally, in cases where this principal has applied, at least one alleged conspirator was named as a defendant. See Id. (where individually named defendants allegedly conspired against plaintiff outside the scope of their employment); Lee v. Chesterfield Gen. Hosp., 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct.App. 1986) (where it is alleged that a named individual defendant conspired with other members of the hospital medical staff.) Here, Koola only sued the Association itself. None of its agents, members or directors have been sued in their individual capacities.

Finally, at all times relevant to this lawsuit, the board members were acting in their official capacities and in the best interests of the Association by instituting this collection action against Koola. (Fischer Aff at 6; Henning Aff at 4; Martin Aff. at 4; Blevins Aff. at 4.) Simply put, Koola was not singled out and there was no conspiracy to harm him. Indeed, the board members discussed several delinquent homeowners at board meetings,

including Defendant, before making any decisions to pursue legal action. (Fischer at 10; Henning Aff at 8; Martin Aff. at 8; Blevins Aff. at 8.) Additionally, the object of filing this action was to recover payment of delinquent assessments from Koola, an action the Association was required to take to preserve its assets. (Fischer at 9; Henning Aff. at 7; Martin Aff. at 7; Blevins Aff. at 7); see S.C. Code Ann. § 33-31-830(a)(3) ("A director shall discharge his duties as a director . . . in a manner the director reasonably believes to be in the best interests of the corporation."). Under the undisputed facts of this case, to hold that the Association somehow engaged in a civil conspiracy against Koola would be tantamount to preventing similarly situated homeowners' associations from instituting collections actions against its members.

For the foregoing reasons, Koola's counter claim for civil conspiracy fails as a matter of law and the Association is entitled to summary judgment.

B. KOOLA'S CLAIM FOR BREACH OF FIDUCIARY DUTY FAILS AS A MATTER OF LAW BECAUSE THE ACTIONS OF THE CAMBRIDGE LAKES BOARD OF DIRECTORS ARE PROTECTED BY THE BUSINESS JUDGMENT RULE.

A director is required to discharge their duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation. See S.C. Code Ann. § 33-31-830(a). In discharging their duties, a director is entitled to rely on information, opinions, reports or statements prepared or presented by legal counsel. See S.C. Code Ann. § 33-31-830(b)(2). Next, "[i]n a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial

action." Goddard v. Fairways Development General Partnership, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993).

In this case, the Association has not breached its fiduciary duty to Koola. First, Koola alleges that the Association's Board of Directors violated S.C. Code Ann. § 27-31-430 as it knew about construction defects affecting his condominium in 2004 when it took control of the association from the developer but failed to disclose these defects to him at the time of his purchase of the condominium. (Am. Countercl. at 5-6.) However, S.C. Code Ann. § 27-31-430 only applies to the lessee, sole owner, or co-owner of a building seeking to convert rental units into condominium units. Here, the statute would apply to Cambridge Two, LLC, the developer of Cambridge Lakes and the entity that sold the condominium to Koola. See Deed from Cambridge Two, LLC to Johnson D. Koola, filed Feb. 24, 2004 (attached as Exhibit "8"). Under Section 27-31-430, Cambridge Two, LLC had the duty to provide a written disclosure to all prospective purchasers as to the physical condition of the buildings within thirty (30) days of recording the Master Deed, not the Association. Next, Koola purchased his condominium on February 24, 2004. Id. However, Cambridge Two, LLC did not turn over control of the Association to the members until October 2004, over seven months after Koola purchased his condominium. (Fischer Aff. at 14.) Thus, any obligation to notify Koola of construction defects affecting his condominium at the time of his purchase fell solely on Cambridge Two, LLC, not the Association.

Next, Koola alleges that the Association failed to obtain approval from the homeowners before filing a construction lawsuit and that it filed the construction lawsuit without permission of the members. (Am. Countercl. at 6.) Pursuant to its by-laws, the Association has the power to maintain, repair, replace and operate the common elements at

Cambridge Lakes. (Fischer Aff. at 17; Henning Aff. at 10; Blevins Aff. at 10). The Association also has the power to retain legal counsel. (Fischer Aff. at 18; Henning Aff. at 11; Blevins Aff. at 11.) Next, the Association has the power to sue. See S.C. Code Ann. § 33-31-302(1). During March-April 2008, the Board of Directors first learned of potential construction defects to the Association's property. (Fischer Aff. at 15.) The defects were not disclosed by the developer when the Association was turned over to the members. (Fischer at 16.) Because of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf. (Fischer at 19; Henning Aff. at 12; Blevins Aff. at 12.)

Koola incorrectly presumes that the Association levied special assessments against its members to fund the expense of this construction lawsuit. He relies on Section 16, Paragraph 6 of the Master Deed, which requires the Association to obtain a two-thirds (2/3) vote of the members prior to levying a special assessment for capital improvements. Here, not only is this provision inapplicable to the Association's ability to file a lawsuit, it is also inapplicable because the Association did not levy a special assessment against the members to fund the construction lawsuit. (Fischer at 20; Henning Aff. at 13; Martin Aff. at 13; Blevins Aff. at 13.) Rather, all expenses related to the construction lawsuit were paid out of the Association's Reserve Accounts. (Fischer at 21; Henning Aff. at 14; Martin Aff. at 14; Blevins Aff. at 14.) Finally, since January 2007, there have only been three (3) increases to the monthly regime fee from \$210.00 to \$285.00 per month. (Blevins Aff. at 20-22.) These increases were due to increases in insurance premiums on the common areas of Cambridge Lakes. (Id.)

Koola also alleges that the Association put pressure on its members to assign their rights in the construction lawsuit to it through a letter sent by their attorney, Mr. Hayes. (Am. Countercl. at ¶ 7.) He further alleges that the letter sent by Mr. Hayes exaggerated the construction defects and caused him damage by stigmatizing his property. (Id.) Next, Koola claims that the Association has refused to discuss certain financial matters with him, including whether a special assessment has been charged to him or whether his monthly assessments have increased as a result of the construction lawsuit. (Id. at ¶ 8.) Finally, Koola claims that the filing of the construction lawsuit prevented him from selling his condominium and caused him to suffer damages. (Id. at ¶ 9.)

However, Koola's allegations are unfounded. First, Koola has met with at least one Board Member regarding the Association's finances. (Martin Aff. at 11.) Next, the Association's letter referenced by Koola does not pressure or require members to assign their rights in the construction lawsuit to the Association. (Fischer Aff. at 22.) Rather, the letter offered members the opportunity to join the construction lawsuit. (Id.) Further, the letter is clear that Mr. Hayes was retained on a contingency fee basis and would only be compensated out of monies received on behalf of the Association. (Id.) By compensating Mr. Hayes on a contingency basis, the Association did not levy any special assessments against its members to pay for the lawsuit. (Fischer Aff. at 20-21; Henning Aff. at 13; Martin Aff. 13; Blevins Aff. at 13.) Members were under no obligation to join the construction lawsuit. (Fischer Aff. at 24; Henning Aff. at 17; Martin Aff. at 17; Blevins Aff. at 17.) Indeed, some members, including Koola, declined to join the lawsuit.

Here, even though Koola did not participate in the lawsuit, he will benefit directly from the settlement proceeds as all windows in his condominium will be replaced at no

charge to him. (Fischer Aff. at 25; Henning Aff. at 18; Martin Aff. at 18; Blevins Aff. at 18.) Next, while Koola's counterclaim makes it seem that the Association has waged a personal attack against him, such is not the case. In fact, every homeowner was affected by the construction lawsuit as no one was able to refinance their condominium while the lawsuit was ongoing. (Fischer Aff. at ¶ 26.) However, it was necessary to file the construction lawsuit to protect the commons elements, including the exteriors of the buildings. (Fischer Aff. at 27; Henning Aff. at 19; Martin Aff. at 19; Blevins Aff. at 19.)

Ultimately, the acts of the Board of Directors were taken in the best interests of the Association. Additionally, Koola has not and cannot show bad faith, dishonesty, or incompetence on the part of the Association or its directors. (Fischer Aff. at 28; Henning Aff. at 20; Martin Aff. at 21; Blevins Aff. at 23.) Therefore, their actions are protected by the business judgment rule and Koola's claim for breach of fiduciary duty fails as a matter of law.

[SIGNATURE PAGE TO FOLLOW]

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WHEREFORE, the Association respectfully requests that Koola's counterclaims be dismissed with prejudice and that judgment be issued in its favor.

Respectfully submitted,

CORRIGAN & CHANDLER LLC


Eugene P. Corrigan III
P.O. Box 547
Charleston, SC 29402
Phone: (843) 577-5420; Fax: 843-577-5650

KRAWCHECK & DAVIDSON LLC

Lydia P. Brooks
9 State St.
Charleston, SC 29401

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina

December 7, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CAMBRIDGE LAKES HOA,)
Plaintiff,)
v.)
JOHNSON KOOLA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-9305

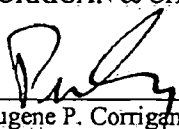
CERTIFICATE OF SERVICE

FILED
2012 DEC -7 PM 12:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This is to certify that the undersigned served the **MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** upon the persons listed
below by mailing a copy of the same to their office, postage prepaid on December 7, 2012.

Shawn M. French, Esquire
The French Law Firm, LLC
100 Ellis Avenue, Suite B
Lexington SC 29072

CORRIGAN & CHANDLER LLC


Eugene P. Corrigan III
P.O. Box 547
Charleston, SC 29402
Phone: (843) 577-5420; Fax: 843-577-5650

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina

NOTE: This Document is being re-recorded to follow the recording of the conveyance Deed into Cambridge Two, LLC.

RE-RECORD **EX-1437PG047**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

EX-2442PG433

**MASTER DEED FOR
CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME**

THIS Master Deed made this 24th day of January, 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").

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(3) ADDRESS

The addresses of the Property are as follows:

Units 1403 - 1609 1403-1609 Cambridge Lake Drive, Mt. Pleasant, SC

(4) THE IMPROVEMENTS

The improvements constructed on said Property are the improvements set forth and described in Exhibit "B".

(5) DEFINITIONS

The terms used herein and in the Charter and By-Laws shall have the meaning stated in the Act and as follows:

- (a) "Act" means the Horizontal Property South Carolina Code of Laws 1976, Section 27-31-10, et. Seq.
- (b) "Charter" means the Charter of the Association, recorded in the RMC Office of Charleston County, South Carolina.
- (c) "Association" means the Cambridge Lake Condominium Homeowners Association, Inc., a South Carolina non-profit corporation.
- (d) "Board" means the Board of Directors of the Association. The Board is the form of administration of the Condominium Property.
- (e) "Building" means each building of the Condominium.
- (f) "By-Laws" means the duly adopted By-Laws of the Association.
- (g) "General Common Elements" means common areas and facilities as defined in said Act and shall include all parts of the Condominium Property not included within the Apartment boundaries as described in Paragraph 6(2) hereafter, and the tangible personal property required for the maintenance and operation of the Condominium. There being no "Limited Common Elements" established by this Master Deed, the General Common Elements shall be hereafter referred to as "Common Elements".
- (h) "Common Expenses" includes those as defined by the Act, together with the expense for which the Co-Owners are liable to the Association, actual or estimated, pursuant to the By-Laws and expenses determined to be Common Expenses by the Board.
- (i) "Condominium" means Cambridge Lake Horizontal Property Regime.

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- (j) "Condominium Documents" means the Master Deed of Cambridge Lake Horizontal Property Regime, the Charter of Cambridge Lake Condominium Homeowners Association, Inc., and its By-Laws, as they may be amended from time to time.
- (k) "Land" is the real property described in Exhibit "A" which is hereby submitted to the condominium form of ownership.
- (l) "Majority of Co-Owners" means fifty one percent (51%) or more of the basic value of the Property as a whole, in accordance with the percentages computed in accordance with the provisions of Paragraph 6(4).
- (m) "Member" means a member of the Association. Membership in the Association shall be confined to those persons who hold a fee-type ownership interest in any Apartment.
- (n) "Developer" means Cambridge Two, LLC, a South Carolina Limited Liability Corporation, and its respective successors and assigns, but the term shall not include persons who purchase individual Apartments from AJ Estee.
- (o) "Plans" means all drawings and specifications in the plot and floor plans and other plans attached as Exhibit "B".
- (p) "Property" means and includes the land described in the attached Exhibit "A", together with all improvements and structures now existing or hereafter placed hereon, all easements, rights and appurtenances thereto, and all personal property now provided by the Developer and intended for use in connection therewith, but does not include the furniture, if any, located in any Apartment presently leased or owned by the Developer.
- (q) "Utility Service" shall include, but not be limited to, electric power, water, heating, air conditioning, garbage, and sewage disposal and any other governmental or public utility assessment, fee or bill.
- (r) "Apartment" means as defined by the said Act, and shall include the elements of a condominium which are not owned in common with the Co-Owners. The boundary lines of each Apartment are as set out in Paragraph 7 hereafter.
- (s) "Co-Owner" means as defined by said Act and shall include his heirs, successors and assigns and shall include the Developer as to those Apartments of which it is the Owner of record.
- (t) "Rules and Regulations" means the duly adopted rules and regulations adopted by the Board for the use of the Condominium Property.
- (u) Singular, plural, gender. Whenever the context so permits, the use of the plural shall include the singular, the use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

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limited to, painting the exterior bricks, exterior doors, or affixing out-shutters to windows.

- (f) To allow the Association its delegates, agents, or employees at all reasonable times to enter into any Apartment for the purpose of maintaining, inspecting, repairing, or replacing Common Elements; or for repairing, maintaining, or replacing plumbing, heating, ventilation or air conditioning systems located within such Apartment, but serving other parts of the Condominium Property; or in order to determine in case of emergency, the circumstances threatening Apartments or Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.
- (g) To promptly report to the Association any defects or all needed repairs for which the Association is responsible.
- (4) Facade: The Association shall be responsible for the maintenance of the exterior perimeter wall and the entrance door to each Apartment. No Co-Owner shall paint any exterior brick or wood surface.
- (5) Repairs: The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements, provided, that if any repairs or replacements are made necessary because of abuse or negligent use thereof by a Co-Owner the cost of such repair or replacement may be assessed again such Co-Owner.

(15) DECORATING

Each Co-Owner shall furnish and be responsible for, at his own expense, of all the decorating in his own Apartment from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps, and other furnishings and interior decorating of both the walls and doors. The use of any the covering of the interior surfaces of the windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject of the Rules and Regulations of the Association.

(16) ASSESSMENTS

- (1) Creation of the Lien and Personal Obligation of Assessments: All assessments shall be payable to the Association. The Developer, for each Apartment owned by it, shall pay and each Co-Owner, by acceptance of the deed to such Apartment, covenants and agrees to pay:
 - (a) An annual assessment in an amount which equals a proportionate share of the Common Expenses, such share being the same as such Co-Owner's percentage of ownership in the Common Elements as set forth in Exhibit "C" hereof;

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- (b) Supplemental assessments if required by the Board of Directors of the Association in accordance with the By-Laws of the Association; and
- (c) Special assessments for capital improvements fixed, established and collected from time to time as hereinafter provided.

The annual, supplemental and special assessments, together with interest thereon and costs of collection thereof, shall be charged against, and the Association shall have therefor a continuing lien upon, each Apartment against which such assessment is made. Such lien shall also secure all assessments which come due thereafter until the lien is satisfied. Each Co-Owner shall be liable for his portion of each assessment coming due while he is the owner of an Apartment, and his successor in title shall be jointly and severally liable with the grantor for such portion thereof as may be due and payable at the time of a conveyance of, but without prejudice to the rights of such successor to recover from the grantor the amounts paid by such successor as such joint debtor. If a mortgagee of record obtains title to such Apartment as a result of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the share of the annual and special assessments by the Association pertaining to such Apartment or chargeable to the former Co-Owner which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid share of the annual and special assessments shall be deemed to be a Common Expense collectable from all the remaining Co-Owners including such acquirer, his successors and assigns. The Association shall, immediately upon foreclosure or other arrangement in lieu of foreclosure, satisfy and release its assessment lien of record.

- (2) Priority of Lien: The lien against any Apartment for assessments in favor of the Association shall be prior and superior to all other liens except any lien for taxes, the lien of any mortgage or any other lien recorded prior to the time of recording of the claim of the Association's lien. The sale or transfer of any Apartment shall not affect the assessment lien; provided, however, that upon the sale or transfer of any Apartment pursuant to foreclosure of a mortgage or by means of a deed in lieu of foreclosure, the lien of such assessment shall be satisfied and released of record as provided in Paragraph 16(1) above.
- (3) Annual Assessments for Common Expenses: The annual assessments levied by the Association shall be collected and held by the Association for the payment of the Common Expenses which shall include, but not be limited to, administrative, insurance, repair, replacement, reserve funds and maintenance expenses of the condominium Property, in accordance with this Master Deed, the By-Laws of the Association and the Act. A Co-Owner shall by acceptance of title be conclusively presumed to have agreed to pay his proportionate share of the Common Expenses accruing while he is the Owner of an Apartment, and no Co-Owner may exempt himself from liability for such share of the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by abandonment of his Apartment or otherwise. The provisions of the By-Laws attached as Exhibit "E" relating to assessments are incorporated herein by reference as if fully set forth.
- (4) Capital Account: There shall be required, as an item included in the Common Expenses and thus in the annual assessments for such expenses, a contribution to a capital account to cover unforeseen contingencies or

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limited to, painting the exterior bricks, exterior doors, or affixing out-shutters to windows.

- (f) To allow the Association its delegates, agents, or employees at all reasonable times to enter into any Apartment for the purpose of maintaining, inspecting, repairing, or replacing Common Elements; or for repairing, maintaining, or replacing plumbing, heating, ventilation or air conditioning systems located within such Apartment, but serving other parts of the Condominium Property; or in order to determine in case of emergency, the circumstances threatening Apartments or Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.
- (g) To promptly report to the Association any defects or all needed repairs for which the Association is responsible.
- (4) Facade: The Association shall be responsible for the maintenance of the exterior perimeter wall and the entrance door to each Apartment. No Co-Owner shall paint any exterior brick or wood surface.
- (5) Repairs: The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements, provided, that if any repairs or replacements are made necessary because of abuse or negligent use thereof by a Co-Owner the cost of such repair or replacement may be assessed again such Co-Owner.

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Each Co-Owner shall furnish and be responsible for, at his own expense, of all the decorating in his own Apartment from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps, and other furnishings and interior decorating of both the walls and doors. The use of any the covering of the interior surfaces of the windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject of the Rules and Regulations of the Association.

(16) ASSESSMENTS

- (1) Creation of the Lien and Personal Obligation of Assessments: All assessments shall be payable to the Association. The Developer, for each Apartment owned by it, shall pay and each Co-Owner, by acceptance of the deed to such Apartment, covenants and agrees to pay:
 - (a) An annual assessment in an amount which equals a proportionate share of the Common Expenses, such share being the same as such Co-Owner's percentage of ownership in the Common Elements as set forth in Exhibit "C" hereof;

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Association cannot pay out of the funds held in the capital account; provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Co-Owners, including the Developer, not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Each Co-Owner's share of any special assessment shall be in proportion to his percentage of undivided interest in and to the Common Elements.

(7)

Date of Commencement of Annual Assessments and Due Dates: The annual assessments shall be established on a fiscal year basis and shall commence as to each Apartment conveyed to a Co-Owner on the date of each such conveyance, with the adjustment for the first assessment according to the number of days remaining in the fiscal year. That portion of each such adjusted assessment attributable to the month following the month of conveyance shall be due and payable at the time of such conveyance, and the balance of such adjusted assessment shall be paid, except as provided in Paragraph 18(8) below, by the Co-Owner in equal monthly installments commencing on the first day of the second month following such conveyance. Unless otherwise provided by the Board of Directors and except as provided in Paragraph 18(8) below, one-twelfth (1/12) of the annual assessment for each Apartment shall become due and payable on the first day of each month during the assessment period. The association shall, upon demand by any Co-Owner or purchaser of an Apartment prior to the completion of a voluntary sale or upon demand by any holder of a mortgage or other lien of any Apartment at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on such Co-Owner's Apartment have been paid as of a specific date within ten (10) days after request therefor. A reasonable charge may be made by the Board of Directors for the issuance of such certificate, which shall be conclusive evidence of payment of any assessment therein stated to have been paid, and any person other than the Co-Owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability for such unpaid assessments shall be limited to the amounts set forth in such certificate.

(8)

Effect of Non-Payment of Assessments Payable Directly to the Association and Remedies of the Association: Any assessment which is not paid when due shall be delinquent. If the payment of any assessment for an Apartment is not paid within ten (10) days after the due date, the Owner of such Apartment shall be in default and the Association may declare the balance of the entire assessment for such Apartment immediately due and payable. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a rate of eight percent (8%) per annum, and the Association may bring suit to recover a money judgment for the unpaid assessment against the Owner personally obligated to pay the same without waiving the lien, and/or file a lien claim against such Owner's Apartment. In either of which events, interests, costs and attorney's fees equal to fifteen percent (15%) of the principal and interest due shall be added to the amount of such assessment as may then be due. Further, if the assessment is not paid within thirty (30) days after the date of default, the Association shall

give prompt notice of default to the holder of a first mortgage, if any, upon such Apartment. The establishment of any such lien and the satisfaction thereof shall be in accordance with Section 27-31-210 of the Act. Each Co-Owner, by his acceptance of a deed to an Apartment from the Developer or from any subsequent Owner of an Apartment, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose such lien in a suit brought in the name of the Association and shall be for the benefit of all other Co-Owners. The Association, acting on behalf of the Co-Owners, shall have the power to bid in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association shall provide written notice of its intention to foreclose any such lien to the holder of a first mortgage lien upon such Apartment, not less than sixty (60) days prior to the date of the foreclosure sale. Non-use of the Common Elements or abandonment of an Apartment shall not constitute a defense against any action on account of any unpaid assessment.

- (9) Exempt Property: Each Apartment owned by the Developer shall be exempt from the assessments created herein until the termination of control of the Association by the Developer. In lieu of the payment of such assessments, Developer shall be responsible for payment to the Association each month of the amounts as provided in Paragraph 16(5) above. Except as provided herein, no Apartment shall be exempt from said assessments.
- (10) Mechanic's Liens: Each Apartment Owner shall only be liable for the cost of repairs and replacements to his Apartment, and for his proportionate share of the Common Expenses. In the event any mechanic's or other lien is filed which, in the opinion of the Board may constitute a lien against the Property, the Common Elements, or any Apartment, the Board may cause the Association to discharge such lien, and the Association shall thereupon assess each Co-Owner or Co-Owners in the amount of their proportionate share of the Association's expense in discharging such lien, including any costs and attorney's fees incurred in connection therewith, such assessment to be secured by a lien on each Apartment responsible for payment thereof in accordance with the Act, said lien to be enforced in accordance with the provision of the Act, Master Deed, and By-Laws. No Apartment Owner shall be liable for the liens of other Co-Owner's except as provided for by the Act and this Master Deed.
- (11) Repairs and Improvements by a Mortgagee of Record: Any first mortgagee of an Apartment shall be entitled to cause repairs to be made and routine maintenance to be performed with respect to an Apartment, or the Common Elements, in the event said mortgagee provides said Co-Owner and other Co-Owners affected, and the Association, with thirty (30) days prior written notice of repairs or routine maintenance required to be performed. In the event such repairs shall not have been made or such routine maintenance satisfactorily performed within any such thirty (30) day period, then such mortgagee is hereby deemed authorized by such Co-Owner and any other Co-Owner affected, and by the Association, to complete such repairs or perform such maintenance, and such mortgagee shall be promptly reimbursed by the Association for the costs thereof. In the event any payments are made by the Association to the mortgagee of an Apartment in accordance with the terms of this Paragraph, the

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,

Plaintiff,

v.

JOHNSON KOOLA,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-9305

AFFIDAVIT OF STEPHAN FISCHER

PERSONALLY APPEARED before me, Stephan Fischer, who, being duly sworn,
deposes and says as follows:

1. My name is Stephan Fischer. I am over the age of 18 and am legally competent to
declare the facts stated herein.

2. I reside at 2714 Big Fire Court, Mt. Pleasant SC 29466 and own a unit at 1597
Cambridge Lakes Drive, Mount Pleasant, South Carolina.

3. Cambridge Lakes Horizontal Property Regime was established through the filing
of a Master Deed dated March 24, 2033 and recorded on February 24, 2003 in the RMC Office
for Charleston County, South Carolina at Book T437, Page 047 and re-recorded on April 3, 2003
at Book Z442, Page 422 ("Master Deed").

4. Cambridge Lakes Condominium Homeowners Association, Inc. is a non-profit
homeowners association organized under, and subject to, the laws of the State of South Carolina.
It was created and established by filing the proper formation documents with the South Carolina
Secretary of State on April 25, 2003 (the "Association").

5. I have been a director of the Association since on or about January 2005 and have
personal knowledge as to the business affairs of the Association and the account of Johnson D.
Koola.

6. Whenever taking action as a director of the Association, I acted in my official capacity as a director and acted in the best interests of the Association.

7. Since November 1 2009, Mr. Koola has failed to pay his monthly regime fee to the Association.

8. On August 10, 2010, the Association filed this lawsuit against Mr. Koola in the Charleston County Small Claims Court to collect unpaid monthly assessments. This lawsuit was subsequently transferred to the Court of Common Pleas.

9. The sole purpose of filing this lawsuit was to recover payment of delinquent assessments from Koola, an action the Association was authorized to take under the Master Deed and Bylaws and was required to take to preserve its assets.

10. During Association Board Meetings, a delinquency report is presented to the Board and we discuss the legal options authorized under the Master Deed and Bylaws that should be taken against delinquent homeowners. Attached as Exhibits A and B to my affidavit are various Association Board Meeting Minutes reflecting these discussions. I certify that the attached meeting minutes are true and accurate copies of the originals, that it is the regular practice of the Association to create said meeting minutes and that said meeting minutes are kept in the ordinary course of business by the Association.

11. During my time as a director of the Association, several liens and collections lawsuits have been filed against members, many of which resulted in the Association obtaining a personal judgment against the homeowner.

12. In May 2010, the Association filed a lien against Mr. Koola's property pursuant to the Master Deed and Bylaws. The lien was filed against Mr. Koola's property because his account was very delinquent. Previously, the Board has filed other liens against Association members who were selling their property to ensure the Association will be paid. (See Ex. A at 3.)

13. The Association's budget is reviewed and adjusted annually. The review of yearly expenditures plus anticipated increases of utilities or repairs is the determining factor when making adjustments to future annual budgets. The annual budget does not change during the calendar year. The budget is presented to the Association members at the annual meeting and the new annual budget takes effect on January 1st each year. Association members may review the proposed annual budget from the date of the annual meeting until January 1st of the new year to review the proposed budget. Attached as Exhibit C to my affidavit are the 2010 Annual Homeowners Meeting Minutes. I certify that the attached meeting minutes are true and accurate copies of the originals, that it is the regular practice of the Association to create said minutes and that said minutes are kept in the ordinary course of business by the Association.

14. In October 2004, the control of the Association was turned over from the developer, Cambridge Two, LLC, to its members.

15. In March-April 2008, the Board of Directors learned of potential construction defects to the Association Property. (See Ex. B at 2, 5.)

16. The construction defects were not disclosed by Cambridge Two, LLC when the Association was turned over to its members.

17. Pursuant to the Association Bylaws, the Association has the power to maintain, repair, replace and operate the common elements at Cambridge Lakes.

18. Pursuant to the Association Bylaws, the Association also has the power to retain legal counsel.

19. Immediately upon learning of the defects, the Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf.

20. The Association did not levy any special assessments against its members to pay for the lawsuit. No member's assessments were increased because of the construction lawsuit.

Thus, the Association was not required to obtain approval from the members prior to filing the construction lawsuit.

21. All expenses associated with the construction lawsuit and paid by the Association were paid from an Association Reserves Account. Attached as Exhibit D to my affidavit are various accounting records showing the account in which funds were paid out related to the construction lawsuit. I certify that the attached accounting records are true and accurate copies of the originals, that it is the regular practice of the Association to create said accounting records and that said accounting records are kept in the ordinary course of business by the Association.

22. After the lawsuit was filed, the Association mailed a letter, dated June 25, 2008, to all members notifying them about the construction lawsuit. The letter merely provided members the opportunity to join the construction lawsuit as a Plaintiff. It did not pressure any member to join the lawsuit. The letter clearly states the Mr. Hayes was being compensated on a contingency fee basis.

23. The Association also held a special member meeting regarding the construction lawsuit. Additionally, John Hayes, Esq. addressed the construction lawsuit with the members at certain annual meetings. (See Ex. C at 1.)

24. Members were not obligated to join the construction lawsuit. Indeed, some members, including Mr. Koola, declined to participate in the lawsuit.

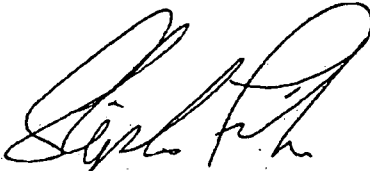
25. Although he chose not to participate in the lawsuit, Mr. Koola will benefit directly from the settlement proceeds. Specifically, all windows in his condominium will be replaced at no charge to him.

26. Every homeowner was affected by the construction lawsuit as nobody has been able to refinance their condominium during this time.

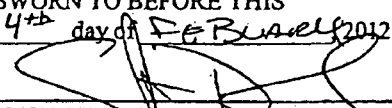
27. It was necessary to file the construction lawsuit to protect the commons elements of the Association, including the exteriors of the buildings.

28. I have not acted dishonestly, incompetently or in bad faith while acting as a director of the Association.

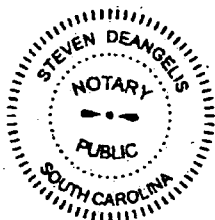
FURTHER AFFIANT SAYETH NOT.


STEPHAN FISCHER

SWORN TO BEFORE THIS
4th day of FEBRUARY 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:

My Commission Expires
April 18, 2021



AFFIDAVIT OF STEPHAN FISCHER

EXHIBIT A

4/24/07 Minutes of Cambridge Lakes HOA Board Meeting

The Cambridge Lakes Home Owner's Association Board of Directors met on April 24, 2007 at the Clubhouse in Mount Pleasant, South Carolina.

Members present: Blevins, Erin; Henning, M. "Ann"; Merriman, Jay
absent: Fischer, Steve
resigned: Mc Kensie, Glenna
Management: Jackson, April

The meeting was called to order by Ms. Jackson at 6:30 P.M.

Minutes The minutes were approved with one correction (under Pine remove "this year" change to - Pine straw will be placed earlier than last year.)

Committees

Financial Since the report contained many recommendations, the board voted as the information was presented in the report.

Motion:

Vent covers Mrs. Blevins recommended that Animal Control Specialists be awarded the contract to trap any animals/birds, clean and place a wire covering over all the vents on buildings B immediately and E to be completed in June- for \$1270 per building.

The motion was approved.

Due to budget constraints, other buildings will be considered by the Financial as the need arises.

Motion:

Paint Front of E Mrs. Blevins advised that Frank DeJong Painting Co. should get the bid to power wash, prime, and paint the front of building E for \$6600 in June.

The motion was approved.

Suggestions included : better grade of weather resistant paint, notification of residents before power washing screened porch fronts, and removal of screens on bay windows.

The financial Committee will devise the timing of painting of the other buildings due to the expense. Mr DeJong will also submit a bid to the Committee for future painting of the interior of the buildings.

Motion :

**Fiberboard
repair**

Ms. Blevins suggested that Rapid Repairs be given the contract to repair the crumbling fiberboard under several bay window units on buildings B and C for \$1300 in June

The motion was approved.

Motion :

HVAC

Mr Merriman recommended to accept the bid from ClimateMakers for routine maintenance twice a year-\$3840; installation of float switches-\$575;also two additional change out of filters -\$575
(We will supply the high efficiency filters.)

The motion was approved.

Motion :

**Termite
bond**

Mrs. Blevins moved that Power Pest Management be awarded the Termite Bond for the initial Termidor application (10 year warranty) for \$9,472 and annual inspection for \$1,184.

The motion was approved.

Motion :

**CD
purchase**

Mrs. Blevins advised that the Board purchase six month Certificates of Deposits for \$10,000 to secure a higher interest rate for some of the Capitol Reserve funds.
(The penalty for withdrawal is only the interest accrued.)

The motion was approved.

Landscape

The report was referred to the Financial Committee to recommend approval.
Pine straw will be laid in May and billed in June.

Miscellaneous

Boat

registration

Four people registered during the annual sign up.
One unit owner will be advised to put his name on the boat registration to keep it consistent with our rules.

Pool

code

Mr. Fischer will change the pool code. Ms. Jackson will send the change out in the next bill.

Misc.cont.

Towing
sign Crosby towing no longer places signs. Ms. Jackson will have our sign replaced.

Leases Ms. Jackson has had 14 lease copies returned (out of 35(?)) Fines for unreturned forms will be levied soon.

Delinquency
report Outstanding regime fees total \$14,000. Several people have paid their fees, but some still have late fees to pay. One owner is selling his unit and has outstanding fees due. Ms. Jackson will speak to his realtor and begin the lien process.

Adjournment Ms. Jackson adjourned the meeting at 8:00 P.M.

Next meeting: April 22, 2007 at 6:30 P.M.

Secretary: *Margel "M" [Signature]*

1/27/2009 Cambridge Lakes HOA Board Meeting Minutes

The Cambridge Lakes Home Owners Association Board Meeting was held on January 27, 2009 at the Clubhouse in Mount Pleasant, South Carolina.

Members present: Blevins, Erin ; Fischer, Steve ; Henning, M."Ann"
Henning ; Martin, John ; Merriman, Jay.
Management present: Martin, Sherry

President Fischer called the meeting to order at 6:30 P.M.

Minutes The minutes of December 2, 2008 were approved as read. The date of the next meeting will be changed to January 27, 2009.

Update Mr. Hayes gave an update to the Board. A meeting will be planned so that He can share this with the homeowners.

Reports

Budget The income and expenses for 2008 were discussed.

Delinquent Three properties have been foreclosed-1409 ,1433, 1529 by their respective Banks.
Sixty day notices were sent in December, if not paid they will have a lien placed on their property.

Project List See attached form.

Unfinished Business

Housekeeping contracts We will continue to evaluate the current applicant, 2 Guys with an Eye through February. At the next meeting the Board will decide the next step.

Leases Lease information is kept current at the Ravenel offices. Changes are made as needed and the Board reviews the information as needed.

Spa There is a gas leak in the spa system as well as the need to put in a new safety drain . Mr. Martin will check out the gas leak problem. The entire pool and spa will have to remain closed until the new safety drains are installed. Ms. Martin will send out an E-mail to notify the homeowners.

Pg 2

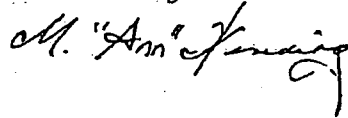
New Business

Stop sign Mr. Fischer shared a homeowner's complaint about people ignoring
Stop signs. The persons involved will receive a letter or phone call.

Adjournment Mr. Fischer adjourned the meeting at 8:30 P.M.

Next meeting February 24, 2009

Secretary M. "Ann" Henning

A handwritten signature in cursive script, appearing to read "M. 'Ann' Henning".

8/31/2010 Cambridge HOA Board Meeting Minutes

The Cambridge Lakes Home Owner's Association Board of Directors met on August 31 2010 at the Clubhouse in Mount Pleasant, South Carolina.

Members present : Blevins, Erin ; Fischer, Steve ; Henning, M. "Ann" ;
Martin, John ; Merriman, Jay
Management present : Lemieux, Melissa

President Fischer called the meeting to order at 6:30 P.M..

Minutes The minutes of July 27, 2010 were approved as read.

Reports

Management

Budget Ms Lemieux reported that the HOA is staying within the budget. Ms. Blevins, Treasurer, reported that she authorized the transferal \$5,000 from the HOA Reserve Fund to the Operating fund .

Delinquent Ms. Lemieux shared the delinquent report. Nine homeowners are on the list. Some delinquent fees were paid after being notified that their debts had been sent to Small Claims court.

As the different Liens, Bankruptcy, and Small Claims cases proceed, there is a need for some one to attend these hearings. Ms. Lemieux will make sure that this is covered .

Financial Committee

Ms. Blevins explained the report of the committee . See attached report.

MOTION

2010 BUDGET

Ms. Blevins reported that the financial had two options with the budget.

1. Close the Spa permanently and keep the budget (and Regimes fees the same)
2. Repair the Spa , reflect the repairs and upkeep in the budget (and Regime Fees would be raised.)

Option one was chosen.

Ms Blevins moved that the 2010 Budget for Cambridge Lakes be approved which would remain the same for another year with no increase in Regime fees.

Opportunity will be given for input about the replacement of the amenity will be given to the HOA.

The motion was approved by the Board of Directors.

Pg 2

**MOTION
CAPITOL
RESERVE
FORECAST**

Ms Blevins discussed the Capitol Reserve Fund Forecast
This information is in the Financial Committee Report.

Ms Blevins requested that most of the capitol spending items be postponed until next year. (Exceptions include: HVAC, elevator, fire system, and light replacement repairs.)

The motion was approved by the Board.

Ms. Lemieux recommended that the Board get a professional Reserve Study to get a written report on future needs of the community (roof, asphalt, pool, etc.) She will research the topic.

Ms. Lemieux has arranged the renewal of most HOA contracts to be done at the beginning of the year (instead throughout the year.)

**Unfinished
Business
Project list**

B door Installation of glass completed

Carpets Stanley Steemer completed. No stretching needed.

E carpet Boss Disaster Restoration, Inc must return to Bld E and complete the work they started on carpet on third floor (site of HVAC overflow).

MOTION

POWER WASHING Mr Fischer moved that Window Gang be given the contract to wash lobby windows inside and out as well as power wash the entrance pavers.

The motion was approved by the Board of Directors

MOTION

TRASH COLLECTION Mr. Fischer moved that Fennell Container Co. be given the contract to haul away the garbage starting November 16, 2010.

The motion was approved by the Board of Directors.

Pg 3

Elevator service Due to a mistake by a previous manager, it was brought to the attention of the Board that Schindler had another year on their contract. Therefore the contract with Carolina Elevator (approved 7/31/2010) is voided.

Spa The topic of repairing/replacing the spa will be brought up at the Annual meeting. Information will be sent out ahead of time about the problems and the need for input from the HOA members.

Pinestraw Mr. Martin will get more straw for the landscapers to place.

Garage

Ownership Two garages have yet to be identified. Ms. Lemieux will have them re-posted. She will also seek to find out if we can enter the garages to find out ownership (The By-laws allow entering the condo units if needed - is it the same for the garages?) In case of a fire or hurricane damage- management needs to know who owns them.

Boat yard All boats in yard have stickers. One sticker is questionable. Mr. Martin will send Mr. Fischer the boat's hull/registration number.
Ms. Lemieux will send out an updated list of boat owners.

New Business

Comcast contract.

Comcast has requested to renew contract from 1999. This topic is deferred to the September meeting. More facts are needed.

Boatyard fee refund

The request from boat owner to refund fee after one month's use was denied. It was recommended that if the form does not state that fee is non-refundable, it should.

Elections All directors are up for re-election. A method of staggering the terms will be decided during the September meeting.

Homeowner Proposal A payback of debt was approved. The method and dates were included.

Pg 4

New Business

**MOTION
CLEANING
SOFFITS AND
GUTTERS**

Mr Fischer proposed that all building and garage soffits and gutters be power washed by the Ravenel Service Department for \$2800.

The Board of Directors approved conditionally.

The above bid did not include the garages, so this must be added to the Ravenel bid .. Ms. Lemieux will notify the Board of his decision.

Annual meeting October 26, 2010

Adjournment Mr. Fischer adjourned the meeting at 8:10 P.M.

Next meeting Early to plan for Annual meeting.
September 14, 2010

Secretary M. "Ann" Henning

5/31/2011 Cambridge Lakes H.O.A Board Meeting Minutes

The Cambridge Lakes Home Owner's Association Board met on May 31, 2011 at the Clubhouse in Mount Pleasant, South Carolina.

Present: Fischer, Steve; Blevins, Erin; Martin, John; Laura Latorre.
Management: Shaluly, Coleen.

President Steve Fischer called the meeting to order at 6:30 P.M.

Minutes The minutes of April 26, 2011 were approved as read.

Reports
Budget The budget was discussed and questions were answered.

Delinquent No new names were listed as being late (over 90 Days). The same homeowners continued to be in the legal process with liens applied and judgments sought. Those who continue to not pay and receive fines are: 1431-Forbes, 1455-Taylor, 1499-Commander/Waite, 1491- Beach, 1579-Hartnett, 1587-Koola. Mrs. Shaluly reported that the judgment was satisfied and the money was collected from 1487- Christodal/ The Naws when they tried to sell another property.

Manager's Project List

Completed:

- 1.) Measuring stick in lagoon was installed- needs to be re-installed with the actual depth markings.
- 2.) Mr. Martin had installed the new signs. More signage may be necessary.
- 3.) Door closures have been repaired.
- 4.) Letters were written to owners advertising on Craig's List as month to month rentals.
- 5.) Legal opinion on limiting rentals to 30%. There is a Case Law against Restriction of Use of units. 100% of ownership would have to agree in order to restrict the use of units. Krawchek & Davidson.

Incomplete:

- 1.) Depth marker needs to be re-installed.
- 2.) Bids for other pergolas for spa replacement

Pending:

- 1.) Elevator bids, Reserve Study, new depth marker

New Business

Mr. Martin reported that we need to start watering the grass. He believes we can attach the out put of the pumps directly into the irrigation lines. Mr. Martin will obtain a proposal from the landscapers to have this work completed.

Noise & Trespassing

Several complaints have been received in regards to the tenants and their guests in unit 1441. Mrs. Shaluly reported that the lease ends on June 11, 2011 and they will be moving out.

Front Entry Doors

Mr. Martin and Mrs. Shaluly will work on getting prices for replacements for these doors as future reserve expenditure.

Next Meeting

The next meeting is scheduled for June 28, 2011.

Adjournment

President Fischer closed the meeting at 7:30 P.M.

Respectfully Submitted:

Coleen Shaluly, Regime & Association Manager for Ravenel Associates, Inc.

AFFIDAVIT OF STEPHAN FISCHER

EXHIBIT B

4/22/2008 Cambridge Lakes HOA Board Meeting Minutes

The Cambridge Lakes Home Owners Association Board met on April 22, 2008 at the Clubhouse in Mount Pleasant, South Carolina.

Present : Blevins, Erin; Fischer, Steve; Henning, M. "Ann" ; Martin, John;
Merriman, Jay
Management: Moore, Joy

The meeting was called to order by President Fischer at 6:20 P.M.

Minutes The minutes for March 25, 2008 were approved as read.

Reports

Management

Budget The budget was discussed. Several financial questions were brought up and discussed.

Motion

Cd renewal Ms. Blevins suggested that the current Certificate of Deposit be renewed (reinvested) for another six months' period.
The motion carried.

Delinquent Several homeowners are in the process of being foreclosed. This is a lengthy process.

Mr. Fischer will speak to the lawyers for court dates, etc.

Unfinished Business

Pool signs Required signs will be installed by Mr. Fischer and Martin.

Motion

pool hours Mr. Fischer requested that the pool hours be changed to 7 A.M.-10 P.M. (Ms. Moore will have the gate access changed to reflect these times.)
The motion carried.

Insurance

Costs The renewal of our insurance came with an increase of \$10,000. Ms. Moore will get back to the Board about the increase.

Pg.2

Unfinished

Business, Cont.

Spa Due to the huge increase in usage of gas for the spa heater, Ms. Moore will contact Berkley Gas & Electric to notify them to not fill the tank automatically. Mr. Fischer or Martin will check the levels and notify Ms. Moore when to call for a refill. The heater will be turned off from May to October to help cut down on costs.

New Business

Homeowner

request The water intrusion for unit 1487 will be checked. Ms. Moore will get estimates to check the damages from the inside of the unit as well as the interior of the unit

just

above unit 1487.

Adjournment President Fischer adjourned the meeting at 8:35 P.M.

Next meeting: May 27 at 6 P.M.

Secretary M."Ann" Henning

M. "Ann" Henning

3/25/2008 Cambridge Lakes HOA Board Meeting Minutes

The Cambridge Lakes Home Owner Association Board met on March 25, 2008 at the Clubhouse in Mount Pleasant, South Carolina.

Present: Blevins, Erin; Fischer, Steve; Henning, M. "Ann";
Martin, John; Merriman, Jay.

Management: Moore, Joy

The meeting was called to order at 6:15 P.M. by President Fischer.

Minutes The minutes for February 26, 2008 were approved with one correction on page 2: quote for carpet cleaning \$4021.

Reports

Property Manager Budget The budget was discussed.

Delinquents Several accounts are delinquent. Some of the home owners have paid their delinquent regime fees.

Financial committee See attached report.

Motion

Front Landscaping Ms. Blevins requested that the Landscape improvement project be approved for the front entrance and sides of Buildings C&D for \$2,294.
The motion was approved

Motion

Paint Bldg B Ms. Blevins proposed that appropriate outdoor Building B surfaces receive power washing and painting for \$11,000.
The motion was approved.
Ms. Moore will notify residents of the building by posting notices.

pg.2

Motion:

**Sidewalk
repair**

Ms. Blevins moved that the broken sidewalk in front of building B repair be approved for \$175.

The motion was approved.

**Unfinished
business**

Motion:

fire panel

Mr. Fischer moved that an emergency project to replace broken fire panels in buildings A&E for \$2,294 be approved.

The motion was approved

**Insurance
renewal**

Due to increase in insurance rates, management was seeking quotes for the same coverage at a better rate. Since the due date was at the end of the week, the committee told Ms. Martin to do the best she could.

Motion:

Insurance

Ms. Blevins moved that the bid from State Farm Insurance should be accepted for general liability and Board coverage for one year at rate of \$70,047 with the same coverage and better deductible rate.

The motion was approved.

**Project
List**

See attached.

Ms. Moore will look into replacing our pool furniture with used but useable furniture from another property that is discarding theirs.

Motion:

Pool&

Spa

Mr. Fischer recommended:

the Pool and Spa access be limited to posted pool hours- 9AM-9PM

in addition, the spa will be heated -Nov.1-May 1

The motion was approved.

Ms. Moore and Martin will work on the computerized security system in place for it to set the hours that the security fobs work. They will also find out if the people in the pool area after 9PM could get out.

pg.3
New
Business

No parking People continue to park on an area of grass beside Bldg c next to the garage. Mr. Fischer requested that several of the bushes being transplanted be replanted in the area next to the garage nearest to building E.

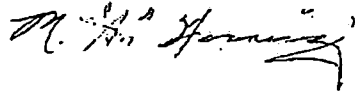
Aging trees Mr Martin and Fischer will look at a tree that Mr. Brown (landscaper) says is dying.

Homeowner request The Board discussed the letter from a resident about building leaks. Ms. Moor will seek quotes from building experts (3) about the problem.

Adjournment The meeting was adjourned by Mr Fischer at 8:20 PM.

Next mtg April 22,2008.

Secretary M "Ann" Henning



AFFIDAVIT OF STEPHAN FISCHER

EXHIBIT C

2010 Annual Home Owners' Association Meeting

The Annual Meeting of the Cambridge Lakes Home Owner's Association was held on October 26, 2010 at the clubhouse in Mount Pleasant, South Carolina..

Call to Order

President Fischer Called the meeting to order at 6:30 PM.

Quorum

Ms. Lemieux, Ravenal Property Manager, announced that there was a quorum (51%) present - either in person or by their proxy.

In person

By proxy

Minutes

The minutes of the 2009 Annual HOA meeting (mailed earlier) were approved as read.

Reports

President's Report

The report had also been mailed out earlier. Mr. Fischer added a few reminders to the report:

Excessive number of Owners not paying late fees is a burden to all other Owners. Trash/ large items should not be left beside the dumpster. Please advise tenants that HOA has to pay extra to haul the large items.

Satellite dishes are not permitted per our By-Laws (Article VII, 7)

The Board will be looking at the By-laws for updating and revision.

Pets and their waste continue to be a problem. Owners are asked to be more respectful of others and pick up behind their pets. Tenants should be given a copy of the Rules and Regulations.

Lawsuit Report

Mr. Hayes presented an update on the Lawsuit against Bostic Brothers, et al. For questions, please call Mr. Hayes at 843 805 7003.

Budget

Ms. Lemieux presented the budget approved by the Board of Directors. There will be no increase in Regime fees. (Please see Spa repair below).

Spa Repair report

NOTE: Although not listed in the By-laws specifically, the topic is mentioned in the Master Deed under Declaration: 2c Common Elements-"all improvements to the premises." Such Declarations must be amended when changed/replaced.

Reports, cont.

Spa repair, cont.

The total vote about the Spa was less than the needed 66 %. Therefore, the vote must be taken again. Ms. Lemieux will be sending this out again shortly. The board urges all Owners to vote.

In the meantime, the Spa will continue to be closed due to the expenses to bring the Spa up to S. C. DHEC regulations. The cost of the running the Spa continues to go up because of the cost of propane gas for heating. Please forward any suggestions for replacement of the spa to Ms. Lemieux.

Election

Note: Article II-1 of By-laws; Board of directors shall be from three - seven in number.

Two new members: Mr. Darnell, Ms. Latorre

Five returning members: Ms Blevins and Henning-Mr. Fischer, Martin, and Merriman

The entire slate was approved by votes in person /proxy

In answer to a question from the floor, requirements for being on the Board :

1. The person's name must be on record (deed) as the owner of a Cambridge Lakes unit.
2. The person must not be in arrears in regards the Regime Fee/fines.

Helpful: Must be able to meet monthly /as needed and able to respond to e-mails frequently.

Open Forum

There was a general questions and answers period. Some of the topics:

Picking up large items for the landfill and more visible signs, possible pick up service, owners giving information to new tenants

Grill replacement...cleaning up existing grills, using small portable charcoal grills, No storage of propane inside unit, outside on porch/storage unit, or garages.

Clubhouse rental costs too much...\$250 non-refundable, \$100 refundable

The above topics will be addressed at future Board meetings.

Questions: Call Melissa Lemieux at 843-352 0300

Adjournment

Mr. Fischer closed the meeting at 8:20 PM

Secretary: M. "Ann" Henning

AFFIDAVIT OF STEPHAN FISCHER

EXHIBIT D

Fri Sep 16, 2011 11:43 am
Report: dvr_ap_check_disbursement2

Cash Disbursement by Vendor
Cambridge Lakes HOA
Sun Mar 01, 2009 thru Tue Mar 31, 2009

User: byrrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>Myles Glick Architect, LLC</u>					
Check Date: 03/10/2009	Bank: not used-NBSC	Check Number: 00010001	Check Amount: 16,900.00		16,900.00
	228 - 6025 - Property Evaluation/Consulting - Fund #2		03/09/2009 Non & Destructive Testing, Report		
			Total for Myles Glick Architect, LLC		16,900.00
<u>Ravenel Associates, Inc</u>					
Check Date: 03/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010003	Check Amount: 1,742.00		1,742.00
	228 - 5020 - Management Fees		03/01/2009 Monthly Mgmt Fee		
Check Date: 03/25/2009	Bank: South Carolina Bank & Trust	Check Number: 00010011	Check Amount: 325.95		
	228 - 5000 - Stationery & Office Supplies		03/01/2009 Monthly Billing/Supply		14.13
	228 - 5000 - Stationery & Office Supplies		03/19/2009 03/08 Copies		80.60
	228 - 5005 - Postage		03/19/2009 03/08 Postage		50.72
	228 - 6035 - Maintenance		03/25/2009 Damage assessment		87.75
	228 - 6035 - Maintenance		03/25/2009 repair hole in elevator		56.50
	228 - 6035 - Maintenance		03/25/2009 install screen		24.25
			Total for Ravenel Associates, Inc		2,067.95
<u>Royall Ace Hardware</u>					
Check Date: 03/10/2009	Bank: South Carolina Bank & Trust	Check Number: 00010004	Check Amount: 57.51		
	228 - 6035 - Maintenance		03/09/2009 Paintbrush, paint		10.71
	228 - 6035 - Maintenance		03/09/2009 Spackle		7.73
	228 - 6035 - Maintenance		03/09/2009 Bulbs		36.93
	228 - 6035 - Maintenance		03/09/2009 Bulb		2.14
			Total for Royall Ace Hardware		57.51
<u>S.C. Dept. Of Revenue</u>					
Check Date: 03/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00001008	Check Amount: 36.00		
	228 - 5080 - State Income Tax Expense		03/13/2009 2009 Estimated State Tax		36.00
			Total for S.C. Dept. Of Revenue		36.00
<u>SCB&T</u>					
Check Date: 03/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00001007	Check Amount: 209.00		
	228 - 5055 - Federal Income Tax Expense		03/13/2009 2009 Estimated Federal Tax		209.00
			Total for SCB&T		209.00

Fri Sep 16, 2011 11:44 am
Report: dwr_ep_check_disbursement2

Cash Disbursement by Vendor
Cambridge Lakes HOA
Wed Apr 01, 2009 thru Thu Apr 30, 2009

User: byrrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
John Martin					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust 228 - 6415 - Landscape Maintenance - Misc.	Check Number: 00010028	Check Amount: 225.00 04/22/2009 Reimb. owner (Lowe's)		225.00
				Total for John Martin	225.00
Lowcountry Pool Boy					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust 228 - 6300 - Pool Contract	Check Number: 00010029	Check Amount: 685.00 04/01/2009 Monthly Pool Service		685.00
				Total for Lowcountry Pool Boy	685.00
Mead's Tree Service, Inc.					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust 228 - 6415 - Landscape Maintenance - Misc.	Check Number: 00010030	Check Amount: 480.00 04/22/2009 Remove tree/limb/haul debris		480.00
				Total for Mead's Tree Service, Inc.	480.00
Mount Pleasant Waterworks					
Check Date: 04/10/2009	Bank: South Carolina Bank & Trust 228 - 6400 - Water - Irrigation	Check Number: 00010016	Check Amount: 89.14 04/09/2009 03/11/09		89.14
				Total for Mount Pleasant Waterworks	89.14
Pritchard & Elliott, LLC					
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust 228 - 5035 - Legal - Lien	Check Number: 00010031	Check Amount: 297.50 04/22/2009 CL Liens		297.50
				Total for Pritchard & Elliott, LLC	297.50
Pro-Legal Copies Inc.					
Check Date: 04/10/2009	Bank: South Carolina Bank & Trust Reserve 228 - 8145 - Reserve Expenditure - Fund #2	Check Number: 00010001	Check Amount: 85.46 04/09/2009 Copies for Lawsuit		85.46
				Total for Pro-Legal Copies Inc.	85.46
Ravanel Associates, Inc.					
Check Date: 04/08/2009	Bank: South Carolina Bank & Trust 228 - 5000 - Stationery & Office Supplies	Check Number: 00010014	Check Amount: 1,756.13 04/01/2009 Monthly Billing/Supply		1,756.13
			04/01/2009 Monthly Mgmt Fee		1,742.00
Check Date: 04/10/2009	Bank: South Carolina Bank & Trust 228 - 6035 - Maintenance	Check Number: 00010018	Check Amount: 58.50 04/09/2009 Side Exit Doors WOH 89		58.50
Check Date: 04/30/2009	Bank: South Carolina Bank & Trust 228 - 5000 - Stationery & Office Supplies	Check Number: 00010032	Check Amount: 70.63 04/22/2009 Supplies/Forms		8.64

Cash Disbursement by Vendor
Cambridge Lakes HOA
Mon Jun 01, 2009 thru Tue Jun 30, 2009

User: Byrrell
Elizabeth Tyrrell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
East Coast Pest Management, Inc.					
Check Date: 06/25/2009	Bank: South Carolina Bank & Trust				
	228 - 8245 - Pest Control				
		Check Number: 00010071	Check Amount: 152.00		152.00
		06/01/2009	Monthly Pest Control		
			Total for East Coast Pest Management, Inc.		152.00
East Cooper Lock And Safe, Inc.					
Check Date: 06/25/2009	Bank: South Carolina Bank & Trust				
	228 - 6035 - Maintenance				
		Check Number: 00010072	Check Amount: 65.00		65.00
		06/25/2009	Service Call		
			Total for East Cooper Lock And Safe, Inc.		65.00
Hayes Law Firm, LLC					
Check Date: 06/25/2009	Bank: South Carolina Bank & Trust Reserve				
	228 - 9145 - Reserve Expenditure - Fund #2				
	228 - 9145 - Reserve Expenditure - Fund #2				
		Check Number: 00010068	Check Amount: 200.86		65.00
		06/25/2009	CBL v Bostic Brothers		139.86
		06/25/2009	Cor. to Richard Davis		200.86
			Total for Hayes Law Firm, LLC		200.86
Hiller Systems, Inc.					
Check Date: 06/10/2009	Bank: South Carolina Bank & Trust				
	228 - 6035 - Maintenance				
		Check Number: 00010058	Check Amount: 510.00		510.00
		06/10/2009	Bldg 1-after hours emergency call		
Check Date: 06/25/2009	Bank: South Carolina Bank & Trust				
	228 - 6035 - Maintenance				
		Check Number: 00010073	Check Amount: 380.00		380.00
		06/25/2009	Low Batteries on Panel Bldg A		
			Total for Hiller Systems, Inc.		890.00
Lowcountry Pool Boy					
Check Date: 06/25/2009	Bank: South Carolina Bank & Trust				
	228 - 6300 - Pool Contract				
		Check Number: 00010074	Check Amount: 685.00		685.00
		06/01/2009	Monthly Pool Service		
			Total for Lowcountry Pool Boy		685.00
Maintain, Inc.					
Check Date: 06/25/2009	Bank: South Carolina Bank & Trust				
	228 - 6035 - Maintenance				
		Check Number: 00010075	Check Amount: 85.00		85.00
		06/25/2009	Check HVAC line 1495		
			Total for Maintain, Inc.		85.00
Mount Pleasant Waterworks					
Check Date: 06/10/2009	Bank: South Carolina Bank & Trust				
	228 - 6400 - Water - Irrigation				
		Check Number: 00010059	Check Amount: 244.13		244.13
		06/10/2009	Water		
			Total for Mount Pleasant Waterworks		244.13

Fri Sep 18, 2011 11:51 am

Report: dwf_sp_check_disbursement12

Cash Disbursement by Vendor
Cambridge Lakes HOA
 Wed Jul 01, 2009 thru Fri Jul 31, 2009

User: blyrell
 Elizabeth Tynell

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
<u>Ravenel Associates, Inc</u>					
Check Date: 07/24/2009	Bank: South Carolina Bank & Trust	Check Number: 00010101	Check Amount: 73.32		
	228 - 5000 - Stationery & Office Supplies	07/23/2009	Copies		2.60
	228 - 5005 - Postage	07/23/2009	Postage		48.47
	228 - 6035 - Maintenance	07/23/2009	Place Extension on Gutter Spout		24.25
			Total for Ravenel Associates, Inc		1,893.82
<u>Royall Ace Hardware</u>					
Check Date: 07/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00010090	Check Amount: 75.02		
	228 - 6035 - Maintenance	07/13/2009	Paper Towels/Trash Bags		54.14
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	196513	5.81
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	188018	4.84
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	195371	8.57
	228 - 6035 - Maintenance	07/13/2009	Misc. Supplies	194895	3.86
			Total for Royall Ace Hardware		75.02
<u>SCE&G</u>					
Check Date: 07/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00010091	Check Amount: 3,371.81		
	228 - 8210 - Electricity	07/13/2009	0521/09-062309		3,371.81
			Total for SCE&G		3,371.81
<u>Schindler Elevator Corporation</u>					
Check Date: 07/13/2009	Bank: South Carolina Bank & Trust	Check Number: 00010092	Check Amount: 2,829.60		
	228 - 6070 - Elevator Maintenance	07/13/2009	Preventive Maint.		2,829.60
			Total for Schindler Elevator Corporation		2,829.60
<u>The Greenery, LLC</u>					
Check Date: 07/24/2009	Bank: South Carolina Bank & Trust	Check Number: 00010102	Check Amount: 2,265.00		
	228 - 8410 - Landscape Maintenance Contract	07/01/2009	Monthly Landscape Contract		2,265.00
			Total for The Greenery, LLC		2,265.00
<u>Thomas J. Carlson</u>					
Check Date: 07/27/2009	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010007	Check Amount: 2,150.00		
	228 - 8145 - Reserve Expenditure - Fund #2	07/27/2009	Destructive Testing Equipment Rental		2,150.00
Check Date: 07/27/2009	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010008	Check Amount: 4,480.48		
	228 - 8145 - Reserve Expenditure - Fund #2	07/27/2009	Roofing Inspections		4,480.48

Fri Sep 16, 2011 11:58 am
 Report: dwr_ap_check_disbursement2

Cash Disbursement by Vendor
 Cambridge Lakes HOA
 Sat May 01, 2010 thru Mon May 31, 2010

User: vphillips
 Vickie Phillips

Vendor	Dept. Account - Project	Trans Date	Remarks	Reference	Amount
State Farm Insurance Companies					
Check Date: 05/12/2010	Bank: South Carolina Bank & Trust	Check Number: 00010291	Check Amount: 7,049.83		
	228 - 5085 - Insurance Expense	05/11/2010	Acci 0467-5848-27	Insurance	7,049.83
			Total for State Farm Insurance Companies		7,049.83
Thomas J. Carlson					
Check Date: 05/04/2010	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010025	Check Amount: 0.00		
	228 - 9145 - Reserve Expenditure - Fund #2	04/30/2010	Construction Consultant	Case 2008 CP 10 3506	10,000.00
	228 - 9145 - Reserve Expenditure - Fund #2	04/30/2010	"VOID" Construction Consultant	Case 2008 CP 10 3506	(10,000.00)
Check Date: 05/05/2010	Bank: South Carolina Bank & Trust Reserve	Check Number: 00010026	Check Amount: 10,000.00		
	228 - 9145 - Reserve Expenditure - Fund #2	05/05/2010	Construction consulting	Misc	10,000.00
			Total for Thomas J. Carlson		10,000.00
Two Guys With An Eye					
Check Date: 05/26/2010	Bank: South Carolina Bank & Trust	Check Number: 00010300	Check Amount: 1,850.00		
	228 - 6260 - Janitorial Contract	05/01/2010	Monthly Janitorial Contract		1,850.00
			Total for Two Guys With An Eye		1,850.00
Waste Industries, Inc.					
Check Date: 05/19/2010	Bank: South Carolina Bank & Trust	Check Number: 00010294	Check Amount: 792.40		
	228 - 6265 - Refuse Collection	05/18/2010	April service period	Refuse collection	792.40
			Total for Waste Industries, Inc.		792.40
			Total for Cambridge Lakes HOA		40,528.14

Cash Disbursement by Vendor
Cambridge Lakes HOA
Mon Nov 01, 2010 thru Tue Nov 30, 2010

Vendor	Dept - Account - Project	Trans Date	Remarks	Reference	Amount
Thomas J. Carlson					
Check Date: 11/12/2010	Bank: First Citizens				
	228 - 9030 - Legal Expense Fund #2	11/10/2010	Check Amount: 0.00		(1,978.20)
	228 - 9030 - Legal Expense Fund #2	11/10/2010	"VOID" depo vol I 4/8/10 rfp #1		1,754.20
	228 - 9030 - Legal Expense Fund #2	11/10/2010	depo vol II 8/25/10 rfp #1		(1,754.20)
Check Date: 11/22/2010	Bank: First Citizens				
	228 - 9030 - Legal Expense Fund #2	11/22/2010	Check Amount: 13,732.40		10,000.00
	228 - 9030 - Legal Expense Fund #2	11/22/2010	pymt on acct RFP #8		1,978.20
	228 - 9030 - Legal Expense Fund #2	11/22/2010	depos vol I 4/8/10 RFP #1		1,754.20
	228 - 9030 - Legal Expense Fund #2	11/22/2010	depos vol II 8/25/10 RFP #1		13,732.40
			Total for Thomas J. Carlson		
Two Guys With An Eye					
Check Date: 11/24/2010	Bank: South Carolina Bank & Trust				
	228 - 6260 - Janitorial Contract	11/01/2010	Check Amount: 1,650.00		1,650.00
			Monthly Janitorial Contract		1,650.00
			Total for Two Guys With An Eye		
Waste Industries, Inc.					
Check Date: 11/12/2010	Bank: South Carolina Bank & Trust				
	228 - 6265 - Refuse Collection	11/10/2010	Check Amount: 792.40		792.40
			October		792.40
			000029862		792.40
			Total for Waste Industries, Inc.		792.40
			Total for Cambridge Lakes HOA		75,955.61

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
CAMBRIDGE LAKES HOA,	)	
	)	CASE NO. 2010-CP-10-9305
Plaintiff,	)	
	)	
v.	)	<u>AFFIDAVIT OF MARGEL S. HENNING</u>
	)	
JOHNSON KOOLA,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, Margel S. Henning, who, being duly sworn,
deposes and says as follows:

1. My name is Margel S. ("Ann") Henning. I am over the age of 18 and am legally competent to declare the facts stated herein.
2. I own real property located at 1435 Cambridge Lakes Drive, Mount Pleasant, South Carolina.
3. I have been a director of the Association since 2004 and have personal knowledge as to the business affairs of the Association and the account of Johnson D. Koola.
4. Whenever taking action as a director of the Association, I acted in my official capacity as a director and acted in the best interests of the Association.
5. Since November 2009, Mr. Koola failed to pay his monthly regime fee to the Association.
6. On August 10, 2010, the Association filed this lawsuit against Mr. Koola in the Charleston County Small Claims Court to collect unpaid monthly assessments.

7. The sole purpose of filing this lawsuit was to recover payment of delinquent assessments from Koola, an action the Association was authorized to take under the Master Deed and Bylaws and was required to take to preserve its assets.

8. During Association Board Meetings, a delinquency report is presented to the Board and we discuss the legal options authorized under the Master Deed and Bylaws that should be taken against delinquent homeowners.

9. During my time as a director of the Association, several liens and collections lawsuits have been filed against members, many of which resulted in the Association obtaining a personal judgment against the homeowner.

10. Pursuant to the Association Bylaws, the Association has the power to maintain, repair, replace and operate the common elements at Cambridge Lakes.

11. Pursuant to the Association Bylaws, the Association also has the power to retain legal counsel.

12. When the Board learned of certain construction defects to the common elements of Cambridge Lakes, we retained attorney John C. Hayes, IV to file a construction lawsuit on the Association's behalf.

13. The Association did not levy any special assessments against its members to pay for the lawsuit. No member's assessments were increased because of the construction lawsuit. Thus, the Association was not required to obtain approval from the members prior to filing the construction lawsuit.

14. All expenses associated with the construction lawsuit and paid by the Association were paid from an Association Reserves Account.

15. After the lawsuit was filed, the Association mailed a letter, dated June 25, 2008, to all members notifying them about the construction lawsuit.

16. The Association also held a special member meeting regarding the construction lawsuit.

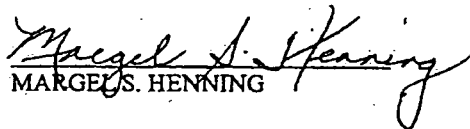
17. Members were not obligated to join the construction lawsuit. Some members, including Mr. Koola, declined to participate in the lawsuit.

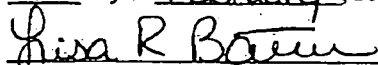
18. Although he chose not to participate in the lawsuit, Mr. Koola will benefit directly from the settlement proceeds. Specifically, all windows in his condominium will be replaced at no charge to him.

19. It was necessary to file the construction lawsuit to protect the commons elements of the Association, including the exteriors of the buildings.

20. I have not acted dishonestly, incompetently or in bad faith while acting as a director of the Association.

FURTHER AFFIANT SAYETH NOT.


MARGE S. HENNING

SWORN TO BEFORE THIS
7th day of February, 2012.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8/30/20

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES HOA,

Plaintiff,

v.

JOHNSON KOOLA,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-9305

AFFIDAVIT OF JOHN T. MARTIN

PERSONALLY APPEARED before me, John T. Martin, who, being duly sworn, deposes and says as follows:

1. My name is John T. Martin. I am over the age of 18 and am legally competent to declare the facts stated herein.

2. I own real property located at 1567 Cambridge Lakes Drive, Mount Pleasant, South Carolina.

3. I have been a director of the Association since 2008 and have personal knowledge as to the business affairs of the Association and the account of Johnson D. Koola.

4. Whenever taking action as a director of the Association, I acted in my official capacity as a director and acted in the best interests of the Association.

5. Mr. Koola has failed to pay his monthly regime fee to the Association for several months.

6. The Association filed this lawsuit against Mr. Koola in the Charleston County Small Claims Court to collect unpaid monthly assessments.

7. The sole purpose of filing this lawsuit was to recover payment of delinquent assessments from Koola, an action the Association was authorized to take under the Master Deed and Bylaws and was required to take to preserve its assets.

8. During Association Board Meetings, a delinquency report is presented to the Board and we discuss the legal options authorized under the Master Deed and Bylaws that should be taken against delinquent homeowners.

9. During my time as a director of the Association, several liens and collections lawsuits have been filed against members, many of which resulted in the Association obtaining a personal judgment against the homeowner.

10. The Association's budget is reviewed and adjusted annually. The review of yearly expenditures plus anticipated increases of utilities or repairs is the determining factor when making adjustments to future annual budgets. The annual budget does not change during the calendar year. The budget is presented to the Association members at the annual meeting and the new annual budget takes effect on January 1st each year. Association members may review the proposed annual budget from the date of the annual meeting until January 1st of the new year to review the proposed budget.

11. On numerous occasions, I personally met with Mr. Koola and reviewed several Association balance sheets and annual budgets with him.

12. In June 2008, the Association filed a construction lawsuit regarding construction deficiencies to Association property.

13. The Association did not levy any special assessments against its members to pay for the lawsuit. No member's assessments were increased because of the construction lawsuit.

Thus, the Association was not required to obtain approval from the members prior to filing the construction lawsuit.

14. All expenses associated with the construction lawsuit and paid by the Association were paid from an Association Reserves Account.

15. After the lawsuit was filed, the Association mailed a letter to all members notifying them about the construction lawsuit.

16. The Association also held a special member meeting regarding the construction lawsuit.

17. Members were not obligated to join the construction lawsuit. Some members, including Mr. Koola, declined to participate in the lawsuit.

18. Although he chose not to participate in the lawsuit, Mr. Koola will benefit directly from the settlement proceeds. Specifically, all windows in his condominium will be replaced at no charge to him.

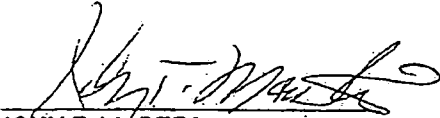
19. It was necessary to file the construction lawsuit to protect the commons elements of the Association, including the exteriors of the buildings.

20. I do not have a personal vendetta against Mr. Koola.

21. I have not acted dishonestly, incompetently or in bad faith while acting as a director of the Association.

[SIGNATURE PAGE TO FOLLOW]

FURTHER AFFIANT SAYETH NOT.


JOHN T. MARTIN

SWORN TO BEFORE THIS

30 day of January, 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 2/25/19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
CAMBRIDGE LAKES HOA,	)	
	)	CASE NO. 2010-CP-10-9305
Plaintiff,	)	
	)	
v.	)	<u>AFFIDAVIT OF ERIN K. BLEVINS</u>
	)	
JOHNSON KOOLA,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, Erin K. Blevins, who, being duly sworn,
deposes and says as follows:

1. My name is Erin K. Blevins. I am over the age of 18 and am legally competent to declare the facts stated herein.
2. I own real property located at 1451 Cambridge Lakes Drive, Mount Pleasant, South Carolina.
3. I have been a director of the Association since approximately 2005 and have personal knowledge as to the business affairs of the Association and the account of Johnson D. Koola.
4. Whenever taking action as a director of the Association, I acted in my official capacity as a director and acted in the best interests of the Association.
5. Since November 2009, Mr. Koola failed to pay his monthly regime fee to the Association.
6. On August 10, 2010, the Association filed this lawsuit against Mr. Koola in the Charleston County Small Claims Court to collect unpaid monthly assessments.

7. The sole purpose of filing this lawsuit was to recover payment of delinquent assessments from Koola, an action the Association was authorized to take under the Master Deed and Bylaws and was required to take to preserve its assets.

8. During Association Board Meetings, a delinquency report is presented to the Board and we discuss the legal options authorized under the Master Deed and Bylaws that should be taken against delinquent homeowners.

9. During my time as a director of the Association, several liens and collections lawsuits have been filed against members, many of which resulted in the Association obtaining a personal judgment against the homeowner.

10. Pursuant to the Association Bylaws, the Association has the power to maintain, repair, replace and operate the common elements at Cambridge Lakes.

11. Pursuant to the Association Bylaws, the Association also has the power to retain legal counsel.

12. The Association retained attorney John C. Hayes, IV to file a construction lawsuit on its behalf immediately upon learning of construction defects to the Association's common elements.

13. The Association did not levy any special assessments against its members to pay for the lawsuit. No member's assessments were increased because of the construction lawsuit. Thus, the Association was not required to obtain approval from the members prior to filing the construction lawsuit.

14. All expenses associated with the construction lawsuit and paid by the Association were paid from an Association Reserves Account.

15. After the lawsuit was filed, the Association mailed a letter, dated June 25, 2008, to all members notifying them about the construction lawsuit.

16. The Association also held a special member meeting regarding the construction lawsuit.

17. Members were not obligated to join the construction lawsuit. Some members, including Mr. Koola, declined to participate in the lawsuit.

18. Although he chose not to participate in the lawsuit, Mr. Koola will benefit directly from the settlement proceeds. Specifically, all windows in his condominium will be replaced at no charge to him.

19. It was necessary to file the construction lawsuit to protect the commons elements of the Association, including the exteriors of the buildings.

20. In January 2007, the monthly regime fee was increased from \$210.00 to \$265.00 due to increases in the cost of services, such as insurance premiums, lagoon maintenance and fire inspections. It was also increased so that more funds could be contributed each month to the Association's capital reserve account.

21. In January 2009, the monthly regime fee was increased from \$265.00 to \$275.00 due to increases in insurance premiums.

22. In January 2012, the monthly regime fee was increased from \$275.00 to \$285.00 due to increases in insurance premiums.

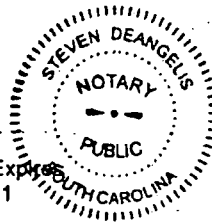
23. I have not acted dishonestly, incompetently or in bad faith while acting as a director of the Association.

FURTHER AFFIANT SAYETH NOT.

Erin K. Blevins
ERIN K. BLEVINS

SWORN TO BEFORE THIS
28th day of FEBRUARY, 2012.
[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:

My Commission Expires
April 18, 2021



WHEREAS, at a meeting of the Managers/Members of CAMBRIDGE TWO, LLC, a South Carolina limited liability company, duly called and held, It was unanimously resolved that the property hereinbelow described be conveyed to the Grantee(s) herein for the consideration hereinafter shown and that ALBERT V. ESTEE, as its MEMBER / MANAGER be and is authorized to execute this deed of conveyance on behalf of the said limited liability company as its act and deed.

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, that CAMBRIDGE TWO, LLC, a SC Limited Liability Company, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of *ONE HUNDRED FIFTY-ONE THOUSAND THREE HUNDRED TWENTY-FIVE and NO/100 (\$151,325.00)* and Subject to the Restrictions, Easements, and Limitations as hereinafter set forth, if any, to the Grantor paid by JOHNSON D. KOOLA (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and, by these presents, does grant, bargain, sell and release unto the said JOHNSON D. KOOLA, his/her/their Heirs and Assigns, the following described property, to-wit:

ALL that certain condominium unit known and designated as UNIT 208, BUILDING E, CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME, a Horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act, Section 27-31-10, et seq., 1976, South Carolina Code of Laws, as amended, and submitted by Master Deed dated February 24, 2003 and recorded in the Office of the RMC for Charleston County, South Carolina in Book T-437 at Page

047. SAID dwelling unit conveyed hereby being shown on Exhibit "F" attached to the Master Deed.

CONVEYED TOGETHER WITH: (1) An undivided percentage in the common elements, restricted common areas, and facilities of the property described in said Master Deed ("Common Elements") attributable to the said Unit; (2) An easement for the continuance of all encroachments by the Dwelling Unit on any adjoining unit or common elements existing as a result of construction of the Condominium Unit(s) or which may come into existence hereafter as a result of settling or shifting of the dwelling unit(s) or of the other condominium unit(s), after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain percentages, or by reason of alteration or repair to the common elements made by or with the consent of the Board of Administration; (3) An easement in common with the owners of other condominium units to use any pipes, wires, ducts, flues, cables, conduits, public utility lines and other common elements located in any other rights and easements in common with the other condominium unit owners, all as described in the Master Deed, Bylaws and any and all Amendments thereto as recorded in the Office of the RMC for Charleston County, South Carolina.

SUBJECT to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina, including, but not limited to those contained in said Master Deed and/or Bylaws, and any and all Amendments thereto.

THIS being a portion of the same property as conveyed to CAMBRIDGE TWO, LLC by Deed of Cambridge Lakes, L.P., A SC Limited Partnership, dated April 2, 2003 and duly recorded in the Office of the RMC for Charleston County, South Carolina, in Book Z-442 at Page 141.

TMS No.: 559-14-00-157

Tax District: 2-1

BK Y484PG815

Grantees'

Address: 1587 Cambridge Lakes Drive, Mt. Pleasant, SC 29464

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, JOHNSON D. KOOLA, his/her/their Heirs, Successors and Assigns forever.

And the Grantor does hereby bind the Grantor and the Grantor's Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee hereinabove named and the Grantee's Heirs and Assigns against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

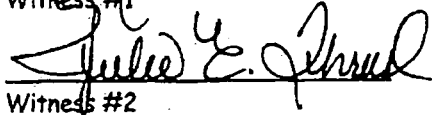
BK Y484PG816

WITNESS the hand and seal of the Grantor this 20th day of February in the
year of our Lord Two Thousand Four (2004) and in the Two Hundred Twenty-Eighth
(228) year of the Sovereignty and Independence of the United States of America.

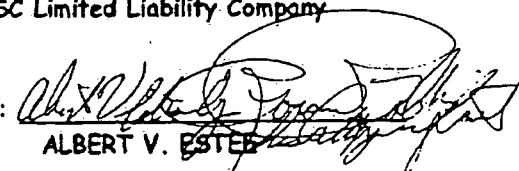
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

CAMBRIDGE TWO, LLC
a SC Limited Liability Company

Witness #1


Witness #2

BY:


ALBERT V. ESTEE

ITS: Member / Manager

NAMES MUST BE SIGNED EXACTLY AS THEY ARE TYPED

STATE OF SOUTH CAROLINA)

) ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

THE FOREGOING instrument was acknowledged before me by ALBERT V. ESTEE,
as Member / Manager of CAMBRIDGE TWO, LLC, a SC Limited Liability Company, on
this 20th day of February, 2004.


Notary Public for SOUTH CAROLINA

My Commission expires:

[KOOLA / MP04-0208.JET]

JULIE E. THRUSH
Notary Public, State of South Carolina
Commission Expires August 19, 2007

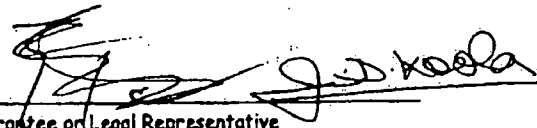
BK Y484PG817

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHARLESTON)

Date of Transfer of Title
February 20, 2004

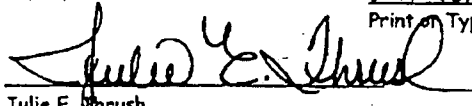
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by Cambridge Two, LLC a SC limited liability company TO Johnson D. Koola ON 02/20/04.
3. Check one of the following: The deed is:
(a) x subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ EXEMPT from the deed recording fee because (Exemption n/a) (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item #7 of this affidavit.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) x The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$151,325.00
(b) _____ The fee is computed on the fair market value of the realty, which is n/a
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a.
5. Check YES _____ or NO x to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is n/a.
6. The DEED Recording Fee is computed as follows:
(a) \$151,325.00 the amount listed in Item #4 above
(b) 0.00 the amount listed on Item #5 above (no amount, please zero)
(c) \$151,325.00 subtract Line 6(b) from Line 6(a) and place the result here.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantee.
8. Check if Property other than Real Property is being transferred on this Deed:
(a) _____ Mobile Home
(b) _____ Other: _____
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.


Grantor, Grantee or Legal Representative
Connected with this Transaction

SWORN to before me this
02/20/04

Johnson D. Koola
Print or Type Name Here


Julie E. Thrush
Notary Public for State of South Carolina
My commission expires: 08/19/07

JULIE E. THRUSH
Notary Public, State of South Carolina
Commission Expires August 19, 2007

RECORDER'S PAGE

This page must remain with
the Original Document

DAVIDSON
BENNETT &
WIGGER

1/2/04



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Recording

Fee 11.00

State

Fee 393.90

County

Fee 166.65

Postage _____

Total 571.55

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RECEIVED FROM RMC

MAR 05 2004

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

**PID VERIFIED
BY ASSESSOR**

REP _____

DATE / /

(843) 958-4800

2 COURTHOUSE SQUARE

CHARLESTON, SOUTH CAROLINA

29402-0726

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-9305

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JULIE J. ARMSTRONG
CLERK OF COURT
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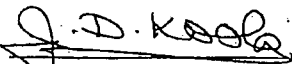
Johnson Koola, ...Appellant,
v.
Cambridge Lakes HOA, ...Respondent.

NOTICE OF APPEAL

Appellant/Defendant Johnson Koola ("appellant") hereby appeals the Order of the Honorable R. Markley Dennis, Jr., denying appellant's Motion to Reconsider recorded on June 18, 2013 subsequent to the Order of the Honorable R. Markley Dennis, Jr., granting Respondent/Plaintiff's ("respondent") Motion for Summary Judgment recorded on March 15, 2013 and the consequent dismissal of appellant's counterclaims against respondent.

Dated: Mt. Pleasant, S.C.
July 17, 2013

Respectfully submitted,



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

Enclosures: Order denying Defendant's Motion to Reconsider

NOTE: This Document is being re-recorded to follow the recording of the conveyance Deed into Cambridge Two, LLC.

RE-RECORD **T437PG047**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Z442PG433

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").

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(3) ADDRESS

The addresses of the Property are as follows:

Units 1403 – 1609 1403-1609 Cambridge Lake Drive, Mt. Pleasant, SC

(4) THE IMPROVEMENTS

The improvements constructed on said Property are the improvements set forth and described in Exhibit "B".

(5) DEFINITIONS

The terms used herein and in the Charter and By-Laws shall have the meaning stated in the Act and as follows:

- (a) "Act" means the Horizontal Property South Carolina Code of Laws 1976, Section 27-31-10, et. Seq.
- (b) "Charter" means the Charter of the Association, recorded in the RMC Office of Charleston County, South Carolina.
- (c) "Association" means the Cambridge Lake Condominium Homeowners Association, Inc., a South Carolina non-profit corporation.
- (d) "Board" means the Board of Directors of the Association. The Board is the form of administration of the Condominium Property.
- (e) "Building" means each building of the Condominium.
- (f) "By-Laws" means the duly adopted By-Laws of the Association.
- (g) "General Common Elements" means common areas and facilities as defined in said Act and shall include all parts of the Condominium Property not included within the Apartment boundaries as described in Paragraph 6(2) hereafter, and the tangible personal property required for the maintenance and operation of the Condominium. There being no "Limited Common Elements" established by this Master Deed, the General Common Elements shall be hereafter referred to as "Common Elements".
- (h) "Common Expenses" includes those as defined by the Act, together with the expense for which the Co-Owners are liable to the Association, actual or estimated, pursuant to the By-Laws and expenses determined to be Common Expenses by the Board.
- (i) "Condominium" means Cambridge Lake Horizontal Property Regime.

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EX: T437PG049

- (j) "Condominium Documents" means the Master Deed of Cambridge Lake Horizontal Property Regime, the Charter of Cambridge Lake Condominium Homeowners Association, Inc., and its By-Laws, as they may be amended from time to time.
- (k) "Land" is the real property described in Exhibit "A" which is hereby submitted to the condominium form of ownership.
- (l) "Majority of Co-Owners" means fifty one percent (51%) or more of the basic value of the Property as a whole, in accordance with the percentages computed in accordance with the provisions of Paragraph 6(4).
- (m) "Member" means a member of the Association. Membership in the Association shall be confined to those persons who hold a fee-type ownership interest in any Apartment.
- (n) "Developer" means Cambridge Two, LLC, a South Carolina Limited Liability Corporation, and its respective successors and assigns, but the term shall not include persons who purchase individual Apartments from Al Estea.
- (o) "Plans" means all drawings and specifications in the plot and floor plans and other plans attached as Exhibit "B".
- (p) "Property" means and includes the land described in the attached Exhibit "A", together with all improvements and structures now existing or hereafter placed hereon, all easements, rights and appurtenances thereto, and all personal property now provided by the Developer and intended for use in connection therewith, but does not include the furniture, if any, located in any Apartment presently leased or owned by the Developer.
- (q) "Utility Service" shall include, but not be limited to, electric power, water, heating, air conditioning, garbage, and sewage disposal and any other governmental or public utility assessment, fee or bill.
- (r) "Apartment" means as defined by the said Act, and shall include the elements of a condominium which are not owned in common with the Co-Owners. The boundary lines of each Apartment are as set out in Paragraph 7 hereafter.
- (s) "Co-Owner" means as defined by said Act and shall include his heirs, successors and assigns and shall include the Developer as to those Apartments of which it is the Owner of record.
- (t) "Rules and Regulations" means the duly adopted rules and regulations adopted by the Board for the use of the Condominium Property.
- (u) Singular, plural, gender. Whenever the context so permits, the use of the plural shall include the singular, the use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

(6) DESCRIPTION OF THE BUILDINGS AND COMMON ELEMENTS

- (1) **Building:** Five (5) buildings (Buildings "A" - "E") have been constructed primarily of brick veneer construction, on concrete footings, with brick exterior walls. Each building is described as to location, dimensions, type and number of rooms in each Apartment on the Plans.
- (2) **Common Elements:** The Common Elements of the Condominium shall include the Common Elements and facilities located substantially as shown on the Plans. Such Common Elements and facilities will include the following:
 - (a) The parcel of land shown in Exhibit "A" attached hereto;
and
 - (b) Those portions of the Buildings not otherwise herein defined as being embraced within the Five (5) buildings (Buildings "A" - "E"), including but not limited to the foundation, roofs, floors, ceilings, perimeter walls of Apartments, loading bearing interior walls and partitions, walls enclosing common pipe chases and other common facilities, stoops, laundry rooms, meter and machinery rooms, recreation areas, swimming pool and cabana area, stairways, entrance and exit or communication ways, balconies, pipe, wires, and public utility lines, including the space actually occupied by the above, all as are more particularly shown in Exhibit "B" insofar as practical; and
 - (c) All improvements to the premises constructed such as utilities, walkways, plants, trees, shrubbery, yards, lawns, gardens, swimming pool, playgrounds, etc., located on said parcel of land; and
 - (d) Parking facilities as shown on the Plans, or added at a later date; and
 - (e) All other elements of each Building, not included within the boundary of each Apartment, constructed on the aforesaid parcel of land, nationally of common use or necessary to its existence, upkeep and safety and, in general, all other devices or installations existing for common use; and
 - (f) The assets of Cambridge Lake Condominium Homeowners Association, Inc. (a non-profit corporation organized for the purpose of providing and entity [the Board] for the administration of the Condominium); and
 - (g) An easement for support in every portion of an Apartment which contributes to the support of each Building; and
 - (h) An easement for the furnishing of utility services to more than one Apartment or to the Common Elements or to an Apartment other than the one containing the installation, which installation shall

include conduits, ducts, plumbing, wiring and other facilities for the rendering of such services; and

- (i) An easement in common with others for ingress and egress, by vehicle or on foot, in, to upon, and over all roads, walks and passageways located on the Property; and
 - (j) An easement for the placement and maintenance of all roadways and utilities, including sewer, electricity and telephone lines, pipes sewers and conduits, in and through the Property, including the right of access thereto, such easements being in common with and subject to the terms and conditions of all easements and rights of way heretofore granted by Developer to companies furnishing utility service to the Property.
- (3) Encroachments: If any portion of the Common Elements now encroaches upon any Apartment, or if any Apartment now encroaches upon any other Apartment or upon any portion of the Common Elements as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of a building, a valid easement for the encroachment and for the maintenance of the same, so long as the building stands, shall exist. In the event of the building, Apartment, any adjoining Apartment, or any adjoining Common Element shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, and easement for encroachments of parts of the common Elements upon any Apartments or of any Apartment upon any other Apartment or upon any portion of the Common Elements due to such construction and maintenance thereafter shall exist so long as the building shall stand.
- (4) Determination of the Percentages of Ownership in Common Elements. Common Expenses: Common Expenses shall be charged to the Co-Owners according to the percentages of undivided interests in the Common Elements appertaining to each Apartment and its Owner as set forth on Exhibit "C" attached hereto and made a part of hereof. These percentages are based on the number of Apartments at the date of this Master Deed. The total percentage of the undivided interests of all of the Apartments equals one hundred (100).
- (5) To the extent attributable to Common Elements and administration of the Condominium and the Association, funds for the payments of current expenses, and for the creation of reserve for the payment of future expenses, including certain improvements, replacements and additions and such other reserve requirements as may be accepted by the Association, shall be Common Expenses and shall be obtained by assessments against the Co-Owners in proportion to their percentage interests in the Common Elements.
- (6) The Developer reserved the right, so long as it is the Owner of any unsold Apartments, to change the price of such Apartment or Apartments. However, no change in the price for such Apartment or Apartments will vary the percentage of the estimated annual Common Expenses for such Apartment or

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its percentage of interest in the Common Elements or its obligations in connection therewith.

(7)

APARTMENTS

The Developer, in order to implement Condominium ownership for the Property, covenants and agrees to, and hereby does, subdivide the Property vertically and horizontally into the following Freehold Estates:

- (1) One Hundred Four (104) separate Apartments, together with the shares in the Common Elements appurtenant to each Apartment, as shown graphically in the Plans. Said Exhibit "B" delineates the dimensions of each Apartment at floor level, the elevation of all floors and ceilings from USC and GS data, the location and dimensions of the perimeter walls, and the location, dimensions and area of each Apartment with reference to established geographical points. Each of the said One Hundred Four (104) Apartments consist of the following private elements:
 - (a) The volumes or cubicles of space enclosed by the vertical plane of the unfinished interior surfaces of perimeter walls and the horizontal plane of the unfinished surfaces of the Apartment's floors and ceiling.
 - (b) All interior dividing walls and partitions (including the space occupied by such walls or partitions) excepting, however, load bearing walls;
 - (c) The finished surfaces of the floor, ceiling and perimeter walls and the decorated surfaces of interior load bearing walls, consisting of, as the case may be, wallpaper, paint, plaster, carpeting, tiles, and any and all other finishing materials affixed or installed as a part of the physical structure of the Apartment; and
 - (d) All interior doors, the main entrance door, window panes, window frames, window screens and frames, light fixtures, installed bathroom and kitchen appliances, stove, cabinets, refrigerator, sink and piping in connection therewith.
 - (e) The spaces (and the improvements within such spaces) containing water heating, heating and air conditioning systems and apparatus and all electrical switches, wiring, pipes, ducts, conduits, television, telephone, and electrical receptacles and boxes serving that Apartment exclusively, whether located within or without the boundaries of the Apartment.

Nothing in this Section shall be construed as limiting in any way the right of the Association or a mortgagee from performing maintenance on, or making repairs or improvements to the said walls, provided such maintenance, repairs or improvements are authorized by the Master Deed or By-Laws. Maintenance shall be as provided for in Paragraph

12 hereafter. No Co-Owner shall have the right to remove, alter, remodel or in any way endanger the structural soundness of any wall.

(8) CHANGES

The Developer reserves the right to change the interior design arrangement of all Apartments, so long as the Developer owns the Apartments so altered. Any such change shall be reflected by an amendment to this Master Deed which may be executed by the Developer alone, notwithstanding the procedures for amendment described in Paragraph 24 of the Master Deed. However, no such change shall increase or decrease the number of Apartments nor alter the percentage share in the Common Elements allocated to each Apartment without amendment of this Master Deed in the manner described in Paragraph 24(2) hereof.

(9) THE ASSOCIATION'S EASEMENTS

Developer hereby reserves for and grants to the Association for the benefit of its Members, their guests and lessees, the following easements, rights and privileges;

- (a) An easement for support in every portion of an Apartment which contributes to the support of each Building; and
- (b) An easement for the furnishing of utility services to more than one Apartment or to the Common Elements or to an Apartment other than the one containing the installation, which installation shall include conduits, ducts, plumbing, wiring and other facilities for the rendering of such services; and
- (c) An easement in common with others for ingress and egress, by vehicle or on foot, in, to, upon, and over all roads, walks and passageways located on the Property; and
- (d) An easement for the placement and maintenance of all roadways and utilities, including sewer, gas, electricity and telephone lines, pipes, sewers and conduits, in and through the Property, including the right of access thereto, such easements and rights of way heretofore granted by Developer to companies furnishing utility service to the Property.

(10) IDENTIFICATION

Each Apartment is assigned a number and letter which is indicated on the Plans, and is described as to Apartment number, building location, dimensions, and other data necessary for its proper identification on the Plans.

(11) APARTMENTS SUBJECT TO MASTER DEED.
BY-LAWS, RULES & REGULATIONS

The acceptance of a deed or conveyance or the entering into a lease or the entering into of occupancy of any Apartment shall constitute an agreement that the provisions of this Master Deed, the By-Laws and the Rules and Regulations, as they may be amended from time to time,

are accepted and ratified by such Co-Owner, tenant, or occupant to the extent that each provision hereof is applicable thereto, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time and interest or estate in such Apartment, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

(12) EXCLUSIVE OWNERSHIP

Each Co-Owner shall have exclusive ownership and possession of his Apartment. He shall have an undivided interest in the Common Elements in the percentages expressed in this Master Deed and as set forth in Exhibit "C", which percentages of undivided interest of each Co-Owner shall have a permanent character and shall not be altered without the consent of all Co-Owners expressed in an amended Master Deed duly recorded. The percentage of undivided interest in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Co-Owner shall use the Common Elements in accordance with the purpose for which the same are intended, without hindering or encroaching upon the lawful rights of the other Co-Owners.

(13) ENFORCEMENT

Failure of any Co-Owner to comply strictly with the provisions of this Master Deed, and the By-Laws and the Rules and Regulations, shall be grounds for an action to recover sums due, or damages, or injunctive relief or any or all of them. Such actions may be maintained by the Association on its own behalf or on behalf of the Co-Owners aggrieved. In case of flagrant or repeated violation by a Co-Owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with the provisions of this Master Deed, the By-Laws and the Rules and Regulations. Nothing herein contained shall prevent, in a proper case, an independent action by an aggrieved Co-Owner for such relief.

(14) MAINTENANCE

- (1) Association Maintenance: The Association, as a Common Expense, shall maintain, repair and replace if necessary the following:
- (a) All portions of the Common Elements.
 - (b) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained within an Apartment, but which service part or parts of the Condominium other than the Apartment within which contained.

The Association may enter into a contract with any firm, person or corporation, or may join with other entities in contracting for the maintenance and repair of the Common Elements any may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the Members of the Association; provided, however, that any such contract shall be cancelable on ninety (90) days written notice, with or without payment of a fee.

- (2) Co-Owners Maintenance: Each Co-Owner shall maintain his Apartment and the interior thereof in good tenable condition and repair, and shall repair, maintain and replace if necessary the following:
- (a) The fixtures and equipment in his Apartment, including the refrigerator, stove, fans, and all other appliances, drains, plumbing fixtures and connections, sinks, and plumbing within the Apartment, electric panels, wiring, outlets, and electric fixtures within the Apartment; window panes, screening and glass; the painting of the interior doors and interior wall surface shall be the responsibility of the Apartment Owner, and all wall coverings and carpeting within an Apartment. The cleaning or washing on both the exterior and interior surfaces of all windows shall be the responsibility of the Co-Owners.
 - (b) The plumbing, heating, ventilation, air-conditioning and electrical systems serving only that Apartment, whether located within or without the boundary of the Apartment including the heating and air conditioner systems, hot water heaters, fuse boxes, wiring, fireplace flues and all other plumbing, electrical, gas or mechanical systems. In the event any such system or a portion thereof is within another Apartment or requires access to another Apartment the repair, maintenance or replacement thereof shall be performed by the Association, and the costs thereof shall constitute an assessment against the Co-Owner responsible therefor.
- (3) Apartment Owner's Covenants: Each Apartment Owner agrees as follows:
- (a) To perform all maintenance, repairs and replacements which are his obligation under Section 12(2) hereof.
 - (b) To pay for all of his utilities, including electricity, gas, and telephone used within his Apartment and all taxes levied against his Apartment.
 - (c) Not to make, or cause to be made, any repairs to any plumbing, heating, ventilation or air conditioning systems located outside his Apartment, but required to be maintained by him under Section 12(2)(b) hereof except by licensed plumbers or electricians authorized to do such work by the Association or its delegate.
 - (d) Not to make any addition or alteration to his Apartment or to the Common Elements or do any act that would impair the structural soundness or safety or any part of the Condominium Property. Structural alterations within an Apartment may be made only with the written consent of the Association.
 - (e) To make no alterations, additions, improvements, decoration, repair, replacement or change to the Common Elements, or to any outside or exterior of any building, specifically including, but not

limited to, painting the exterior bricks, exterior doors, or affixing out-shutters to windows.

- (f) To allow the Association its delegates, agents, or employees at all reasonable times to enter into any Apartment for the purpose of maintaining, inspecting, repairing, or replacing Common Elements; or for repairing, maintaining, or replacing plumbing, heating, ventilation or air conditioning systems located within such Apartment, but serving other parts of the Condominium Property; or in order to determine in case of emergency, the circumstances threatening Apartments or Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.
- (g) To promptly report to the Association any defects or all needed repairs for which the Association is responsible.
- (4) Façade: The Association shall be responsible for the maintenance of the exterior perimeter wall and the entrance door to each Apartment. No Co-Owner shall paint any exterior brick or wood surface.
- (5) Repairs: The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements, provided, that if any repairs or replacements are made necessary because of abuse or negligent use thereof by a Co-Owner the cost of such repair or replacement may be assessed again such Co-Owner.

(15) DECORATING

Each Co-Owner shall furnish and be responsible for, at his own expense, of all the decorating in his own Apartment from time to time, including painting, wallpapering, washing, cleaning, panelling, floor covering, draperies, window shades, curtains, lamps, and other furnishings and interior decorating of both the walls and doors. The use of any the covering of the interior surfaces of the windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject of the Rules and Regulations of the Association.

(16) ASSESSMENTS

- (1) Creation of the Lien and Personal Obligation of Assessments: All assessments shall be payable to the Association. The Developer, for each Apartment owned by it, shall pay and each Co-Owner, by acceptance of the deed to such Apartment, covenants and agrees to pay:
 - (a) An annual assessment in an amount which equals a proportionate share of the Common Expenses, such share being the same as such Co-Owner's percentage of ownership in the Common Elements as set forth in Exhibit "C" hereof;

- (b) Supplemental assessments if required by the Board of Directors of the Association in accordance with the By-Laws of the Association; and
- (c) Special assessments for capital improvements fixed, established and collected from time to time as hereinafter provided.

The annual, supplemental and special assessments, together with interest thereon and costs of collection thereof, shall be charged against, and the Association shall have therefor a continuing lien upon, each Apartment against which such assessment is made. Such lien shall also secure all assessments which come due thereafter until the lien is satisfied. Each Co-Owner shall be liable for his portion of each assessment coming due while he is the owner of an Apartment, and his successor in title shall be jointly and severally liable with the grantor for such portion thereof as may be due and payable at the time of a conveyance of, but without prejudice to the rights of such successor to recover from the grantor the amounts paid by such successor as such joint debtor. If a mortgagee of record obtains title to such Apartment as a result of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the share of the annual and special assessments by the Association pertaining to such Apartment or chargeable to the former Co-Owner which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid share of the annual and special assessments shall be deemed to be a Common Expense collectable from all the remaining Co-Owners including such acquirer, his successors and assigns. The Association shall, immediately upon foreclosure or other arrangement in lieu of foreclosure, satisfy and release its assessment lien of record.

- (2) Priority of Lien: The lien against any Apartment for assessments in favor of the Association shall be prior and superior to all other liens except any lien for taxes, the lien of any mortgage or any other lien recorded prior to the time of recording of the claim of the Association's lien. The sale or transfer of any Apartment shall not affect the assessment lien; provided, however, that upon the sale or transfer of any Apartment pursuant to foreclosure of a mortgage or by means of a deed in lieu of foreclosure, the lien of such assessment shall be satisfied and released of record as provided in Paragraph 16(1) above.
- (3) Annual Assessments for Common Expenses: The annual assessments levied by the Association shall be collected and held by the Association for the payment of the Common Expenses which shall include, but not be limited to, administrative, insurance, repair, replacement, reserve funds and maintenance expenses of the condominium Property, in accordance with this Master Deed, the By-Laws of the Association and the Act. A Co-Owner shall by acceptance of title be conclusively presumed to have agreed to pay his proportionate share of the Common Expenses accruing while he is the Owner of an Apartment, and no Co-Owner may exempt himself from liability for such share of the Common Expenses by waiver of the enjoyment of the right to use any of the Common Elements or by abandonment of his Apartment or otherwise. The provisions of the By-Laws attached as Exhibit "E" relating to assessments are incorporated herein by reference as if fully set forth.
- (4) Capital Account: There shall be required, as an item included in the Common Expenses and thus in the annual assessments for such expenses, a contribution to a capital account to cover unforeseen contingencies or

deficiencies arising from unpaid assessments or liens and to cover emergency expenditures in connection with maintenance and repair of the Common Elements. The portion of the annual assessment which is allocated for such contribution shall be maintained by the Association in a separate capital account with separate records maintained therefor. Except to the extent that a portion of such capital account must be maintained for a reasonable reserve to cover future estimated costs of replacement and reconstruction of the Common Elements, any surplus remaining in said capital account at the end of any fiscal year of the Association shall be carried over to the next fiscal year and applied by the Association in preparing its estimated annual budget for that next year to reduce the amount of such capital contributions required to be assessed against the Co-Owners as an item of Common Expense for such year.

- (5) Determination of Annual Assessments and Collection and Disbursement of Proceeds: The Association shall have the responsibility for payment of the Common Expenses in connection with the administration and management of the Condominium Property according to this Master Deed and the By-Laws of the Association. The Board of Directors shall annually prepare an estimated annual budget for each fiscal year of the Association and shall determine and notify each Co-Owner of the annual assessment for each Apartment for such coming year. The annual assessment allocable to each Apartment shall be in proportion to such Co-Owner's undivided percentage interest in the Common Elements as set forth in Exhibit "C". To the extent that the assessments and other cash income collected during the preceding year shall be more or less than the expenditures for such preceding year, such surplus or deficit shall be taken into account in the preparation of the estimated annual budget. During the time in which Developer maintains control of the Association as provided in the By-Laws; the Developer shall be exempt from annual, supplemental and special assessments created herein. However, during such period, the Association shall collect from Developer, and Developer hereby agrees to pay to the Association, an amount deemed necessary by the Developer to cover expenses required to be paid by the Association each month less the proceeds of all individual assessments (reduced to the extent of the Co-Owners contributions to the capital account as provided in Paragraph 16 above collected for such month from all other Co-Owners). From and after the time Developer relinquishes control of the Association, the Developer's obligations shall cease, except with respect to the Apartments owned by Developer, and the Association shall have the responsibility for determining the amount of all assessments provided for herein, the collection of such assessments from the Co-Owners, and the disbursement from the proceeds of such assessments of all the Common Expenses incurred by the Association in the administration and maintenance of the Common Elements, including the contribution to the capital account as provided for in Paragraph 16(4) above.
- (6) Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, special assessments for the purpose of defraying, in whole or in part, the cost or any portion thereof of any construction or reconstruction, repair or replacements of a capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto, which the

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Association cannot pay out of the funds held in the capital account; provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose; written notice of which shall be sent to all Co-Owners, including the Developer, not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. Each Co-Owner's share of any special assessment shall be in proportion to his percentage of undivided interest in and to the Common Elements.

- (7) Date of Commencement of Annual Assessments and Due Dates: The annual assessments shall be established on a fiscal year basis and shall commence as to each Apartment conveyed to a Co-Owner on the date of each such conveyance, with the adjustment for the first assessment according to the number of days remaining in the fiscal year. That portion of each such adjusted assessment attributable to the month following the month of conveyance shall be due and payable at the time of such conveyance, and the balance of such adjusted assessment shall be paid, except as provided in Paragraph 16(8) below, by the Co-Owner in equal monthly installments commencing on the first day of the second month following such conveyance. Unless otherwise provided by the Board of Directors and except as provided in Paragraph 16(8) below, one-twelfth (1/12) of the annual assessment for each Apartment shall become due and payable on the first day of each month during the assessment period. The association shall, upon demand by any Co-Owner or purchaser of an Apartment prior to the completion of a voluntary sale or upon demand by any holder of a mortgage or other lien of any Apartment at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on such Co-Owner's Apartment have been paid as of a specific date within ten (10) days after request therefor. A reasonable charge may be made by the Board of Directors for the issuance of such certificate, which shall be conclusive evidence of payment of any assessment therein stated to have been paid, and any person other than the Co-Owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability for such unpaid assessments shall be limited to the amounts set forth in such certificate.

- (8) Effect of Non-Payment of Assessments Payable Directly to the Association and Remedies of the Association: Any assessment which is not paid when due shall be delinquent. If the payment of any assessment for an Apartment is not paid within ten (10) days after the due date, the Owner of such Apartment shall be in default and the Association may declare the balance of the entire assessment for such Apartment immediately due and payable. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a rate of eight percent (8%) per annum, and the Association may bring suit to recover a money judgment for the unpaid assessment against the Owner personally obligated to pay the same without waiving the lien, and/or file a lien claim against such Owner's Apartment. In either of which events, interests, costs and attorney's fees equal to fifteen percent (15%) of the principal and interest due shall be added to the amount of such assessment as may then be due. Further, if the assessment is not paid within thirty (30) days after the date of default, the Association shall

give prompt notice of default to the holder of a first mortgage, if any, upon such Apartment. The establishment of any such lien and the satisfaction thereof shall be in accordance with Section 27-31-210 of the Act. Each Co-Owner, by his acceptance of a deed to an Apartment from the Developer or from any subsequent Owner of an Apartment, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose such lien in a suit brought in the name of the Association and shall be for the benefit of all other Co-Owners. The Association, acting on behalf of the Co-Owners, shall have the power to bid-in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association shall provide written notice of its intention to foreclose any such lien to the holder of a first mortgage lien upon such Apartment, not less than sixty (60) days prior to the date of the foreclosure sale. Non-use of the Common Elements or abandonment of an Apartment shall not constitute a defense against any action on account of any unpaid assessment.

- (9) Exempt Property: Each Apartment owned by the Developer shall be exempt from the assessments created herein until the termination of control of the Association by the Developer. In lieu of the payment of such assessments, Developer shall be responsible for payment to the Association each month of the amounts as provided in Paragraph 16(5) above. Except as provided herein, no Apartment shall be exempt from said assessments.
- (10) Mechanic's Liens: Each Apartment Owner shall only be liable for the cost of repairs and replacements to his Apartment, and for his proportionate share of the Common Expenses. In the event any mechanic's or other lien is filed which, in the opinion of the Board may constitute a lien against the Property, the Common Elements, or any Apartment, the Board may cause the Association to discharge such lien, and the Association shall thereupon assess each Co-Owner or Co-Owners in the amount of their proportionate share of the Association's expense in discharging such lien, including any costs and attorney's fees incurred in connection therewith, such assessment to be secured by a lien on each Apartment responsible for payment thereof in accordance with the Act, said lien to be enforced in accordance with the provision of the Act, Master Deed, and By-Laws. No Apartment Owner shall be liable for the liens of other Co-Owner's except as provided for by the Act and this Master Deed..
- (11) Repairs and Improvements by a Mortgagee of Record: Any first mortgagee of an Apartment shall be entitled to cause repairs to be made and routine maintenance to be performed with respect to an Apartment, or the Common Elements, in the event said mortgagee provides said Co-Owner and other Co-Owners affected, and the Association, with thirty (30) days prior written notice of repairs or routine maintenance required to be performed. In the event such repairs shall not have been made or such routine maintenance satisfactorily performed within any such thirty (30) day period, then such mortgagee is hereby deemed authorized by such Co-Owner and any other Co-Owner affected, and by the Association, to complete such repairs or perform such maintenance, and such mortgagee shall be promptly reimbursed by the Association for the costs thereof. In the event any payments are made by the Association to the mortgagee of an Apartment in accordance with the terms of this Paragraph, the

Association shall thereupon assess the Co-Owner or Co-Owners based upon the Board's determination of the proportion of such expense to be allocated to the Co-Owner or Co-Owners or to the Common Expenses, in accordance with the terms of the Act, this Master Deed and the By-Laws, such assessment to be made in the form of a special assessment for the month following in which such payment was made.

(17) ASSOCIATION

The operation and administration of the Condominium shall be performed by an association, which shall be incorporated as a non-profit corporation, pursuant to the provisions of the Act, and shall be organized and shall fulfill its functions pursuant to the following provisions:

- (1) Name: The name of the Association shall be Cambridge Lake Condominium Homeowners Association, Inc. ("Association").
- (2) Powers: The powers and duties of the Association shall include those set forth in the Code of South Carolina 1976, as amended, this Master Deed and the By-Laws of the Association, and it shall have the powers to purchase an Apartment of the Condominium.
- (3) Members:
 - (a) Qualifications: The members of the Association shall consist of all the recorded Co-Owners of Apartments.
 - (b) Change of Membership: Change of membership in the Association shall be established by recording in the RMC Office of Charleston County, South Carolina, of a deed or other instrument establishing a record title to an Apartment of the Condominium, and the delivery to the Association of a certified copy of such instrument, the Co-Owner designated by such instrument thereby becoming a member of the Association. Membership of the prior Owner shall be thereby terminated.
 - (c) Voting Rights: The vote for an Apartment shall be cast by the Co-Owner thereof, or the duly authorized proxy of the Co-Owner, or the Co-Owner's certified voting representative in the manner provided by the By-Laws. Each Co-Owner shall have a vote equal to his percentage ownership in the Condominium Property as a whole, as set forth in Exhibit "C".
- (4) Board of Directors: The affairs of the Association shall be conducted by a Board of Directors of not less than three (3) nor more than seven (7) directors, who shall be designated in the manner provided by the By-Laws.
- (5) Developer Control: Until the Developer has completed and sold 76% of the Apartments of the Condominium, or until January 1, 2009, or until the Developer elects to terminate its control of the Association, whichever shall first occur, there shall be no annual or special meeting of the members of the Association.

- (6) Indemnification: Every director and every officer of the Association shall be indemnified by the Association against expenses and liabilities, in the manner provided for in the Charter of the Association and the By-Laws.
- (7) Fidelity Bond: The Association shall obtain fidelity bond coverage for any person or entity handling funds of the Association including employees of professional manager, if any, retained by the Association.
- (8) Limitation of Liability: Notwithstanding the liability of the Association to maintain and repair parts of the Property, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association nor for injury or damage caused by the elements or Apartment Owners or other persons.
- (9) Charter and By-Laws: Charter and By-Laws of the Association shall be in the form attached hereto as Exhibit "D" and "E" respectively.
- (10) Liability of Purchaser for Unpaid Assessments: The purchaser of an Apartment (other than a purchaser at a foreclosure sale as described above) shall be jointly and severally liable with the seller for unpaid amounts owing by the latter up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by him as such joint debtor. The Association shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller and the purchaser's liability under this section shall be limited to the amount as set forth in the statement.
 - (a) Upon the sale or conveyance of an Apartment, all unpaid assessments against a Co-Owner shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:
 - [1] Assessments, lien and charges for taxes past due and unpaid on the Apartment; and
 - [2] Payments due under mortgage instruments or encumbrances recorded prior to the conveyance of the Apartment.

(18) INSURANCE AND CASUALTY LOSSES

The Board of Directors or its authorized agent shall obtain insurance for all of the improvements on the Property (with the exception of improvements and betterments made by the respective Co-Owners at their expense) against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full cost of any repair, reconstruction or replacement in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering all Common Elements and all damage or injury caused by the negligence of the Association or any of its agents which public liability policy shall have reasonable limits set by the Board of Directors.

Premiums for all such insurance shall be Common Expenses and paid by the Association. Such insurance and all casualty losses shall be governed by the provisions of the By-Laws.

(19) CONDEMNATION

In the event of condemnation of all or a portion of the Property, the disposition of proceeds of the award shall be governed by the following provisions:

- (1) Entire Property: In the event of condemnation of the entire Property, the Association shall be entitled to receive the proceeds of the award which shall be distributed by the Association to the Co-Owners and their mortgagees, as their interests may appear, in proportion to their undivided interests in the Common Elements.
- (2) Partial Taking: In the event of condemnation of a portion of the Property, the Association shall be entitled to receive the proceeds of the award which shall be distributed in accordance with the findings of a panel of three (3) arbitrators to be selected by the Board which shall proceed in accordance with the then existing rules of the American Arbitration Association to determine the portion of the award due to be distributed to each of the several Co-Owners and their mortgagees, as their interest may appear, by virtue of the Co-Owner's interest solely in the Apartments or portions thereof taken by condemnation. The portion of the award allocable to the Common Elements shall be retained by the Association which shall treat the same as insurance proceeds and proceed to reconstruct and restore the affected portion of the Property to a complete architectural Apartment if the Board determines that such is feasible. The panel or arbitrators shall also determine the percentage of undivided interest of the remaining Co-Owners in the Common Elements following the condemnation and each Co-Owner shall be deemed to have consented to the amendment of this Master Deed in accordance with such findings and the continuation of the Condominium regime with respect to the Property remaining following condemnation. If it is determined not to be feasible to restore a portion of the Property to a complete architectural Apartment, the portion of the award allocable to the Common Elements shall be distributed to the Co-Owners and their mortgagees, as their interests may appear, in proportion to their undivided interests therein. The expense of the arbitration shall be paid by the Association, and shall constitute a Common Expense.

(20) USE RESTRICTIONS

- (1) Residential Purposes: All Apartments contemplated in the Condominium Property shall be, and the same hereby are, restricted exclusively to residential use, except that Developer has the right to maintain model units as it deems appropriate. No structures of a temporary character, trailer, basement, tent, shack, carport, garage, barn or other outbuilding shall be constructed or placed on, or used as a residence on any portion of the Condominium Property at any time, except such temporary structures as may be necessary for use by the Developer during the sale period.

- (2) Fee Simple Estate: Each Apartment shall be conveyed as a separately designated and legally described fee simple estate subject to the terms, conditions and provisions hereof and of the Act.
- (3) No Violation of Rules: No Co-Owner shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of the private elements of the Apartments, the use of the common Elements or otherwise. Determinations with respect to whether or not a particular activity or occurrence shall constitute violation of this Paragraph 20(3) shall be made by the Board of Directors of the Association and shall be binding upon the parties unless determined to be arbitrary or capricious in an appropriate judicial proceeding.
- (4) Animals and Pets: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any part of the Condominium Property, except that dogs, cats or other household pets may be kept by the respective Owners in their respective residences provided that they are not kept, bred or maintained for any commercial purpose and do not endanger the health of or, in the sole discretion of the Board of Directors, unreasonably disturb the Owner of any Apartment or any lessee thereof. All dogs and cats shall be under leash when walked or exercised upon the Condominium grounds.
- (5) Signs and Business Activities: No signs, billboards, unsightly objects, flags, etc. or nuisances shall be erected, placed or permitted to remain on the Condominium Property, nor shall the Condominium Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Apartment or any lessee thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of the Condominium Property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Developer, its agents or assigns during the sale period. Notwithstanding the provisions of this Paragraph, an Owner desiring to sell his Apartment shall be allowed to post a "for sale" sign immediately in front of his Apartment, such sign not to be greater in size than three (3) square feet. Also notwithstanding the provisions of this Paragraph, the Association shall be allowed to place at least one sign of reasonable size and dignified form to identify the Condominium Property and such other signs as may be deemed appropriate by the Board of Directors of the Association.
- (6) Maintenance of Fixtures and Equipment: All fixtures and equipment installed within the private elements of an Apartment, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a residence, shall be maintained and kept in repair by the Owner thereof, except in respect to utility lines serving more than one (1) residence wherein the Association has this responsibility. A Co-Owner shall do nothing that will impair the structural soundness or integrity of any building or portion thereof or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect any Apartment or its Owner.

- (7) Exterior Antennas: No exterior television or radio antennas shall be placed on any improvements without prior written approval of the Board of Directors.
- (8) Equal Treatment: Other than as expressly provided herein, no action shall at any time be taken by the Association or its Board of Directors which would favor any Co-Owner or Co-Owners over any other co-Owner or Co-Owners.
- (9) Leasing: Apartments may be leased or rented for such terms as the Co-Owner thereof may deem appropriate, provided, however, the Association shall have the power to prescribe reasonable rules and regulations regarding the leasing and rental of such Apartments.
- (10) Regulation: Reasonable regulations concerning the use of the Property not inconsistent with the provisions of this Master Deed may be made by the Association and amended from time to time by the Board provided, however, that all such amendments thereto shall be approved by a Majority of the Co-Owners before such shall become effective. Members not present at meetings considering such regulations or amendments thereto may express their approval or disapproval in writing. Copies of such regulations or amendments thereto shall be furnished by the Association to all Co-Owners and residents of the Condominium.

(21) NOTICE OF LIEN OR SUIT

- (1) Notice of Lien: A Co-Owner shall give notice unto the Association of every lien upon his Apartment, excluding taxes by governmental bodies, within five (5) days after the Co-Owner's receipt of notice thereof.
- (2) Notice of Suit: A Co-Owner shall give notice to the Association of every suit or other proceedings which may affect the title to his Apartment, such notice to be given within five (5) days after the Co-Owner receives knowledge thereof.
- (3) Failure to Comply: Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.
- (4) Notice to First Mortgagee: The Association shall within ten (10) days of receipt of such notice, forward a copy thereof to the first mortgagee of the Apartment affected.

(22) COMPLIANCE AND DEFAULT

Each Co-Owner shall be governed by and shall comply with the terms of the Act, Master Deed, Charter, By-Laws and Rules and Regulations adopted pursuant thereto and said Documents and Regulations as they may be amended from time to time. A failure to comply therewith shall entitle the Association or other Co-Owners to the following relief in addition to the remedies provided by the Act:

- (1) Negligence: A Co-Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his act, negligence or carelessness

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of by that of any member of his family or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carrier by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of an Apartment or its appurtenances.

- (2) Costs and Attorney's Fees: In any proceeding arising because of any alleged failure to comply by a Co-Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the Court.
- (3) No Waiver of Rights: The failure of the Association or any Co-Owner to enforce any covenant, restrictions or other provisions of the Act, this Master Deed, the By-Laws, or the Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

(23) COVENANT AGAINST PARTITION

There shall be no judicial or other partition of the Property, any part thereof or any Apartment, nor shall Developer, any Co-Owner, or any person acquiring any interest in the project or any part thereof seek any such partition unless the Property has been removed from the provisions of the Act.

(24) GENERAL PROVISIONS

- (1) Amendment - By Developer: Amendments to this Master Deed for the purpose of correcting errors or conforming the documents to the requirements of the Act or insuring conformity of the private and Common Elements, to the Master Deed, the Plans and the By-Laws shall be made by the Developer as and when necessary. In the event that an amendment materially affects the rights of any then existing lienholders of record or Co-Owners, the amendment shall be valid only upon the written consent thereto of all such then existing lienholders and co-Owners affected thereby. Such an amendment shall be certified by Developer as having been duly approved and shall be effective when recorded in the RMC Office for Charleston County, South Carolina.
- (2) Amendment - Other: Amendments to this Master Deed, other than those provided for in Paragraph 24(1) above, which are authorized by this Master Deed and the Act, shall be proposed and adopted in the following manner:
 - (a) Notice: Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered.
 - (b) Resolution: A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the membership of the association, and after being proposed by one of such bodies, it must be approved by the other. Directors and members not present at the meeting considering the amendment may express their

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approval in writing. Such approvals must be by not less than a majority of the Directors and, unless otherwise specified in this Master Deed or the Act, but not less than two-thirds percent (66 2/3%) of the total vote of the Association; provided, however, that in any event the proposed amendment should change an Apartment or affect materially any rights of any Co-Owner or then existing first mortgage holders, such amendment shall also require the written consent thereto of the Owners of record of such Apartment and all of the holders of record of any lien thereon.

- (c) Recording: A copy of each amendment provided for in this Paragraph 24(2) shall be certified by the Board of Directors of the Association as having been duly adopted and shall be effective when recorded in the RMC Office of Charleston County, South Carolina.
- (3) Termination: The Condominium may be terminated and the Condominium Property removed from the provisions of the Act in the following manner.
- (a) Agreement: All of the Co-Owners may remove the Condominium Property from the provisions of the Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the Apartments consent thereto or agree, in either case by instruments duly recorded, that their liens be satisfied or transferred so as to effect and be a lien upon only the percentage of undivided interest in the Property of the Co-Owners whose Apartment had been subject to such lien.
- (b) Destruction: In the event it is determined in the manner provided by in the By-Laws, that the Property shall not be repaired or reconstructed after casualty, the Condominium will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to facts effecting the termination, which certificate shall become effective upon being recorded.
- (c) Ownership after Termination: After termination of the Condominium, the rights of the Apartment Owners and their respective mortgagees and lienholders shall be determined in the following manner:
- [i] The undivided share in the Property owned in common by each Co-Owner with respect to the previous Common Elements and with respect to the private elements shall be the undivided interest previously owned by such Co-Owner in the previous Common Elements
 - [ii] Any liens affecting any of the Apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the Co-Owner in the previous Condominium Property, and
 - [iii] The previous Condominium Property shall be subject to an action for partition and sale at the instance of any Co-Owner, in which

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event the net proceeds of sale shall be paid to a court appointed Trustee. Said net proceeds of sale, together with the net proceeds of the insurance on the previous Condominium Property, if any, shall be considered as one fund with, after paying all expenses of the Trustee, shall be divided among all of the Co-Owners in a percentage equal to the percentage of undivided interest owned by each Co-Owner in the previous Condominium Property, after first paying out of the respective share of the Co-Owners, to the extent sufficient for the purpose, all liens of record (according to their existing priorities) on the undivided interest in the previous Condominium Property owned by each Co-Owner.

- (5) Covenants Running with the Land: All provisions of this Master Deed shall be construed to be covenants running with the land, and with every part thereof and interest therein, including, but not limited to, every Apartment and the appurtenances thereto; and every So-Owner and claimant of the land or any part thereof or interest therein, and his heirs, successors, executors, administrators and assigns shall be bound by all of the provisions of this Master Deed.
- (6) Ad Valorem Taxes: It is anticipated that all ad valorem taxes, special assessments and other imposed by any taxing authority shall be separately assessed against and collected on each Apartment as single parcel, and not on the Condominium Property as a whole. Such taxes, assessments and charges shall constitute a lien only upon the Apartment and upon no other portion of the Condominium Property. All laws authorizing exemptions or deductions from taxation shall be applicable to each individual Apartment to the same extent they are applicable to other property.
- (7) Severability: Invalidity of any covenant, condition, restriction or other provisions of this Master Deed or the By-Laws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

(25) POWER OF ATTORNEY

Each Co-Owner shall be deemed by his acceptance of a deed to an Apartment to have consented to the powers of amendment herein reserved by Developer and to any amendments previously or hereafter executed by Developer pursuant thereto. Each Co-Owner shall further be deemed by his acceptance of a deed to an Apartment to have appointed Developer his attorney-in-fact to give, execute and record the consent of the Co-Owners to any and all amendments to this Master Deed which the Developer reserves pursuant to Paragraph 24(1) hereof.

(26) PROPORTIONATE CHANGES IN COMMON EXPENSES AND COMMON SURPLUS

In the event anyone or more of the Apartments are not rebuilt by reason of loss as a result of destruction, and therefore the number of Apartments is reduced, then the proportionate share of the Common Expenses and of the Common Surplus of each Apartment

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shall be increased by adding to each remaining Apartment the proportionate percentages of ownership out of the percentages of ownership of the Apartments not rebuilt.

(27) ACCEPTANCE OF TERMS

The Association by its execution of this Master Deed, approves the foregoing and all of the covenants, terms and conditions, duties and obligations of this Master Deed and Exhibits attached hereto. The Co-Owners, by virtue of their acceptance of the Deed of conveyance as to their Apartments and other parties, by virtue of their occupancy of Apartments, hereby approve the foregoing and all of the terms and conditions, duties and obligations set forth in the Condominium Documents.

(28) BLANKET MORTGAGE

The entire Condominium Property, or some or all of the Apartments included therein, may be subject to a single or blanket mortgage constituting a first lien thereon created by a recordable instrument duly executed by the Developer, its successors and assigns, and any Apartment included under the lien of such mortgage may be sold or conveyed subject thereto; provided, however, any such mortgage shall provide a means for the release of any Apartment secured by the mortgage from the lien thereby created.

(29) RULE AGAINST PERPETUITIES

If any of the options, privileges, covenants or rights created by this Master Deed or the By-Laws shall be unlawful, void or voidable for violation of the rules against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, President of the United States.

(30) INTERPRETATION

The provisions of this Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision of any other provision hereof.

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IN WITNESS WHEREOF, the undersigned, Cambridge Two, LLC, A South Carolina Limited Liability Company, has set its Hand and Seal on the day and year first hereinabove written.

WITNESSES:

Julie E. Thrush

CAMBRIDGE TWO, LLC
A South Carolina Limited Liability Company

By: [Signature]

Its: Manager/Member

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness who, on oath, says that he saw the within named Cambridge Two, LLC, A South Carolina Limited Liability Company, by Albert Esteve, its Manager/Member, sign the within Master Deed, and that (s)he with the other witness herein witnessed the execution thereof.

Esteve

Witness [Signature]

SWORN TO and subscribed before me this
27th day of February, 2003

Julie E. Thrush
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/19/2007

JULIE E. THRUSH
Notary Public, State of South Carolina
Commission Expires August 19, 2007

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

BX: 2442PG457

ALL that certain piece, parcel or lot of land, with the buildings and improvements thereon, or to be built thereon, situate, lying and being in the Christ Church Parish, Town of Mt. Pleasant, County of Charleston, State of South Carolina, known and designated as Parcel "B", Cambridge Lakes Apartments, as shown on a plat thereof made by Penolia A. Van Buren, P.L.S., S.C. Reg. No 11075, dated December 11, 1998 and revised June 2, 1999, and duly recorded in the Office of the RMC for Charleston County, South Carolina on June 9, 1999, in Plat Book ED at Page 219; SAID parcels having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

SUBJECT to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina.

THIS being the same property as conveyed to Cambridge Lakes, L.P. by Deed of Classic Properties, Inc. of Charleston dated June 9, 1999 and duly recorded in the Office of the RMC for Charleston County, South Carolina on June 9, 1999 in Book D-328 at Page 890.

TMS No.: 559-14-00-008

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

BK Z 442-pg 457A

**"TECHNICAL CORRECTIONS" TO MASTER DEED FOR
CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME**

The following language is technical correction to clarify the language in the Master Deed which reflects with the plat in the Master Deed in regards to use:

Under (5) Definitions – (g) "General Common Elements" shall be changed to read as follows:

"General Common Elements" means common areas and facilities as defined in said Act and shall include all parts of the Condominium Property not included within the Apartment boundaries as described in Paragraph 6(2) hereafter, with a separate garage unit as shown on the attached plat, and the tangible personal property required for the maintenance and operation of the Condominium. The General Common Elements shall be hereafter referred to as "Common Elements".

The caption for (8) apparently reads: "Description of the Buildings and Common Elements". This caption shall be changed to read "Description of Buildings, Common Elements and Limited Common Elements".

Under (6), the following shall be added:

- (7) Limited Common Elements: The Limited Common Elements and the unit(s) or Owner to which they are assigned, licensed or owned by are:
- (a) The garages shown on attached plat known as garages "A", "B", "C" & "D".
 - (b) Declarant may convey parking garage units to the owner as a limited common element associated with the unit. Once associated with that particular unit, it remains with that unit in perpetuity. If the parking garage is conveyed to an owner as a limited common element associated with the unit, the owner of that unit shall have the right to transfer fee simple title to the parking garage of the unit as a limited common element associated with that particular unit. Declarant shall have the right at any time to convey the parking garage unit to an owner, as limited common elements to be conveyed with the unit then owned by the owner.

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Under (6) Description of the Buildings and Common Elements - (1) Building shall be changed to read as follows:

Building: Five (5) buildings (Buildings "A" - "E") have been constructed primarily of brick veneer construction, on concrete footings, with brick exterior walls. Each building is described as to location, dimensions, type and number of rooms in each Apartment on the Plans and the garages. This is shown as garages "A", "B", "C", & "D" on the attached plat.

Under (6) Description of the Buildings and Common Elements - (2) Common Elements (b) shall be changed to read as follows:

Those portions of the Buildings not otherwise herein defined as being embraced within the Five (5) buildings (Buildings "A" - "E") and Four (4) garages (Garages "A", "B", "C" & "D"), including but not limited to the foundation, roofs, floors, ceilings, perimeter walls of Apartments, loading bearing interior walls and partitions, walls enclosing common pipe chases and other common facilities, stoops, laundry rooms, meter and machinery rooms, recreation areas, swimming pool and cabana area, stairways, entrance and exit or communication ways, balconies, pipe, wires, and public utility lines, including the space actually occupied by the above, all as are more particularly shown in Exhibit "B" insofar as practical; and

Under (6) Description of the Buildings and Common Elements - (2) Common Elements (d) shall be changed to read as follows:

Parking facilities as shown on the Plans, or added at a later date, but does not include garages "A", "B", "C", & "D", only the open parking as shown on the plat.

RE-RECORD
Z442PG463

T437PG077

EXHIBIT "D"

**CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME
(A CONDOMINIUM)
CHARTER OF
CAMBRIDGE LAKE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.**

The undersigned hereby associate themselves for the purpose of forming a non-profit corporation under the laws of the State of South Carolina, and certify as follows:

ARTICLE I - NAME

The name of the corporation shall be: Cambridge Lake Condominium Homeowners Association, Inc. For convenience the corporation is herein referred to as "the Association".

ARTICLE II - PURPOSE & POWERS

SECTION I - PURPOSE

The purpose for which the Association is formed is to provide an entity for the administration, management and operation of Cambridge Lake Horizontal Property Regime (herein called "the Condominium"), to be established as a Condominium by the Master Deed of Cambridge Lake Horizontal Property Regime to be filed in the RMC Office of Charleston County, South Carolina (hereinafter referred to as "the Master Deed"); said Condominium being located on lands situated in Charleston County, South Carolina, and more fully described in Exhibit "A" to Master Deed.

SECTION II - POWERS

As a means of accomplishing the foregoing purposes, the Association shall have the following powers:

- (a) The Association shall have all of the powers now conferred or which may be hereafter conferred on a non-profit corporation under the laws of the State of South Carolina which are not in conflict with the terms of this Charter.
- (b) The Association constitutes the incorporation of the "Council of Co-Owners" as provided in the Horizontal Property Act of South Carolina, Section 27-31-90, South Carolina Code of Laws, 1976, as amended (herein the "Act") and shall have all of the powers necessary to administer and manage the Condominium pursuant to the Act, the Master Deed as it may be amended from time to time, and the By-Laws of the Association (the "By-Laws"), including, but not limited to the following:
 - (i) To designate those expenses which shall constitute the common expenses of the Condominium, other than those expenses declared as common expenses under the Act, the Master Deed and the By-Laws.

- (ii) To estimate the amount of the annual budget and to make and collect assessments against Co-Owners of Apartments in the Condominium, to defray the costs, expenses and losses of the Condominium.
- (iii) To use the proceeds of assessments in the exercise of its powers and duties.
- (iv) To maintain, repair, replace, and operate the Condominium Property.
- (v) To purchase insurance upon the Condominium Property and insurance for the protection of the Association and its members, including fidelity bond coverage for all persons having access to the funds of the Association.
- (vi) To make and amend reasonable Rules and Regulations respecting the use of the Condominium Property.
- (vii) To reconstruct improvements after casualty and to further improve the Property.
- (ix) To contract for the management of the Condominium as provided for in the Master Deed and to delegate to such managing agent all powers and duties of the association except such as are specifically required by the Master Deed to have approval of the Board of Directors or the membership of the Association.
- (x) To contract for the management or operation of portions of the Common Elements of the Condominium susceptible to separate management or operation.
- (xi) To retain legal counsel.
- (xii) To employ personnel to perform the services required for proper operation of the Condominium.
- (xiii) To purchase Apartments in the Condominium.
- (xiv) To have access to each Apartment in the Condominium at reasonable times as may be necessary for the maintenance, repair or replacement of any of the Common Elements of the condominium, or for making emergency repairs necessary to prevent damage to the Common Elements and facilities or Apartments in the Condominium.
- (xv) To make such distributions of any profit, surplus or reserve funds of the Association to the members of the Association at such times and in such manner, and to do such other acts, as may be required to comply with the provisions of Section 501 (c)(4) of the Federal Internal Revenue Code, as amended and applicable Revenue Rulings; and other Federal and State statutes providing for an exemption from Federal and State Income Taxes for non-profit organizations.

[xvi] To foreclose any lien for unpaid assessments in like manner as any mortgagee of real property, as provided in the Master Deed and By-Laws.

- (c) All funds and the titles to all properties acquired by the Association and the proceeds thereof shall be held in trust for the members of the Association in accordance with the provisions of the Master Deed, this Charter and the By-Laws.
- (d) The Association will not take steps which will serve to facilitate the transaction of specific business by its members or promote the private interest of any member, or engage in any activity which would constitute a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of the Association shall inure to the benefit of any private individual.
- (e) The Association holds, or desires to hold, property in common for social and fraternal purposes and is not organized for the purpose of profit or gain to the members, or for the insurance of life, health, accident or property, and that three days' notice in The News & Courier, a newspaper of general circulation published in the County of Charleston, South Carolina, has been given that this Charter would be filed.

ARTICLE III

SECTION 1 - QUALIFICATION

The members of the Association shall consist of all of the record Co-Owners of Apartments in the Condominium.

SECTION 2 - CHANGE OF MEMBERSHIP

Change of membership in the Association shall be established by the recording in the RMC Office of Charleston County, South Carolina, of a deed or other instrument establishing a record title to an Apartment in the Condominium, and the delivery to the Association of a certified copy of such deed, or instrument, the new Co-Owner designated by such instrument thereby becoming a member of the Association. The membership of the prior Co-Owner shall be thereby terminated.

SECTION 3 - VOTING

The vote for an Apartment shall be cast by the Co-Owners thereof or by his proxy designated in the manner provided for in the By-Laws. If there is more than one Co-Owner of an Apartment, then the Co-Owners shall select a representative to cast their vote in the manner provided for in the By-Laws. The Association shall have only as many memberships as there are Apartments, with each member having a vote equal to his undivided percentage share in the Common Elements of the Condominium as set forth in Exhibit "C" to the Master Deed and in accordance with the Act. Voting rights will be exercised in the manner provided by the By-Laws.

SECTION 4 - APPROVAL OR DISAPPROVAL BY CO-OWNERS

Whenever the approval or disapproval of a Co-Owner is required upon any matter, whether or not the subject of an Association meeting, such approval or disapproval shall be expressed by the same person who would cast the vote of such Co-Owner at an Association meeting.

SECTION 5 - RESTRAINT UPON ASSIGNMENT OF SHARES IN ASSETS

The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as appurtenance to such member's Apartment.

ARTICLE IV - DIRECTORSSECTION 1 - NUMBER

The affairs of the Association shall be administered by a Board of not less than three (3) nor more than seven (7) Directors. At all elections of the Directors of the association each member entitled to vote (in the manner provided for in the By-Laws) shall be entitled to as many votes as shall equal the number of votes which (except for this provision) he would be entitled to cast for the election of Directors multiplied by the number of Directors subject to the election, and he may cast all of such votes for a single candidate or may distribute them among some or all of the candidates, as he may see fit.

SECTION 2 - COMMITTEES

The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees each of which shall consist of two (2) or more Directors, which committees, to the extent provided in such resolution, shall have and exercise the authority of the Board of Directors in the management of the Association. Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present.

SECTION 3 - RESERVATION OF CONTROL

The first election of Directors shall not be held until after all of the Apartments of the Condominium have been sold by the Developer, until January 1, 2008 or until the Developer elects to terminate its control of the Condominium, whichever shall first occur. The Directors herein named shall serve until the first election of Directors, and any vacancies in their number occurring before the first election shall be filled by the remaining Directors.

ARTICLE V - PERIOD OF DURATION

The period of duration of the Association shall be perpetual, provided, however, that the Association shall be terminated by the termination of the condominium in accordance with the provisions of the Master Deed.

ARTICLE VI - OFFICERS

The officers of the corporation shall consist of a president, one or more vice-presidents, a secretary and treasurer and such other officers and assistant officers as may be deemed necessary, which officers shall serve at the pleasure of the Board of Directors.

The names and addresses of officers who shall serve until their successors are designated by the Board of Directors are as follows:

President: Al Estee

ARTICLE VII - INDEMNIFICATION

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not in exclusion of all other rights to which such Director or officer may be entitled under the Master Deed or By-Laws, or otherwise. The Association shall also purchase a fidelity bond for each Director and officer having access to the funds of the Association.

ARTICLE VIII - PROHIBITED ACTIVITIES

No part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

ARTICLE IX - INITIAL DIRECTORS

The number of Directors constituting the initial Board of Directors shall be five (5). The names and addresses of the persons who shall serve as the Directors of the Association for the first year and until their successors are elected and duly qualified are as follows:

NAME	ADDRESS
1. Al Estee	887 Johnnie Dodds Boulevard, Mt. Pleasant, SC 29464
2. To Be Named	
3. To Be Named	
4. To Be Named	
5. To Be Named	

ARTICLE X - INCORPORATIONS

The names and addresses of the Incorporators of the Association are as follows:

<u>NAME</u>	<u>ADDRESS</u>
1. Al Estee	887 Johnnie Dodds Boulevard, Mt. Pleasant, SC 29464

ARTICLE XI - BY-LAWS

The By-Laws of the Association shall be in the form attached to the Master Deed as Exhibit "E".

ARTICLE XII - MISCELLANEOUS

- (a) All definitions set forth in the Master Deed are incorporated by reference herein.
- (b) Singular, plural, gender. Whenever the context so permits, the use of the plural shall include the singular, the use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

The undersigned Petitioners, being the officers of Cambridge Lake Condominium Homeowners Association, Inc., declare that they were authorized and directed to apply for incorporation in the manner and for the purposes as stated hereinabove

<u>NAME</u>	<u>ADDRESS</u>
(put same names as listed under incorporators)	
1. Al Estee (President)	<u>24 River Reach Way, Charleston, SC 29407</u>

RE-RECORD
EX 2442PG469

EX T437PG083

WHEREFORE, your Petitioners pray that the Secretary of State do issue to the aforesaid Cambridge Lake Condominium Homeowners Association, Inc., a Charter with all the rights, powers, privileges and immunities, and subject to all of the limitations and liabilities conferred by Chapters 12 and 13, Title 12, 1962 Code of Laws of South Carolina, and acts amendatory thereto.

Cambridge Lake Homeowners Assn, Inc.
By *[Signature]*
(Name of Incorporator)

Charleston, South Carolina

24 day of March, 2007

BY-LAWS OFCAMBRIDGE LAKE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

a non-profit corporation existing under
The laws of the State of South Carolina

These are the By-Laws of CAMBRIDGE LAKE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., a non-profit corporation existing under the laws of the State of South Carolina (hereinafter called "the Association"), which has been organized for the purpose of administering a horizontal property regime established pursuant to the Horizontal Property Act of South Carolina (hereinafter called the "Act"), which is identified by the name CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME (hereinafter called the "Condominium"), said Condominium being located on lands situated in Charleston County, South Carolina, and more fully described in Exhibit "A" to Master Deed.

1. Location of Office: The location of the office of the Association shall be at the Property in Charleston County, South Carolina.
2. Fiscal Year: The fiscal year of the Association shall end on the last day of December of each year.

ARTICLE IMEMBERSHIP AND MEMBERSHIP MEETINGS

1. Qualifications: The members of the Association shall consist of all of the record owners of Apartments of the Condominium located in Charleston County, South Carolina, and established by Master Deed as recorded in the RMC Office of Charleston County, South Carolina; and appended to which Master Deed as Exhibit "E" thereto is a copy of these By-Laws.
2. Change of Membership: Change of membership in the Association shall be established by the recording in the RMC Office of Charleston County, South Carolina, of a deed or other instrument establishing a record title to an Apartment in the Condominium, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a member of the Association. The membership of the prior Owner shall be thereby terminated.
3. Voting: When a vote or any other action by Co-Owners provided for herein or in the Condominium requires a specific percentage, portion or fraction of Co-Owners, such percentage or portion or fraction shall mean, unless otherwise stated in the Condominium, such percentage, portion or fraction in the aggregate of such voting power equal to the percentage interest in the Common Elements shown on Exhibit "B" of the Master Deed.
4. Voting Rights: If an apartment is owned by one person, his right to vote shall be established by the record title to his Apartment. If an Apartment is owned by more than one person, the person entitled to cast the vote for the Apartment shall be one of the record Owners designated by a certificate signed by all of the record Owners of the Apartment and filed with

the Secretary of the Association. If an Apartment is owned by a corporation, partnership or other business entity, the person entitled to cast the vote for the Apartment shall be designated by a certificate of appointment signed by a duly authorized officer, general partner, or trustee, as then case may be, and filed with the Secretary of the Association. Such certificates shall be valid until revoked, until superseded by a subsequent certificate or until a change in the ownership of the Apartment concerned. A certificate designating the person entitled to cast the vote of an Apartment may be revoked in like manner as provided hereinabove. If such a certificate is not on file, the vote of such Co-Owners shall not be considered in determining the requirement for a forum nor for any other purpose.

5. Annual Meetings: Annual meetings of Co-Owners shall be held at the office of the Association, on the third Monday in October of each year, at 10:00 A.M., or, if that day is a legal holiday, on the next day following that is not a legal holiday; subject, however, to the provisions of Section 13 of this Article I. The annual meeting shall be held for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members.

6. Special Meetings: Special meetings of the members may be called by the Board of Directors, the president or by members of the Association holding more than twenty percent (20%) of the basic value of the Condominium Property, as a whole, as set forth in the Master Deed, for the purpose of considering and acting upon any matters of interest to the Association and its membership, and taking any other action not inconsistent with these ByOLaws and the Charter of the Association, including the adoption of resolutions declaring the desirability of any action recommended by the membership.

7. Notice of Meetings: Notice of all members' meeting stating the date, time, place and object for which the meeting is called shall be mailed to each member not less than ten (10) nor more than fifty (50) days prior to the date of such meeting. Such notice shall be sent by the secretary of the Association and shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the Association, postage prepaid. Notice of meetings may be waived either before or after meetings.

8. Voting in Person or by Proxy: A member may vote in person or by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid except for the particular meeting designated therein, and no proxy shall be honored unless filed with the secretary of the Association before the appointed time of the meeting.

9. Vote Required to Transact Business: The acts approved by a majority of the Co-Owners (51%) shall constitute a decision of the members and shall be binding upon the members except where approval by a greater percentage is required by the Act, the Master Deed establishing the Condominium, the Charter of the Association or these By-Laws.

10. Consents: Any action which may be taken by a vote of the members may also be taken by written consent to such action signed by the members required to take such action if such members were present and voting.

11. Adjourned Meetings: If any meeting of members cannot be organized because a majority of Co-Owners has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a majority are present.

12. Order of Business: The order of business at annual members' meetings and, as far as practical, at all other members' meetings shall be according to the latest addition of Robert's Rules of Order and shall be presided over by the President of the Association.

13. Retention of Control by Developer: Until the Developer has sold 76% of the Apartments of the Condominium, or until January 1, 2009, or until the Developer elects to terminate its control of the Condominium, whichever shall first occur, no annual or special meeting of the members shall be held.

ARTICLE II

BOARD OF DIRECTORS

1. Members: The Board of Directors of the Association shall be the form administration of the Condominium Property and shall consist of not less than three (3) nor more than seven (7), as shall, from time to time, be determined and fixed by the affirmative vote of the majority of Co-Owners at any annual meeting of the members. Any responsible person shall be eligible to be a Director. The first Board of Directors named in the Charter of the Association shall hold office until their successors shall have been elected. Each person shall be elected and qualified. The word "Director" as sometimes used herein shall mean a person elected to and serving on the Board of Directors.

2. Term: Each Director shall serve a two (2) year term and shall be subject to re-election; subject, however, to the terms of sections nine (9) hereof.

3. Removal: Any Director may be removed for cause by the vote of the majority of Co-Owners present in person or represented by written proxy at any annual or special meeting of the members of the Association.

4. Vacancies: Any vacancy occurring in the Board of Directors, including vacancies occurring from the removal of a Director, may be filled by majority vote of remaining members of the Board of Directors at any annual or special meeting.

5. Annual Meeting: The annual meeting of the Board of Directors shall be held on the third Monday in September of each year at the office of the Association. Notice of the place and hour of each such meeting shall be given to each Director at least five (5) days prior to each such meeting. Such notice may be given either in writing or by telephone.

6. Special Meetings: Special meetings of the Board of Directors for any purpose may be called by the president or upon the written request of any two (2) Directors, upon at least five (5) days notice to each Director and shall be held at such place or places as may be determined by the Directors, or as shall be stated in the call of meeting. Such notice may be given either in writing or by telephone. Regular meetings shall be held at such intervals as a majority of the Board may decide.

7. Organization Meeting: The organizational meeting of a newly-elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

8. Presiding Officer: The presiding officer of Directors' meetings shall be the Chairman of the Board if such an officer has been elected; and if none, then the President shall provide, in the absence of such presiding officers, the Directors present shall designate one of their members to preside.

9. Retention of Control by Developer: Provided, however, that until the Developer has completed and sold all of the Apartments of the Condominium, or until January 1, 2009, or until Developer elects to terminate its control of the Condominium, whichever shall first occur, the first Directors of the Association shall serve until the first annual meeting of the members occurring after the occurrence of the above described events.

10. Waiver of Notice: Any Director may waive notice of a meeting either before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

11. Quorum: A quorum shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Board of Directors approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

12. Powers and Duties: The Board of Directors shall have the following powers and duties:

- (a) To elect the officers of the Association as hereinafter provided.
- (b) To administer the affairs of the association and the Condominium Property.
- (c) To estimate the amount of the annual budget and to make and collect assessments against Co-Owners to defray the costs, expenses and losses of the Condominium.
- (d) To use the proceeds of assessments in the exercise of its powers and duties.
- (e) To maintain, repair, replace and operate the Condominium Property.
- (f) To purchase insurance upon the Property and insurance, including fidelity bond coverage, for the protection of the Association and its members.
- (g) To reconstruct improvements after casualty and to further improve the Property.
- (h) To make and amend reasonable rules and regulations respecting the use of the Property and the operation of the Condominium ("Rules and Regulations").

- (i) To enforce by legal means the provisions of the Act, the Master Deed, and Charter, these By-Laws, and the Rules and Regulations for the user of the Property.
- (j) To contract for the management of the Property of the Condominium and to delegate to such managing agent all powers and duties of the Association except such as are specifically required by the Master Deed to have approval of the Board of Directors or the membership of the Association.
- (k) To contract for the management or operation of portions of the Common Elements of the Condominium susceptible to separate management or operation.
- (l) To retain legal counsel.
- (m) To employ personnel to perform the services required for proper operation of the Condominium.
- (n) To purchase Apartments of the Condominium.
- (o) Unless otherwise provided herein or in the Master Deed to comply with the instructions of a majority of Co-Owners as expressed in the resolution duly adopted at any annual or special meeting of the members.
- (p) To give notice to first mortgagees of certain events or occurrences as set forth in the Master Deed.
- (q) To exercise all the powers and duties as the board of administration of the "Council of Co-Owners" referred to in the Act, and all powers and duties of the Board of Directors of a corporation organized under the Non-Profit Corporation Statutes, and all powers and duties provided for in these By-Laws, and any other powers and duties consistent with South Carolina Law.

13. Compensation: No Director shall be compensated for his services as such.

14. Liability of the Board of Directors: The members of the Board of Directors shall

not be liable to the Co-Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Co-Owners shall indemnify and hold harmless each of the members of the Board of Directors on behalf of the Condominium unless any contract shall have been made in bad faith or contrary to the provisions of the Master Deed of these By-Laws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Condominium. It is understood and permissible for the Board of Directors, whether employed by the Developer or not, to contract with the Developer without fear of being charged with self-dealing. It is also intended that the liability of any Co-Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in common elements bears to the interests of all the Co-Owners in the common elements, as established by Exhibit "C" of the Master Deed.

ARTICLE III

OFFICERS

1. Election: At each annual meeting, the Board of Directors shall elect the following officers of the Association:

- (a) A president, who shall be a Director and who shall preside over the meetings of the Board of Directors and of the members, and who shall be the Chief Executive Officer of the Association.
- (b) A vice-president, who shall, in the absence or disability of the president, perform the duties and exercise the powers of president.
- (c) A secretary, who shall keep the minutes of all meetings of the Board of Directors and of the members, and the minute book wherein resolutions enacted at such meetings shall be recorded, and who shall, in general, perform all the duties incident to the office of the secretary. The office of the Secretary and Treasurer may be held simultaneously by one individual.
- (d) A treasurer, who shall keep the financial records and books of the Association.
- (e) Such additional officers as the Board of Directors shall see fit to elect.

2. Powers: The respective officers shall have the general powers usually vested in such officer of the non-profit corporations; provided that the Board of Directors may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board of Directors may see fit.

3. Term: Each officer shall hold office for the term of two (2) year and until his successor shall have been elected and qualified.

4. Vacancies: Vacancies in any office shall be filled by the Board of Directors at any meeting thereof. Any officer may be removed at any time by a majority vote of the Board of Directors at a special meeting thereof, called for such stated purpose.

5. Compensation: The compensation of all officers shall be fixed by the Board of Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with a Director for the management of the Condominium. The officers shall receive no compensation for their services, unless otherwise expressly provided in a resolution duly adopted by the Board of Directors.

ARTICLE IVINSURANCE AND CASUALTY LOSSES

1. Insurance: The Board of Directors or its authorized agent shall obtain insurance for all of the improvements on the Property (with the exception of improvements and betterments made by the respective owners at their expense) against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, in an amount sufficient to cover the full cost of any repair, reconstruction or replacement in the event of damage or destruction from any such hazard, and Elements and all damage or injury caused by the negligence of the Association or any of its agents which public liability policy shall have reasonable limits set by the Board of Directors. Premiums for all such insurance shall be common expenses and paid by the Association. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association. Such insurance shall be governed by the provisions hereinafter set forth.

- (a) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of "AAAA+" or better by Best's Insurance Reports.
- (b) All policies shall be for the benefit of the Association, the Co-Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses be paid jointly to the Association and to the Trustee chosen by the Association to administer such proceeds as set forth herein.
- (c) Provision shall be made for the issuance of a certificate of insurance to each Co-Owner and his mortgagee, if any, which shall specify that the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the entire Condominium Property shall be covered by such insurance policy or policies.
- (d) All original policies and endorsements thereto shall be deposited with the Trustee which shall hold them subject to the provisions of paragraph 3.
- (e) Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Board of Directors or its duly authorized agent; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations related thereto.
- (f) In no event shall any recovery or payment under the insurance coverage obtained and maintained by the Board of Directors hereunder be affected or diminished by insurance purchased by a Co-Owner or their mortgagee.
- (g) Each Co-Owner may obtain additional insurance for his own benefit and at his own expense; provided however, that no Co-Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Co-Owners and their

mortgagees, may realize under any insurance policy which the Board of Directors may have in force on the property at any particular time.

- (h) Each Co-Owner at his own expense may obtain on the private elements of his Apartment or the contents thereof title insurance, homeowner's liability insurance, theft and other insurance covering contents, improvements, betterments and personal property damage and loss.
- (i) The Board of Directors shall conduct an annual insurance review for the purpose of determining the full insurable value of the entire Condominium Property including all private elements and common elements without respect to depreciation, and of all improvements on the Property (with the exception of improvements and betterments made by the respective Co-Owners at their expense) by one or more qualified persons.
- (j) The Board of Directors or its duly authorized agent shall make reasonable efforts to secure insurance policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, its duly authorized agents, and the Co-Owners and their respective servants, agents and guests; (2) a waiver of insurer's rights to repair or reconstruct instead of paying cash; (3) a waiver of insurer's right to cancel, invalidate or suspend the policy on account of the acts of fewer than five Co-Owners or the conduct of any Director, officer or employee of the Association or its duly authorized agent without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent, and Co-Owner or mortgagee, and (4) that any "other insurance" clause in the master policy exclude individual Co-Owners' policies from consideration.

2. No Partition: There shall be no judicial partition of the Condominium Property or any part thereof, and Developer and every person acquiring any interest in the Condominium Property or any part thereof shall acquire the same subject to this Declaration and shall be deemed to have waived any right to seek any such judicial partition until the happening of the conditions set forth in paragraph 4. In the case of damage or destruction or until the Condominium Property has been removed from the provisions of the Act as provided for in these By-Laws or the Master Deed.

3. Trustee:

- (a) All insurance policies purchased by and in the name of the Association shall provide that proceeds covering property losses shall be paid jointly to the Association and the Trustee. Immediately upon the receipt by the Association of such proceeds, the Association shall endorse the instrument by means of which such proceeds are paid and deliver such instrument to the Trustee. The Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds, nor shall Trustee have any obligation to inspect the Property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person. The Trustee shall be entitled to a reasonable compensation for the performance

of its duties and functions, which said compensation shall be paid as a common expense of the Association.

- (b) Among other things, the duty of the Trustee shall be to receive proceeds delivered to it and to hold such proceeds in trust for the benefit of the Co-Owners and their mortgagees. An undivided share of such proceeds on account of damage or destruction to the Common Elements shall be allocated and assigned for the Co-Owners in accordance with their respective percentages of undivided interest in and to the Common Elements. Proceeds on account of damage or destruction to private elements shall be allocated and assigned for the Co-Owners of the damaged or destroyed private elements in proportion to the cost of repairing or reconstructing the damage or destruction suffered by each such Owner. In the event that a mortgagee endorsement has been issued as to any particular Apartment, the share of such Co-Owner shall be held in trust for such Owner and his mortgagee as their interests may appear.
- (c) Proceeds of insurance policies received by the Trustee shall be disbursed as follows:
- (i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs shall be paid into the capital account for the benefit of all Co-Owners and shall be considered as a contribution of capital by the Co-Owners.
 - (ii) If it is determined as provided for in the Act and paragraph 4, that the damaged or destroyed improvements for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.
 - (iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever shall be made pursuant to and in accordance with a certificate of the Association signed by the President or Vice President and attested by the Secretary directing the Trustee as to the disbursements. If the damage or destruction is to the Common Elements and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the mortgagee, if any, known by the Trustee to have the largest interest in or lien upon such Common Elements. If the damage or destruction is to the private elements of one or more apartments and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the mortgagee or mortgagees, if any, known by the Trustee to have an interest in or lien upon the private elements of such Apartment or Apartments. The Trustee shall not incur liability to any Co-Owner, mortgagee or other person for any disbursements made by it pursuant to and in accordance with any such certificates or written authorizations.

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4. Damage and Destruction:

- (a) Immediately after the damage or destruction by fire or other casualty of all or any part of the Condominium Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall notify any holder of a first mortgage covering the damaged or destroyed property and shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or construction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Condominium Property to substantially the same condition in which it existed prior to the fire or other casualty with the private elements of each Apartment and the Common Elements having the same vertical and horizontal boundaries as before.
- (b) Reconstruction after fire or other casualty shall be mandatory where the extent of damage accounts for less than two-thirds (66 2/3%) of the entire Condominium Property, as provided in the Act.
- (c) Any such damage or destruction shall be repaired or reconstructed unless at least ninety percent (90%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If, for any reason, the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction are not made available to the Association within said period of sixty (60) days after the casualty, then such period shall be extended until such information shall be made available to the Association; provided, however, that said extension of time shall in no event exceed ninety (90) days. No mortgagees shall have any right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed.
- (d) In the event that it is determined by the Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then in that event, (1) any Co-Owner may petition a court of competent jurisdiction for a removal of the Condominium Property from the provisions of the Act, and upon removal of the Condominium Property from the provisions of said Act, the property shall be deemed to be owned in common by those who were Co-Owners at the time of such removal, (2) the undivided share in the property owned in common by each such Co-Owner with respect to the previous Common Elements and with respect to the private elements shall be the undivided interest previously owned by such owner in the previous Common Elements, (3) any liens affecting any of the Apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the Co-Owner in the previous Condominium Property, and (4) the previous Condominium Property shall be subject to an action for partition and sale at the instance of any Co-Owner, in which event the net proceeds of sale shall be subject to an action for partition and sale at the instance of any Co-Owner, in which event the net proceeds of sale shall be paid to the Trustee. Said net proceeds of sale, together with the net of the insurance on the previous Condominium Property, after first paying out of the respective

share of the Co-Owners, to the extent sufficient for the purpose, all liens (according to their existing priorities) on the undivided interest in the previous Condominium Property owned by each Co-Owner. Disbursements to such owners shall be made pursuant to certificates provided for in paragraph 3.(c)(iii). Under no circumstances shall anyone other than the owner of an Apartment at the time of removal of the Condominium Property from the provisions of said Act be entitled to the use of any previous element of each previous Apartment subsequent to such removal and prior to the sale of such previous element.

5. Repair and Reconstruction:

- (a) If the damage or destruction for which the insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special assessment against all Co-Owners in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Such assessments against Co-Owners for damage to Apartments shall be in proportion to such Co-Owners' percentages of ownership in the Common Elements.
- (b) Any and all sums paid the Association by virtue of those special assessments provided for in paragraph (a) of this paragraph 5, shall be deposited by the Association with the Trustee. The proceeds from insurance and assessments, if any, received by the Trustee, when the damage or destruction is to be repaired or reconstructed, shall be disbursed as provided for in paragraph 3.

ARTICLE V

ASSESSMENT AND COLLECTION OF COMMON EXPENSES

1. Records: The Board of Directors shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Elements and common expenses, specifying and itemizing the expenses incurred, and such records and the vouchers authorizing the payments of such expenses shall be available for examination by the Co-Owners and the first mortgagee of any Apartment at convenient hours of week days. Such payment vouchers may be approved in such manner as the Board of Directors may determine.

2. Budget: The Board of Directors shall cause to be prepared an estimated annual budget for common expenses for each fiscal year of the Association. Such budget shall take into account the estimated common expenses for administration and maintenance and repair of the Common Elements which common expenses shall include but not limited to the following: salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and other expenses (as distinguished from individual mortgage payments, real estate taxes, and individual expenses for utility services billed or charged to the separate Co-Owners on an individual or separate basis rather than a common basis). The common expenses shall be those expenses designated by the Board of Directors pursuant to these By-Laws and the Master Deed. The Common expenses may also include such amounts as may be required for the purchase or lease by the

Board of Directors, on behalf of the Association, of any Apartment which is to be sold at a foreclosure or other judicial sale. The annual budget shall provide for an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis. The annual budget shall provide for amounts required to make up for any deficit in any prior year, a general reserve for contingencies for the year, and a reserve for replacements in reasonable amounts as determined by the Board of Directors. To the extent that the assessments and other cash income collected from the Co-Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account.

3. Assessments: The estimated annual budget for each fiscal year shall be approved by the board of Directors, and copies thereof shall be furnished by the Board to each Co-Owner not later than forty-five days (45) before the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget each Co-Owner shall pay, as his respective monthly assessment for the common expenses one-twelfth (1/12) of his share of the common expenses for such year as shown by the annual budget. The assessment of the common expenses shall be as set forth in the Master Deed. The Board of Directors may cause to be sent to each Co-Owner on or before the first day of each month a statement of the monthly assessment of such Co-Owner for such month, but the failure to send or to receive such monthly statement shall not relieve any Co-Owner of his obligation to pay his monthly assessments on or before the first day of each month. If the Board of Directors shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Co-Owner shall continue to pay each month the amount of his previous monthly assessment on or before the first day of each month to the manager or managing agent or as may be otherwise directed by the Board. No Co-Owner shall be relieved of his obligation to pay his assessments by abandoning or not using his apartment or the common elements. No Co-Owner shall be liable for the payments of any assessment levied against his Apartment subsequent to a sale, transfer or other conveyance of all such Co-Owner's interest in such Apartment.

The Developer, its Grantees and Assigns to the development shall be exempt from paying dues on units owned by the Developer, but the Developer will pay into the Association the amount deemed by the Developer in his discretion to be necessary to maintain the budget.

4. Proration of Assessments: For the first fiscal year, the annual budget shall be approved by the first Board of Directors. If such first year shall be less than a full year, then the monthly assessment for each Co-Owner for the common expenses shall be proportional to the number of months and days in such period covered by such budget. Commencing with the date of closing of his Apartment by each Co-Owner, he shall pay his assessment for the following month or fraction of a month, which assessment shall be in proportion to his ownership interest in the Common Elements and the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be as computed by the Board of Directors.

5. Annual Statements: Within forty-five (45) days after the end of each year covered by an annual budget, or as soon thereafter as shall be practicable, the Board of Directors shall cause to be furnished to each Co-Owner and the first mortgagee of each Apartment a statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

6. Accounts: The Board of Directors shall cause to be kept a separate account record for each Co-Owner showing the assessments charged to and paid by such Co-Owner, and the status of his account from time to time.

Upon ten (10) days notice to the Board of Directors any Co-Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Co-Owner. A Co-Owner shall make no more than one request per month.

7. Supplemental Budget and Assessments: If during the course of any year, it shall appear to the Board of Directors that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated common expense for the remainder of such year, then the Board shall prepare and approve a supplemental budget as provided for in the Master Deed covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Co-Owner, and thereupon a supplemental assessment shall be made to each Co-Owner, for his proportionate share of such supplemental budget.

(a) Assessments for emergencies: Assessments for emergency Common Expenses which cannot be paid from the annual Assessments for common expenses shall be made only after notice of the need therefore to the Co-Owners. After such notice and upon approval in writing by a majority of the Co-Owners, the Assessment shall become effective, and it shall be due after 30 days' notice thereof in such manner as the Board of Directors of the Association shall require.

8. Payment of Assessments: It shall be the duty of every Co-Owner to pay his share of the common expenses in proportion to his percentage share in the Common Elements as shown on Exhibit "C" of the Master Deed. If any Co-Owner shall fail or refuse to make any such payments when due, the Association and the Board of Directors shall have the authority to exercise and enforce any and all rights and remedies as provided for the Act, the Master Deed or these By-Laws, or otherwise available at law or in equity, for the collection of all unpaid assessments.

(a) Acceleration of Assessment installments upon default. If a Co-Owner shall be in default in the payment of an installment upon an assessment, the Board of Directors of the Association may accelerate the remaining installments of the assessment (if the assessment is payable monthly) upon notice thereof to the Co-Owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, which date shall not be less than 10 days after delivery thereof to the Co-Owner, nor less than 20 days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

9. Liens: The Board of Directors may cause the Association to discharge any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property, the Common Elements, or any Apartment or private element in the Condominium, and the Association shall thereupon have a lien in such amount, together with the amount of any costs any attorney's fees incurred in connection therewith, on each Apartment responsible for the payment thereof in accordance with the provisions of the Act, and the Board of Directors shall thereupon perfect any such lien by recording an appropriate claim of lien prepared and filed for record in accordance with the provisions of the Act. Any and

all liens, claims or rights of the Association in or with respect to any Apartment, or Co-Owner, for the discharge of any mechanic's lien or other encumbrances provided for hereunder shall be subordinate to the lien of any mortgage upon any Apartment recorded prior to the date of such lien, claim or right.

10. Lien of the Association For Unpaid Assessments: All unpaid Assessments against any Co-Owner shall constitute a lien against the Co-Owner's Apartment in favor of the Association, as provided by the Act, which lien shall become effective when a notice, claiming such lien, has been duly recorded by the Association in the RMC Office for Charleston County, South Carolina. Said lien shall be prior to all other liens except only tax liens on the apartment in favor of any assessing unit, and mortgages and other liens recorded, prior to recordation of the Association's lien. Such claim of lien shall state the legal description of the Apartment, the name of the record owner, and the amount due and the date when due. Such claim of lien shall be signed and verified by an officer or agent of the Association prior to its being recorded; and no such claim of lien shall be made by the Association unless the assessment, charge or expense, giving rise to the lien, remains unpaid for more than ten (10) days after same become due. Any such lien may be foreclosed by the Association in the manner provided by law for the foreclosure of real estate mortgages. The lien shall secure the payments of all assessments as described in said claim of lien and, in addition thereto, shall secure the payment of subsequent assessments which come due after the filing of the claim of lien and prior to the satisfaction of such lien by foreclosure or otherwise, including interest thereon at the rate of eight percent (8%) per annum together with all costs and reasonable attorney's fees incurred by the Association incident to the collection of such assessments or the enforcement of such lien. If foreclosure is not commenced within one (1) year after the date of filing such claim of lien, such claim shall not thereafter be foreclosed, nor shall such claim thereafter constitute a lien on the Apartment described in such claim. The right of the Association to foreclose a lien as aforesaid shall be in addition to any other remedy, at law or in equity, which may be available to it for the collection of assessments, including the right to proceed personally against any delinquent Co-Owner for the recovery of a judgment "in personam". Any personal judgment against any such delinquent Co-Owner may include all unpaid subsequent assessments which come due after the institution of such suit and prior to such Order of Judgment, including interest thereon at the rate of eight percent (8%) per annum, together with all costs and reasonable attorney's fees incurred by the Association incident to the collection of such assessments.

ARTICLE VI

MORTGAGES

1. Notice to Board of Directors: A Co-Owner who mortgages his apartment shall notify the secretary of the Association who shall maintain a record of such information.
2. Notice of Unpaid Common Expenses: The Board of Directors shall promptly report to the first mortgagee of any Apartment unpaid charges due from, or any other default by, the Co-Owner of a mortgaged Apartment not cured within thirty (30) days of default.
3. Notice of Taking or Damage: The Board of Directors shall promptly report to all first mortgagees in writing any loss to, or taking of, (including condemnation) the Common Elements or damage to an Apartment exceeding one thousand dollars (\$1,000.00).

4. Examination of Books: The holder of a first mortgage on any Apartment shall have the same right to examine the books and records of the Association afforded a Co-Owner pursuant to Section 6 of Article V of these By-Laws.

ARTICLE VII

USE AND OCCUPANCY RESTRICTIONS

1. Use and Occupancy Restrictions: No part of the Property shall be used for other than residential use and the related common purposes for which the property was designed. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit a Co-Owner from:

- (a) Maintaining his personal or professional library therein.
- (b) Keeping his personal business or professional records or accounts therein.
- (c) Handling his personal business or professional records or accounts therein.

Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

2. Use of Common Elements: The Common Elements shall be used only for access, ingress and egress to and from the respective Apartments by the persons residing therein and their respective guests, household help and other authorized visitors, and for such other purposes which are incidental to the residential use of the respective apartments; provided, however, the parking area, and other special areas shall be used for such purposes as are approved by the Board of Directors. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Co-Owner. The Association and the Board of Directors, and their authorized employees and representatives, shall have such access to any Apartment as may be necessary for the repair, maintenance, replacement, alteration, care or protection of the Common Elements, or any portion thereof.

3. Nuisances: No unlawful, immoral, noxious or offensive activities shall be carried on in any Apartment or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board of Directors cause unreasonable noise or disturbance to others.

4. Maintenance and Repair: Each Co-Owner shall maintain his Apartment in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Apartment which may increase the rate of cause the cancellation of insurance on other Apartments or on the Common Elements. Each Co-Owner shall not display, store or use any signs, clothing, sheets, blankets, laundry or other articles outside his Apartment, or paint or decorate or adorn the outside of his apartment, or install outside his apartment any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board of Directors.

5. Trash: Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time in administrative Rules and Regulations of the Board of Directors.

6. Rights of Developer: Until all of the Apartments have been sold by the Developer and occupied by the Purchasers, the Developer may use and show one or more of such unsold or unoccupied apartments as a model apartment or sales office, and may maintain customary signs in connection therewith notwithstanding the provisions of Sections 4 of this Article.

7. Personal Property: Articles of personal property belonging to any Co-Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in common areas, except in such storage area as may be specifically designated for the respective Co-Owner by the Board of Directors. No clothing, rugs, sheets, blankets or other laundry shall be hung or exposed from windows, balconies, decks or other common areas of the Property except when specifically approved by the Board of Directors. Screened porches shall at all times be kept clean and free of clothes, etc. If there is a violation of these rules, the Board of Directors shall have the right to assess a penalty fee.

8. Electric Wiring: No Co-Owner shall overload the electric wiring in any building, or operate any machines, appliances, accessories or equipment to the heating or air-conditioning system or plumbing system other than those systems originally installed, without the prior written consent of the Board of Directors or managing agent.

9. Boats, Campers and Inoperable Motor Vehicles: No boats, canoes, or campers shall be stored or parked on or in the common areas. All boats, canoes and campers shall be stored and parked in the area designated by the Board of Directors. Motor vehicles may be parked only in the areas provided for that purpose. Any motor vehicle which breaks down or becomes inoperable in the common areas shall immediately be repaired and made operable. The Board of Directors shall have the authority to remove any such vehicle from the common area if such vehicle is left in an inoperable state for more than 48 hours, or if such vehicle impedes or prevents ready access to any part of the Property. If there is a violation of these rules, the Board of Directors shall have the right to assess a penalty fee.

10. Pets: No animals shall be raised, bred or kept in any apartment, except for dogs, cats or other household pets of a Co-Owner, provided that they are not kept for any commercial purposes, and provided that they shall be kept in strict accordance with the administrative rules and regulations relating to household pets from time to time adopted or approved by the Board of Directors, and provided that they shall not in the sole judgment of the Board of Directors constitute a nuisance to others. If there is a violation of these rules, the Board of Directors shall have the right to assess a penalty fee. Pets shall be limited to no more than two (2) pets in any apartment and shall be limited to small pets. Any and all pets will need to be approved by the Board of Directors or any such committee created by the Board for such review.

ARTICLE VIII

MISCELLANEOUS

1. Seal: The seal of the Association shall be circular in form and shall contain the name of the Association and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

2. Bank Accounts: The Board of Directors may, from time to time, by resolution authorize the maintenance of one or more deposit accounts by the Association. All checks, drafts, or other orders for the payment of money issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

3. Notice: Whenever any notice or demand is required to be given by these By-Laws or the Master Deed, any notice or demand so required shall be deemed sufficient if given by depositing the same in the United States Mail, postage prepaid, addressed to the person entitled thereto at his last known post office address according to the records of the Association, and such notice shall be deemed given on the day of such mailing.

4. Waiver of Notice: Whenever any notice whatever is required to be given under the provisions of any law, or under the provisions of the Charter, these By-Laws or the Master Deed, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

5. Conflict: In the event of any conflict between the provisions of these By-Laws and the Master Deed, the Master Deed shall govern.

6. Definitions and Gender:

(a) The Members of the Association shall be all Co-Owners of the Property.

(b) All definitions set forth in the Master Deed are incorporated by reference herein.

(c) Singular, plural, gender. Whenever the context so permits, the use of the plural shall include the singular, the use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

ARTICLE IX

AMENDMENT

1. Notice: Notice of the subject matter of a proposed amendment to these By-Laws shall be included in the notice of any meeting at which a proposed amendment is considered

(a) A resolution for the adoption of the proposed amendment shall be represented to a meeting of the Members approval of any amendment shall be

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had only upon the affirmative vote of the Co-Owners representing at least two-thirds of the total basic value of the Property, as provided for in the Act.

- (b) Proviso. Provided, however, that no amendment shall discriminate against any Co-Owner not against any Apartment or class or group of Apartments unless the Co-Owners so affected shall consent. No amendment shall be made which is in conflict with the Act, the Charter or the Master Deed.

4. Execution and Recording: A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the RMC Office for Charleston County, South Carolina.

The foregoing were adopted as By-Laws of CAMBRIDGE LAKE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., a non-profit corporation existing under the laws of the State of South Carolina, at the first meeting of the Board of Directors on the 24th day of February, 2003.

WITNESS

PRESIDENT

WITNESS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness who, on oath, says that he saw the within named CAMBRIDGE LAKE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., by Albert Foster, its President, sign the within Master Deed, and that (s)he with the other witness herein witnessed the execution thereof.

Witness

SWORN TO and subscribed before me this
24th day of February, 2003
Julio E. Ithual
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/19/2007

RE-RECORD
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RECORDER'S PAGE

This page Must remain with
the original document.



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**Davidson
Bennett
& Wigger**
ATTORNEYS AT LAW

RE-RECORD
FILED

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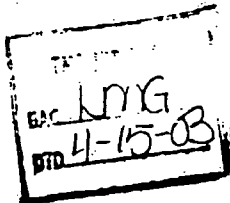
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording

Fee 178.00
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CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

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County Fee —
Postage —
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RECEIVED FROM RMC

APR 16 2003

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

**PID VERIFIED
BY ASSESSOR**

REP JRR

DATE 3/6/03

RECEIVED FROM RMC

MAR 07 2003

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

CASE NO: 2010-SC-87-1648

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

2010-CP-10-9146

JUDGMENT AGAINST	ATTORNEY
NAME: MICHAEL B. HARTNETT ADDRESS: 1579 CAMBRIDGE LAKES DRIVE MOUNT PLEASANT SC 29484	FILED 2010 OCT 18 PM 5:50 JULIE J. ARMSTRONG CLERK OF COURT <i>Clocked in date</i>
JUDGMENT IN FAVOR OF	
NAME: CAMBRIDGE LAKES HOA ADDRESS: 3090 HIGHWAY 17 NORTH MT PLEASANT SC 29466	
DAMAGES AND COST	

AMOUNT OF JUDGMENT \$ 7500.00
INTEREST \$
ATTORNEY FEES \$
COST \$ 80.00
TOTAL \$ 7580.00

JUDGMENT RENDERED October 8, 20 10

JAMES TURNER

MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the ____ day of _____, 20 ____.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, _____ Clerk of the Court of Common Pleas of Charleston County,
this ____ day of _____, 20 ____.

(R-10/01)

Plaintiff or Plaintiff's Attorney

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

2011-CP-10-39

JUDGMENT AGAINST		ATTORNEY	
NAME:	CHARLES W. TAYLOR, JR.	JULIE J. ARMSTRONG CLERK OF COURT	2011 JAN 4 PM 2:28 FILED
ADDRESS:	1119 COTTON POINT MT PLEASANT SC 29434		
JUDGMENT IN FAVOR OF			
NAME:	CAMBRIDGE LAKES HOA	LYDIA COWAN, ESQ.	
	3090 HIGHWAY 17 NORTH	PO DRAWER 1018	
ADDRESS:	MT PLEASANT SC 29466	CHARLESTON SC 29402	
DAMAGES AND COST			

11-11a

AMOUNT OF JUDGMENT	\$ 2860.46
INTEREST	\$
ATTORNEY FEES	\$ 750.00
COST	\$ 80.00
TOTAL	\$ 3890.46

JUDGMENT RENDERED DECEMBER 20, 2010

JAMES TURNER
MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the ____ day of _____, 20 ____.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, _____ Clerk of the Court of Common Pleas of Charleston County,
this ____ day of _____, 20 ____.

(R-10/01)

Plaintiff or Plaintiff's Attorney

2011-CP-10-2767

STATE OF SOUTH CAROLINA)

SC872010002258
CIVIL CASE NUMBER

COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT

TRANSCRIPT OF JUDGMENT
FIND FOR PLAINTIFF

Names of Parties Against Whom Judgment is Granted	Attorneys
The Naws, LLC c/o George M. Christodal III 1481 Cambridge Lakes Drive Mt. Pleasant SC 29464	BY _____ JULIE J. ARMS, LONG CLERK OF COURT 2011 APR 15 PM 2:52 FILED
Names of Parties To Whom Judgment is Granted	Attorneys
Lydia P. Davidson, Esquire For: Cambridge Lakes HOA P O Drawer 1018 Charleston, SC 29402-0000	

DAMAGES AND COSTS

Amount of Judgment:	\$6,748.71
Costs:	
Court Costs / Filing Fees	\$ 160.71
Attorney Fees	\$ 735.00
	\$0.00
Total Amount of Judgment:	\$7,644.42
Date of Judgment:	4/7/2011

I, James A Turner, Magistrate in and for the County of Charleston, do hereby certify that the foregoing is a correct transcript of the judgment issued by this Court.

James A Turner
Charleston County Magistrate

April 7, 2011



Charleston County
Summary (Magistrate)
Court Case Details
Public Index



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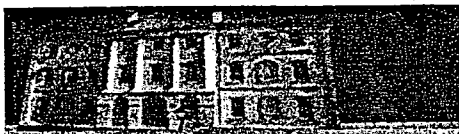
Cambridge Lakes Hoa VS Geoff G Forbes

Case Number:	SC872010002259	Court Agency:	Small Claims - North	Filed Date:	10/22/2010
Case Type:	Civil	Case Sub Type:	Summons & Complaint	File Type:	
Status:	Disposed	Assigned Judge:	Turner, James A		
Disposition:	Find for Plaintiff	Disposition Date:	12/20/2010	Disposition Judge:	Turner, James A.
Original Source Doc:		Original Case #:			
Judgment Number:	SC872010002259	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Cambridge Lakes Hoa	Judgment/Judgment	Judgment		12/20/2010-00:00	12/20/2010-00:00	
Forbes, Geoff G	Judgment/Judgment	Judgment		12/20/2010-00:00	12/20/2010-00:00	
	FINDING FOR PLAINTIFF	Filing		12/20/2010-00:00	12/20/2010-00:00	
	Civil Court Default Date	Event		12/17/2010-10:00	12/17/2010-10:15	
	Civil Court Default Date	Event		12/10/2010-10:00	12/10/2010-10:00	
	SERVICE;CERTIFIED MAIL	Filing		11/05/2010-00:00	11/05/2010-00:00	
Cambridge Lakes Hoa	Civil Converted Cost	Filing		10/22/2010-00:00	10/22/2010-00:00	
Cambridge Lakes Hoa	Civil Converted Cost	Filing		10/22/2010-00:00	10/22/2010-00:00	
	S/C Non-Liquidated	Filing		10/22/2010-00:00	10/22/2010-00:00	

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Charleston County
Summary (Magistrate)
Court Case Details
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Cambridge Lakes Hoa VS Geoff G Forbes

Case Number:	SC872010002259	Court Agency:	Small Claims - North	Filed Date:	10/22/2010
Case Type:	Civil	Case Sub Type:	Summons & Complaint	File Type:	
Status:	Disposed	Assigned Judge:	Turner, James A		
Disposition:	Find for Plaintiff	Disposition Date:	12/20/2010	Disposition Judge:	Turner, James A
Original Source Doc:		Original Case #:			
Judgment Number:	SC872010002259	Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials		
For:	Cambridge Lakes Hoa	Against:	Forbes, Geoff G	Judg. Amount:	\$5,195.99	Judgment Date:	12/20/2010
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	--
Notes:	None						
Judgment Details							
Claims Code		Detail Desc.			Detail Amount		Detail Date
None							

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

2012-CP-10-4714
2012CV1010600328
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

TRANSCRIPT OF JUDGMENT
FIND FOR PLAINTIFF

FILED
2012 JUN 11 PM 4:18
CLERK OF COURT

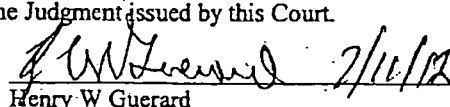
Names of Parties Against Whom Judgment is Granted	Attorneys
The Naws, LLC 1481 Cambridge Lakes Drive Mt. Pleasant, SC 29464	

Names of Parties To Whom Judgment is Granted	Attorneys
Cambridge Lakes Condominium Homeowners Association, Inc 9 State Street Charleston, SC 29401	Lydia P Brooks Esq

DAMAGES AND COSTS

Amount of Judgment:	\$3,380.82
Costs:	
Interest	\$0.00
Attorney Fees	\$600.00
Court Costs / Filing Fees	\$140.00
Total Amount of Judgment:	\$4,120.82
Date of Judgment:	6/5/2012

I, Henry W Guerard, Magistrate in and for the County of Charleston, do hereby certify that the foregoing is a correct transcript of the Judgment issued by this Court.


Henry W Guerard
Charleston County Magistrate

MV47

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Circuit Court Case No. 2010-CP-10-9305

APPELLATE CASE NO.: 2013-001632

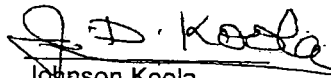
Cambridge Lakes HOA,.....Respondent,

v.

Johnson Koola,.....Appellant.

CERTIFICATION OF COUNSEL PURSUANT TO RULE 210(G)

The undersigned, appellant pro se, certifies under penalty of perjury that the above Record of Appeal includes all matters, which are included after mutual agreement between the appellant and respondent with conditional exclusion of certain irrelevant materials subject to Court approval. A "Motion to Exclude Irrelevant Materials from the Designation of Matter to be Included in the Record on Appeal" filed on August 15, 2014, is pending with the Court of Appeals.



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

Appellant pro se

August 16, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 29 2014

APPEAL FROM CHARLESTON COUNTY SC Court of Appeals
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Circuit Court Case No. 2010-CP-10-9305

APPELLATE CASE NO.: 2013-001632

Cambridge Lakes HOA, ... Respondent,

v.

Johnson Koola, ... Appellant.

AMENDED [INITIAL] BRIEF OF APPELLANT

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

Appellant pro se

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT WHEN DISCOVERY WAS NOT COMPLETED, AND APPELLANT'S MOTION TO COMPEL WAS YET TO BE HEARD?
- II. DID THE TRIAL COURT ERR IN GRANTING THE HOA'S MOTION FOR SUMMARY JUDGMENT TO DISMISS KOOLA'S COUNTERCLAIMS AGAINST THE HOA?
 - A. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT AS THE COURT FAILED TO APPREHEND GENUINE ISSUE OF MATERIAL FACTS IN DISPUTE?
 - B. DID THE TRIAL COURT ERR IN DISMISSING KOOLA'S COUNTERCLAIMS AGAINST THE HOA FOR CIVIL CONSPIRACY BY SUMMARY JUDGMENT?
 - C. DID THE TRIAL COURT ERR IN DISMISSING KOOLA'S COUNTERCLAIMS AGAINST THE HOA FOR BREACH OF FIDUCIARY DUTY BY SUMMARY JUDGMENT?

STATEMENT OF THE CASE

This is an appeal from Charleston County Trial Court's order, which dismissed Appellant Johnson Koola's ("Koola") counterclaims against Respondent Cambridge Lakes HOA ("HOA") subsequent to granting of Summary Judgment to the HOA. This was affirmed by denial of appellant's Motion to Reconsider. The Form 4 Order (ROA # 1: Form 4 Order, *Cambridge Lakes HOA v. Koola*, Case No.: 2010-CP-10-9305, March 4, 2013) issued by the Presiding Judge stated that "Plaintiff's Motion for Summary Judgment was granted, therefore Defendant's Counterclaims are dismissed and Plaintiff's Motion to Compel is now moot". Koola appeals the dismissal of his counterclaims against the HOA and prays to the Honorable Court to revoke the Summary Judgment granted to the respondent.

STATEMENT OF FACTS

In January 2004, Koola contracted to purchase a condominium (converted from apartments through condo conversion) in Cambridge Lakes subdivision in Mt. Pleasant, South Carolina, from Cambridge Two, LLC and Albert Estee ("developer/seller"). Shortly before closing of the sale, Koola received a copy of the Master Deed for Cambridge Lake[s] Horizontal Property Regime from developer/seller, which stated that the Cambridge Lake[s] Horizontal Property Regime (the "Condominium") was established according to the provisions of South Carolina Horizontal Property Act, § 27-31-10 et seq. (1976) ("HPA"). (ROA # 2: Master Deed of the HOA at 1). Koola and his Mortgagee also received the "Builder's Certification" (ROA # 3: Builder's Certification) from developer/seller which stated: "For Condo Conversions: The structural, health and safety repairs and remodeling have been completed". In Feb. 2004, Koola purchased the condominium after paying 10% down payment. In Sep. 2010, Koola learnt that developer/seller violated South Carolina Horizontal Property Act § 27-31-430 (1976), ("HPA § 27-31-430"), and that the "Builder's Certification" was falsified and fraudulent.

In June/July 2008, Koola was attempting to sell his condominium to enable him to pay off his mortgage related debts, as his income then was only limited Social Security benefits. In June 2008, the HOA initiated construction defects litigation¹ against the builder and related entities, developer/seller and one of two real estate agents. After initiating the lawsuit the HOA, through a letter dated June 25, 2008, informed the homeowners that there are defects "in the buildings at Cambridge Lakes in the foundation, main walls, windows, roofs, trusses, framing or any other part of the

¹Summons and Complaint, *Cambridge Lakes HOA v. Bostic Bros.*, Case No.: 2008-CP-10-3506, June 8, 2008.

structure or building envelope". (ROA # 4: Letter from the HOA at 3, June 25, 2008). The HOA asked the homeowners to assign their claims and rights of action to the HOA and to agree to a collection of regular or special assessments on behalf of the HOA. (*id.* at 3). The HOA did not follow the due process while initiating the litigation¹. The HOA claimed \$8 million as the cost to repair the construction defects¹. This translates into defects worth \$92,307 in the 3-bedroom condominium Koola purchased.

Because of the alleged massive construction defects and the stated potential liability of \$92,307, Koola could not sell² his unit in 2008. In 2009 Koola became insolvent and filed for Chapter 7 Bankruptcy. In the second half of 2009, Koola made another attempt to sell his condominium, but could not.

By November 2009, Koola had no resources to continue to pay mortgage-related payments and defaulted on those payments. In April/May 2010, Koola listed his unit for short sale on the advice of his Mortgagee. When informed of his attempt to sell his unit through short sale, the HOA filed lien (ROA # 5: Notice of Lien) on his unit followed by a civil action against Koola alleging failure to pay monthly assessments. The Notice of Lien prompted the Mortgagees to file foreclosure actions³ against Koola. Koola filed timely responses and counterclaims in these actions. Because of these multiple adversarial and judicial actions in short order – a Notice of Lien, a Lis Pendens, a civil action for the collection of regime dues, and multiple foreclosure actions – Koola was forced to cancel his efforts to sell his condo unit through short sale. The HOA, through its multiple civil actions, obstructed Koola's short sale of his condominium.

² Between 2006 and 2010, the market price of a three-bedroom condominium in Cambridge Lakes fell from approximately \$245,000 to \$125,000 (ROA # 18: Koola, Motion to Reconsider, p.15).

³ First Mortgagee foreclosure action: *BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP v. Johnson D. Koola et al.* case No.: 2010-CP-10-6060, Sep. 1, 2010.

PROCEDURAL HISTORY.

The litigation between the parties initially rose on August 10, 2010, when the HOA filed a Summons⁴ in Charleston County Small Claims Court against Koola for unpaid monthly dues and associated fees. Koola answered and counterclaimed. The Hon. Magistrate transferred the case to the Court of Common Pleas on November 8, 2010. Since then the case was continued as 2010-CP-10-9305 in the Court of Common Pleas. The motions filed by the HOA to dismiss Koola's counterclaims were denied by the Court of Common Pleas on July 26, 2011.

In June 2011, the HOA served discovery on Koola. Koola responded to the discovery proceedings in a very timely manner. On July 15, 2011, Koola served discovery on the HOA. The HOA responded to the discovery proceedings in August and Sep. 2011. The HOA's responses were mostly incomplete; the HOA's responses to Koola's Request for Admission illustrate this inadequacy. (ROA # 6: HOA's Answers to Koola's Request for Admissions, Aug. 15, 2011). More importantly, the HOA withheld certain critical minutes of the Board of Directors ("BOD") meetings. Also, the HOA withheld financial statements for several months. Many of the statements were incomplete. In several instances HOA modified the financial statements before production to Koola. Because of these inadequacies, Koola filed a Motion to Compel on Aug. 15, 2012. (ROA # 7: Motion to Compel, Aug. 15, 2012).

The HOA's two civil cases against Koola were subsequently combined into a single action, Case No.: 2010-CP-10-9305, through a court order on December 5, 2011. On June 8, 2012, Koola filed an Amended Answer and Counterclaim (ROA # 8: Koola,

⁴ Summons, Cambridge Lakes HOA vs. Johnson Koola, Case No.: 2010-SC-87-1646, July 7, 2010.

Amended Answer and Counter Claim, June 8, 2012). The HOA filed an Answer to the Amended Answer and Counter Claim on June 18, 2012 (ROA # 9: HOA, Reply to Defendant's Amended Answer and Counterclaims, June 18, 2012).

On August 1, 2012, the HOA filed a Motion for Summary Judgment to dismiss Koola's counterclaims in case # 2010-CP-10-9305. (ROA # 10: HOA, Motion for Summary Judgment, Aug. 1, 2012. The HOA filed a Memorandum in Support of the Plaintiff's Motion for Summary Judgment on Dec. 7, 2013 (ROA # 11: HOA, Memorandum in Support of Motion for Summary Judgment) ("HOA's Memorandum"). Koola filed a Response to Plaintiff's Motion for Summary Judgment on Jan. 2, 2013. (ROA # 12: Koola's Reply to HOA's Motion for Summary Judgment) ("Koola's Reply to HOA's Memorandum"). The Presiding Judge took the case under advisement. The Trial Court was aware of the appellant's Motion to Compel in the case docket. Nevertheless, the trial court granted summary judgment to respondent, then proceeded to dismiss the appellant's counterclaims without ruling on his counterclaims whatsoever and then declared the Motion to Compel "now moot" (Form 4 Order, *supra*). The long order granting Summary Judgment to the HOA and dismissing Koola's counterclaims was posted on March 15, 2013. (ROA # 13: Order Granting Plaintiff's Motion for Summary Judgment). The Court's order did not address any of the material facts raised by Koola in his Reply to HOA's Memorandum. On April 5, 2013 Koola filed a Motion to Reconsider in this action (ROA # 14: Motion to Reconsider). The presiding Judge denied the Motion to Reconsider on June 18, 2013. (ROA # 15: Order Denying Defendant's Motion to Reconsider). The Appeal to the Court of Appeals followed.

STANDARD OF REVIEW

In reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rules 56(f) and 56(c) of the SCRCP. Under Rule 56(f), SCRCP, the Court may order "a continuance of the case to permit affidavits to be obtained or depositions to be taken or *discovery to be had*, if it appears from the affidavits of a party opposing summary judgment that he cannot, for reasons stated, justify his opposition to the motion for summary judgment".

Under Rule 56(c), SCRCP, "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". *Nexsen v. Haddock*, 353 S.C. 74, 77, 576 S.E.2d 183, 185 (Ct.App. 2002). 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. Inc.*, 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.E.2d 385, 387 (1973).

ARGUMENTS

I IT WAS AN ERROR FOR THE TRIAL COURT TO GRANT SUMMARY JUDGMENT TO THE HOA WHEN DISCOVERY, INCLUDING KOOLA'S MOTION TO COMPEL, WAS STILL PENDING.

Rule 56(f), SCRCP, implies that dismissal of a defendant's counterclaim and granting of summary judgment to the plaintiff are not appropriate when the trial court has not decided on the defendant's Motion to Compel. "Summary judgment must not be

granted until the opposing party has had a full and fair opportunity to complete discovery". *Baird v. Charleston County*, 333 S.C. 519, 539, 511 S.E.2d 69 (1999); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law." *Middleborough Horizontal Property Regime Council of Co-owners v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct.App. 1995).

Koola expressly stated that the HOA had failed to fully respond to Koola's discovery requests and that there was still outstanding discovery that was dispositive to the facts of the case. (Motion to Reconsider, *supra*, at 23). The HOA's answers to Koola's Request for Admissions to the Plaintiff bear testimony to this statement. (HOA's Answers to Koola's Request for Admissions, *supra*). The HOA did not produce several months' of financial statements. Many of the monthly financial statements were incomplete even by the standards set by the HOA. Some of the statements were either modified or altered shortly before submission to Koola, possibly committing perjury. (Koola's Reply to HOA's Memorandum, *supra*, at 26). Koola cannot state what changes were made to the financial statements. The HOA intentionally withheld the minutes of BOD meetings for several months, especially those when the BOD discussed Koola's delinquencies in 2010 and 2011, and when the BOD discussed construction defects litigation¹. (Koola's Reply to HOA's Memorandum, *supra*, at 25-26) The HOA also failed to produce the official policy of the HOA to initiate litigation against Koola and other homeowners to collect unpaid dues. There were unanswered questions about when the HOA knew of the construction defects in Cambridge Lakes and of the violation of HPA §

27-31-430, and whether the HOA officially authorized the HOA attorney to initiate the construction defects litigation in BOD meeting. (Koola's Reply to HOA's Memorandum, *supra*, at 14)

Koola cannot state with specificity as to how he was prejudiced by failing to receive a full and fair opportunity to complete discovery because the documents and information at issue were never provided by the HOA. The trial court should have considered the pending issues and the Motion to Compel and afforded Koola sufficient time to develop opposition to summary judgment before making any ruling on HOA's summary judgment dismissal of Koola's counterclaims with prejudice.

II. THE TRIAL COURT ERRED IN GRANTING THE HOA'S MOTION FOR SUMMARY JUDGMENT TO DISMISS KOOLA'S COUNTERCLAIMS AGAINST THE HOA.

Under Rule 56(c), SCRCP, it is well established that "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.* "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) (internal citations omitted).

In *Hancock v. Mid-South Management Co. Inc.*, 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."

A. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT AS THE COURT FAILED TO APPREHEND GENUINE ISSUE OF MATERIAL FACTS IN DISPUTE.

(i) The HOA instituted an action against Koola to collect unpaid assessments under the terms of the Master Deed. (HOA's Memorandum, *supra*, at 3). Koola has raised the question whether the Master Deed of the HOA is legally valid and enforceable with respect to Koola. (Koola's Reply to HOA's Memorandum, *supra*, at 2-4; Motion to Reconsider, *supra*, at 5-6). Developer/seller and Cambridge Lake[s] Horizontal Property Regime sold a condominium to Koola in violation of HPA § 27-31-430. "Because a condominium is a creature of the statute, strict compliance with Horizontal Property Act is required to create horizontal property regime". *Harrington v. Blackstone*, 319 S.C. 1, 459 S.E.2d 309, 312 (Ct.App. 1995). Strict compliance with the Horizontal Property Act was not met. Therefore, the Master Deed is statutorily invalid and unenforceable. In *Ryals v. Anderson*, 180 Ga.App. 568, 349 S.E.2d 801 (Ga.App. 1986), the Court of Appeals of Georgia has acknowledged that the purchaser of a condominium has a statutory right to rescind a sales contract of a condominium if the

purchaser did not receive statutorily required documents. Koola purchased the condominium in 2004 on the express assurance that Cambridge Lakes condominiums were created in strict compliance with HPA § 27-31-430. The HOA took over the control of the property regime from its predecessor, Cambridge Lake[s] Horizontal Property Regime, in October 2004. Through this action, the HOA inherited the assets and liabilities of its predecessor and is a true successor of its predecessor, Cambridge Lake[s] Horizontal Property Regime. The HOA is employing the same Master Deed of its predecessor to sue Koola; this is the best evidence that the HOA is the true successor of Cambridge Lake[s] Horizontal Property Regime. The HOA is liable to Koola under successor liability provisions. *"If [the successor] takes the benefit, it must, as has so often been said, take the burden, which equitably attaches with it". Simmons v. Mark Lift Industries, Inc., 366 S.C. 308 (2005), 622 S.E.2d 213 (Internal citations omitted).* Koola is entitled to rescission of his condominium purchase. Is the HOA's Master Deed, inherited from its predecessor, statutorily valid and enforceable on Koola? This is a subject matter that should be decided by the Jury. The Trial Court erred when it failed to refer the matter to a jury and granted summary judgment to the HOA without addressing this issue in any manner. (Order Granting Plaintiff's Motion for Summary Judgment). The HOA states that Developer sold condominium with construction defects and is not responsible for the HPA § 27-31-430 violations of its predecessor. After rescission, the HOA can recover any damages from the developer/seller under the theory of loss mitigation.

(ii) Koola has presented to the Trial Court that the annual budgets of the HOA presented to the Homeowners for approval during annual meetings show no dues outstanding from any homeowners, which include Koola. (Koola's Reply to HOA's Memorandum, *supra*, at 22-24).

The relevant sections of the annual budget for 2007 provided to the homeowners by the HOA are reproduced below:

Cambridge Lakes Homeowners Association					
Year To Date As of September 30, 2007					
Compared to 2007 Budget					
Current Year to Date					
	Actual	Budget	Variance	Annual Budget	Budget Remaining
Income					
Operating	205,977.29	201,420.00	4,557.29	268,560.00	62,582.71

The actual operating income for nine months from Jan. 1 through Sep. 30, 2007 is actually higher than the budgeted income; the sum total of actual operating income and the budget for the remaining three months equals the budgeted income.

The relevant sections of the annual budget for 2009 provided to the homeowners by the HOA are reproduced below:

CAMBRIDGE LAKES
PROJECT RECAP
9 MOS ACTUAL 3 MOS PROJECTION YEAR ENDING DECEMBER 31, 2009

	Income/ Expense	3 MOS Projection	Total Projected	Annual Budget 2009	Budget Variance PROJ 2009
Cambridge Lakes	9/30/2009	Oct-Dec 09	12/31/2009		
Actual Income					
4100 Regime Revenue	210,600	70,200	280,800	280,800	0

The sum total of actual regime revenue for nine months from Jan. 1, 2009 through Sep. 30, 2009 and the projected revenue for three months from Oct. 1 through Dec. 31, 2009

exactly equal the annual budget for 2009 and the projected budget variance for 2009 is zero.

The relevant sections of the annual budget for 2013 provided to the homeowners by the HOA are reproduced below:

CAMBRIDGE LAKES

APPROVED OPEARTING BUDGET 2013

INCOME	2011 Actuals	2012 8 Months Actual 4 Month Forecasted	2013 Approved
<u>OPERATING</u>			
Regular Assessments	\$284,880.00	\$136,200.00	\$284,880.00

The actual operating income by way of regular regime collection for 2011 is exactly equal to the 2013 budgeted income. The actual operating income by way of regular regime collection for the eight months of 2012 is not provided.

HOA's budgets show that there are no outstanding regime dues for the given years from any homeowners, which include Koola. Since the HOA has not established that there are any dues from Koola, HOA has no standing to continue civil action against Koola for the collection of dues.

The statements publicly made by the HOA in the annual budgets for the given years that there are no outstanding dues form any homeowners contradict the HOA's claim that Koola is indebted to the HOA for non-payment of regime assessments. This inconsistency is not a matter of law, but a matter of fact. The Trial Court erred when it failed to refer the matter to a jury and granted summary judgment to the HOA without addressing this issue in any manner.

B IT WAS AN ERROR FOR THE TRIAL COURT TO DISMISS KOOLA'S COUNTERCLAIM AGAINST THE HOA FOR CIVIL CONSPIRACY BY SUMMARY JUDGMENT.

Koola has pled a claim against the HOA for civil conspiracy (Amended Answer and Counterclaim, *supra*, at 3-4, Koola's Reply to HOA's Memorandum, *supra*, at 8-12; and Motion to Reconsider, *supra*, pp 11-15). The obstruction of Koola's short sale of his condominium was an act of conspiracy. Under South Carolina law, a claim for civil conspiracy is established if the plaintiff can show that the following elements are met:

1. The combination of two or more persons;
2. for the purpose of injuring the plaintiff;
3. causing special damages to the plaintiff.

LaMotte v. Punch Line of Columbia, Inc. 296 S.C. 66, 370 S.E.2d 711 (1988); *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010).

The members of the Board of Directors ("BOD") of the HOA conspired among themselves, the Management Company (Ravenel Associates) and the HOA attorneys. This satisfies the first element of civil conspiracy. *Lee v. Chesterfield General Hosp. Inc.*, 289 S.C. 6, 11, 344 S.E.2d 379, 381-82 (Ct. App. 1986). The parties to the conspiracy against Koola were motivated by these factors (Koola's Reply to HOA's Memorandum, *supra*, at 24): (1) All parties were infuriated with Koola, as Koola did not join the HOA's construction defects litigation¹. (2) All parties wanted to take revenge against Koola as he asked the HOA and the Management Company to provide him with the financial statements of the HOA to discover any financial irregularities. (3) Koola once pinpointed to a member of the BOD of HOA that the annual budgets of the HOA presented to the homeowners are manipulated. (4) Koola once questioned the HOA

about the HOA's new policy regarding renting the condominiums, which infuriated all the parties. The HOA threatened Koola with legal actions in this matter, but finally withdrew its threats. Here, Koola expressly plead that all the parties conspired to injure Koola, maliciously singling him out for disparate treatment. That the HOA denies this allegation, of course, does not mean that the HOA is entitled to summary judgment. It creates a clear genuine issue of material fact, to which Koola must be entitled to present to a jury to determine.

With regard to the second element of a prima facie claim for civil conspiracy, Koola has expressly alleged that the purpose of the HOA's decision to institute multiple litigations against Koola was to injure Koola by precluding his ability to short sell his condominium. The HOA countered that there was nothing illegal in and of itself in filing a lien or civil case against Koola. The fact that the actions of conspiracy are not per se illegal is not fatal to the ability to state a civil conspiracy cause of action. An unlawful act is not a necessary element of the tort. *Lee v. Chesterfield General Hosp. Inc.*, 289 S.C. 6, 11, 344 S.E.2d 379, 383 (Ct. App. 1986). The motive of the HOA, whether innocent or malicious, was in clear dispute at the time of the HOA's summary judgment, and the determination of this issue should have been reserved for a jury to determine.

To meet the final requirement of showing "special damage", Koola has alleged that the objective of the conspiracy was not only to injure Koola, but also to destroy him financially. The HOA obstructed Koola's short sale of his condominium. In a short sale, the homeowners associations will be paid out in full in preference to Mortgagees; any loss will be born by the Mortgagee. In a foreclosure action, the Mortgagees will be paid out in full first; usually, the HOAs collect nothing or very little after foreclosure sale. S.C.

Code Ann. § 27-31-200. The policy of the HOA was/is to collect any unpaid regime dues from (insolvent) homeowners through short sale as recorded in the minutes of the meeting of the BOD held on August 25, 2009 (ROA # 16: Minutes of the BOD meeting, Aug. 25, 2009 at 1) under the paragraph "Delinquent Report":

"... If the bank wants to pursue "short sales" in which the bank obtains real estate brokers to sell the property while still in the name of the delinquent owner it works to our benefit. All parties including the bank have to negotiate a settlement to affect the sale. Normally the homeowner's association only has to forgive the late fees". (Emphasis added).

It is quite evident from the statement that a short sale works to the best advantage of the HOA to collect dues from insolvent homeowners. By obstructing Koola's short sale of his condominium, the HOA violated its own policy and that of Federal lending agencies and regulators and financial institutions.

After a short sale in 2010, Koola would have received anywhere between \$120,000 and \$125,000 as sales price. This was just sufficient to pay off all the claims of the HOA and the Mortgagee as well, as Koola had more than 25% equity in his condominium. A foreclosure action would bring \$50,000 to \$60,000 to the table, which would result in deficiency and civil judgments of about \$100,000. At age 70, Koola has no income or resources to pay off even a small fraction of these judgments. The psychological pressure of this potential judgment destroys Koola's life. This is the special damage that the HOA conspired to inflict on Koola. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292, 278 S.E.2d 607 (1981).

The HOA denied any conspiracy against Koola. (HOA's Memorandum, *supra*, at 3-6). It states:

(1) *The HOA has authority to institute an action against Koola for noncompliance with Master Deed to pay the monthly regime and by virtue of S.C. Code Ann. § 27-31-170. id. at 3.*

Initiation of civil action to collect unpaid dues is *the option* when the nonpayment is due to temporary financial difficulties, or if the defaulters have additional sources of income or assets. In the case of insolvent homeowners with no income or assets, the best and only option is to collect the dues after a short sale. Koola could have paid off all outstanding dues to HOA after short sale. Pursuing civil actions against insolvent homeowners are comparable to suing a dead person for damages.

(2) *The HOA states that no individual homeowner can stop making payments for a length of their choosing. id. at 3*

Koola responds that (i) Koola has paid his monthly regime dues from Feb. 2004 through October 2009 without a delay even on a single occasion. (ii) Koola became insolvent because of his inability to sell his condo in 2008 and 2009 and could not pay any dues thereafter. This inability was caused by the HOA's construction defects litigation¹, which was initiated without due process of law. *Koola did not stop making payments voluntarily or at will.* The HOA is the proximate cause that rendered Koola insolvent. (iii) As an insolvent homeowner, Koola offered the HOA the best opportunity to clear the dues through short sale. Instead, the HOA opted for multiple civil actions.

(3) *The HOA states that the HOA has not singled out Koola for nonpayment of assessments. Id. at 3.*

At the time when Koola was trying to sell his condominium, his neighbor two doors down (#1583 Cambridge Lakes Dr) sold his unit through short sale in

February/March 2010. The neighbor had regime dues of \$13,673.23. RMC records indicate that the lien placed on his unit has not been cleared. There are no court records showing any civil action pending against that neighbor. This means that the HOA let the neighbor sell his property without satisfying the lien.

In 2008/2009, the HOA was pursuing a civil action⁵ against another Cambridge Lakes homeowner. On April 19, 2009, the case was dismissed as a voluntary nonsuit without prejudice. There are no records to show that the HOA is pursuing this action or has collected any dues from that homeowner.

Financial statements received from the HOA in its responses to Koola's discovery requests indicate that three homeowners in Cambridge Lakes at 1423, Cambridge Lakes Dr, 1455 Cambridge Lakes Dr and 1491 Cambridge Lakes Dr, had several thousand dollars in unpaid dues. Court and RMC records show that the HOA hasn't collected any dues from these homeowners, and there are no pending cases.

These specific instances confirm that the HOA singled out Koola in its actions and acted discriminatorily.

(4) *The HOA states that it has obtained judgments against five homeowners. id.*
at 4.

Koola responds that the HOA has not stated whether these homeowners defaulted due to some temporary financial difficulties or due to irrevocable insolvency, and whether they were attempting short sale to pay off the regime dues, and whether the HOA *collected* any judgments from them. Koola repeats that initiation of civil action to collect unpaid dues is *the option* when the nonpayment is due to temporary financial

⁵ 2008 CP-10-000471

difficulties or the defaulters have assets. In the case of insolvent homeowners, the best option is to collect the dues after a short sale.

(5) *The HOA states that Koola has not established conspiracy by the HOA against Koola because Koola has sued only the HOA but not any other parties to the conspiracy in their individual capacities. Id. at 5.*

Koola responds that suing other parties in their individual capacities for conspiracy is not an element of conspiracy. Suing other members in their individual capacities is warranted only if the plaintiff seeks monetary damages from them in their individual capacity.

(6) *The HOA further claims that the directors discharged their duties in a manner that the directors reasonably believed to be in the best interest of the HOA. Id. at 6.*

Koola responds that the HOA's actions belie this statement. The HOA's construction defects litigation forced not only Koola but also many other Cambridge Lakes homeowners to default on their regimes. The HOA has not disclosed number of homeowners who lost their homes to short sale and foreclosures. Koola has stated that approximately 35% of the homeowners lost their homes. (Koola's Reply to HOA's Memorandum, *supra*, at 8). The HOA exaggerated construction defects and stigmatized the Cambridge Lakes condominiums making them unmarketable. The HOA initiated construction defects litigation¹ claiming \$8 million damages, but settled the case for about \$1.815 million at the expense of homeowners. Cambridge Lakes, LLC and Albert Estee were prime defendants in the HOA's construction defects litigation¹; in 2011, the HOA dismissed the complaint against them and did not recover any damages from them. Prudential Carolina Real Estate c/d/b as Carolina One, sold nearly 60% of the

condominiums in Cambridge Lakes. However, the HOA did not pursue any action against Prudential. (Koola's Reply to HOA's Memorandum, *supra*, at 22). These actions were not in the best interest of the members of the HOA.

To claim that the HOA did not discriminate against Koola, the HOA has to show that the HOA has taken multiple civil actions – placing a Lien, initiating civil action to collect HOA dues and foreclosure action – against those homeowners who were trying to clear off the HOA dues through short sale; the HOA hasn't done that.

C. IT WAS AN ERROR FOR THE TRIAL COURT TO DISMISS KOOLA'S COUNTERCLAIM AGAINST THE HOA FOR BREACH OF FIDUCIARY DUTY BY SUMMARY JUDGMENT.

Koola has pled claims for breach of fiduciary duty against the HOA in the following instances. (Amended Answer and Counterclaim, *supra*, at 1-3). Koola brings to the kind attention of Appellate Court four most serious Breaches of Fiduciary Duty by the HOA (Koola's Reply to HOA's Memorandum, *supra*, at 14, 15, 16-18 and 21).

(i) The HOA and the Members of the BOD maintain that the BOD first learned of potential construction defects in Cambridge Lakes during March-April 2008. The April 2008 Minutes of the BOD of the HOA (ROA 17 # 4/22/2008 Cambridge Lakes HOA Board Meeting Minutes) makes the following statement: "New Business Development: The water intrusion for unit 1487 will be checked. Ms Moore [property manager] will get estimates to check the damages from inside of the unit as well as the interior of the unit". There are no further references whether the necessary repair was done. Two months later in June 2008 Koola and homeowners learned from HOA's letter (Letter from the HOA, June 25, 2008, *supra*, at 3) that the HOA filed an \$8 million construction defects litigation¹. The HOA has withheld the minutes of many BOD meetings from

Koola. Therefore, Koola cannot determine whether there were any reports of construction defects before April 2008.

Koola's Reply to HOA's Memorandum, *supra*, at 15, has stated that on November 20, 2004 Koola met with Mr. Stephen Fisher, Member, BOD of the HOA and asked him about the rumors of construction defects in Cambridge Lakes. Koola's immediate neighbor, who was working for the Architect firm, which oversaw the construction of Cambridge Lakes, told Koola that some of the construction defects may be for real. Koola conveyed this information to Mr. Fisher during the meeting. Mr. Fisher denied any construction defects in Cambridge Lakes and did not act further on the information provided to him. Koola believed Mr. Fisher and was convinced that the rumors of construction defects are without any basis. Koola invested more and more in his condominium toward the principal balance of the mortgage. Four years later, the HOA filed the construction defects litigation¹; the architecture firm was one of the defendants in the said case. Mr. Fisher was grossly negligent in not pursuing the information provided to him about construction defects. Fiduciary relationship required Mr. Fisher to act on Koola's information. Should the HOA and/or the BOD "..... not uphold its duty to pursue a recovery for any alleged construction defects in the common elements, which it maintains, it may be liable to the homeowners for its omissions. *Queen's Grant Villas Horizontal Property Regime I_IV v. Daniel Internat'l Corp.*, 286 S.C. 555, 335 S.E.2d 365, 366 (S.C.1985).

(ii) The HOA and the Members of the BOD maintain that the BOD first learned of potential construction defects in Cambridge Lakes during March-April 2008 and immediately upon learning the of the defects, the HOA retained attorney John C. Hayes,

IV, to file a construction lawsuit on its behalf. The HOA filed the construction defects lawsuit¹ two months later in June 2008. Koola in his Reply to HOA Memorandum, *supra*, at 14, has categorically stated that the minutes for the months of May and June 2008 make no references that the HOA authorized Mr. Hayes to file the construction defects litigation. The HOA has not produced minutes of any of the BOD meetings to show that that the HOA indeed authorized Mr. Hayes to file construction defects lawsuit¹ on its behalf. Koola represents to the Appellate Court that Hayes was not *officially* authorized by the HOA to file the lawsuit. The BOD might have met in a private meeting and outside the domain of HOA and requested Hayes to file the lawsuit; this is a private affair. This is a serious breach of fiduciary duty by the HOA.

(iii) The HOA breached fiduciary duty when it initiated the construction defects litigation without the approval of two-third majority of the homeowners. The HOA denies this claim by stating that it has the power to sue because it has the "duty to maintain, repair, replace and operate the common elements" of Cambridge Lakes. *Queen's Grant Villas Horizontal Property Regimes I-IV v. Daniel Internat'l Corp.*, 286 S.C. 555, 335 S.E.2d 365 (S.C. 1985). This decision does not offer the HOA absolute authority to initiate construction defects litigation without due process; in the present case, the HOA has to receive the approval of two-third majority of the homeowners to initiate the construction defects lawsuit as it involved collection of special assessment. "*The rights and authority of the Regime must be gleaned from the Horizontal Property Act and from the master deed. From these we may determine (1) the property owned by the individual condominium owners and (2) the rights of the Regime.*" *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d. 46 (1984). ". *The*

homeowners association is bound to obtain homeowners approval if the covenants of the association so demands it". *Baumann v. Long Cove Club Owners Ass'n*, 380 S.C. 131, 668 S.E.2d 420 (Ct.App. 2008). "When controversy regarding rights of condominium unit owners arises, court must examine all relevant provisions of Horizontal Property Act, master deed, and allied documents, regarding those provisions together, in relation to each other and harmonized, if possible". (Internal citations omitted) *Harrington v. Blackstone*, 319 S.C.1, 459 S.E.2d 309 (Ct.App.1995). (Emphasis added). The Horizontal Property Act does not address this issue directly. The Master Deed of the HOA, Paragraph (16) (6) Special Assessments for Capital Improvements (Master Deed, *supra*, at12), states as follows:

"In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, special assessments..... provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose,....." (emphasis added).

The HOA circumvented this provision of the Master Deed by asking the homeowners to join the lawsuit to agree to assign their rights and claims to the HOA and to agree to any regular or future assessments. (Letter from HOA, *supra*, at 3). The homeowners, who assigned their rights to the HOA, agreed to pay on demand unspecified amount of future special assessments. This is like signing a 'promissory note'. "The HOA may exercise powers only within the constraints of South Carolina Horizontal Property Act, condominium declaration (Master Deed) and bylaws; where association actions were not in accordance with declaration, assessments were *ultra vires*". *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct.App. 1987).

(iv) Koola has stated that the HOA spent several thousand dollars to investigate construction defects and to initiate the construction defects lawsuit¹. The HOA created a Special Reserve Fund in March 2009 for diversion of funds from budgets. (Koola's Reply to HOA's Memorandum, *supra*, at 21).

Mr. Steve Fisher, President of HOA, has furnished an affidavit attached to HOA's Memorandum, which states: " The Association's budget is reviewed annually..... The annual budget does not change during the year." The financial statements for March 2009 and November 2010 attached thereto shows expenditures under the heading 'Property Evaluation/Consulting – Fund 2' and 'Legal Expenses Fund # 2' respectively. (ROA # 17: Cash Distribution by Vendor, Cambridge Lakes HOA, Mar. 1, 2009 thru Mar. 31, 2009 at 2 and Cash Distribution by Vendor, Cambridge Lakes HOA, Nov. 1, 2011 thru Nov. 30, 2010 at 4). There may be any other expenditures. The HOA has not furnished the annual budgets for 2009 and 2010 to show that these two reported expenditures have been budgeted and presented to the homeowners. In its absence, these expenditures are in violation of Section 16 Assessments, Para 4 and 5 of the Master Deed (Master Deed, *supra*, pp 11, 12) and a Breach of Fiduciary Duty.

As stated by the Restatement of Torts, "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation. Restatement (2d) of Torts, 874 § (1979). In South Carolina, courts have held that a fiduciary relationship exists when "one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of one reposing the confidence". *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789, 794 (1990).

Uniform Condominium Act § 3-103(a) and *Goddard v. Fairways Development General Partnership*, 310 S.C. 408, 426 S.E.2d 829 (Ct.App. 1993) define fiduciary responsibilities of the HOA in the context of a Horizontal Property Regime. "A homeowners association is bound to follow the covenants and its own bylaws". *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 356 S.e.2d 411, 414 (Ct.App. 1987).

The HOA states that Koola's claim for breach of fiduciary duty fails as a matter of law because the actions of the members of the BOD are protected by the Business Judgment Rules. S.C. Code Ann. § 3-31-830(a); S.C. Code Ann. § 33-31-830(b)(2). The HOA fails to recognize that the judgment of the directors will be set aside by judicial action if bad faith, dishonesty, or incompetence on the part of the members of BOD could be established. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15 (Ct.App. 2000). *Goddard v. Fairways Development General Partnership*, 310 S.C. 408, 414, 426 S.E.2d 828 832 (Ct.App. 1993).

The Supreme Court of South Carolina has ruled: "We hold that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association". *Murphy, Jr. v. Yacht Cove Homeowners Ass'n.*, 289 S.C. 367, 345 S.E.2d 709 (1986). This is the law in South Carolina.

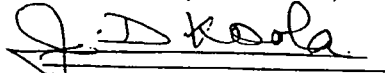
Koola's Amended Answer and Counterclaim has claimed damages in excess of one hundred thousand (\$100,000) dollars.

CONCLUSION

Based upon the foregoing points and authorities, Koola respectfully submits that the Order of the trial court granting summary judgment to the HOA should be reversed, and appellant's counterclaims against respondent restored and remanded to the trial court for trial.

Dated: April 28, 2014
Mt. Pleasant, SC

Respectfully submitted,



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

Appellant pro se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-10-9305

RECEIVED

JUN 3 0 2014

SC Court of Appeals

Cambridge Lakes HOA.....Respondent,

v.

Johnson Koola.....Appellant.

INITIAL BRIEF OF RESPONDENT

Eugene P. Corrigan III
J. Matthew Johnson
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
CAMBRIDGE LAKES HOA

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY GRANT SUMMARY JUDGMENT AND CORRECTLY RESOLVE THE APPELLANT'S MOTION TO COMPEL?**
- II. DID THE CIRCUIT COURT UNDERSTAND THE ISSUES AND THE LAW PRESENTED BY THE APPELLANT, TAKE THEM UNDER CONSIDERATION, AND REACH THE PROPER CONCLUSIONS IN GRANTING SUMMARY JUDGMENT?**

STATEMENT OF THE CASE

Respondent Cambridge Lakes Homeowners Association¹ (the "HOA") filed suit in Charleston County Small Claims Court for unpaid monthly regime fees and late charges on July 29, 2010 owed by Appellant Koola in the amount of two thousand nine hundred twelve dollars and three cents (\$2,912.03) (Small Claims Court Complaint, July 29, 2010) Attached to the Complaint was a statement of Appellant's account showing his last payment was on October 29, 2009. He was served on August 13, 2010, and on September 2, 2010, he filed a form answer with the box checked indicating he contested the claim. He did not state in the Answer that he did not owe the money. On the same day Appellant filed a document entitled "Summons" but it is not a summons but more of a letter to the Court wherein he asks the Court to remove the case to Circuit Court where a foreclosure action was already pending on the same property filed by his mortgage company (Appellant's "Summons", September 2, 2010). A *lis pendens* was placed on the property by the mortgage company when that suit was filed. *See Bank of America, NA v. Koola, et al*, 2010-CP-10-6060.

By October 13, 2010, Appellant had obtained an attorney. The attorney filed a motion to transfer the case to Charleston County Circuit Court, where the foreclosure action against Appellant was pending.² Appellant filed a Counterclaim against the HOA on November 5, 2010, alleging Civil Conspiracy and Breach of Fiduciary Duty, seeking damages in excess of one hundred thousand (\$100,000.00) dollars. The case was sent to

¹ The HOA is incorporated under South Carolina law as a non-profit corporation and its official name is Cambridge Lakes Condominiums Homeowners Association, Inc

² Attorney Melinda Lucka also filed a Notice of Appearance on October 13, 2010 Attorney Shawn French then filed a Notice of Appearance on behalf of Appellant, on September 30, 2011, substituting Ms Lucka as Appellant's counsel On July 3, 2013, Mr French was relieved as counsel and Appellant now proceeds in this litigation *pro se*

the Court of Common Pleas by the Small Claim's Court Judge. On January 11, 2011 the Respondent filed a Motion to Dismiss the Counterclaims since they were already asserted in the Circuit Court case. (Motion to Dismiss, January 11, 2011). Appellant filed a *pro se* response to the Motion on the grounds that the counterclaims in the foreclosure suit were totally separate matters than those in this case. (Response to Motion to Dismiss, July 19, 2011). The HOA filed a Motion for Summary Judgment as to Appellant's counterclaims on August 1, 2012. Appellant filed a Motion to Compel discovery from the HOA and a Motion for Summary Judgment on August 15, 2012.³ The parties appeared before the Honorable R. Markley Dennis on November 6, 2012. Judge Dennis issued an order on November 14, 2012, informing the parties he was taking the motion under advisement. On March 4, 2013, the court issued a Form 4 Order granting the HOA's Motion for Summary Judgment and rendering Appellant's Motion to Compel moot. A written Order was entered on March 15, 2013. The court held there was no evidence to support Appellant's claim that the HOA conspired against him in seeking to collect his unpaid fees or that the HOA Board of Directors did not act in the best interest of the HOA by pursuing a construction defect case to correct problems with the building. (Order of March 15, 2013, pp. 4, 6) Appellant filed a Motion to Reconsider on April 5, 2013, which was denied on June 18, 2013. He appealed to this Court on July 17, 2013.

STATEMENT OF FACTS

This case derives from Appellant's failure to pay his condo fees and assessments to the HOA. Appellant's last payment occurred on October 23, 2009. Appellant purchased his condominium located at 1587 Cambridge Lakes Drive, Unit 208 in

³ Appellant subsequently withdrew his Motion for Summary Judgment (Form 4 Order, November 14, 2012)

Charleston, South Carolina (the "Condo"), on February 24, 2004, which is evidenced by a deed recorded in the Charleston County RMC Office. The Condo is a part of the Cambridge Lakes Horizontal Property Regime ("HOA"). Appellant is a member of the HOA. Article seventeen of the Master Deed established the operation and administration of Cambridge Lakes Condominiums by the HOA, which is structured as a nonprofit corporation. The HOA was incorporated by filing the appropriate documents with the South Carolina Secretary of State's Office on April 25, 2003. (Fischer Aff. at 4). All unit owners including the Appellant are members of the HOA ("Owners") and subject to the regulations set forth in the Master Deed and the HOA's By-laws ("By-laws"). A Board of Directors ("Board") consisting of unit owners elected from the Owners has existed since 2004. At all times relevant to this lawsuit, these Board members were acting in their official capacities and in the best interests of the Association by instituting this collection action against Appellant. (Fischer Aff at 6; Henning Aff at 4; Martin Aff. at 4; Blevins Aff. at 4).

The Master Deed specifies the HOA's ability to collect monthly assessments from all condominium owners, as is standard practice with Horizontal Property Regimes. (Master Deed, Art. 16, Sec.1). The By-laws charge the Board to administer the affairs of the HOA and Cambridge Lakes. (*Id.*, Art. 12, ¶ b). The HOA budget is reviewed and adjusted annually and does not change during the calendar year. (Martin Aff. at 10). The budget is presented to the Owners at the annual meeting and the new annual budget takes effect on January 1st each year. (*Id.*). Owners may review the proposed annual budget from the date of the annual meeting until January 1st to review the proposed

budget. (*Id.*) Appellant met with at least one Board Member on several occasions to discuss the HOA's finances. (*Id.* at 11).

The By-laws also require the HOA to maintain, repair, replace and operate the common elements; enforce by legal means the provisions of the South Carolina Horizontal Property Act, the Master Deed, Charter, By-Laws, and Rules and Regulations of the HOA; and allow the Board to retain legal counsel." (Master Deed, Art. 12, ¶¶ e, i, and l). In April 2008, the Board learned of potential construction defects at Cambridge Lakes. (Fischer Aff. at 3). The defects were not disclosed by the Developer when the HOA was turned over to the Owners. (Fischer Aff. at 16). Exercising their power to retain legal counsel, the HOA hired an attorney to file a construction lawsuit on its behalf. (*Id.*, p 3). The attorney was retained on a contingency fee basis and would only be compensated out of monies received on behalf of the HOA. (*Id.* at 22). All expenses related to the construction lawsuit were paid out of the HOA's Reserve Accounts. (Fischer Aff. at 20; Henning Aff. at 13; Martin Aff. at 13; Blevins Aff. at 14). The HOA did not levy a special assessment to fund the construction lawsuit. Since January 2007, there have only been three increases to the monthly regime fee from \$210.00 to \$285.00 per month. (Blevins Aff. at 20-22). These were due to increases in insurance premiums on the common areas of Cambridge Lakes. (*Id.*).

The attorney sent a letter to all Owners on June 25, 2008, through Cambridge Lakes' property management company, Ravenel Associates, informing them about the construction defect lawsuit. The letter asked the Owners to assign their claims to the HOA and additionally to join the lawsuit as plaintiffs. Owners were under no obligation to join the lawsuit, and some, including Appellant declined to do so. (Fischer Aff. at 24;

Henning Aff. at 17; Martin Aff. at 17; Blevins Aff. at 17). Ultimately, all unit owners received new windows from the settlement of the construction case, improving the units. There is no evidence that Appellant attempted to refinance his unit with a company that does offer refinancing even when litigation to improve the property is pending.

The HOA, like all horizontal property regimes, relies on the collection of fees and assessments from all of its owners to operate. No individual owner can stop making payments for a length of time of their choosing or they will be placed in default. (Master Deed, Article 16, Sec. 8). Since the HOA was established, it has filed multiple liens and lawsuits and obtained judgments against different Owners⁴.

Appellant stopped paying his monthly assessment to the HOA on October 23, 2009 (Small Claims Court Complaint, ¶¶ 2(b) and (c)). The Board members discussed several delinquent homeowners at board meetings, including Appellant, before making any decisions to pursue legal action. (Fischer Aff. at 10; Henning Aff. at 8; Martin Aff. at 8; Blevins Aff. at 8). Acting under the provisions set forth in the Master Deed and By-laws, the HOA filed a Notice of Lien against Appellant's Condo on May 24, 2010, for the unpaid assessments and late fees in the amount of One thousand nine hundred sixty-three dollars and fifty-two cents (\$1,963.52). This action was filed to recover payment of delinquent assessments from Appellant. (Fischer Aff. at 9; Henning Aff. at 7; Martin Aff. at 7; Blevins Aff. at 7).

⁴ See generally *Cambridge Lakes HOA v. Michael B. Hartnett*, 2010-CP-10-9146 (Charleston County) (Nov 3, 2010) (Judgment for Plaintiff in the amount of \$7,580.00), *Cambridge Lakes HOA v. Charles W. Taylor, Jr.*, 2011-CP-10-39 (Charleston County) (Jan 4, 2011) (Judgment for Plaintiff in the amount of \$3,690.46), *Cambridge Lakes HOA v. The Naws, LLC, et al.*, 2011-CP-10-2767 (Charleston County) (April 15, 2011) (Judgment for Plaintiff in the amount of \$7,644.42), *Cambridge Lakes HOA v. Geoff G. Forbes*, SC872010002259 (Charleston County Small Claims Court) (Dec 20, 2010) (Judgment for Plaintiff in the amount of \$5,105.99), *Cambridge Lakes HOA v. The Naws, LLC*, 2012-CP-10-4714 (Charleston County) (July 19, 2012) (Judgment for Plaintiff in the amount of \$4,120.82).

On July 27, 2010, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP ("BAC"), filed a *Lis Pendens* and Summons and Complaint against Appellant seeking to foreclose its first mortgage on his Condo. On July 29, 2010, the HOA instituted this action against Appellant. Rather than pay the balance due, Appellant counterclaimed against the HOA alleging Civil Conspiracy and Breach of Fiduciary Duty. To date, Appellant continues to live in the unit without paying past or current fees required by his Deed.

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *Turner v. Millman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). A genuine issue of fact, however, can be created only by evidence that would be admissible at trial. *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (1994). Further, this Court has established that the plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.

Johnson v Robert E Lee Acad , Inc., 401 S.C. 500, 503, 737 S.E.2d 512, 513 (Ct. App.
2012) (quoting *Hansson v. Scalise Builders of S.C* , 374 S.C. 352, 357–58, 650 S.E.2d 68,
71 (2007))

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT AND CORRECTLY RESOLVED THE APPELLANT'S MOTION TO COMPEL.

The lower court acted properly in granting the HOA's motion for summary judgment and ruling Appellant's Motion to Compel moot. (Form 4 Order, March 4, 2013, Order of March 15, 2013). Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman v AT & T Co*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991). However, the non-moving party to a summary judgment party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

Appellant argues that it was improper for the lower court to grant summary judgment because his motion to compel was still pending. (App. Initial Brief, p.9). He asserts that the HOA (1) did not produce several months of financial statements; (2) that some of the statements were either modified or altered before submission to Appellant; (3) the HOA intentionally withheld minutes of BOD meetings for several months; and (4) the HOA failed to produce the official policy of the HOA to initiate litigation against Appellant to collect unpaid dues.⁵ (*Id.*). This Court has examined whether it is proper

⁵ Appellant's motion to compel does not specify what items were not produced by the HOA and therefore it is assumed that the meeting minutes "intentionally withheld for several months" were subsequently produced and are therefore not applicable to this argument. Moreover, Appellant has been provided with the "policy" that allows the HOA to initiate litigation for unpaid assessments. In its Memorandum in Support of its Motion for Summary Judgment, the HOA stated that its ability to initiate collection actions against individual members is derived from the Master Deed and By-laws, documents that were readily available to Appellant as a member of the HOA. (Memorandum in Support of Motion for Summary Judgment, p. 3). As a member of the HOA, Appellant has equal authority as the Board members to obtain documents from the custodian of the records. (Master Deed and By Laws, South Carolina Horizontal Property Act, S.C. Code Ann. §§ 27-31-10, et seq.)

for the lower court to grant a motion for summary judgment without first ruling on a motion to compel. In *CEL Products, LLC v Rozelle*, 357 S.C. 125, 591 S.E. 2d 643 (Ct. App. 2004) Defendant filed several counterclaims against the Plaintiff in a case arising from an employment matter. The Court of Appeals upheld the trial court's summary judgment as to Rozelle's counterclaims in spite of her outstanding motion to compel for three reasons. First, they found there had been ample time to complete discovery as the hearing for summary judgment occurred seventeen months after Defendant filed her answer and counterclaims. *Id.*, 357 S.C. at 129, 591 S.E. 2d at 643. Next, the court held that the trial judge exercised discretion in granting the motion and found no abuse of discretion caused prejudice to the Defendant. *Id.* Third, they found the Defendant failed to demonstrate how further discovery would be beneficial. *Id.*, 357 S.C. at 131, 591 S.E. 2d at 646. The Court also noted that the information sought by Defendant was not necessary to a material claim and the information was not in the sole possession of Plaintiff. *Id.* (distinguishing this case from *Lanham v. Blue Cross*, 349 S.C. 356, 563 S.E.2d 331 (2002) where the Supreme Court found the trial court erred in ruling on summary judgment before ruling on a motion to compel because the information sought was material to Plaintiff's claim and under the sole custody of Defendant).

The facts at issue here are very similar to those set forth in *CEL Products*. The HOA filed its Motion for Summary Judgment on August 1, 2012, nearly twenty-two months after Appellant filed his amended answer and counterclaims. (Counterclaim, November 3, 2010)⁶ It was filed two years after Appellant was served with the suit. At the motion hearing, the trial court took all pending motions (including Appellant's

⁶ Appellant filed an Amended Answer and Counterclaim with the lower court on June 8, 2012, but the facts alleged in the counterclaims are substantially the same

Motion to Compel) under advisement and ordered the parties to submit memorandums pertaining to the HOA's Motion for Summary Judgment. Appellant also failed to show how the information sought would support his counterclaims for civil conspiracy and breach of fiduciary duty by the HOA. In fact, Appellant stated in his brief that he "cannot state with specificity as to how he was prejudiced" by the HOA's failure to provide these documents. (App. Initial Brief. at 10). Moreover, the information Appellant sought was also available to him from other sources, including the HOA's property management company, which is required to provide HOA documents upon request of a unit owner. There is nothing in the record to support that these statements sought by Appellant would have established the HOA acted improperly in bringing its collection action against him. See *Thomas v Waters*, 315 S.C. 524, 445 S.E. 2d 659 (Ct. App. 1994) (affirming grant of summary judgment when plaintiff did not demonstrate likelihood that further discovery would produce additional relevant evidence); *Fender & Latham, Inc v First Union Nat Bank of S. Carolina*, 316 S.C. 48, 50, 446 S.E.2d 448, 449 (Ct. App. 1994) (holding the trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case). The Master Deed and By-Laws require that the Board collect these fees. Therefore, the circuit court's decision to grant summary judgment to the HOA was correctly decided since Appellant had ample time to obtain the records, if he did not already have them. The items requested do not change the material facts. There is no clear reason as to why Appellant continues to raise the issue of his Motion to Compel. There was a time that Appellant was acting as his own attorney while he had an attorney of record. Attorney French filed the Motion (Motion to Compel, August 15,

2011.) Appellant sent the discovery without serving all the attorneys and without a certificate of service. Despite this Appellant received responses to requests to admit in August 2011 and to interrogatories and request for production by December 2011. The Motion was most certainly moot.

Appellant also argues that the trial court should have afforded him sufficient time to develop opposition before ruling on the HOA's motion for summary judgment. (App Initial Brief at 10). In *Middleborough Horizontal Property Regime Council of Co-owners v. Montedison*, 320 S.C. 470, 479, 465 S.E. 2d 765, 771 (Ct. App. 1995) the defendant argued that granting partial summary judgment for the plaintiff was inappropriate as it did not have a full and fair opportunity to conduct discovery. The Court disagreed, finding that defendant advanced "no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment and did not point out in any specific manner how it would be prejudiced by its inability to conduct discovery." *Id* As previously discussed, the HOA filed its Motion for Summary Judgment on August 1, 2012, three months before the hearing occurred. The collection action was over two years old. The lower court took the matter under advisement on November 14, 2012, allowing the parties to submit supporting memorandum. The HOA filed their memorandum on December 7, 2012; Appellant filed his response in opposition on January 2, 2013. Following the court's rationale in *Middleborough*, the five months between the HOA's initial filing for summary judgment and Appellant's response shows there was adequate time to develop his opposition. Thus, Appellant's argument is without merit, and the HOA's motion for summary judgment should be affirmed.

II THE CIRCUIT COURT UNDERSTOOD THE ISSUES AND THE LAW PRESENTED BY THE APPELLANT, TOOK THEM UNDER CONSIDERATION, AND REACHED THE PROPER CONCLUSIONS IN GRANTING SUMMARY JUDGMENT.

The Appellant has spent years living in his unit without paying his legally mandated fees to pay for insurance, management, landscaping and all other shared expenses. He has not paid anything on his mortgage. The only conclusion from the record is that he cannot or will not honor his financial obligations. Appellant maintains that by filing this lawsuit, the HOA obstructed his short sale on his condominium, which constitutes an act of civil conspiracy. (App. Initial Brief, p. 11). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. *Cricket Cove Ventures, LLC v Gilland*, 390 S.C. 312, 324, 701 S.E. 2d 39, 46 (Ct. App. 2010).

Appellant has failed to establish the first element of a civil conspiracy because the HOA members cannot conspire with themselves. "A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." *Pridgen v Ward*, 391 S.C. 238, 244, 705 S.E.2d 58, 62 (Ct. App. 2010). Therefore, "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *Id.*, see also *Vaught v Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 94 (Ct. App. 1989) (finding no civil conspiracy where defendant city council members, as officers of the city are the alter egos of the city and, therefore, cannot be held to have conspired amongst themselves).

Appellant counters that "suing other parties in their individual capacities for conspiracy is not an element of conspiracy." (App. Initial Brief, p. 18). Appellant has not

named the individual Board members as defendants in this matter, and therefore this argument is neither relevant nor a correct understanding of the law. At all times relevant to this lawsuit, the Board members were acting in their official capacities. (Fischer Aff at 6; Henning Aff at 4; Martin Aff. at 4; Blevins Aff. at 4). Although it is true that "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties," this presumes that the agents are acting in their individual capacities, not in their official capacities. *Pridgen*, 391 S.C. at 244, 705 S.E 2d at 62. Further, South Carolina recognizes the intracorporate conspiracy doctrine. Under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment cannot conspire among themselves. *Cricket Cove*, 390 S.C. 312, 325, 701 S.E. 2d 39, 46 (Ct. App. 2010); *see also* 16 Am.Jur.2d *Conspiracy* § 56 (2005) (a corporation cannot be a party to a conspiracy consisting of the corporation and the persons engaged in the management, direction, and control of corporate affairs, where the individuals are acting only for the corporation and not for any personal purposes of their own). Here, Appellant only sued the HOA, an incorporated entity, itself. None of its agents, members or directors has been sued in their individual capacities.⁷ The first element of civil conspiracy has not been established and summary judgment was rightfully granted.

Next, there is no evidence to support that the HOA conspired to injure Appellant by filing this lawsuit. Appellant alleges the HOA singled him out for nonpayment of assessments. (App. Initial Brief, p. 17). There is nothing in the record to support this claim. The obligation to collect these fees is clear in our law. This assertion is

⁷ To the extent Appellant alleges a civil conspiracy between the HOA, the property management company and the HOA's attorney, this fails as well because neither of these parties are named as defendants in this action either

unfounded. Not only did the Board discuss several delinquent homeowners at its meetings, including Appellant, before making any decisions to pursue legal action, but accounting records show that the HOA has been assessing late fees, filing liens and lawsuits and obtaining judgments against homeowners for several years. (Fischer Aff. at 10-12; Henning Aff. at 5-10; Martin Aff. at 5-9; Blevins Aff. at 5-9). Additionally, the object of filing this action was to recover payment of delinquent assessments from Appellant, an action the HOA was required to take to preserve its assets. (Fischer Aff. at 9; Henning Aff. at 7; Martin Aff. at 7; Blevins Aff. at 7); *see* S.C. Code Ann. § 33-31-830(a)(3) ("A director shall discharge his duties as a director . . . in a manner the director reasonably believes to be in the best interests of the corporation."). To hold that the HOA engaged in a civil conspiracy against Appellant would be tantamount to preventing similarly situated homeowners' associations from instituting collections actions against its members. Therefore, based on the facts presented, there is no evidence to support that the HOA conspired to injure Appellant by filing this lawsuit.

Finally, Appellant has failed to establish special damages. To allege a civil conspiracy, a plaintiff must also plead special damages that go beyond the damages alleged in other causes of action. *Vaught*, 300 S.C. at 209, 387 S.E.2d at 95. In Appellant's counterclaim for civil conspiracy he alleges "that because of the actions of the corporate agents, which include this action and actions contained in previous allegations, [Koola] has suffered special damages...[he] will be faced with bottom val[u]e at foreclosure sale." (Undated Amended Answer and Counterclaim filed June 8, 2012, ¶ 17). Likewise, in Appellant's counterclaim for breach of fiduciary duty, he claims that Board's filing of a construction defect action "created hardship and the

opportunity to sell his property was lost.” (*Id.*, ¶ 9). The crux of Appellant’s damages under both counterclaims is his inability to sell his Condo and the loss of proceeds, purportedly as a result of the HOA’s actions. This is insufficient to establish special damages. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) (If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed).

Appellant has also failed to establish any question of fact over alleged damages caused by the HOA. He alleges the HOA’s decision to institute this lawsuit forced him to cancel the short sale on his condo, thereby “destroying him financially.” (App. Initial Brief, p. 13). Appellant relies on S.C. Code Ann. §27-31-200 which provides for the payment of outstanding assessments upon the sale or conveyance of a property as evidence that the HOA should have allowed his short sale to go through, rather than file a lien and/or file a collections action against him⁸. (*Id.*). However, the Master Deed and S.C. Code Ann. § 27-31-170 authorize the HOA to institute an action against homeowners for noncompliance with the Master Deed.⁹ In addition, a *Lis Pendens* and

⁸ Appellant incorrectly states that it was the policy of the HOA to allow owners to sell their condominiums through a short sale to recover outstanding assessments and late fees (App Initial Brief, p 14) Appellant has continually referenced a portion of the minutes of the August 25, 2009 Board of Directors’ meeting where it mentions that if the bank wants to pursue “short sales” it works to [the HOA’s] benefit. There is no evidence to support this is an accepted practice of the HOA in regards to unpaid assessments, nor is it clear whether this was specific to the situation being discussed at this meeting (a deceased owner’s foreclosure action). Moreover, this language would seem to indicate that the utilizations of short sales would only be encouraged once the bank had taken possession of the property, not when an owner was currently in default.

⁹ Appellant makes a separate argument that the HOA is not able to pursue this collection action because the Master Deed is invalid (App Initial Brief, p 15) Appellant argues that the developer provided him with a “fraudulent, falsified builders certification” in violation of S.C. Code Ann. §27-31-430. Not only has there been any competent evidence submitted by Appellant in this case to establish the builder’s certification was fraudulent, but his reliance on *Harrington v. Blackston*, 322 S.C. 470, 473 S.E. 2d 47 (1996) for the proposition that “strict compliance with the Horizontal Property Act is required to create a horizontal property regime” is misplaced as this opinion was vacated. South Carolina case law on the need for strict compliance with the Act is generally about the need for the Master Deed to contain specific language that property is a horizontal property regime. *See Egrets Pointe Townhouses Property Owners Ass’n, Inc. v. Fairfield Communities, Inc.*, 870 F.Supp. 110 (D.S.C. 1994), (Defendant property owner was not bound by the requirements of the horizontal property regime where he had inadvertently failed to delete an

Summons and Complaint for Mortgage foreclosure were filed against Appellant on July 27, 2010, two weeks before the HOA's collection action was filed. The filing of the *Lis Pendens* alone served as public notice that the property was subject to litigation and would have interfered with Appellant's ability to sell his property. It was the foreclosure action that harmed Appellant's ability to obtain loans as it tends to show Appellant's inability to pay off his debts. The HOA did not cause special damage to Appellant by filing this lawsuit.

A. There Is No Admissible Evidence To Substantiate Appellant's Allegations of Civil Conspiracy Against the HOA.

In granting the HOA summary judgment, the circuit court held that Appellant's claims against the HOA were not supported and there was no general issue of material fact (Order of March 15, 2013, p. 2). Appellant alleges, without citing any supporting evidence, that the obstruction of the short sale of his condominium was an act of conspiracy. (App. Brief, p.11). Specifically, he argues that members of the Board of the HOA were motivated by (1) their infuriation with Appellant because he did not join in the construction defect litigation and questioned the HOA's policy regarding condominium rentals; and (2) revenge because Appellant questioned the financial statements of the HOA. (*Id.* at 12). Appellant also asserts the HOA singled him out for payment and acted discriminatorily. (*Id.* at 17). "A genuine issue of fact . . . can be created only by evidence which would be admissible at trial." *Hansen, supra*, 316 S.C. at 510, 450 S.E.2d at 627. In addition, Rule 56(e), SCRPC states that an adverse party may

affidavit's boilerplate language asserting that a declaration of horizontal property regime master deed had been recorded), *Battery Homeowners Ass'n v Lincoln Financial Resources, Inc.*, 309 S.C. 247, 422 S.E.2d 93 (1992) (townhouse development not a horizontal property regime where the master deed for the development neither stated the intention to create such a regime, as required by S.C. Code Ann. § 27-31-30, nor expressly included the words "Horizontal Property Regime" in its name, as required by S.C. Code Ann. § 27-31-100)

not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. These affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. *Id.* As evidenced by his Reply to the HOA's Memorandum in Support for Summary Judgment and Motion to Reconsider, Appellant has not provided any admissible evidence to support his allegations of a civil conspiracy, in the form of an affidavit or otherwise. Instead, Appellant offers through conjecture and unsubstantiated speculation, that the HOA is liable for civil conspiracy by virtue of instituting a collections action for \$2,912.03, which he maintains was a decision motivated by revenge, fury and a discriminatory desire to destroy Appellant, rather than to recover unpaid assessments rightfully owed to the HOA.

As to the special damages suffered, Appellant avers that he would have received anywhere between \$120,000 and \$125,000 in proceeds from his short sale in 2010. (App. Initial Brief, p. 14). He further states that a foreclosure action would bring \$50,000 to \$60,000, resulting in a deficiency judgment. (*Id.*) Again, Appellant presents no competent evidence to support these allegations. As this Court has previously held, bald allegations of diminution in property value are insufficient to create a genuine issue of fact regarding damages absent any competent evidence showing the existence, amount or causation of damages. *Gauld v O'Shaughnessy Realty Co*, 380 S.C. 548, 561, 671 S.E. 2d, 79 (Ct. App. 2008).

Accordingly, there is no admissible evidence to substantiate the alleged conspiracy, thus Appellant cannot establish the requisite elements that HOA's purpose of

instituting this action was to cause him injury and or special damages. *See Gordon v Busbee*, 397 S.C. 119, 136, 732 S.E. 2d 822, 832 (Ct. App. 2011) (upholding a directed verdict on Plaintiff's civil conspiracy claim where the record contained no evidence, only speculation that any of the parties conspired with each other). Summary judgment should be affirmed on this additional sustaining ground.

The trial court correctly granted summary judgment on the basis that there was no material issue of fact in regard to a breach of fiduciary duty by the HOA. The HOA is a nonprofit corporation organized under the laws of South Carolina. (Master Deed, Art. 5, Sec. c; Fischer Aff., p.1). In accordance with the Master Deed, the HOA is governed by a Board of Directors ("Board"). (Master Deed, Art. 5, Sec. d). When the Master Deed was first recorded in 2003, the Board was controlled by the developer, Cambridge Two, LLC. (Master Deed, Art. 17, Sec. 5). Appellant purchased his condominium in February 2004. (Deed from Cambridge Two, LLC, to Johnson D. Koola, filed Feb. 24, 2004). In October 2004, the developer transferred control to the homeowners who elected a new board of directors from the collective owners. (Fischer Aff, p.3).

As directors of a nonprofit corporation, the Board's standard of care is derived from the South Carolina Non Profit Corporation Act. *See* S.C. Code Ann. §§ 33-31-10, et. seq. A director is required to discharge their duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation *See* S.C. Code Ann. § 33-31-830(a). In discharging their duties, a director is entitled to rely on information, opinions, reports or statements prepared or presented by legal counsel. *See* S.C. Code Ann. § 33-31-830(b)(2).

In South Carolina, a fiduciary relationship does not exist between an owner-controlled homeowners association and an individual owner in the area of collecting assessments and fees. In *Roundtree Villas Homeowners Association v DeRienzo*, 287 S.C. 114, 336 S.E.2d 883, (Ct. App. 1985) appellant challenged the trial court's direct verdict on owners' breach of fiduciary duty counterclaim against the condominium owners association finding there was "no concomitant relationship, legally, between the payment of assessments and a condominium association's duty to maintain common elements." Although, the court of appeals declined to review the trial court's ruling in this matter because the jury verdict also found on behalf of the condominium association, which was not appealed, no other opinion has been rendered by the appellate courts on this issue.¹⁰ Similarly, the South Carolina Supreme Court declined to find a fiduciary relationship existed between an architectural review board, appointed by a developer in a planned community, and an individual owner holding that "we have never imposed the high standard of fiduciary duty on planned community organizations....instead the correct standard, the Board has a duty to exercise judgment reasonably and in good faith." *O'Shea v Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 632 (1992).

Further, the Uniform Condominium Act distinguishes the duty of care required by Board members based on how they are elected. See Uniform Condominium Act § 3-103(a)(1980) (the officers and members of the executive board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners and (ii) if

¹⁰ But see *Anchor Point, Inc v Shoals of Anderson, Inc*, 309 S.C. 486, 424 S.E.2d 521 (Ct App 1992) (affirming the master's finding that appellant homeowners association was liable for individual unit co-owners' failure to pay fees to respondent by virtue of fiduciary relationship because "at no point in [appellant's] reply does the appellant raise the issue that, as a homeowner's association, the appellant is not liable for the debts of its members." The master also found the owners authorized appellant to act on their behalf and represented the interests of the co-owners in legal actions.) This case is distinguishable from the facts at issue here because the HOA does not need authorization to institute legal action on behalf of individual owners and the actions taken by the Board were in furtherance of its contractual duty to maintain the common elements

elected by the unit owners, ordinary and reasonable care). Moreover, the comments to this section state that “this lower standard of care should increase the willingness of unit owners to serve as officers and members of the board.” *Id* As previously discussed, control of the Board transferred from the developer to the owners in October 2004. No heightened standard of care is imposed upon the Board members and no fiduciary duty exists between the HOA and Appellant.

In a dispute between the directors of an incorporated, nonprofit homeowners association and an aggrieved homeowner, the conduct of the directors should be tested by the business judgment rule, and absent a showing of bad faith, dishonesty or incompetence, the business judgment of the directors should not be set aside. *Dockside Ass'n, Inc v Deytens*, 294 S.C. 86, 362 S.E. 2d 874 (Ct. App. 1987); *Goddard v Fairways Dev. Gen. Partnership*, 310 S.C. 408, 426 S.E. 2d 828 (Ct. App. 1993). In addition, the burden of proving a lack of good faith is borne by those challenging the board's actions. *Dockside*, 294 S.C. at 87, 362 S.E. 2d at 875.

Appellant argues there have been serious breaches of fiduciary duty by the HOA, through the Board's actions, but he fails to demonstrate any bad faith, dishonesty or incompetence.¹¹ First, he alleges that the Board's authorization to initiate a construction defect lawsuit occurred during a private meeting and outside the domain of the HOA. (App. Initial Brief, p. 20). Appellant offers no evidence to support this allegation, only

¹¹ Appellant also raises an argument about a lack of deficit for outstanding assessments upon comparison of collected revenue and budgeted revenue for 2010 and 2011 (App. Initial Brief, p. 23). These budgets are not contained in the lower court's record and therefore cannot be addressed by the HOA without referencing documents properly before the court. Appellant's additional example of the HOA's purported breach of fiduciary duty is derived from the existence of a "Comprehensive Business Liability Insurance policy" that is carried by the HOA. Not only is this policy not part of the lower court's record, but its existence is not competent evidence pursuant to Rule 411, SCRE.

speculation. Further, he alleges that the HOA initiated this lawsuit without first obtaining two-thirds approval of the homeowners. (App. Initial Brief, p.22).

The rights and obligations of a homeowners association are gleaned from the Master Deed. See *Queen's Grant Villas Horizontal Property Regimes I-IV v. Daniel Intern'l Corp*, 286 SC 555, 556, 335 S.E. 2d 365, 366 (1985). Here, the HOA has the power to maintain, repair, replace and operate the common elements at Cambridge Lakes. (Fischer Aff. at 17; Henning Aff. at 10; Blevins Aff. at 10). The HOA also has the power to retain legal counsel and the power to sue. (Fischer Aff. at 18; Henning Aff. at 11; Blevins Aff. at 11); See S.C. Code Ann. § 33-31-302(1). Appellant erroneously relies on Section 16, Paragraph 6 of the Master Deed, which requires the Association to obtain a two-thirds (2/3) vote of the members prior to levying a special assessment for capital improvements, which is inapplicable to the Association's ability to file a lawsuit. A property regime has standing to bring an action for construction defects in common elements that the regime has a duty to maintain. *Roundtree, supra*, 282 S.C. 415, 321 S.E.2d 46 (1984). Should a regime not uphold its duty to pursue recovery for construction defects in the common elements it maintains, it may be liable to the homeowners for its omissions. *Queen's Grant*, 286 SC at 556, 335 S.E. 2d at 366. Thus, the HOA acted properly in initiating a lawsuit regarding construction defects to Cambridge Lakes' common elements and acted in the best interest of the owners.

Next Appellant argues that the Board's decision to settle the construction defects lawsuit for \$1.815 million dollars at the expense of homeowners was not in the best interest of the members of the HOA. (App. Initial Brief, p. 19). This statement makes no sense. The attorney for the HOA was successful in obtaining funds and window

replacements that improved the buildings and increased their value. Appellant is incorrect that settlement of the lawsuit was at the expense of the homeowners. The HOA retained its attorney on a contingency fee basis who would only be compensated out of monies received on behalf of the HOA. (Fischer Aff. at 22). Further, decisions to settle and release certain parties were taken under advice of legal counsel. In discharging their duties, a director is entitled to rely on information, opinions, reports or statements prepared or presented by legal counsel. *See* S.C. Code Ann. § 33-31-830(b)(2). Thus, Appellant's accusation that the Board acted improperly in settling the construction defect lawsuit fails to overcome the statutory protections set forth in the business judgment rule.

Appellant also alleges³ that Board member Stephan Fischer failed to act on information from Appellant in November 2004 about construction defects at Cambridge Lakes. Even if true, there is no relationship of this claim to this case. Assuming *arguendo* that Appellant did impart such information to Fischer in November 2004, this does not demonstrate that Fischer acted improperly in his capacity as a board member. Fischer did not join the Board until January 2005, therefore any discussions between the two occurred prior to his involvement with the Board. (Fischer Aff., at 5). Appellant claims that Fischer lied to him about the absence of construction of defects, but offers no evidence to support this statement (App. Initial Brief, p. 20). In his affidavit filed with the trial court, Fishers states that the defects were not disclosed by the developer when the HOA was turned over to the members. (Fischer Aff., at 16). It was not until sometime in March or April 2008 that the Board of Directors first learned of potential construction defects to the Association's property. (Fischer Aff. at 15). Thereafter, the HOA retained an attorney to file a construction lawsuit on its behalf. (Fischer Aff. at 19).

In response to Fischer's affidavit, Appellant has not overcome the burden to prove a material issue of fact exists as to knowledge of construction defects prior to 2008.

Finally, Appellant argues the Board violated S.C. Code Ann. § 27-31-430 because it knew about construction defects affecting his condominium in 2004 when it took control of the association from the developer, but failed to disclose these defects to him at the time of his purchase of the condominium. However, S.C. Code Ann. § 27-31-430 only applies to the lessee, sole owner, or co-owner of a building seeking to convert rental units into condominium units. Here, the statute would apply to Cambridge Two, LLC, the developer of Cambridge Lakes and the entity that sold the condominium to Appellant. Under Section 27-31-430, Cambridge Two, LLC had the duty to provide a written disclosure to all prospective purchasers as to the physical condition of the buildings within thirty (30) days of recording the Master Deed, not the HOA. Next, Appellant purchased his condominium on February 24, 2004. (Deed from Cambridge Two, LLC, to Johnson D. Koola, filed Feb. 24, 2004). However, Cambridge Two, LLC did not turn over control of the HOA to the members until October 2004, over seven months after Appellant purchased his condominium. (Fischer Aff. at 14). Thus, any obligation to notify Appellant of construction defects affecting his condominium at the time of his purchase fell solely on Cambridge Two, LLC, not the HOA.

Ultimately, the acts of the Board of Directors were taken in the best interests of the HOA. Additionally, Appellant has not and cannot show bad faith, dishonesty, or incompetence on the part of the HOA or its directors. (Fischer Aff. at 28; Henning Aff. at 20; Martin Aff. at 21, Blevins Aff. at 23). Therefore, their actions are protected by the

business judgment rule and Appellant's claim for breach of fiduciary duty fails as a matter of law.

The Appellant fails to establish that the lower court failed to grasp the issues in this matter. Lashing out at the lower Court because is getting closer to a judgment against him for the money owed, is not proper or supported in his arguments. On the contrary, the lower court fully understood what the Appellant was trying to do. The ruling was not issued until the Appellant was given additional time after the hearing to submit support for his position, was based on matters of law which cut off all attempts to raise a material issue of fact.

CONCLUSION

What began as a routine attempt to recover unpaid assessments from a delinquent member of an HOA was transformed into nearly four years delay to try to avoid payment. While the most recent recession caused regrettable income issues for many, the law and responsibilities of the Board to all the unit owners did not change. It is clear that for the Board to have acted differently would have resulted in loss of value for all units and put a great strain upon unit owners who were making their payments. These owners must pay more, if needed, when others did not meet their obligations. Appellant's failure to establish any facts to support his counterclaims and the application of well-established South Carolina law requires the affirmation of the Circuit Court's order granting summary judgment in favor of the HOA¹².

¹² After this motion was granted the collection action moved forward handled by the attorney who filed the original Complaint. A judgment was entered in favor of the HOA. Appellant filed a second notice of appeal as to the judgment. On June 25, 2014 Appellant filed for an extension of time to file his initial brief in that matter.

For all the foregoing reasons, and any others this Court may deem proper, Respondent, by and through its undersigned counsel, respectfully requests that this Court AFFIRM the Circuit Court's order granting summary judgment in its favor.

Respectfully submitted,



Eugene P. Corrigan III
J. Matthew Johnson
CORRIGAN & CHANDLER LLC
PO Box 547
Charleston, SC 29402
Phone: (843) 577-5410
Fax: (843) 577-5650

ATTORNEYS FOR RESPONDENT
CAMBRIDGE LAKES HOA

June 27, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

JUL 21 2014

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Circuit Court Case No. 2010-CP-10-9305

APPELLATE CASE NO.: 2013-001632

Cambridge Lakes HOA, ... Respondent,

v.

Johnson Koola, ... Appellant.

REPLY BRIEF OF APPELLANT

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

Appellant pro se

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S.C. Code Ann. § 33-31-830(a)

S.C. Code Ann. § 33-31-830(a);

S.C. Code Ann. § 33-31-830(b)(2).

Uniform Condominium Act § 3-103(a)

ARGUMENT

I. IT WAS AN ERROR FOR THE TRIAL COURT TO GRANT SUMMARY JUDGMENT TO THE HOA WHEN DISCOVERY, INCLUDING KOOLA'S MOTION TO COMPEL, WAS PENDING.

Koola (Appellant) expressly stated in his Initial Brief, pp 6-8, that the HOA (Respondent) had failed to fully respond to Koola's Discovery requests, and that there was outstanding Discovery that was dispositive to the facts of the case, the Trial Court should have considered the pending Discovery issues and the Motion to Compel, and afforded Koola sufficient time to develop opposition to Summary Judgment before making the ruling that Plaintiff's Motion to Compel is now moot". (ROA 1, Form 4 Order).

If this Court applies the decision in *CEL Products, LLC v. Rozelle*, 357 S.C. 125, 591 S.E.2d 643 (Ct.App. 2004) to Koola's case, this Court will find that the formal Order (ROA # 13) issued by the Trial Court does not refer to 'Plaintiff's Motion to Compel' and 'Motion to Compel is now moot' at all, and that the Trial Court did not exercise discretion before ruling the 'Motion to Compel is now moot'. The HOA's argument that the Trial Court exercised discretion in ruling 'Motion to Compel is now moot' is not substantiated (Respondent's Brief, pp 9-10).

Respondent's Initial Brief, pp 9-10, argues further that Koola had ample time to complete Discovery between filing of the Answer and Counterclaim and motion hearing. In fact, the HOA's responses to Koola's Discovery were mostly incomplete, raised numerous objections, and the HOA refused to answer many of the Interrogatories and failed to produce many of the Requests for Production (ROA # 6). In response to Koola's Request for Admission that "money spent by the plaintiff HOA to investigate construction defects and to initiate the lawsuit # 2008-CP-10-3506 was not a budgeted

item", the HOA responded: "Investigation is still on going and Defendant will supplement its Answer shortly. In the event an answer is required at this time, Defendant denies Request to Admit [No.:] 27". (ROA # 6). Koola believed that the HOA will supplement its Answer shortly, but it never happened.

This Court have held that "a defendant will be estopped to assert the statute of limitations in a 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." *Magnolia North Property Owner's Ass'n v. Heritage Communities, Inc.* 397 S.C. 348, 372, 725 S.E.2d 112, 125 (Ct.App. 2012).

The Motion for Summary Judgment filed by the HOA on Aug. 1, 2012 (ROA # 10) did not include any grounds for the Summary Judgment. Hence, Koola could not elaborate his Motion to Compel with any specifics. The HOA filed its Memorandum in support of its Motion for Summary Judgment only on Dec. 7, 2013 (ROA # 11) delaying Koola's efforts to complete Discovery even further.

These statements would satisfy this Court why Koola could not complete the Discovery, as it should be. Aggressive steps to complete the Discovery like taking Depositions, Motion to Compel etc. in the HOA's two cases would cost Koola approximately \$3000 additionally; Koola could not afford to pay for them.

The HOA argues further that Koola did not demonstrate how further discovery would be beneficial, and how the information sought by Koola would be necessary to make a material claim in the case (Respondent's Brief, pp10-11). Koola responds that the HOA intentionally withheld minutes of BOD meetings of the HOA for several months. The production of all the withheld minutes of the BOD meetings would help

Koola to determine when the HOA knew about the construction defects in Cambridge Lakes, when the HOA knew about violation of HPA § 27-31-430 (S.C. Horizontal Property Act § 27-31-430) by the developer (developer/seller and the HOA's predecessor), and whether the BOD (Board of Directors) of the HOA authorized attorney John Hayes, IV, to file the construction defects litigation. In turn, these information would help Koola to determine whether the HOA was negligent to investigate the construction defects, whether the HOA is liable for the violation of HPA § 27-31-430 by the developer, and whether the HOA breached Fiduciary Duty and whether the HOA is liable to Koola for negligence and negligence per se.

Had the HOA produced all the financial statements, it would have helped Koola to determine how many homeowners had defaulted on their regime dues, when the HOA filed lawsuits to collect unpaid regime dues from individual homeowners, whether the HOA filed lawsuits to collect regime dues against all defaulters without discrimination, and how many judgments were satisfied, and whether the HOA's obstruction of Koola's short sale of his condominium was discriminatory.

The HOA has stated in the Respondent's Brief, p 6, that the BOD discussed Koola's defaults of the regime dues before filing the lawsuit to collect the dues. Koola was probably the only homeowner in Cambridge Lakes who voluntarily offered to clear the regime dues through short sale of his condominium, which the HOA rejected. Did the HOA take into consideration Koola's offer to clear the regime dues through short sale? Or, did the HOA opt for the expensive litigation route? The receipt of HOA's official policy to file civil actions against Koola would help Koola to clarify this issue. The information sought through Discovery was necessary to establish material claims.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENT AS THE COURT FAILED TO APPREHEND GENIUNE ISSUES OF MATERIAL FACTS IN DISPUTE

A. Obstruction of Koola's short sale of his condominium by the HOA

Koola has detailed in his Initial Brief, p 3, pp 14-15, how the HOA rejected Koola's voluntary offer to sell his condominium short, which was the only way for Koola to clear off all debts. The HOA's Notice of Lien (ROA # 5) caused multiple adversarial and judicial actions against Koola in short order – a Notice of Lien by the HOA (May 25, 2010), a Lis Pendens by the first mortgagee (July 27, 2010), a civil action by the HOA for the collection of regime dues (July 29, 2010), the foreclosure action by the first mortgagee (Sep. 1, 2010), a second foreclosure action by the second mortgagee and a third foreclosure action by the HOA (Dec. 15, 2010). Koola was forced to cancel his efforts to sell his condominium through short sale. The HOA, through its multiple civil actions, obstructed Koola's short sale of his condominium.

Had the HOA not obstructed Koola's short sale, Koola would have sold his condominium by the end of summer of 2010 and cleared off the HOA's regime dues. Instead, the HOA preferred to collect the regime dues through litigation.

Koola has detailed in his Initial Brief, pp 14-15, the policy of the HOA to collect any unpaid regime dues from insolvent homeowners through short sale as recorded in the minutes of the meeting of BOD held on August 25, 2009 (ROA # 16). By obstructing Koola's short sale of his condominium, the HOA violated its own policy and that of Federal lending agencies and regulators and financial institutions.

In a footnote # 8 to Respondent's Brief, p 16, the HOA states that satisfying the regime dues through short sale is not the accepted practice of the HOA.

Respondent's Brief has repeatedly stated that Koola owes regime dues to the HOA. The HOA does not state why the HOA rejected Koola's voluntary offer to clear off the dues to the HOA through a short sale of his condominium. The HOA has allowed short sale previously in Cambridge Lakes (Appellant's Initial Brief, pp 16-17).

Does the HOA have a claim for action against Koola for collection of unpaid dues when Koola voluntarily offered to clear off his dues through short sale? This is not a question of law, but a genuine issue of material fact and is reserved for the jury. The Trial Court failed to refer this question to a jury for a trial. The Trial Court did not address this issue in its formal Order (ROA # 13).

B. An *ab initio* invalid Master Deed and a contract to buy condominium induced by fraud

The HOA instituted a civil action in 2010 against Koola to collect unpaid assessments of HOA regime dues under the terms of the Master Deed. The Master Deed of the HOA states:

"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").
(ROA # 2, Master Deed of the HOA).

In due course of time the HOA established (Respondent's Brief, p 24)), and Koola learned (Appellant's Initial Brief, p 2) that the Developer violated a key provision of the Horizontal Property Act, HPA § 27-31-430, "Disclosure of physical condition of the building". A condominium is a creature of the statute, strict compliance with HPA is required to create horizontal property regime. S.C. Code Ann. § 27-31-30, § 27-31-100.

Harrington v. Blackstone, 311 S.C. 459, 429 S.E.2d 826 (Ct.App. 1993), 319 S.C. 1, 459 S.E.2d 309 (Ct.App. 1995) (reversed in part on other grounds) and the references cited therein.

Koola represents to this Court that the Master Deed of the HOA is *ab initio* invalid and therefore unenforceable on Koola for the statutory violation of HPA § 27-31-430.

Koola has detailed in Appellant's Initial Brief (pp 9-10) that the HOA's legal action against Koola has no legal standing as its Master Deed, inherited from its predecessor, is *ab initio* invalid.

Koola has detailed in Appellant's Initial Brief (p 2,) that in 2010 Koola learned that developer falsified the Builder's Certification issued to Koola and his mortgagee due to his non-compliance with HPA § 27-31-430 and thereby committed fraud.

Koola purchased the condominium in 2004 on the express assurance that the Cambridge Lakes condominiums were created in strict compliance with § HPA 27-31-430, and that the Builder's Certification is not fraudulent. The developer induced Koola into a contract to buy the condominium through fraud and using an *ab initio* invalid Master Deed. Koola is entitled to rescission of his condominium purchase. Alternatively, the HOA buys back the condominium from Koola and can later resell the condominium to others to recoup any losses and sue the developer for the remaining losses, if any. The HOA can also try to recover from the developer under the theory of Loss Mitigation.

In footnote # 9 to Respondent's Brief, p 16, the HOA denies that the Master Deed is invalid. The HOA argues that Koola has not submitted 'competent evidence' to establish that the Builder's Certification was fraudulent due to violation of SC Code Ann.

§ 27-31-430. This is in spite of the fact that the HOA itself detailed statute violations of the developer in Respondent's Brief, p 24. Fraud was a cause of action by the HOA against the developer in HOA's construction defects lawsuit.

That the Master Deed is invalid is a matter of fact. Is the *ab initio* invalid Master Deed of the HOA enforceable on Koola? Is Koola entitled to rescission of his condominium? Is the contract to buy the condominium induced through an *ab initio* Master Deed and fraud valid? These questions are reserved for the jury. The Trial Court did not make a ruling on this cause of action by Koola (ROA # 13).

C. The Annual Budgets presented by the HOA to the Homeowners show no dues from any homeowners, and the HOA has no legal standing to sue Koola

The relevant sections of the HOA's budgets for the years, 2007, 2009 and 2013 (Koola, Reply to HOA's Motion for Summary Judgment, ROA # 12 pp 22-24 and Appellant's Initial Brief, pp 11-12) show that there are no outstanding regime dues from any homeowners including Koola. Since the HOA has not established that there are any dues from Koola, the HOA has no claims to continue the civil action against Koola.

The official statements publicly made by the HOA in the annual budgets for the given years that there are no outstanding dues from any homeowners, including Koola, contradict the HOA's claim that Koola is indebted to the HOA for non-payment of regime assessments. This inconsistency is not a matter of law, but a matter of fact. The Trial court did not rule on this cause of action by Koola. The Trial Court erred further when it failed to refer the matter to a jury and granted Summary Judgment to the HOA.

In a footnote # 11 to the Respondent's Brief, the HOA states that these budgets are not contained in the lower court's record and cannot be raised in this Court. Koola

responds that Koola presented these budget data in his Reply to HOA's Motion for Summary Judgment (ROA # 12) and Motion to Reconsider (ROA # 14) to the Trial Court. Therefore, Koola presents to this Court that he can raise this issue in this Court.

D. Business Judgment Rule and Best Interests of the HOA

The HOA states (Respondent's Brief, p 6) that since the HOA was established it has filed multiple liens and lawsuits and obtained judgments against different owners. In support, the HOA has stated that it has obtained Judgments in the following cases: 2010-CP-10-9146, 2011-CP-10-39, 2011-CP-10-2767, SC 872010002259, and 2012-CP-10-4714. (Koola does not reveal the identities of the homeowners). (Footnote 4 to Respondent's Brief, p 6). The HOA has not stated anywhere that the HOA has collected any of these judgments. The legal conclusion is that the HOA has not collected on any judgments it has received.

In the Respondent's Brief, the HOA has stated repeatedly and repeatedly that Koola has defaulted on his regime dues, and the HOA filed the civil action against Koola in the best interest of the HOA and in accordance with better Business Judgment Rules. At no time the HOA had admitted that Koola offered to clear off his regime dues through short sale.

What is the priority of the HOA and the best interest of all homeowners? Is it to obtain judgments and not to collect the judgments or to collect Koola's dues through the voluntary short sale of his condominium without any legal costs? This is a genuine issue of material fact reserved for the Jury.

III. IT WAS AN ERROR FOR THE TRIAL COURT TO DISMISS KOOLA'S COUNTERCLAIM AGAINST THE HOA FOR BREACH OF FIDUCIARY DUTY BY SUMMARY JUDGMENT.

South Carolina Non-profit Corporation Act, S.C. Code Ann. § 33-31-830(a) (1976) states that a director shall discharge his duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the corporation. The members of BOD of HOAs elected by unit owners are required to exercise ordinary and reasonable care. Uniform Condominium Act § 3-103(a).

Statute established Duty of Care on the HOA vis-à-vis BOD. When an ordinary person reposes special confidence in another ordinarily prudent person, [who has a Duty of Care,] so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of one reposing the confidence, and fiduciary relationship is established. (Breach of Fiduciary Duty; S.C. Bar Continuing Legal Education).

Generally, the principles of fiduciary obligation and business judgment applied to corporate directors also apply to the governing board of a condominium¹.

Koola has pled claims for breach of fiduciary duty against the HOA (Appellant's Initial Brief, pp 19-24, Koola's Reply to HOA's Memorandum p 14, 15, pp 16-18 and p 21, ROA # 12 and Amended Answer and Counterclaim, pp 1-3, ROA # 8). Koola brings to the kind attention of Appellate Court some of the most serious Breaches of Fiduciary Duty by the HOA.

¹ Condominium Law in South Carolina, D. S. MacGregor, Esq., Third Ed., South Carolina Bar, 2013.

A. Did the HOA investigate Construction defects in Cambridge Lakes diligently?

The HOA has claimed that the BOD of the HOA first learned of the potential construction defects in Cambridge Lakes during March-April, 2008. (ROA # 17). The HOA did not seek information from all homeowners whether they experienced water leaks or construction defects in their units before filing the lawsuit. The HOA did not investigate water leaks and construction defects diligently.

Appellant's Initial Brief, p 20, makes a detailed reference to a meeting between Koola and Stephen Fisher, Member, BOD of the HOA, on November 20, 2004. During this meeting Koola conveyed reliable information to Fisher that the rumors of construction defects in Cambridge Lakes may be for real. Fisher denied any construction defects in Cambridge Lakes and did not act further on the information provided to him. The HOA filed the construction defects lawsuit four years later.

Duty of Care, which Fisher had to Koola, required Fisher to act on the information about construction defects. Fisher breached Fiduciary duty and was negligent when he failed to act on the information about construction defects that Koola provided to him in 2004 (Koola, Reply to HOA's Motion for Summary Judgment, p 15, ROA # 12).

The HOA responds that Fisher joined the Board in Jan. 2005, therefore discussions between the two occurred prior to his involvement with the Board, and are not binding on the HOA. The developer handed over the control of the HOA to the BOD in Oct. 2004. Fisher became a Board member and Vice president in Oct. 2004.

The Appellate Court of South Carolina has ruled in *Fisher et al. v. Shipyard Village Council of Co-owners, Inc.*, Op. No. 5241 (S.C.Ct.App. filed June 25, 2014) that the Council [HOA] is charged with maintaining common elements, and the

duties created by the Bylaws and South Carolina law also support a duty by the Council [HOA] to investigate who is responsible for damage to the common elements. Koola holds Fisher liable for breach of Fiduciary Duty to Koola and negligence.

B. Did the BOD of the HOA authorize attorney John C. Hayes, IV, to file the construction defects litigation in a BOD meeting?

Certain members of the BOD of the HOA filed sworn affidavits with the HOA's Memorandum in Support of Motion for Summary Judgment (ROA # 11)) in which they stated that the BOD retained attorney John C. Hayes, IV, to file the construction defects lawsuit on its behalf when learned of water leak in just one Cambridge Lakes unit. The HOA has not produced the minutes of any BOD meeting to confirm that the BOD authorized Hayes to file the construction defects lawsuit, and it should be concluded that these BOD members lied in their affidavits.

Koola represents to the Appellate Court that in the absence of supporting minutes of the BOD meeting, Hayes was not officially authorized by the HOA to file the lawsuit, the BOD might have met in a private meeting and outside of the domain of the HOA, and requested Hayes to file the lawsuit. This is a private affair, not an official business. This is a serious breach of fiduciary duty by the HOA.

C. The HOA filed the construction defects lawsuit without the approval of the two-third majority of the Cambridge Lakes Homeowners.

Appellant's Initial Brief, pp 21-22, details how the HOA filed the construction defects lawsuit without the approval of the two-third majority of the homeowners in contravention of the mandate of the HOA's Master Deed, Paragraph (16)(6) (ROA # 2, pp 12-13). The HOA circumvented the mandate of the Master Deed as follows: HOA filed the lawsuit on June 18, 2008. On June 25, 2008, the HOA, through a letter (ROA #

4), asked the homeowners to join the lawsuit by assigning their rights to the HOA and to agree to pay any regular or future assessments. The very fact that the HOA demanded that the homeowners assign their rights to the HOA to pursue the lawsuit confirms that the HOA has to receive approval of two-third majority of the homeowners. The homeowners, who assigned their rights to the HOA, agreed to pay on demand unspecified amount of future special assessments. This is like signing a 'promissory note', which is a binding contract.

The HOA counters by stating (Respondent's Brief, p 5) that (1) assigning the rights of the homeowners to the HOA was voluntary, (2) the litigating attorney would be paid out from the proceedings of the lawsuit, (3) the HOA did not actually collect the special assessment. The HOA did not reveal its intention that it will collect the special assessments from the homeowners if the HOA lost its construction defects lawsuit.

Koola agrees with the HOA that the HOA has the duty maintain the common elements and has power to file lawsuits to recover in construction defects litigation. But this power to file lawsuits is subject to "due process of law", which includes informing the homeowners of the construction defects, informing the homeowners that they will be assessed a special assessment in case the HOA loses the lawsuit, receiving approval from two-third majority of the homeowners to file the lawsuit and to collect the special assessments when necessary.

South Carolina Appellate Court and South Carolina Supreme Court have categorically ruled that the homeowner associations do not have the power or right to collect special assessments without the approval of the Homeowners in contravention of the provisions of the Master Deed. *Lovering v. Seabrook Island Property Owners Ass'n*,

289 S.C. 77, 344 S.E.2d 862 (Ct.App. 1986), 291 S.C. 210, 352 S.E.2d 707 (1987) (affirmed and modified).

The appellate courts have ruled on the issues of construction defects and recovery of damages in many decisions: *Queens' Grant Villas Horizontal Property Regimes I-IV v. Daniel Internat'l Corp.*, 286 S.C. 555, 335 S.E.2d 365 (1985), *Roundtree Villas Ass'n Inc. v. 4701 Kings Corp.*, 282, S.C. 415, 321 S.E.2d 46 (1984), *Bauman v. Long Cove Club Owners Ass'n*, 380 S.C. 131, 668 S.E.2d 420 (Ct.App. 2008), *Harrington v. Blackstone*, supra, *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct. App. 1987)

That the HOA filed the construction defects litigation without the approval of two-third majority of the homeowners is a serious Breach of Fiduciary Duty by the HOA.

D. Diversion of funds to pursue construction defects litigation

Appellant's Initial Brief, pp 23, has detailed how the HOA spent several thousand dollars to investigate construction defects and to pursue the construction defects lawsuit by creating a special fund in March 2009 in the middle of the budget year (ROA # 17) and without the approval of homeowners and without informing the homeowners of the diversion of funds from other budget head. This is a plain Breach of Fiduciary Duty. The HOA itself states in the Respondent's Brief, p 4: "The HOA budget is reviewed and adjusted annually and does not change during the calendar year. (Martin Aff. at 10)".

E. Business Judgment Decisions of the BOD in bad faith, dishonesty, or incompetence

For nearly three years the HOA held the developer liable to the HOA for construction defects and violation of HPA § 27-31-430 in HOA's construction defects litigation. In March 2011, the HOA quietly dismissed the case against the Developer

with prejudice. In the same litigation, the HOA did not file lawsuit against Prudential Carolina Real Estate c/d/b as Carolina One; who sold nearly two-thirds of the condominiums, for recovery. In the construction defects litigation, HOA claimed damages worth \$8 million; in June 2011, the HOA settled the case and received nearly \$1.815 million as damages. Nearly one-third of the funds was paid to the attorney as his fees. Did the HOA receive enough funds to repair the damages as claimed in HOA's letter (ROA # 4)? If the case is remanded to the Trial Court, Koola can establish with reasonable confidence that the BOD acted in bad faith and dishonesty and incompetently.

The HOA states that Koola's claims for Breach of Fiduciary Duties fail as a matter of law (Respondent's Brief, p 15, 19, 23) because the actions of the members of the BOD are protected by the Business Judgment Rules, S.C. Code Ann. 33-31-830(a); S.C. Code Ann. 33-31-830(b)(2). The HOA fails to recognize that the judgment decisions of the directors will be set aside by judicial action if bad faith, dishonesty, or incompetence on the part of the members of the BOD could be established. *Kuznik v. Bees Ferry Ass'n*, 342 S.C. 579, 538 S.E.2d 15 (Ct.App. 2000) and *Goddard v. Fairways Development General Partnership*, 310 S.C. 408, 414 426 S.E.2d 828, 832 (Ct.App. 1993).

The Supreme Court of South Carolina has ruled: "We hold that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association". *Murphy, Jr. v. Yacht Cove Homeowners Ass'n*, 289 S.C. 367, 345 S.E.2d 709 (1986). This is the law of South Carolina.

IV. IT WAS AN ERROR FOR THE TRIAL COURT TO DISMISS KOOLA'S COUNTERCLAIM AGAINST THE HOA FOR CIVIL CONSPIRACY BY SUMMARY JUDGMENT

A. Obstruction of Koola's short sale of his condominium by the HOA was a discriminatory act

Koola's Reply to HOA's Motion for Summary Judgment, pp10-11 (ROA # 12) has detailed the case of a Cambridge Lakes homeowner (# 1583 Cambridge Lakes Dr) who sold his condominium in or around February/March 2010 through short sale. The HOA allowed that homeowner to sell his condominium through short sale without satisfying the lien (\$13,673.23). Koola has also detailed the cases of three homeowners at 1423 Cambridge Lakes Dr, 1455 Cambridge Lakes Dr, and 1491 Cambridge Lakes Dr, who had several thousand dollars in unpaid dues (Motion for Summary Judgment, p11, ROA # 12). RMC records show that the HOA hasn't collected any dues from these homeowners. There are no court records showing any civil action pending against them. The HOA does not address these specific instances.

These specific instances would show to this Court that the HOA applies different standards to different people, and that the HOA singled out Koola in its actions and acted discriminatorily in spite of the fact that Koola voluntarily offered to clear his dues through short sale. Koola has further alleged that the actions of the HOA toward Koola were discriminatory and prejudiced based on race, color and national origin (Koola, Reply to HOA's Motion for Summary Judgment, p 12, ROA # 12). Two members of the BOD know Koola personally, as they live in the same building; the directors know that Koola belongs to a different race, color and national origin.

The HOA denies that it has not discriminated against Koola (Respondent's Brief, pp 14 -15). The formal Order of the Trial Court does not address these facts.

The question before the jury is whether the HOA treated Koola differently from the homeowners at #1583 Cambridge Lakes Dr, #1423 Cambridge Lakes Dr, #1455 Cambridge Lakes Dr and #1491 Cambridge Lakes Dr, and if so, whether it was discriminatory, and if yes, whether the discriminatory action was based on race, color and national origin.

B. Civil Conspiracy

Koola has pled a claim against the HOA for civil conspiracy for its obstruction of Koola's short sale of his condominium (Amended Answer and Counterclaim, pp 3-4, ROA # 8, Koola's Reply to HOA's Motion for Summary Judgment, pp 8-12, ROA # 12, Motion to Reconsider, pp 11-15 and Appellant's Initial Brief, pp 13-19). Under South Carolina Law, a claim for civil conspiracy is established if the plaintiff can show that the following elements are met: (1) The Combination of two or more persons, (2) For the purpose of injuring the plaintiff, and (3) Causing special damages to the plaintiff.

The members of the BOD of the HOA conspired among themselves, the Management Company (Ravenel Associates) and the HOA's attorneys. This satisfies the first element of civil conspiracy.

With regard to the second element of a prima facie claim for civil conspiracy, Koola has expressly alleged that the purpose of the HOA's decision to institute multiple litigations against Koola (Lien, Civil action to collect regime dues and Foreclosure action) was to inure Koola by precluding his ability to short sell his condominium.

To meet the third element to claim "special damage", Koola has alleged that the objective of the conspiracy was to injure Koola as well as to destroy him financially.

Appellant's Initial Brief, p 15, has stated that after short sale in 2010, Koola would have received anywhere between \$120,000 and \$125,000 as sale price. This was sufficient to pay off all mortgage-related debts, as Koola had more than 25% equity in his condominium. A foreclosure action would bring about \$50,000 to \$60,000 to the table, which would result in deficiency and civil judgments of about \$100,000. At age 70, Koola has no income or resources to pay off even a small fraction of these judgments. The psychological pressure of this potential judgment and its consequences destroy Koola's life. This is the special damage that the HOA conspired to inflict on Koola.

The infliction of special damage has the following adverse, detrimental effects on Koola. (1) After foreclosure and civil judgment, Koola will be evicted from his condominium. Because of poor credit resulting from foreclosure and civil judgments, and no wage income and other resources, Koola would not be able to rent an apartment. That Koola will become homeless is a possibility. (2) Koola is a professional chemist and was unemployed since 2007. In 2010, Koola was under the retirement age. He could have moved to elsewhere and sought a professional chemist's job. Koola could not move out due to the prolonged litigations and remains unemployed since 2007. The resulting damage from these civil actions is enormous. (3) The cost of litigation is beyond Koola's affordability. Koola borrows money on credit card to pay for the litigation cost. These are the aftereffects of special damage that the HOA inflicted on Koola due to conspiracy. *Allen v. Columbia Fin. Mgmt. Ltd.*, 279 S.C. 481, 377 S.E.2d 352 (Ct.App. 1988). Lawful acts may become actionable as a civil conspiracy when the "object is to ruin or damage the business of another". *Charles v. Texas*, 199 S.C. 156, 170, 18 S.E.2d 719, 724 (1942).

That the HOA denies conspiracy, of course, does not mean that the HOA is entitled to summary judgment. It creates a clear genuine issue of material fact, to which Koola must be entitled to present to a jury to determine. The HOA denies conspiracy against Koola on the following counts:

(1) The HOA argues further that Koola sued only HOA, but not the members of the BOD in their individual capacities and its agents (Respondent's Brief, pp13-14). A theoretical consideration of conspiracy would show to this Court that conspiracy and suing the conspirators for the crime committed are two fundamentally different but successive steps. "A conspiracy is an agreement between two or more persons to commit an unlawful act coupled with intent to achieve the agreement's objective, and an action or conduct that furthers the agreement. Conspiracy is a separate offense from the crime that is the object of conspiracy"². A conspiracy can take place only between two or more people. Once conspiracy is conceived or completed, conspirators can be sued to recover for damages either singly or in groups at will (of the plaintiff). Sometimes, some of the conspirators could not be apprehended, or they may be absconding. In that case only the conspirator left behind is sued. The HOA's argument that Koola's conspiracy case fails, since he has sued only the HOA, has no standing.

(2) The HOA denies conspiracy claims (Respondent's Brief, p 18) because Koola has not presented competent evidence to support the condominium sales prices in Cambridge Lakes, which he presented in Appellant's Initial Brief, p 15. A property owner is competent to estimate his property's value as a matter of law. *Rogers v. Rogers*, 280 S.C. 205, 311 S.E.2d 743 (Ct.App. 1984). RMC records show that two two-bed room units in Cambridge Lakes, 1455 and 1599 Cambridge Lakes Dr, were sold for \$116,500

² Black's Law Dictionary, Ninth Ed., B.A. Garner, Ed. in Chief, West Publishing Co., 2009.

and \$116,000 respectively in 2011. Koola can estimate with reasonable certainty the potential sales price of a three-bedroom condo in the range of \$120,000 to \$125,000. The HOA's denial does not hold as a matter of law in a court room.

(2) The HOA's claim that it has authority to institute an action against Koola for noncompliance with Master Deed to pay the monthly regime has no standing as Koola has shown to this Court that the HOA's Master Deed is *ab initio* invalid and unenforceable on Koola. (Appellant's Initial Brief, pp 9-10).

(3) The HOA's claim that it has authority to institute an action against Koola by virtue of S.C. Code Ann. § 27-31-170 at 3, and that no individual homeowner can stop making payments for a length of their choosing is redundant and has no merit because Koola has voluntarily offered to clear his dues (Appellant's Reply Brief, supra, at 10).

(4) The HOA's statement that it has obtained judgments against five homeowners has no merit at all as the HOA has not documented that these five judgments have been satisfied (Appellant's Reply Brief, supra, at 10).

(5) The HOA's argument that it has not singled out Koola for nonpayment of assessments, has been discredited by Koola. Koola has established his conspiracy claim against HOA beyond reasonable doubt (Appellant's Reply Brief, supra, at 17-18).

(6) The HOA claims that the directors discharged their duties in a manner that the directors reasonably believed to be in the best interest of the HOA, have no merit because Koola has detailed how the HOA acted in bad faith and dishonesty, and incompetently (Appellant's Reply Brief, supra, pp 11-16).

Conclusion

Koola has shown to this Court that notwithstanding the legality of claims and counterclaims of both parties to this case, Koola offered to clear off his regime dues through short sale of his condominium voluntarily. The HOA rejected this offer and opted for litigation. The HOA has not provided any evidence to this Court that the HOA has collected on any of the judgments that the HOA has obtained in the past.

Koola has shown to this Court that the Trial Court granted Summary Judgment to the HOA when Discovery, including Motion to Compel, was pending. The Trial Court did not exercise discretion before ruling the 'Motion to Compel is now moot'.

Koola has shown to this Court that the Trial Court failed to apprehend genuine issues of Material Fact in dispute, that the HOA breached Fiduciary Duty, and dismissed Koola's counterclaim against the HOA for Civil Conspiracy without due consideration.

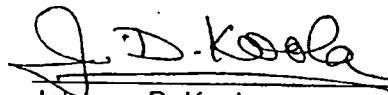
The Appellant and the Respondent see the relevant issues as glass half full or half empty, offering contradicting explanations.

It troubles the Appellant that the Respondent's Brief is often unethical. It was very troubling when the Respondent made the inflammatory statement: "Lashing out at the lower court because is getting closer to a judgment against him for the money owed, is not proper or supported in his arguments". Respondent's Brief, p 25. This creates a hostile environment for the Appellant in the Court of Appeals and a more hostile environment in the lower court, if the case would be remanded. In a footnote to the Respondent's Brief, p 25, Appellant states further: "After this motion was granted the collection action moved forward handled by the attorney who filed the original complaint. A judgment was entered in favor of the HOA. Appellant filed a second notice of appeal

as to the judgment. On June 25, 2014 Appellant filed for an extension of time to file his initial brief in that matter". Appellant prays to this Court to review these statements by the Respondent.

For all the foregoing reasons, and any others this Court may deem proper, Appellant pro se Koola respectfully prays to this Court to reverse the Trial Court's Order granting Summary Judgment to the Respondent and to remand the case to the Trial Court.

Respectfully submitted,

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

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

Appellant pro se

Mt Pleasant, SC 29464
July 17, 2014

**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**

Cambridge Lakes Homeowners Association, Respondent,

v.

Johnson Koola, Appellant.

Appellate Case No. 2013-001632

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-391
Submitted March 1, 2015 – Filed August 5, 2015

AFFIRMED

Johnson Koola, of Mount Pleasant, pro se.

Eugene P. Corrigan, III, of Corrigan & Chandler, LLC,
and Lydia Pruitt Brooks, of Krawcheck & Davidson,
both of Charleston, for Respondent.

PER CURIAM: Johnson Koola appeals the circuit court's order granting summary judgment in favor of Cambridge Lakes Homeowners Association (Cambridge Lakes), arguing the circuit court erred in granting summary judgment because (1) the parties had not yet performed discovery and the circuit court had not acted on Koola's motion to compel and (2) Koola showed there were triable

issues of fact. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in granting summary judgment before the parties completed discovery and without acting on Koola's motion to compel: *CEL Prods., LLC v. Rozelle*, 357 S.C. 125, 129, 591 S.E.2d 643, 645 (Ct. App. 2004) ("The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial."); *id.* at 130, 591 S.E.2d at 645 ("The manner in which a trial is conducted is within the [circuit court's] discretion. "); *id.* at 131, 591 S.E.2d at 646 (finding summary judgment was appropriate to avoid prolonging litigation based on the mere possibility that the party "might obtain some helpful information"); *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a fishing expedition.'").
2. As to whether the circuit court erred in granting summary judgment: *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) ("Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a [circuit] 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. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP." (citations and internal quotation marks omitted)); *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886-87 (2006) ("A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. . . . However, a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities." (citations and internal quotation marks omitted)); *id.* at 564, 626 S.E.2d at 887 (providing "a corporation cannot conspire with itself"); *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 409 S.C. 164, 180, 760 S.E.2d 121, 129-30 (Ct. App. 2014) ("In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business

judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action."); *id.* at 178, 760 S.E.2d at 129 ("When master deeds and bylaws show a homeowner's association has the obligation to maintain the common elements, the association has a duty to pursue a recovery for any alleged construction defects in the common elements.").¹

AFFIRMED.²

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

¹ As to whether the circuit court erred in granting summary judgment because Koola showed the master deed was unenforceable: *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").

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

V

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Circuit Court Case No. 2010-CP-10-9305

APPELLATE CASE NO.: 2013-001632

Cambridge Lakes HOA, ... Respondent,

v.

Johnson Koola, ... Appellant.

PETITION FOR REHEARING

Appellant pro se, Johnson Koola, ("Koola" or "Petitioner") files this Petition for Rehearing of the Court of Appeal's Unpublished Opinion No. 2015-UP-391 filed on August 5, 2015 under Rule 221(a), (c), and Rule 240(c)(3), and (i) SCACR.

Petitioner files this Petition for Rehearing stating with particularity the points overlooked or misapprehended by the court as provided under Rule 221(a), SCACR. Further, the petitioner files an Affidavit and other documents as provided under Rule 240(c)(3), SCACR, as some of the facts relied upon in support of the Petition are not contained in the Record on Appeal.

Petitioner requests an oral hearing before the petition for rehearing is decided on under Rule 240(h), SCACR.

TABLE PF AUTHORITIES

CASES

1. <i>Charles v. Texas</i> , 199 S.C. 156, 170, 173, 18 S.E.2d 719, 724-25 (1942).....	3
2. <i>Chastain v. Hiltabidle</i> , 381 S.C. 508, 514, 673 S.E.2d 826, 829 (2009).....	5
3. <i>David v. McLeod Reg'l Med. Ctr.</i> , 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).....	5
4. <i>Exchange Bank of Meggett v. Bennett</i> , 193 S.C. 320, 326, 8 S.E.2d 515, 517 (1940).....	2
5. <i>Fisher v. Shipyard Vill. Council of Co-owners, Inc.</i> , 409 S.C. 164, 177-81, 760 S.E.2d 121, 128-30 (Ct.App. 2014), Petition for Writ of Certiorari granted, 2015 S.C. Lexis 135 (2015).....	8, 9, 11, 15
6. <i>Goble v. American Railway Express Co.</i> , 124 S.C. 19, 30-31, 115 S.E. 900, 904 (1920).....	2
7. <i>Gynecology Clinic, Inc. v. Cloer</i> , 334 S.C. 555, 556, 514 S.E.2d 592 (1999).....	3
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12. <i>Johnson v. Sonoco Prods. Co.</i> , 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).....	6
13. <i>Kuznik v. Bees Ferry Associates</i> , 342 S.C. 579, 603, 538 S.E.2d 15, 27 (Ct.App. 2000).....	17, 21
14. <i>LaMotte v. Punch Line of Columbia, Inc.</i> , 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988).....	3
15. <i>Lovering v. Seabrook Island Property Owners Ass'n</i> , 291 S.C. 201, 202-03, 352 S.E.2d 707, 708 (1987).....	13, 14
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20.	<i>Queen's Grant Villas Horizontal Property Regime I-IV v. Daniel Internat'l Corp.</i> , 286 S.C. 555, 556, 335 S.E.2d 365, 366 (1985).....	11, 13
21	<i>Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.</i> , 282 S.C. 415, 421, 321 S.E.2d 46, 49 (1984).....	13, 14
22.	<i>Seabrook Island Property Owners Ass'n v. Pelzer</i> , 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct.App. 1987).....	13, 14
23.	<i>Simmons v. Mark Lift Industries, Inc.</i> , 366 S.C. 308, 622 S.E.2d 213 (2005).....	7
24.	<i>SSI Medical Services, Inc. v. Cox</i> , 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990).....	8
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1. IT WAS A MANIFEST ERROR FOR THE COURT OF APPEALS TO DISMISS PETITIONER'S CLAIM FOR CONSPIRACY RULING THAT RESPONDENT'S MANAGEMENT COMPANY AND ATTORNEYS ARE ITS AGENTS OVERRULING A SUPREME COURT DECISION.

- A. Respondent's Management Company and its attorneys are not its agents by law.

Petitioner has pled a claim against the respondent for civil conspiracy among the members of the Board of Directors of the respondent Homeowner Association ("BOD"), its Management Company (Ravenel Associates) and its attorneys for their obstruction of petitioner's short sale of his condominium alleging injury and special damages. (R. p. 051, line 25-p. 055, line 2; p. 080, line 8-p. 084, line 22, Bf. P. 13, line 3-p. 15; Reply Bf. P. 15, line 3-18, line 6). An action for conspiracy is an action at law. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). Although petitioner clearly stated the elements to establish civil conspiracy, this Court ruled that "a civil conspiracy can not exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities." This Court cites to *McMillan*: "agents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party." *Id.* at 564, 626 S.E.2d at 887. This Court erred because it missed the fact that the keywords in *McMillan* is "guilty knowledge of a **third party**."

The Supreme Court has defined the relationships between a principal and agent and a master and servant in a very distinct language:

"There is this marked distinction between [**principal** and **agent** and master and servant]: The **agent** is appointed for the purpose of establishing a new **contractual relation between the principal and a third person....**"

"Now, the relation of **master** and **servant** is essentially different from that of principal and agent, in that the **servant** is deputized to complete, not a contractual relation between the master and a third person, as the agent is

expected to do, but **to perform an operative service for the master**" (Emphasis added).

Goble v. American Railway Express Co., 124 S.C. 19, 30, 31, 115 S.E. 900, 904 (1920).

The respondent's Management Company and its attorneys perform certain operative services for the respondent, not a contractual service for third parties such as petitioner, on behalf of the respondent. They cannot be considered as its agents.

The ruling of this Court in the current Appeal clearly contradicts the definition of an agent by the Supreme Court. It was a manifest error for this Court to dismiss petitioner's claim for conspiracy ruling that respondent's Management Company and its attorneys are its agents.

"[A]lthough a corporation cannot conspire with itself, "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties". (Internal citation omitted).

Pridgen v. Ward, 391 S.C. 238, 244, 705 S.E.2d 58, 62 (Ct.App. 2010);

"Each conspirator is jointly and severally liable for all damages resulting from the conspiracy....Since the liability of conspirators is joint and several, the action may be maintained against one only of the conspirators, or plaintiff may at his option join all the alleged conspirators as defendants in one action."

Exchange Bank of Meggett v. Bennett, 193 S.C. 320, 326, 8 S.E.2d 515, 517 (1940).

B. Petitioner's Injury and Special damages

Petitioner has expressly alleged that the purpose of the respondent's decision to institute multiple actions against petitioner (a lien (R. pp. 019-021), this appeal¹, and a foreclosure action²) was to injure the petitioner by precluding his ability to short sell his

¹ Cambridge Lakes HOA v. Koola, Appellate Case No.: 2013-001632

² Summons on Crossclaim of Defendant Cambridge Lakes Condominium Homeowners Association, Inc., Case No.: 2010-CP-10-6060, Dec. 15, 2010

condominium, which was the only means for the petitioner to clear off any dues to the respondent. (R. R. pp. 019-021, Bf. P. 14, lines 8-17, Reply Bf. P. 16, lines 20-24).

To meet the third element to claim "special damage", petitioner has alleged that the objective of the conspiracy was to injure the petitioner as well as to destroy him financially. (R. p. 053, lines 15-25; p. 082, lines 7-15; Bf. P. 14; line 18-p. 15, line 22; Reply Bf. P. 17, line 1-p. 18, line 2). In his Initial Brief, petitioner has stated that after short sale in 2010, petitioner would have received anywhere between \$120,000 and \$125,000 as sales price sufficient to pay off all mortgage-related debts. A foreclosure action would bring about \$50,000 to \$60,000 to the table, which would result in deficiency and civil judgments of about \$100,000 and would destroy petitioner financially. At age 71, petitioner has no income or resources to pay off even a small fraction of these judgments. The psychological pressure of this potential judgment and its consequences destroy petitioner's life. This is the special damage that the respondent conspired to inflict on the petitioner. Lawful acts become actionable as a civil conspiracy when the "object is to ruin or damage the business of another." *Charles v. Texas*, 199 S.C. 156, 170, 18 S.E.2d 719, 724 (1942); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988); *Gynecology Clinic, Inc. v. Cloer*, 334 S.C. 555, 556, 514 S.E.2d 592 (1999). "When a man is injured personally, his hand cut off, his foot mashed, something like that, you haven't any standard to go by. It is the same way when a man's business is ruined...." *Charles*, 199 S.C. at 173, 18 S.E.2d at 725.

The infliction of special damage would have the following adverse, detrimental effects on the petitioner: (i) after foreclosure and civil judgment, petitioner will be evicted from his condominium. Because of poor credit resulting from foreclosure and civil

judgments and no wage income and other resources, petitioner would have a very difficult time to rent an apartment; (ii) petitioner is a professional chemist and was unemployed since 2007. In 2010, petitioner was under the retirement age. After short sale in 2010 and clearing off all mortgage related dues, petitioner could have moved to elsewhere and sought a professional chemist's job. Petitioner could not move out due to the prolonged litigations and remains unemployed since 2007. The resulting damage from these civil actions is enormous and the cost of litigation is beyond petitioner's affordability. Petitioner borrows money on credit card to pay for the litigation cost. These are the aftereffects of the special damage that the HOA inflicted on the petitioner due to conspiracy. The only goal of the respondent in litigating against petitioner is to inflict special damage on him even at the risk of not collecting any dues.

"Special damages are those elements of damages that are the natural, but not the necessary or usual, consequences of the defendant's conduct." *Hackworth v. Greywood At Hammett, LLC*, 385 S.C. 110, 116, 682 S.E.2d 871, 875 (2009). Respondent's rejection of petitioner's offer of short sale of his condominium to clear off his dues, if any, to it and institution of multiple civil actions to destroy him financially and to destroy his life are very reprehensible. Respondent has allowed other homeowners to short sell their units and did not pursue any legal actions against many others for the dues. "In considering the degree of reprehensibility, a Court should consider whether:

(i) the harm caused was physical as opposed to economic; (ii) the tortuous conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and the harm was the pursuit of intentional malice, trickery, or deceit rather than mere accident."

Jenkins v. Few, 39 S.C. 209, 222, 705 S.E.2d 457, 464 (Ct.App. 2010).

C. A court considering summary judgment does not make factual determination.

The respondent has never claimed that its Management Company and its attorneys are its agents. *Pro se* petitioner represents that a court adjudicates on the issues raised by the opposing parties rather than making factual or legal arguments in favor of a party. "A Court considering summary judgment makes neither factual determination nor considers the merits of competing testimony." *Chastain v. Hiltabidle*, 381 S.C. 508, 514, 673 S.E.2d 826, 829 (2009); *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

Petitioner respectfully submits to this Court to reverse its Order affirming the grant of Summary Judgment to the respondent and remand the case to the Trial Court.

II. THE COURT OF APPEALS OVERLOOKED THE FACT THAT PETITIONER RAISED THE ISSUE OF ENFORCEABILITY OF THE INVALID MASTER DEED IN HIS REPLY TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND ERRONEOUSLY AFFIRMED THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT TO THE RESPONDENT.

Petitioner raised the issue of enforceability of the Master Deed *first* in his Reply to plaintiff/respondent's Motion for Summary Judgment (R. p. 047, line 22-p. 48 A, line 13; p. 49, line 4-p. 50, line 24) and *additionally* in Motion to Reconsider (R. p. 076, line 3-p. 077, line 3; p. 077, line 18-p. 080, line 7), Appellant's Initial Brief (p. 9, line 13-p. 10), and Reply Brief (p. 5, line 10-p. 7, line 8) arguing that the Master Deed, because of the violation of South Carolina Horizontal Property Act, §27-31-10 *et seq.* ("SCHPA"), is invalid.

The Court of Appeals affirmed the Trial Court's Order granting Summary Judgment to the respondent by stating that petitioner *raised the issue of enforceability of the Master Deed for the first time* in the Motion to Reconsider and

not before. *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). Petitioner had, indeed, raised the issue in his Reply to plaintiff/respondent's Motion for Summary Judgment (R. p. 047, line 22-p. 48 A, line 13; p. 49, line 4-p. 50, line 24)

In his Reply to plaintiff/respondent's Motion for Summary Judgment, petitioner raised the following issues:

- (i) the respondent Cambridge Lakes Homeowners Association's ("Respondent HOA") Master Deed is registered according to the provisions of SCHPA, (R. p. 047, line 22-p. 048, line 7);
- (ii) the said Master Deed is invalid and unenforceable because it violated a key provision of the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-430, "Disclosure of the physical condition of the building, (R. p. 048, line 8-p. 48 A, line 8), the violation of which constitutes violation of S.C. Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq. ("SCUTPA"), (R. p. 048, line 23- p. 48 A, line 8);
- (iii) the respondent's **predecessor** Cambridge Lakes Horizontal Property Regime and Cambridge Two, LLC sold a condominium to the petitioner on the basis of a legally void Master Deed and a fraudulent "Builder's Certification" implying that they complied with the mandates of S.C. Code Ann. § 27-31-430 and committed fraud, (R. p. 48-A, line 14-27);
- (iv) the petitioner purchased the condominium on the express representation that the Master Deed complied with the provisions of SCHPA and Cambridge Lakes Horizontal Property Regime complied with the mandates of S.C. Code Ann. § 27-31-430, (R. 049, line 28-p. 050, line 4);

- (v) the petitioner has a legal right to rescind the purchase of his condominium because it was conveyed to him through fraudulent means and because of code violations, (R. p. 050, lines 7-11);
- (vi) the respondent HOA is the true **successor** of Cambridge Lakes Horizontal Property Regime and inherited the assets and liabilities of its **predecessor**, Cambridge Lakes Horizontal Property Regime, (R. p. 049, lines 4-28);
- (vii) the respondent HOA has no legal right to use the provisions of an *ab initio* invalid Master Deed to take legal actions against the petitioner, (R. p. 050, lines 4-6).

This Court's ruling, that "because a condominium is a creature of a statute, strict compliance with Horizontal Property Act is required to create horizontal property regime", *Harrington v. Blackstone*, 319 S.C. 1; 459 S.E.2d 309, 312 (Ct.App. 1955), validates petitioner's arguments presented herein. A successor is a "person who succeeds to the office, rights, and responsibilities or place of another". *Holly Woods Association of Residence Owners v. Hiller*, 392 S.C. 172, 188, 708 S.E.2d 787, 796 (Ct.App. 2011). If [the successor] takes the benefit, it must, as has so often been said, take the burden, which equitably attaches with it. *Simmons v. Mark Lift Industries, Inc.*, 366 S.C. 308, 622 S.E.2d 213 (2005).

Since the petitioner has shown here that he has raised the enforceability of the Master Deed in his Reply to plaintiff/respondent's Motion for Summary Judgment, he respectfully requests this Court to reverse its Order affirming the grant of Summary Judgment to the respondent by stating that an issue may not be raised for the first time in a motion to reconsider.

III. THIS COURT ERRED IN AFFIRMING THE TRIAL COURT'S ORDER IN GRANTING SUMMARY JUDGMENT TO RESPONDENT DESPITE PETITIONER'S SHOWING THAT RESPONDENT BREACHED FIDUCIARY DUTY AND ACTED IN BAD FAITH, DISHONESTY OR INCOMPETENCE.

A. Fiduciary Duty

Petitioner has pled claims for Breach of Fiduciary Duty against the respondent, *inter alia*, in that: (i) it failed to investigate construction defects in Cambridge Lakes *diligently*; (ii) the BOD did not authorize attorney John C. Hayes, IV, to file the construction defects lawsuit³; (iii) it initiated the construction defects lawsuit without getting approval from two-thirds majority of the homeowners; and (iv) the breach of fiduciary duty in violation of the provisions of the Master Deed is an *ultra vires* act. (R. p. 057, line 10-p.058, line23; p. 059-line 4-p.63; p. 070, lines 6-17; p. 086, line 20-p. 091-14; p. 096, lines 9-17; Bf. p. 19, line 19-p. 24; Reply Bf. p. 9-p. 15, line 2).

S.C. Non-profit Corporation Act, S.C. Code Ann. § 33-31-830(a) (1976) and the Supreme Court have determined that directors of homeowners associations have a duty to exercise judgment reasonably and in good faith. *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 632 (1992); *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990). "[A] member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association." *Murphy, Jr. v. Yacht Cove Homeowners Ass'n*, 289 S.C. 367, 369, 345 S.E.2d 709, 710 (1986). Restatement (2d) of Torts, 874 § (1979).

Though the Court appropriately cites *Fisher v. Shipyard Vill. Council of Co-owners, Inc.*, 409 S.C. 164, 180, 760 S.E.2d 121, 129-30 (Ct.App. 2014) and Petition for Writ of Certiorari granted, 2015 S.C. Lexis 135 (2015) in its Unpublished Order, the

³ Cambridge Lakes HOA, et al. v. Bostic Brothers Construction, et al, Case No. 2008-CP-10-3506, June 19, 2008; ditto, Third Amended Complaint, July 14, 2010

Court failed to apply this Court's Holdings to the petitioner's Breach of Fiduciary Duty claims. In *Fisher* this Court: (i) **affirmed** the Trial Court's Order granting of summary judgment to the respondents on the issue of duty to investigate, **who** is responsible for the damages to the common elements; (ii) **reversed** the Trial Court's Order granting of summary judgment to the respondents because the Council dutifully investigated **what** was causing the water problems; and (iii) **reversed** the Trial Court's Order that business judgment rule did not apply. *Id.* at 177-179, 760 S.E.2d at 128-129.

Petitioner enumerates respondent's three serious breaches of Fiduciary Duty.

Duty to Investigate

On November 20, 2004, petitioner informed Mr. Stephen Fisher, Member, BOD, about the rumors of construction defects in Cambridge Lakes. Petitioner's immediate neighbor, who was working for the architect firm, which oversaw the construction of Cambridge Lakes, told him that some of the construction defects might be for real. Petitioner conveyed this information to Mr. Fisher. Mr. Fisher denied any construction defects in Cambridge Lakes, did not act further on the information, and did not refer the matter to the Board. When the respondent filed the construction defects litigation in June 2008, the architecture firm was one of the defendants in the said case. Mr. Fisher was grossly negligent because fiduciary relationship required Mr. Fisher to act on petitioner's information. (R. p. 058, line 1-23; p. 087, line 16-p. 088, line 13; Bf. p. 20, line 3-18; Reply Bf. p. 20, lines 8-21).

In the case at bar, the respondent maintains that the BOD first learned of potential construction defects during March-April 2008, filed the construction defects lawsuit in June 2008 pleading construction defects, and amended the Complaint in 2010

to include violation of SCHPA. (R. p. 152, lines 13-14, lines 21-22; p. 153, lines 9-12; p. 184, lines 14-16; p. 187 lines 19-20; p. 191, 13-15).

In early 2003, the developers/sellers of Cambridge Lakes condominiums (Cambridge Two, LLC and Albert Estee) sent a letter⁴ (Affidavit 5-6) entitled "Notice of Condominium Conversion and Offer to purchase" to all the tenant/apartment residents of Cambridge Lakes stating that the developers/sellers will provide them with the "Disclosure of the physical condition building report" as mandated by S.C. Code Ann. § 27-31-430 before they buy the condominium, but did not provide it to them. They did not provide this letter to anyone, including petitioner, who bought the condominiums in late 2003 and later.

Charleston County RMC records show that at least three members of the BOD, Stephen Fisher, John Martin, and Margel S. Henning bought their units in early 2003 and should have received the said letter, and they were fully aware of the violation of SCHPA § 27-31-430 by the developers/sellers and by implication they were aware of construction defects in Cambridge Lakes as early as 2003. ***The BOD took control of Cambridge Lakes in the fall of 2004***, (R. p. 152, lines 11-12), and ***then in 2004, they should have investigated any potential construction defects and violation of SCHPA § 27-31-430***. They failed in their duty to investigate construction defects in Cambridge Lakes and violated Fiduciary Duty.

"A property regime has standing to bring an action for construction defects in common elements that the regime has duty to maintain....Should the Regime not uphold its duty to pursue a recovery for any alleged construction defects in the common elements, which it maintains, it may be liable to the homeowners for its omissions."

⁴ Trademark Properties, Inc., a defendant in the respondents construction defects litigation, filed the letter under reference under the Caption "Affidavit of Richard C. Davis" as Exhibit "B", Case No. 2008-CP-10-3506, Nov. 2, 2010.

Queen's Grant Villas Horizontal Property Regime I-IV v. Daniel Internat'l Corp., 286 S.C. 555, 556, 335 S.E.2d 365, 366 (1985). This Court affirmatively determined: "[T]he duties created by the Bylaws and S.C. law also support a duty to investigate [by the Council] who is responsible for damage to the common elements". *Fisher*, 409 S.C. at 179, 760 S.E.2d at 129.

This Court erred because the Court failed to apply its own Decision in *Fisher* to petitioner's appeal. This is despite the facts that petitioner has demonstratively shown that: (i) the respondent had actual and constructive knowledge in 2004 that there are construction defects and SCHPA violations in Cambridge Lakes; (ii) the respondent failed in its duty to investigate diligently construction defects and violation of SCHPA § 27-31-430 in Cambridge Lakes in 2004; (iii) and both the Court and petitioner have cited *Fisher* in the Court's Order and in petitioner's Brief.

Petitioner respectfully requests this Court to determine whether the respondent breached Fiduciary Duty as it failed in its duty to investigate construction defects and SCHPA violations in 2004, as this Court has determined in *Fisher*.

The respondent's BOD did not authorize its attorney to file the construction defects lawsuit.

The respondent maintains that the BOD: (i) first learned of potential construction defects in Cambridge Lakes during March-April 2008, (R. p. 152, lines 13-14); (ii) immediately upon learning of the defects, it retained attorney John C. Hayes, IV, to file a construction lawsuit on its behalf, (R. p. 152, lines 21-22; p. 184, lines 14-16); and (iii) filed the construction defects lawsuit in June 2008, (R. p. 153, lines 9-12; p. 187, lines 19-20; p. 191, lines 13-15). Petitioner has categorically stated (R. p. 057, lines 15-31; p.

087, lines 5-15) that the minutes for the months of April, May and June 2008 make no references that the HOA authorized Mr. Hayes to file the construction defects litigation. (R. p. 102, lines 8-13; Affidavit 7-10). The respondent has not produced minutes of any of the BOD meetings to show that that BOD, indeed, authorized Hayes to file construction defects lawsuit on its behalf. Petitioner represents to this Court that Hayes was not *officially* authorized by the BOD to file the lawsuit. The BOD might have met in a private meeting and outside the domain of HOA and requested Hayes to file the lawsuit; this is a private affair and there are no documentation. This is a serious breach of Fiduciary Duty by the HOA.

It is a question of fact to be determined by jury whether the BOD authorized attorney John Hayes, IV, to file the construction defects litigation.

The respondent's BOD filed the construction defects lawsuit without the approval of two-thirds majority of the Cambridge Lakes Homeowners.

The HOA breached fiduciary duty when it initiated the construction defects litigation without the approval of two-thirds majority of the homeowners (R. p. 059, lines 4-22; p. 089, line 3-p. 090, line 12; Bf. p. 21, line 11-p. 22; Reply Bf. p. 11, line p. 13-20). This duty arose because construction defects litigation involved collection of special assessments. After filing the lawsuit, the respondent sent a letter to the homeowners and asked them: (i) to join the lawsuit; (ii) agree to assign their rights and claims to it; and (iii) to agree to any collection of **regular and special assessments** together with late fees. (R. p. 018, lines 3-5, lines 11-16). The homeowners, who assigned their rights to the HOA, agreed to pay on demand unspecified amount of future special assessments, which is signing of a 'promissory note'. The collection of special

assessments is governed by Paragraph (16)(6) of the respondent HOA's Master Deed, which states:

*"[T]he Association may levy, in any fiscal year, special assessments..... provided that any such assessment shall have the **assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose,.....**" (emphasis added).*

The defendant HOA has the duty to maintain, repair, replace and operate the common elements" of Cambridge Lakes. Queen's Grant Villas Horizontal Property Regimes I-IV, 286 S.C. at 556, 335 S.E.2d at 366. In the present case, the HOA has to receive the approval of two-thirds majority of the homeowners to initiate the construction defects lawsuit as it involved collection of special assessment. (R. p. 018, lines 3-5, lines 11-16). In *Lovering v. Seabrook Island Property Owners Ass'n*, 291 S.C. 201, 202-03, 352 S.E.2d 707, 708 (1987), the Supreme Court affirmed as modified this Court's Holding stating: "It is undisputed that the Association had no express power to impose [special] assessment at issue...Based on the foregoing, the Court of Appeals correctly held that the imposition of the special assessment was *ultra vires*". In *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct.App. 1987), this Court reversed the Decision of the Trial Court that allowed the Association to collect annual maintenance charges from property owners in contravention of its Bylaws and Restrictive covenants after determining that Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as any other contract and *affirmed* other grounds in the appeal.

"The rights and authority of the Regime must be gleaned from the Horizontal Property Act and from the master deed." Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 421, 321 S.E.2d. 46, 49 (1984). In *Harrington v. Blackstone*, 319

S.C.1, 459 S.E.2d 309 (Ct.App.1995), this Court determined that the rights of condominium unit owners must be determined by examining all relevant provisions of Horizontal Property Act, master deed and allied documents and harmonize them if possible.

This Court erred because the Court failed to apply its own decision and that of the Supreme Court in *Lovering (supra)*, *Seabrook Island Property Owners Ass'n (supra)*, *Roundtree Villas Ass'n, Inc. (supra)*, and *Harrington (supra)* that a regime of a homeowner's association is duty bound to act by its Bylaws and S.C. laws, to petitioner's claims that respondent filed the construction defects lawsuit without the approval of two-thirds majority of the Cambridge Lakes Homeowners and made the homeowners agree to pay future special assessments in contravention of the provisions of its Master Deed, an *ultra vires* act.

It is respectfully submitted that this Court makes a determination whether the respondent breached Fiduciary Duty for initiating construction defects lawsuit without the approval of two-thirds majority of the homeowners and not following the protocol in the Master Deed for collection of special assessment, and whether the action of the respondent was an *ultra vires* action.

B. Business Judgment Rules

S.C. Code Ann. § 33-31-830 *et seq.* defines business judgment rules applicable to a non-profit corporation. Petitioner has claimed that by S.C. Laws, business judgment rules did not apply to respondent's *ultra vires* acts, and by S.C. Laws, respondent cannot justify its *intra vires* acts when it acted in bad faith, dishonesty or incompetence. (R. p. 065; p. 096, lines 9-23; Bf. p. 24; Reply Bf. p. 13, line 21-p. 5, line 2)

In *Fisher*, 409 S.C. at 180-81, 760 S.E.2d at 130, this Court has determined that: (i) the business judgment rule applies to actions allowed by the Master Deed, Bylaws and SCHPA, *intra vires* acts, but does not extend to actions not allowed by the Master Deed, Bylaws and SCHPA, *ultra vires* acts; (ii) if the Bylaws, and Master Deed specified how duties should be performed, the ***business judgment rule would not allow the Council to deviate from those rules***. Nevertheless, this Court did not apply its own Decisions in *Fisher* to petitioner's claims that in its *intra vires* actions, respondent acted in bad faith, dishonesty or incompetence.

Petitioner enumerates respondent's three actions where it acted in bad faith and incompetence and possibly fraudulently. In its construction defects lawsuit filed in June 2008, the respondent held the developers/sellers liable for construction defects and violation of SCHPA § 27-31-430. The lawsuit claimed eight million dollars in damages; triple damages are allowed for violation of SCHPA and SCUTPA. The registration document filed with the South Carolina Secretary of State shows that: (i) Albert Estee (the developer/seller) registered Cambridge Lakes Condominium Homeowners Association, Inc. ("HOA") as an Eleemosynary Incorporation on April 4, 25, 2003 and continued to remain as the registered agent till 2010; (iii) on July 6, 2010, he registered Edward Pritchard III as the new agent. (Affidavit 11⁵). Pritchard III and respondent's construction defects litigation attorney John Hayes were members or partners of the law firm Pritchard and Elliot, LLC and are thus connected. Sometime after 2009, John Hayes formed the Hayes Law Firm. Thus, in the construction defects litigation in 2011,

⁵ Trademark Properties, Inc., a defendant in the respondents construction defects litigation filed the registration document under reference under the Caption "**Affidavit of Richard C. Davis**" as **Exhibit "C"**, Case No. 2008-CP-10-3506, Nov. 2, 2010.

John Hayes was representing the respondent HOA of which registered agent was or still is Pritchard III. On November 15, 2010, shortly after Pritchard III was made the registered agent of the HOA, Albert Estee filed a Motion for Summary Judgment⁶ to dismiss respondent's claims against him. Shortly thereafter in 2011, respondent's attorney John Hayes quietly dismissed all the claims against Albert Estee and Cambridge Two, LLC; they walked away from the lawsuit free. Petitioner should not speculate what role the relationship between John Hayes and Pritchard III played in the dismissal of claims against the developers/sellers in 2011. What is certain is that the respondent defrauded the homeowners for several million dollars, which they would have received after successful completion of the litigation for construction defects and SCHPA violations.

As real estate agents, Trademark Properties, Inc. sold nearly one-third of the condominiums and Carolina One sold nearly two-thirds of the condominiums in Cambridge Lakes. Petitioner bought his condominium through Carolina One. Nevertheless, the respondent filed construction defects lawsuit against Trademark Properties, Inc, but not Carolina One. Because Carolina One was not sued, homeowners lost substantial amount of recovery money.

In the construction defects litigation, the respondent claimed eight million dollars as damages. In June 2011, the respondent settled the case against all defendants and received nearly \$1.815 million as damages. After paying attorney fees, the respondent received approximately net \$1.2 million. This implies that the respondent either exaggerated the damages in the construction defects litigation, or the respondent did

⁶ "Albert Estee and Cambridge Two, LLC's Motion for Summary Judgment and to Compel Discovery" in respondent's construction defects litigation, No. 2008-CP-10-3506, Nov. 15, 2010.

not do repair work of all defects as it received a far less settlement at the end. Either way, the homeowners were losers. In a recent Charleston County action⁷, a jury awarded East Bridge Lofts Property Owners Association, Inc. *et al.* actual damages of \$22 million and punitive damages of \$33 million for construction defects and violation of SCHPA. Competence matters.

The respondent's liability insurance (Affidavit 12) covers the BOD for their actions, which is an affirmative proof that the BOD might or would act in bad faith, dishonesty and incompetence, but it does not require them to act that way. "[T]he [business judgment] rule will not apply if the directors have engaged in self-dealing, fraud, or other unconscionable conduct". *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 603, 538 S.E.2d 15, 27 (Ct.App. 2000).

IV. THE COURT OF APPEALS ERRED IN DECIDING ON QUESTIONS OF FACT AND AFFIRMED THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT TO RESPONDENT.

"It is the duty of the Court, on motion for summary judgment, not to try issues of fact, but only to determine whether there are genuine issues to be tried; and once having found that triable issues exist, must leave those issues for determination at trial. *Title Insurance Company of Minnesota v. Christian, III*, 267 S.C. 71, 77, 226 S.E.2d 24, 243 (1976).

A. The respondent obstructed petitioner's short sale of his condominium, which was the only means for him to clear off any regime related dues.

In 2010, when petitioner offered to pay off his dues, if any, to the respondent through a voluntary short sale of his condominium, it filed a Lien (R. p. 019-021) on

⁷ East Bridge Town Lofts Property Owners Association, Inc. v. East Bridge Lofts, LLC, Case No. 2010-CP-10-10204, June 10, 2014.

petitioner's condominium, which triggered a series of legal actions against Petitioner, a Lien (R. p. 19-21), a Lis Pendens, HOA's civil action⁷, and three foreclosure actions⁷. Petitioner was then forced to cancel his short sale efforts in late 2010. In a short sale, the homeowners associations will be paid out in full in preference to mortgagees. In a foreclosure action, the mortgagees will be paid out in full first; usually, the HOAs collect nothing or very little after foreclosure sale. S.C. Code Ann. § 27-31-200. The policy of the HOA was/is to collect any unpaid regime dues from insolvent homeowners through short sale as recorded in August 2009 BOD meeting. (R. p. 099, lines 21-30):

"If the bank wants to pursue "short sales" in which the bank obtains real estate brokers to sell the property while still in the name of the delinquent owner it works to our benefit. All parties including the bank have to negotiate a settlement to affect the sale. Normally the homeowner's association only has to forgive the late fees".

Nevertheless, the respondent chose to pursue legal action to collect any dues and forced petitioner to foreclosure.

The rejection of petitioner's offer of short sale to clear off any regime related dues was the result of a conspiracy between the members of BOD, the Management Company (Ravenel Associates) and the HOA attorneys. They were motivated by these factors: (i) all parties were infuriated with petitioner as he did not join the HOA's construction defects litigation; (ii) all parties wanted to take revenge against petitioner as he asked them to provide him with the financial statements of the HOA to discover any financial irregularities; (iii) petitioner once pinpointed to a member of the BOD that the annual budgets of the HOA presented to the homeowners are manipulated; and (iv)

⁷ BAC Home Loans Servicing, LP. v. Johnson D. Koola, Amended Complaint, Case No. 2010-CP-10-6060, Sep. 1, 2010; Ditto, Crossclaim of First Citizens Bank and Trust Co., Sep. 30, 2010, Ditto, Cross claim of Cambridge Lakes Condominium Association, Inc., Dec. 15, 2010.

petitioner once questioned the HOA about the HOA's new policy regarding renting the condominiums, which infuriated all the parties. Here, petitioner expressly plead that all the parties conspired to injure Koola, maliciously singling him out for disparate treatment. Petitioner has alleged that the actions of the respondent toward him were discriminatory and prejudiced based on race, color and national origin. Two members of the BOD know petitioner personally.

The respondent has not responded to petitioner's claims that: (i) it allowed his neighbor two doors down (#1583 Cambridge Lakes Dr) to short sell his unit in February/March 2010 and did not collect regime dues. (R. p. 053, lines 26-p. 054, line 2; p. 082, lines 18-23; Bf. p. 16, line 22-p. 17, line 4; Reply Bf. p. 15, lines 8-17) and (ii) it has not pursued any action to collect several thousand dollars in dues from three homeowners at 1423, 1455, and 1491 Cambridge Lakes Dr (R. p. 054, lines 6-11 p. 083, lines 6-11; p. 083, lines 6-11; Bf. p. 17, lines 9-12; Reply Bf. p. 15, line 12-17). Instead, the respondent argues that it obtained judgments against five homeowners (R. p. 133, lines 3-12). It is verified from court records that respondent has not collected the judgments from them.

It is a question of fact to be determined by a jury whether: (i) petitioner's voluntary offer of payment of any regime related dues through short sale is a legitimate and legal means to clear off respondent's claims against petitioner; (ii) forcing the petitioner to foreclosure and to write off all dues after foreclosure as provided in Master Deed Paragraph 16(1)(c) is a good faith and competent business judgment decision; and (iii) whether the respondent treated petitioner discriminatorily.

- B. The Annual Budgets presented by the respondent to the homeowners show no dues from any homeowners, and hence the respondent has no legal standing to sue petitioner for regime related dues.

Petitioner has presented to the Courts that the annual budgets of the respondent presented to the homeowners for approval during annual meetings show no dues outstanding from any homeowners, which include petitioner. (R. p. 065, line 23-p. 067, line 1; Bf. p. 11, line 7-p. 12, line 20; Reply Bf. p. 7, 9-p. 10, line 3). The relevant sections of the annual budget for 2009 and 2013 (Affidavit 13-14) are presented below:

CAMBRIDGE LAKES PROJECT RECAP						
9 MONTHS ACTUAL		3 MONTHS PROJECTION		YEAR ENDING DECEMBER 31, 2009		
		INCOME/ EXPENSE	3 MOS PROJECTION	TOTAL PROJECTED	ANNUAL BUDGET	BUDGET VARIANCE
	Cambridge Lakes	9/30/2009	Oct-Dec 09	12/31/2009	2009	PROJ 2009
ACTUAL INCOME						
4100	REGIME REVENUE	210,600	70,200	280,800	280,800	0

APPROVED OPERATING BUDGET 2013			
INCOME	2011 ACTUALS	2012 8 Months Actual	2013 Approved
		4 Months Forecasted	
OPERATING			
Regular Assessments	\$284,880.00	\$136,200	\$284,880

The sum total of actual regime revenue for nine months from January 1, 2009 through September 30, 2009 and the projected revenue for three months from October

1 through December 31, 2009 exactly equal the annual budget for 2009. The actual 2011 operating income is \$284,880.00, which is exactly equal to the budget approved for 2013. These statements imply that there are no dues from any homeowners.

If the financial statement presented to the homeowners is true, then there are no regime related dues from any homeowner and petitioner; hence the respondent has no legal standing to sue petitioner for collection of dues. If the financial statement presented to the homeowners is false, then the respondent made fraudulent misrepresentation and is liable to homeowners for fraud. "[T]he [business judgment] rule will not apply if the directors have engaged in self-dealing, fraud, or other unconscionable conduct." *Kuznik*, 342 S.C. at 603, 538 S.E.2d at 27.

Any inconsistency in the budgets is not a matter of law, but a question of fact. This Court erred when it failed to remand the matter to a jury trial and affirmed the Order of the Trial Court granting Summary Judgment to the Respondent.

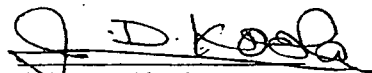
CONCLUSION

For the reasons stated above, petitioner respectfully submits that this Court grant the Petition for Rehearing and remand the case to Trial Court for a jury trial after reversing its Order affirming the grant of Summary Judgment to the respondent.

Respectfully submitted,

August 19, 2015

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AUG 20 2015
SC Court of Appeals


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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Circuit Court Case No. 2010-CP-10-9305

APPELLATE CASE NO.: 2013-001632

Cambridge Lakes HOA,..... Respondent,

v.

Johnson Koola,..... Appellant.

AFFIDAVIT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

SWORN STATEMENT

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JOHNSON KOOLA, being duly sworn, deposes and says:

1. I am the appellant in the above-captioned action. I am over the age of 18 years, and I believe in the sanctity of an oath. I have personal knowledge of the facts presented herein, and if before a court person, I would testify competently to the same.
2. I reside at 1587 Cambridge Lakes Drive, Mount Pleasant, South Carolina.
3. On August 5, 2015, the Court of Appeals denied my Appeal and affirmed the grant of Summary Judgment to the respondent. From a reading of Rule 240(c), I understand that I can file an Affidavit and supporting documents to support my arguments in the Petition for Rehearing, as they are not contained in the Record on Appeal.

Affidavit 1

4. In February 2004, I bought a condominium in Cambridge Lakes Subdivision in Mount Pleasant, South Carolina. Master Deed of the Cambridge Lakes Horizontal Property Regime categorically stated that the Master Deed complied with the provisions of South Carolina Horizontal Property Act. The Builder's Certification certified that the structural, health & safety repairs and remodeling have been completed.

5. I made 10% down payment at the time of purchase and made additional payments to the remaining principal balance. At the end of 2009, I had more than 25% equity in my condominium, which made me feel that I have a safe and secure place to live.

6. On few occasions, I questioned the members of the Board of Directors of the Homeowners Association ("HOA") on certain irregularities in the financial statements presented to the homeowners. These would show to the homeowners that there are no regime dues from any homeowners while during the annual meetings the Board members will announce that there are regime dues from several homeowners.

7. By the end of June 2008, HOA informed the homeowners through a letter that it has filed a lawsuit against the developers and sellers and other parties for construction defects, which later included Horizontal Property Act violations. The HOA asked the homeowners to join the lawsuit on the condition that they assign their rights and claims to the HOA, and agree to payment of unspecified amount of regular and special assessments with late fees when called for. For this reason, I did not join the lawsuit.

8. By 2008, my income was limited to Social Security benefits and decided to sell my condominium to pay off my mortgage related payments and move to a rental apartment. I could not sell it in 2008 because the ongoing construction defects lawsuit.

9. In March 2009, I filed for Chapter 7 Bankruptcy. After discharge from Bankruptcy, I tried to sell the condominium again, but could not sell it.

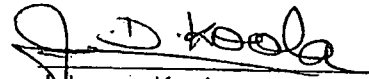
10. By the fourth quarter of 2009, I became insolvent.
11. When informed of my voluntary offer to pay off regime dues through short sale of my condominium, the HOA placed Lien on it in May 2010, which triggered a series of legal actions against me; one Lien, one Lis Pendens, HOA's civil action to collect dues and three foreclosure actions. I cancelled my short sale attempts in late 2010.
12. I have personal knowledge of the fact that in February/March 2010, the HOA allowed my neighbor (at 1583 Cambridge Lakes Dr) to sell his condominium through short sale, and that the HOA did not collect the unpaid regime dues from him.
13. I also have personal knowledge of the facts that the HOA did not collect any unpaid dues from three other neighbors at 1423, 1455 and 1491 Cambridge Lakes Dr. and allowed them to move out.
14. I also have personal knowledge of the facts that the HOA does not collect unpaid dues from insolvent homeowners after foreclosure. I learn from reading the financial statements of the HOA that the unpaid and uncollected share of the regime dues is deemed as Common Expense collectible from all remaining homeowners. On previous occasions, the HOA has collected unpaid dues of other insolvent homeowners from me through my monthly regime payments.
15. I also have personal knowledge of the fact the HOA has collected unpaid dues from homeowners who have income by way of wages and other assets and resources.
16. I receive only limited social Security income and have no other resources. My inability to sell my condominium during 2008-2009 because of the HOA's construction defects lawsuit rendered me insolvent. After foreclosure sale of my condominium, which is imminent, the Court will prorate the proceedings among my creditors when the HOA would receive their dues.

17. As part of my Affidavit, I attach the following documents to it: 1. "Notice of Condominium Conversion and Offer to Purchase", 2. "May 2008 and June 2008 Minutes of the HOA Board meeting", 3. "Cambridge Lakes HOA Registration Certificate", 4. "Certificate of Insurance for Liability Coverage", 5. "Copies of the HOA's Annual Budget for 2009 and 2013".

THE AFFIANT FURTHER SAYETH NOT.

Dated: August 19, 2015

Respectfully submitted,



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



My Commission Expires June 22, 2022

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Affidavit 4

Cambridge Lakes

MOUNT PLEASANT

Cambridge Two, LLC
1930 Cambridge Lakes Drive
Mount Pleasant, SC 29406

Re: Notice of Condominium Conversion and Offer to Purchase

Dear Resident:

Please be advised that Cambridge Two, LLC ("Owner") is looking into the conversion of Cambridge Lakes, located at 1930 Cambridge Lakes Drive, Mount Pleasant, South Carolina, into a condominium regime. If the Owner proceeds with this conversion, the building in which this apartment you currently lease from the Owner is located, will be subdivided into separate condominium units pursuant to S.C. Code § 27-31-10 et seq. (the "Condominium Act") and the Master Deed of Cambridge Lakes Horizontal Property Regime.

Please be advised that pursuant to the Condominium Act you have the following rights:

(a) Owner may not require you to vacate your apartment until expiration of your lease or for one hundred twenty days (if you are age sixty or older) or ninety days (if you are under the age of sixty) following delivery of this letter, whichever is longer, and the terms of your tenancy may not be altered during that period. Your rights and obligations during any tenancy extended by the Condominium Act will remain the same as before the extension. Notwithstanding the foregoing, any notice which under the terms of your tenancy is required to be given to prevent the automatic renewal or extension of the term of your tenancy may be given by Owner during the foregoing period. In addition, the Condominium Act does not prevent termination of a lease according to law for violation of its terms. This letter serves as notice that the Owner will be terminating your lease, unless other arrangements have been made and put in writing by you and the property manager, effective on the earliest possible date permitted by your lease and the law and in accordance with the terms thereof.

(b) Owner is required to offer you the right to purchase the apartment you occupy at a specified price and upon specified terms. If you accept such offer, which is provided by Trademark Properties, please be advised that the Owner's obligation to sell the apartment to you will be conditioned on its decision, in its sole discretion, to proceed with the conversion. The price and terms offered to you are required to be at least as favorable as the price and terms offered to prospective purchasers who are not tenants in possession of apartments in the complex. You must be allowed sixty days



Affidavit 5

in which to accept such offer and, in the event you shall not have accepted the offer within the sixty days, Owner shall be prohibited for an additional fifty days (if you are age sixty or older) or fifteen days (if you are under the age of sixty) from making an offer to convey the apartment to any other person at a price or upon terms more favorable than those offered to you, unless such more favorable offer first shall have been extended to you for your exclusive consideration for a period of ten days. Acceptance of an offer by you must be in writing.

(c) In connection with the offer to purchase required to be extended to you by Owner, Owner is required to provide you with the written report of an independent registered architect or engineer describing the physical condition of the apartment building that has been converted, the general condition of all common elements, a good faith estimate of the remaining useful life of the items reported on, and 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. Such a report will be forwarded to you in due course. Notwithstanding the time periods set forth in paragraph (b) above, you will not be required to accept the offer in paragraph (b) sooner than ten (10) days after this report is sent to you.

In accordance with your rights under the Condominium Act, Owner hereby offers to sell the apartment occupied by you at the price and upon the terms and conditions of the Purchase and Sale agreement provided by Trademark Properties. Therefore, if you are interested in executing a purchase and sale agreement, please contact Trademark Properties within sixty (60) days.

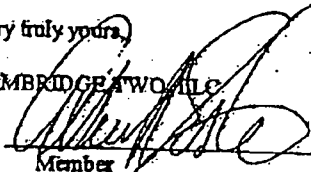
Our goal is to provide all of our residents with an affordable home ownership opportunity while undertaking improvements that will make you proud to call Cambridge Lakes your home.

Our Resident Manager, Roxanne Robbins can be reached at 881-1330 for lease related questions. The Trademark Properties Real Estate Team is can be reached by telephone at (843) 762-0110

Thank you for making Cambridge Lakes your home. We look forward to serving you in the future.

Very truly yours,

CAMBRIDGE LAKES

By: 

Member

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Affidavit 6

5/27/2008 Cambridge Lakes HOA Board Meeting Minutes

The Cambridge Lakes Home Owner's Association Board met on May 27, 2008 at the Clubhouse in Mount Pleasant, South Carolina.

Members present: Blevins, Erin; Fischer, Steve; Henning, M. "Ann";
Martin, John ; Merriman, Jay

Management present: Moore, Joy

President Fischer called the meeting to order at 6:15 P.M.

Minutes The minutes were approved as read.

Reports

Property manager

Budget The budget was discussed.

Delinquent Two homeowners are delinquent in Regime fee payment. Four other
home owners have been placed in the foreclosure procedure.

Unfinished Business

Project list

Dormer repair Ms. Moore to get other quotes.

Entrance sign The entrance sign was power washed. Repainting of sign deferred to Finance Committee.

Broken window Ms. Moore to get quotes for broken window pane (Bldg D), not total replacement of window.

Leaks Ms. Moore to get estimates.

Edging Placing of Edging around first floor porches and bay windows has been deferred. Ms. Moore will notify the Greenery to keep pine straw off buildings

Insurance Ms. Moore will get written explanation of unplanned \$10,000 increase in premium.

HVAC contract Ms. Moore will notify Climate Makers of cancellation of our contract. She will get 2 more quotes for the next meeting.

Copier Removal Ms. Moore has notified copier owner of cancellation. The HOA has to pay for insurance and removal of the copier back to Georgia.

Pg 2.

New business

Rental units Several units have been listed as rental units. Ms. Moore will notify these owners of the need to register them with her and the fee for non compliance. One owner is offering to let prospective owners/renters to stay in the unit. Ms. Moore will also notify that owner (1421) that the lease terms is 6 months - and he is subject to be fined.

Ms. Moore will send out an annual letter to all homeowners asking for a copy of the lease and names of lessees as well as fine amount for non-compliance.

Newsletter Board members will submit ideas, or topics to Ms. Moore for a summer newsletter. Mr. Merriman will help Ms. Moore to put the letter in a correct format.

H.O. request The Board denied a request to reimburse a home owner for the carpet in his secondary to poor maintenance of the air conditioning .

Boatyard Ms. Moore will send out an annual letter for owners who have registered their boats to send in the \$25 fee for this year.

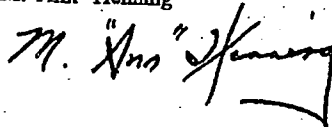
Mr. Merriman asked about Jet skis-which are permissible if properly registered (showing that they own the condo unit as well as the boat/jet skis). Trailers are not permitted.

CD rate Ms Moore reported that the rate of our CD is 3.35%

Adjournment Mr. Fischer adjourned the meeting at 7:50 P.M.

Next meeting June 24 at 6:00 P.M.

Secretary M."Ann" Henning



Affidavit 8

6/24/2008 Cambridge Lakes HOA Meeting Minutes

The Cambridge Lakes Home Owner's Association Board met on June 24 2008 at the Clubhouse in Mount Pleasant, South Carolina.

Members present: Blevins, Erin; Fischer, Steve ; Henning, M. "Ann";
Martin, John; Merriman, Jay

Management present: Moore, Joy

President Fischer called the meeting to order at 6:20 P.M.

Minutes The minutes of April 27, 2008 were approved as read.

Reports

Property manager

Budget The budget was discussed.

Delinquent A discussion of those property owners who have not paid their Regime Fees were discussed. Three owners are in the foreclosure procedure.

Financial committee

Ms. Blevins gave the report (See Attached report).

MOTION

Insurance Ms. Blevins suggested that the Board accept the change suggested by the
Renewal Finance committee- to increase the amount of our deductible from \$5,000 to \$10,000. (this would lower our annual premium by \$7,107).

The motion was approved.

Insurance Quote An earlier discrepancy in the verbal versus the written quote has never been explained and decided to close the topic.

MOTION

Lagoons

Contract Ms. Blevins moved that Aquatics Management Services have their contract Renewed September 1-August, 2009 -for the same price.

The motion was approved.

Pg. 2

Unfinished business

(Project list / P. L. items included)

COMPLETED

Copier Leased Copier was returned to the owner. Ravenal replaced with a smaller copier.

Pool signs New and old signs now have hours 7A. -10 P and age 14 restriction

Broken Window Installment of plain glass for a broken door window is \$170.

Property manager Role of P.M. is not buying materials for HOA

CONTINUING -Ms. Moore to report actions taken

HVAC quotes Revisions should include two visits for maintenance in October and April

Rental units For noncompliant owners, the follow up letter should include \$100 fine.
Board needs a completed list of leases, etc.

Boatyard fee Letter to be sent out in July bill and include \$25 annual boatyard fee. For those paying later, the fee should be prorated by actual number of months used.

Summer News A copy of the final newsletter draft will be sent to Board for comments.

New Business

MOTION:

Elevator room Mr. Fischer requested that the safety lights required by the State in the elevator rooms in buildings B, C, D&E be installed at a cost of \$570 which includes labor and parts.

The motion was approved.

Mr Martin will accompany Mr. Dockworth for quality control issues.

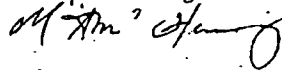
Patio spindles Ms. Moore will send letters advising of inspection of porch railings to non occupant owners. Board members will distribute door to door.

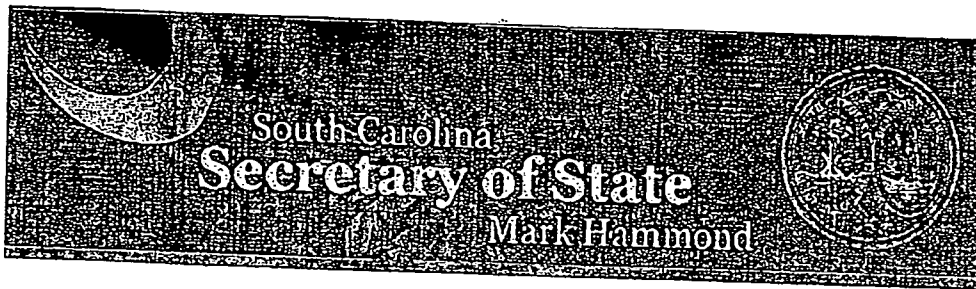
Board roles President Fischer passed out role expectations to members. The members discussed and agreed to the activities. See Attached.

Adjournment President Fischer adjourned the meeting at 7:35 P.M.

Next meeting July 30, 2008 at 6:00 P.M.

Secretary M. "Ann" Henning





CAMBRIDGE LAKES CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Note: This online database was last updated on 10/26/2010 6:01:27 PM.
See our Disclaimer.

DOMESTIC / FOREIGN: Domestic
STATUS: Good Standing
STATE OF INCORPORATION: SOUTH CAROLINA
/ ORGANIZATION: Non Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME: EDWARD PRITCHARD III
ADDRESS: 1202-B PALM BLVD
CITY: ISLE OF PALMS
STATE: SC
ZIP: 29451
SECOND ADDRESS:

FILE DATE: 04/25/2003
EFFECTIVE DATE: 04/25/2003
DISSOLVED DATE: //

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	06/07/2010	CHANGED AGT/ADD FROM-ALBERT V ESTEE	
Eleemosynary Incorporation	04/25/2003	NONPROFIT INCORPORATION(P)	Image

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.



<http://www.scsos.com/index.asp?n=18&p=4&s=18&corporateid=101332>

Affidavit 11

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CERTIFICATE OF INSURANCE

This certifies that

- ☒ STATE FARM FIRE AND CASUALTY COMPANY, Bloomington, Illinois
☐ STATE FARM GENERAL INSURANCE COMPANY, Bloomington, Illinois
☐ STATE FARM FIRE AND CASUALTY COMPANY, Scarborough, Ontario
☐ STATE FARM FLORIDA INSURANCE COMPANY, Winter Haven, Florida
☐ STATE FARM LLOYDS, Dallas, Texas

Insures the following policyholder for the coverages indicated below:

Policyholder CAMBRIDGE LAKES HOMEOWNERS ASSOCIATION

Address of policyholder PO BOX 406
ISLE OF PALMS SC 29451

Location of operations MULTIPLE

Description of operations CONDOMINIUM REGIME

The policies listed below have been issued to the policyholder for the policy periods shown. The insurance described in these policies is subject to all the terms, exclusions, and conditions of those policies. The limits of liability shown may have been reduced by any paid claims.

POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD		LIMITS OF LIABILITY (at beginning of policy period)
		Effective Date	Expiration Date	
99-C4-6606-3	Comprehensive Business Liability	04/01/2009	04/01/2010	BODILY INJURY AND PROPERTY DAMAGE
This insurance includes:		☐ Products - Completed Operations ☐ Contractual Liability ☐ Underground Hazard Coverage ☐ Personal Injury ☐ Advertising Injury ☐ Explosion Hazard Coverage ☐ Collapse Hazard Coverage ☒ DIRECTORS AND OFFICERS COVERAGE		Each Occurrence \$ 1,000,000 General Aggregate \$ 2,000,000 Products - Completed Operations Aggregate \$ 2,000,000
99-CK-0193-9	EXCESS LIABILITY	POLICY PERIOD		BODILY INJURY AND PROPERTY DAMAGE (Combined Single Limit)
	☒ Umbrella ☐ Other	Effective Date	Expiration Date	
		05/23/08	05/23/09	Each Occurrence \$ 2,000,000 Aggregate \$
	Workers' Compensation and Employers Liability			Part 1 STATUTORY Part 2 BODILY INJURY Each Accident \$ Disease - Each Employee \$ Disease - Policy Limit \$
POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD		LIMITS OF LIABILITY (at beginning of policy period)
		Effective Date	Expiration Date	
99-C4-6606-3	BUILDING COVERAG	04/01/09	04/01/10	21,438,500
99-C4-6606-3	CONTENTS COVERAG	04/01/09	04/01/10	228,400
99-C4-6606-3	AUXILIARY BUILDIN	04/01/09	04/01/10	1,306,100

THE CERTIFICATE OF INSURANCE IS NOT A CONTRACT OF INSURANCE AND NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE APPROVED BY ANY POLICY DESCRIBED HEREIN.
 UNITOWNER:

JOHNSON D. KOOLA
 1587 CAMBRIDGE LAKES DR
 MT PLEASANT, SC 29464-7300

Name and Address of Certificate Holder

COUNTRYWIDE HOME LOANS
 INSURANCE DEPARTMENT FTWX-22
 PO BOX 961206
 FORT WORTH TX 76161-0206

LOAN # 52532740

558-894 a.4 11-12-2002 Printed in U.S.A.

Affidavit 12

[illegible]

APPROVED OPERATING BUDGET 2013			
	2011	2012 8 Months Actual	2013
	Actuals	4 Month Forecasted	Approved
INCOME			
OPERATING:			
Regular Assessments	\$284,880.00	\$136,200.00	\$284,880.00
Late Fees	\$2,000.00	\$1,870.00	\$500.00
Comcast Royalties		\$3,590.00	\$4,400.00
Interest on Operating/Reserve	\$1,953.76	\$2.39	\$996.00
TOTAL OPER. REVENUE	\$288,833.76	\$141,662.39	\$290,776.00
RESERVE FUND CONTRIBUTIONS			
Capital Reserve	\$70,800.00	\$35,400.00	\$70,800.00
TOTAL RESERVE CONTRIBUTION	\$70,800.00	\$35,400.00	\$70,800.00
TOTAL HOA INCOME	\$359,633.76	\$177,062.39	\$361,576.00
EXPENSES			
Stationary & Office Supplies	\$1,122.36	\$396.00	\$1,100.00
Postage	\$564.47	\$259.00	\$500.00
Management Fee	\$20,904.00	\$13,936.00	\$20,904.00
Legal - Lien Fees	\$8,112.98	\$1,852.00	\$2,200.00
Federal Income Tax Expense	\$0.00	\$458.00	\$475.00
State Income Tax	\$0.00	\$252.00	\$265.00
Tax Preparation	\$500.00	\$525.00	\$525.00
Insurance Expense	\$97,942.45	\$68,703.00	\$112,708.00
Bad Debt Expense	\$12,255.29	\$19,403.00	\$25,000.00
Maintenance	\$8,387.37	\$4,262.00	\$9,000.00
Elevator Maintenance	\$14,894.44	\$5,963.00	\$9,800.00
HVAC Maintenance	\$705.05	\$2,276.00	\$3,000.00
Storm Water Fee	\$1,174.80	\$0.00	\$1,180.00
Electricity	\$33,421.78	\$21,533.00	\$32,000.00
Telephone	\$14,141.74	\$9,250.00	\$13,800.00
Pest Control	\$1,750.00	\$1,146.00	\$1,528.00
Termite Bond	\$0.00	\$822.00	\$822.00
Janitorial Contract	\$19,800.00	\$13,200.00	\$19,800.00
Refuse Collection	\$7,685.17	\$6,021.00	\$8,440.00
Fire Alarm Contract/Repairs	\$5,282.43	\$4,930.00	\$7,200.00
Pool Contract	\$8,700.00	\$7,900.00	\$7,800.00
Pool Expense	\$760.03	\$2,628.00	\$500.00
Water-Irrigation	\$2,628.01	\$1,154.00	\$1,500.00
Irrigation Maintenance	\$1,015.00	\$0.00	\$500.00
Landscape Maint. Contract	\$18,700.00	\$7,800.00	\$13,800.00
Pinestraw- Ground Cover	\$4,355.00	\$256.00	\$0.00
Pond/Lagoon Maintenance	\$3,344.67	\$1,600.00	\$3,000.00
Reserve Contribution	\$70,800.00	\$47,200.00	\$70,800.00
TOTAL EXPENSES	\$581,144.00	\$243,250.00	\$581,144.00
TOTAL MONTHLY FEE	\$278,489.76	\$133,812.39	\$280,776.00

RECEIVED
AUG 20 2015
SC Court of Appeals

Affidavit 14

The South Carolina Court of Appeals

Cambridge Lakes Homeowners Association, Respondent,

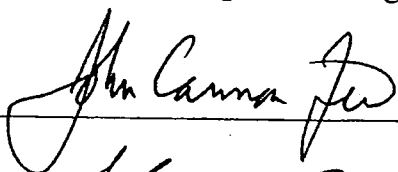
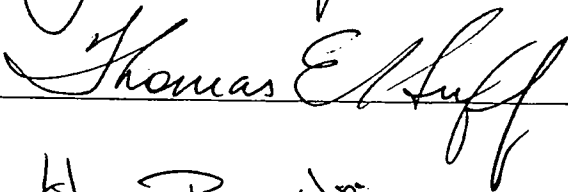
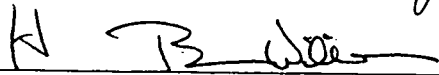
v.

Johnson Koola, Appellant.

Appellate Case No. 2013-001632

ORDER

After careful consideration of the petition for rehearing, the 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 is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Johnson Koola

Eugene P. Corrigan, III, Esquire

Lydia Pruitt Brooks, Esquire

FILED

October 23, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Circuit Court Case No.: 2010-CP-10-9305

Appellate Case No.: 2013-001632

Opinion No.: 2015-UP-391 (S.C. Ct.App. filed Aug. 5, 2015)

Cambridge Lakes Homeowners Association,.....Respondent,

v.

Johnson Koola,.....Petitioner.

CERTIFICATION OF COUNSEL PURSUANT TO RULE 242(e)

The undersigned, petitioner *pro se*, certifies under penalty of perjury that the Appendix complies with Rule 242(e), SCACR.



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

November 19, 2015