

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APR 02 2015

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of the Master in Equity

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

APPELLATE CASE No. 2014-001323

Bank of America, N.A.,

Respondent,

v

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

Of whom Johnson D. Koola is the

Appellant

RECORD ON APPEAL

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

Appellant pro se

Other Counsels of Record

Dean Anthony Hayes, Esquire
Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211
(803) 252-5817

Attorney for Respondent
Bank of America, N.A.

Robert P. Jackman, Esquire
Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211
(803) 252-5817

Attorney for Respondent
Bank of America, N.A.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO 2010 CP-10 - 6060

BAL HOME LOANS

Kooka

PLAINTIFF(S)

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol. Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRPC, ☐ Bankruptcy Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Plaintiff's motion for summary judgment on
Defendants' counterclaims are granted. Defendants' motion for sanctions is denied.

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.

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Circuit Court Judge

3062

Judge Code

3/27/14
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

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

DEFENDANTS.

F10-04188

IN THE COURT OF COMMON
PLEAS

C/A NO.. 2010-CP-10-6060

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING THE
DEFENDANT, JOHNSON D.
KOOLA'S, MOTION FOR
SANCTIONS**

FILED
2014 APR 25 AM 8:56
JULIE J. AKSTROM
CLERK OF COURT
BY

On March 20, 2014, a hearing was held on Bank of America's motion for summary judgment and the motion for sanctions filed by the defendant, Johnson D. Koola. Present for the hearing was Dean A. Hayes, attorney for the plaintiff, Bank of America. Also present was the defendant, Johnson D. Koola.

This is an action for the foreclosure of a mortgage on real estate generally described as 1587 Cambridge Lakes Drive, Mount Pleasant, South Carolina and owned by the defendant, Johnson D. Koola. There is no dispute the note and mortgage at issue in this case were executed on February 20, 2004. In response to Bank of America's summons and complaint, Johnson D. Koola, on March 24, 2011, filed an amended answer and counterclaim alleging, among other things, negligence on the part of Bank of America in that it failed to verify the accuracy and truthfulness of the condominium's builders' certification and appraisal. Bank of America is moving for summary judgment as to the counterclaim or counterclaims set forth in Koola's amended answer and counterclaim. Koola is moving for sanctions based on Bank of America's

alleged failure to provide Koola with a loan modification that Koola could afford

A PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AS TO JOHNSON D. KOOLA'S COUNTERCLAIM(S)

The amended answer and counterclaim of Johnson D. Koola, contains jumbled allegations against various parties, but any claims against Bank of America are based on Koola's allegation that Bank of America "was negligent and willful in its failure to verify the accuracy/truthfulness of the statements in the Builders' Certification " According to Koola, "the developer/seller certified in writing to the Plaintiff in what is known as a Builders' Certification that the 'condominium being sold is a condo conversion' and the structural, health & safety repairs and remodeling have been completed.'" Koola alleges that the certification by the developer/seller was false and that Bank of America was negligent for not discovering it was false.

"Negligence is the breach of a duty of care owed to the plaintiff by the defendant" *Savannah Bank v Stalliard*, 400 S.C. 246, 251, 734 S.E 2d 161, 163 (2012) (citations omitted) In order "[t]o state a cause of action for negligence, the plaintiff must allege facts which demonstrate : (1) a duty of care owed by the defendant; (2) a breach of that duty by a negligent act or omission; (3) a negligent act or omission; and (4) that damages proximately resulted from the breach of duty." *Id* (citations omitted).

In the present case, Koola cannot establish that Bank of America owes him a duty of care. In *Stalliard*, the borrower argued that summary judgment for the bank "was inappropriate because the bank was negligent in processing and discovering false information about [the borrower's] income in the loan application, which would have made [the borrower] ineligible for

the loan.” *Id.* The Supreme Court held that the bank did not have a duty to inform the borrower of information the borrower could have discovered by reading the loan application himself. *Stalliard*, 400 S.C. at 251-52; 734 S.E.2d at 163-64. Similarly, in *Regions Bank v Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003), the guarantor of a loan alleged the bank was negligent for not making sure she understood her liability, for not ensuring the loan documents were properly completed, and for failing to advise her of the financial condition of the borrower. The court of appeals held that summary judgment for the bank was appropriate because there was no duty of care owed by the bank to the guarantor. *Regions Bank v Schmauch*, 354 S.C. 648, 668-70, 582 S.E.2d 432, 442-44 (Ct. App. 2003).

Koola alleges that if Bank of America had conducted a proper appraisal that Bank of America would have discovered that the builders’ certification was false. However, this argument is almost identical to the argument that a lender making a construction loan to a builder of a home, has a duty to the builder, when making periodic inspections before loan advancements to the construction company, to make sure the builder is getting a job free of defects. Although the Supreme Court has noted that both the lender and the builder have a common interest in seeing that the construction of the building is free of defects, the Court has held that the inspections are fundamentally for the benefit of the lender and, absent a contract, the lender has no duty to the builder to make sure the construction is free of defects. *Roundtree Villas Ass’n, Inc v 4701 Kings Corp.*, 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984). Because Koola cannot show that Bank of America owed him a duty of care, Bank of America is entitled to summary judgment on Koola’s counterclaim or counterclaims for negligence.

Alternatively, any claims asserted by Koola against Bank of America are barred by the statute of limitations. Koola’s allegations against Bank of America relate to actions that

occurred in February 2004, and Koola did not assert these claims until March 2011. South Carolina Code § 15-3-530 provides for a three year statute of limitations for claims such as those asserted by Koola. For this reason also, Bank of America is entitled to summary judgment as to the claims asserted against it by Koola

Further More, Mr Koola received a Ch. 7 Bankruptcy discharge in Case # 09-01024 on July 13, 2009 rendering these claims moot.

B. KOOLA'S MOTION FOR SANCTIONS SHOULD BE DENIED

Mr. Koola's motion for sanctions is based on Bank of America's alleged failure to provide him with a favorable loan modification. Koola admits in his motion that Bank of America offered him a loan modification that reduced his monthly payment from \$838.69 to \$797.14, but Koola states that he couldn't afford even the reduced monthly payment.¹ He alleges that Bank of America was required to reduce the principal balance and interest rate of the loan to an amount low enough for him to be able to afford the monthly payments. In support of his position, Koola cited various sections of the United States Code.

However, Koola cannot point to a specific law that requires Bank of America to provide him with a loan modification with the terms he says he needs in order to be able to afford the monthly payments. Koola can also point to no specific servicing guidelines that require Bank of America to provide him with the loan modification he says that he requires, and even if he could, he would not have a private right of action against Bank of America for violating those guidelines. *See Federal Nat Mort Ass'n v LeCrone*, 868 F.2d 190, 193 (6th Cir. 1989) (noting that "no express or implied right of action in favor of mortgage exists for violation of HUD servicing policies."). *See also Spaulding v. Wells Fargo Bank*, 714 F 3d 769 (4th Cir. 2013) (court found mortgagor had no causes of action under Maryland law for mortgagee's alleged violations of the

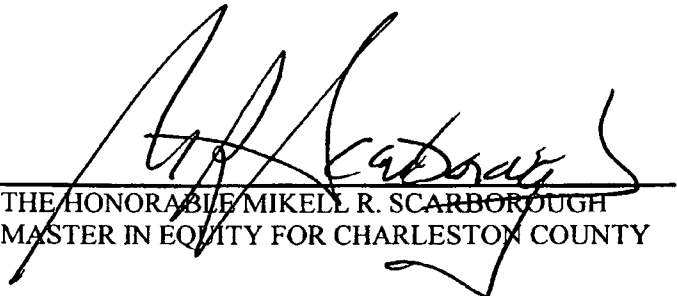
¹ In paragraph 15 of his amended answer and counterclaim, Mr Koola states that "social security benefits are the only source of regular income for him "

Home Affordable modification Program). For these reasons, Koola's motion for sanctions should be denied

IT IS ORDERED that Bank of America's motion for summary judgment be and hereby is granted as to any causes of action asserted against it by Johnson D. Koola in his amended answer and counterclaim.

IT IS FURTHER ORDERED that Johnson D. Koola's motion for sanctions be and hereby is denied.

IT IS SO ORDERED!



THE HONORABLE MIKELL R. SCARBOROUGH
MASTER IN EQUITY FOR CHARLESTON COUNTY

April 24, 2014
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP- 10 - 6060

ORIGINAL

Bank of America

Johnson D. Koola, et al

PLAINTIFF(S)

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case
Additional Information for the Clerk

Defendant's Rule 59(e) Motion to Reconsider is hereby respectfully denied

INFORMATION FOR THE PUBLIC 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		\$
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If applicable, describe the property, including tax map information and address, referenced in the order
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Circuit Court Judge

3062

Judge Code

5/6/14

Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-06060

BANK OF AMERICA, N A

JOHNSON D KOOLA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

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ORDER INFORMATION

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Additional Information for the Clerk

CASE DISMISSED PURSUANT TO RULE 41(a) SCRPC

INFORMATION FOR THE PUBLIC INDEX		
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Circuit Court Judge

3062

Judge Code

Date

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-6060BAC Home LoansKoola

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

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ORDER INFORMATION

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Additional Information for the Clerk

Motion to reinstate is granted with 13 orders
Plaintiff is to provide reinstatement figures

INFORMATION FOR THE JUDGMENT INDEX

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Circuit Court Judge

3062

Judge Code

Date

1/27/14

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP- 10 - 6060

Bank of America

Johnson D Koola, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case

Additional Information for the Clerk

Defendant's Rule 52(a) and Rule 59(e) motions are hereby respectfully denied

INFORMATION FOR THE PUBLIC INDEX

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Circuit Court Judge

3062

Judge Code

4/25/14

Date



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP- 10 - 6060

Bank of America

Johnson D Koola, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

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☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk

Defendant's Rule 52(a) and Rule 59(e) motions are hereby respectfully denied

INFORMATION FOR THE PUBLIC INDEX

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Circuit Court Judge

3062

Judge Code

4/25/14

Date

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

FILED

at _____ O'clock & _____ min. _____ M

MAY 22 2012

IN RE

John D. Koola

Debtor(s)

) CHAPTER 7
)
) CASE NO: 09-2104-DD
)
) ORDER UPON MOTION REOPENING CASE
)

United States Bankruptcy Court
Columbia, South Carolina (23)

Before the court is the debtor's(s) motion, filed on April 20, 2012, to reopen this closed case pursuant to 11 U.S.C. § 350(b)

After notice of the motion and no objections being filed, it appears that the motion should be granted and the case be reopened

IT IS, THEREFORE, ORDERED that

- 1 The case is reopened;
- 2 The action proposed in the motion be initiated within fifteen (15) days of the entry of this order,
3. Upon the completion of the proposed action or upon the failure of the movant to initiate timely the proposed action, the Clerk of the Bankruptcy Court (the clerk) shall close this case without further order;
- 4 The appointment of a trustee by the United States Trustee is ~~is not~~ necessary to protect the interests of the creditors and the debtor and to ensure the efficient administration of the case (See Federal Rule of Bankruptcy Procedure 5010);
- 5 If a meeting of creditors is necessary, the United States Trustee's office will schedule and the Clerk's office will give notice thereof to each party in interest,
6. If this is a case under Chapter 13 of the United States Bankruptcy Code and if, according to the trustee's record a payment under the Chapter 13 plan is currently due, the debtor(s) shall make such payment to the trustee by cashier's check or certified funds within five (5) business days after the entry of this order; if such payment is not made timely, the case may be dismissed without further notice or hearing
- 7 The attorney for the debtor(s) shall review and submit any needed address changes or deletions of creditors to the mailing matrix within five (5) days after the entry of this order



DAVID R. DUNCAN
United States Bankruptcy Judge

Columbia, South Carolina

5-22, 2012

C-308.12/01/09

ENTERED

MAY 22 2012

B. R. M.

United States Bankruptcy Court – District of South Carolina

J Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number 09-02104-dd

Chapter 7

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Johnson D Koola
aka Johnson Devassey Koola
1587 Cambridge Lakes Drive
Mount Pleasant, SC 29464

Last four digits of Social Security or other Individual Taxpayer
No(s)(if any) xxx-xx-8113

Entered By The Court
07/13/09

**ORDER
DISCHARGE OF DEBTOR
ORDER DISCHARGING TRUSTEE
ORDER CLOSING CASE**

Filed By The Court
07/13/09
Tammi M. Hellwig
Clerk of Court
US Bankruptcy Court

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED**

- 1 The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code)
- 2 The trustee has certified that the estate of the above-named debtor(s) has been fully administered, therefore, *Kevin Campbell*, is discharged as the trustee of the above named debtors(s) and the bond is canceled
- 3 The Chapter 7 case of the above-named debtor(s) is closed

Columbia, South Carolina
July 13, 2009
Document 9



United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION

Form 195BNC (Revised 03/06/2013)

United States Bankruptcy Court – District of South Carolina

J Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number 09-02104-dd

Chapter 7

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Johnson D Koola
aka Johnson Devassey Koola
1587 Cambridge Lakes Drive
Mount Pleasant, SC 29464

SSN xxx-xx-8113

Entered By The Court
11/6/13

ORDER DISCHARGING TRUSTEE AND CLOSING CASE

Filed By The Court

11/6/13
Laura A Austin
Clerk of Court
US Bankruptcy Court

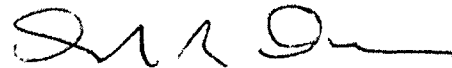
The trustee having certified that the estate of the above-named debtor(s) has been fully administered,

IT IS ORDERED THAT:

The case trustee is discharged as trustee of the estate of the above named debtor(s) and the bond is cancelled

The Chapter 7 case of the above named debtor(s) is closed

Columbia, South Carolina
November 6, 2013
Document 26



Chief United States Bankruptcy Judge

Voluntary Petition

B	1	47
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B1 (Official Form 1)(1/08)

Page 2

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s) Koola, Johnson D.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed - None -	Case Number	Date Filed	
Location Where Filed	Case Number	Date Filed	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor - None -	Case Number	Date Filed	
District	Relationship	Judge	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11) ☐ Exhibit A is attached and made a part of this petition		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b). X <u>/s/ Ann A. Urquhart</u> ID <u>March 20, 2009</u> Signature of Attorney for Debtor(s) (Date) Ann A. Urquhart ID #10372	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? ☐ Yes, and Exhibit C is attached and made a part of this petition ☒ No			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) ☒ Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: ☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box) ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes) ☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following) _____ (Name of landlord that obtained judgment) _____ (Address of landlord) ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and ☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l))			

B 2 47

B1 (Official Form 1)(1/08)

Page 3

Voluntary Petition		Name of Debtor(s)	
(This page must be completed and filed in every case)		Koola, Johnson D	
Signature(s) of Debtor(s) (Individual/Joint)		Signatures	
I declare under penalty of perjury that the information provided in this petition is true and correct [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7 [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b) I request relief in accordance with the chapter of title 11, United States Code, specified in this petition		Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition (Check only one box) ☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached ☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached	
X <u>/s/ Johnson D. Koola</u> Signature of Debtor <u>Johnson D. Koola</u> X _____ Signature of Joint Debtor _____ Telephone Number (If not represented by attorney) _____ <u>March 20, 2009</u> Date _____		X _____ Signature of Foreign Representative _____ Printed Name of Foreign Representative _____ Date _____	
Signature of Attorney*		Signature of Non-Attorney Bankruptcy Petition Preparer	
X <u>/s/ Ann A. Urquhart ID</u> Signature of Attorney for Debtor(s) _____ <u>Ann A. Urquhart ID #10372</u> Printed Name of Attorney for Debtor(s) _____ <u>Drose Law Firm</u> Firm Name _____ <u>3955 Faber Place Drive, Suite 103</u> <u>Charleston, SC 29405</u> Address _____ <u>843-767-8888 Fax: 843-767-3290</u> Telephone Number _____ <u>March 20, 2009</u> Date _____ *In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect		I declare under penalty of perjury that (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b), and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached Printed Name and title, if any, of Bankruptcy Petition Preparer _____ Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer) (Required by 11 U.S.C. § 110) _____ Address _____ X _____ Date _____ Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above _____ Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual _____ If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person 4 bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110 18 U.S.C. §136	
Signature of Debtor (Corporation/Partnership)			
I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition X _____ Signature of Authorized Individual _____ Printed Name of Authorized Individual _____ Title of Authorized Individual _____ Date _____			

B6B (Official Form 6B) (12/07)

In re **Johnson D. Koola**

Case No _____

Debtor

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1 Cash on hand	X			
2 Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives		Checking account with First Citizens Bank	-	254.00
3 Security deposits with public utilities, telephone companies, landlords, and others	X			
4 Household goods and furnishings, including audio, video, and computer equipment		Household goods and furnishings	-	2,290.00
5 Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles		Books, pictures and misc items	-	75.00
6 Wearing apparel		Wearing apparel	-	75.00
7 Furs and jewelry		Jewelry	-	20.00
8 Firearms and sports, photographic, and other hobby equipment		1 camera	-	50.00
9 Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each	X			
10 Annuities. Itemize and name each issuer	X			

Sub-Total > 2,764.00
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B 15 47

B6B (Official Form 6B) (12/07) - Cont

In re Johnson D. Koola

Case No. _____

Debtor

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11 Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1) Give particulars (File separately the record(s) of any such interest(s) 11 U.S.C. § 521(c))	X			
12 Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans Give particulars		2 IRAs with Fidelity	-	29,899.00
		401 k with TIAA-CREF 50% belongs to estranged spouse	J	6,743.50
13 Stock and interests in incorporated and unincorporated businesses Itemize		15 shares of stock in Newmont Mining	-	636.00
		Stock portfolio with Interactive Brokers	-	2,764.00
14 Interests in partnerships or joint ventures Itemize	X			
15 Government and corporate bonds and other negotiable and nonnegotiable instruments	X			
16 Accounts receivable	X			
17 Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled Give particulars	X			
18 Other liquidated debts owed to debtor including tax refunds Give particulars	X			
19 Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property	X			
20 Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust	X			

Sub-Total > **40,042.50**
(Total of this page)

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

B

16

47

B6B (Official Form 6B) (12/07) - Cont

In re Johnson D. Koola

Case No _____

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
21 Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims Give estimated value of each	X			
22 Patents, copyrights, and other intellectual property Give particulars	X			
23 Licenses, franchises, and other general intangibles Give particulars	X			
24 Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes	X			
25 Automobiles, trucks, trailers, and other vehicles and accessories	X			
26 Boats, motors, and accessories	X			
27 Aircraft and accessories	X			
28 Office equipment, furnishings, and supplies	X			
29 Machinery, fixtures, equipment, and supplies used in business	X			
30 Inventory	X			
31 Animals	X			
32 Crops - growing or harvested Give particulars	X			
33 Farming equipment and implements	X			
34 Farm supplies, chemicals, and feed	X			
35 Other personal property of any kind not already listed Itemize	X			

Sub-Total > 0.00
(Total of this page)
Total > 42,806.50
(Report also on Summary of Schedules)

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

United States Bankruptcy Court
District of South Carolina

In re Johnson D. Koola

Debtor(s)

Case No
Chapter

7

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of
17 sheets, and that they are true and correct to the best of my knowledge, information, and belief

Date March 20, 2009

Signature /s/ Johnson D. Koola
Johnson D. Koola
Debtor

Penalty for making a false statement or concealing property Fine of up to \$500,000 or imprisonment for up to 5 years or both
18 U.S.C. §§ 152 and 3571

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE

JOHNSON D KOOLA, ***-**-8113

1587 Cambridge Lakes Drive

Mt. Pleasant, SC 29464

Debtor

)

) Chapter 7

)

) Bankruptcy No. 09-02104

)

)

MOTION TO REOPEN CASE AND MEMORANDUM IN SUPPORT

DEBTOR hereby moves this Court, pursuant to 11 U S C §350(b), to reopen the case which was closed after the debtor received a discharge. Since that time, the Trustee has issued a final report and account, the Discharge Order was issued on July 13, 2009, and the case was closed. The debtor now seeks to reopen the case to permit him to list various lawsuits as assets. Debtor's right to file these suits existed prior to the filing of his Chapter 7 case, but were unknown to Debtor at that time.

Debtor is informed and believes that justification exists to reopen the case because 11 U S C §350(b) allows for the reopening of a case to "accord relief to the debtor." Debtor has filed claims in civil court against various entities in the form of original complaints, counter-claims, and cross-claims. Debtor does not wish failure to list these claims in his bankruptcy to be a bar to his recovery in state court.

WHEREFORE, debtor moves this court to reopen this case to allow debtor to amend his Schedule B to list his interest in three (3) pending state court actions.

DROSE LAW FIRM

BY: /s/ R. Michael Drose

R MICHAEL DROSE

District Court I D #609

Attorneys for Debtor

3955 Faber Place Drive, Suite 103

Charleston, SC 29405

(843) 767-8888

Charleston, South Carolina
April 20, 2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE.
JOHNSON D KOOLA
Last four digits of social security # 8113

Debtor

CASE NO 09-02104

STATEMENT OF CHANGE

CHAPTER 7

STATEMENT OF CHANGE FOR AMENDED SCHEDULE B

The debtor hereby amends Schedule B with the following changes

Schedule B, Line 21 - Added claim for failure to inspect and all related claims of unknown value against debtor's mortgage servicer

Schedule B, Line 21 - Added claim for failure to disclose and all related claims against debtor's homeowners association

Schedule B, Line 21 - Added claim for unfair trade practices, violation of the horizontal property act, and all related claims against various entities related to the development of debtor's condominium

/s/

Ann A Urquhart
District ID# 10372
Attorneys for the Debtor
Drose Law Firm
3955 Faber Place Dr , Ste. 103
Charleston, SC 29405
(843) 767-8888
drose@droselaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Statement of Change, with a copy of the Amended Schedule B on the Chapter 7 Trustee, Kevin Campbell, by electronic service through CM/ECF, and by mail to all the creditors listed on the attached mailing matrix

/s/

Office Personnel
Attorneys for the Debtor
Drose Law Firm
3955 Faber Place Dr , Ste. 103
Charleston, SC 29405
(843) 767-8888

Dated

In re Johnson D. KoolaCase No 09-02104

Debtor

SCHEDULE B - PERSONAL PROPERTY - AMENDED
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
21 Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each		Claim against BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP for failure to inspect and all related claims Claim against Cambridge Lakes Condominium Homeowners Association, Inc. f/k/a Cambridge Lakes Horizontal Property Regime for failure to disclose and all related claims Claim against Cambridge Two, LLC, Albert V. Estes; Cambridge Lakes, LP; Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartment Homes; Stephen R. Heape, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc.; Carolina One; Charleston Home Team, LLC; Charleston Home Team Properties, LLC; and William E. Jenkinson, IV for unfair trade practices, violation of the horizontal property act, and all related claims	-	Unknown
22 Patents, copyrights, and other intellectual property. Give particulars	X			
23 Licenses, franchises, and other general intangibles. Give particulars	X			
24 Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes	X			
25 Automobiles, trucks, trailers, and other vehicles and accessories	X			
26 Boats, motors, and accessories	X			
27 Aircraft and accessories	X			
28 Office equipment, furnishings, and supplies	X			
29 Machinery, fixtures, equipment, and supplies used in business	X			
Sub-Total >				0.00
(Total of this page)				

Sheet 2 of 3 continuation sheets attached
to the Schedule of Personal Property

United States Bankruptcy Court – District of South Carolina
J Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number 09-02104-dd

Chapter 7

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Johnson D Koola
aka Johnson Devassey Koola
1587 Cambridge Lakes Drive
Mount Pleasant, SC 29464

SSN xxx-xx-8113

NOTICE OF HEARING

Filed By The Court

4/25/12

L. Jefferson Davis IV
(Acting)
Clerk of Court
US Bankruptcy Court

PLEASE TAKE NOTICE that a hearing will be held at:

King and Queen Building
145 King Street
Room 225
Charleston SC 29401

on May 22, 2012 at 09:00 AM, to consider and act upon the following pleading.

Motion to Reopen Chapter 7 Case To amend Schedule B to list Debtors interest in possible claims against various entities Filed by Ann A Urquhart of Drose Law Firm on behalf of Johnson D. Koola

The pleadings related thereto have been filed with the Court. Any party objecting to the relief sought must file a response in accordance with SC LBR 9014-1, and must serve the party seeking the relief with a copy of said objection by 5/11/12. Any party failing to do so may be denied the opportunity to be heard. Please take notice that any party which has filed and served an objection in accordance with SC LBR 9013-3 and SC LBR 9014-1 and which fails to appear at the time and place above noticed to prosecute that objection, may not have the objection considered.

If the party filing the document referred to above has not served the document as required by the Fed. R. Bankr. P. and the Local Rules of this Court, the filing party is hereby notified that, at the hearing above referenced, the Court may give notice of the possible imposition of sanctions against the filing party, pursuant to Fed. R. Bankr. P. 9011 for failure to effect service.

Dated April 25, 2012

L. Jefferson Davis IV (Acting)
Clerk, US Bankruptcy Court

By B Mobley
Deputy Clerk

1 STATE OF SOUTH CAROLINA)
 2 : IN THE COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2010-CP-10-6060
 3 BAC HOME LOANS,)
 4)
 4 Plaintiff(s),)
 5) Hearing
 5 -vs)
 6)
 6 JOHNSON D. KOOLA,)
 7)
 7 Defendant(s),)
 -----)
 8
 9
 10

11 Given before The Honorable Mikell Scarborough, in the
 12 Charleston County Courthouse, Charleston, South Carolina on
 13 Thursday, July the March 20, 2014, commencing at 3:00
 14 o'clock p.m.
 15
 16
 17
 18
 19
 20 -----

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1 A-P-P-E-A-R-A-N-C-E-S

2 For the Plaintiff : Korn Law Firm
3 By: Dean Hayes, Esq.,
4 1300 Pickens Street
Columbia, SC 29201

5 For the Defendant : Johnson Koola, pro se

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13 INDEX TO EXHIBITS

14 (None were marked.)

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1 THE COURT: BAC versus Koola?

2 MR. HAYES. Yes, sir.

3 THE COURT: Set today for 3:00 o'clock. Shawn
4 French, he's no longer counsel?

5 MR. HAYES. Yeah. Shawn was relieved as counsel,
6 Your Honor.

7 THE COURT: All right. Mr. Koola, you're here
8 representing yourself?

9 MR. KOOLA: Yes, sir.

10 THE COURT: And Mr. Hayes, this is your motion?

11 MR. HAYES: That's correct, Your Honor. This is a
12 fairly old motion. This is a case, we filed a summons and
13 complaint waiving the deficiency because Mr. Koola had filed
14 bankruptcy in 2009. And he filed an answer counter claim, a
15 pro se answer counter claim and cross claims. The cross
16 claims were against the homeowners association. And the
17 counter claim was basically that the Bank of America had
18 failed to catch the fact that a builder certificate had
19 allegedly been falsified or the builder made a false
20 statement on the builder's certificate. That's the
21 allegation, the counter claim allegation that we're dealing
22 with today.

23 THE COURT: This is new construction?

24 MR. HAYES: No, sir. It was construction, they
25 were converting it from, I think they were converting it to

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1 condominiums, Your Honor.

2 MR. KOOLA: There are five condominium complexes.

3 MR. HAYES: I'm sorry

4 MR. KOOLA: Yeah. Condo community.

5 MR. HAYES: Yeah. They were converting it to
6 condominiums and he said the builder certificate, the
7 builder falsified it and Bank of America should have
8 discovered it. And in the motion for summary judgment that
9 we filed, I think back in 2012 we alleged two grounds.
10 First, the statute of limitations, and second, the fact that
11 he didn't assert this in his bankruptcy schedules.

12 THE COURT: Is this a discharge?

13 MR. HAYES: Yes, sir.

14 THE COURT: That might be dispositive right there.

15 MR. HAYES: Well, he went back and amended after
16 to add it, but I still think the statute of limitations
17 would prevent it. There's also an additional ground, Your
18 Honor, the fact that he's alleged negligence by the bank in
19 not discovering the defect. There's been a lot of cases on
20 the bank's duty. The bank would have no -- in order to have
21 negligence you would have to have a breach of a duty. And
22 the Court has determined in several cases that a bank does
23 not have a duty to the borrower, like in the Round Tree
24 Villas case. I passed up a copy of that, Your Honor. And I
25 also have given a copy to Mr. Koola.

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1 And in that case the Round Tree Villas versus 4701
2 Kings Corporation, and in that case the borrower alleged
3 that the bank should have caught construction defects when
4 they were disbursing the funds. And the Court stated that
5 traditionally lenders in making the construction loan made
6 periodic inspections and those inspections were for their
7 own benefit and not for the benefit of the borrower. And
8 the lender did not have a fiduciary duty to the borrower.

9 There's also the case, Your Honor, of Regions Bank
10 versus Schmock (ph). And in that case the borrower alleged
11 that the bank owed her a duty of care to explain the
12 documents to her. And the Court held that, they said the
13 issue is what, if any duty a bank owes a customer in the
14 regular course of business. And they said that the bank did
15 not have a duty to the borrower to explain to the borrower
16 anything she could not have determined by reading the
17 documents herself.

18 And then there's the case of Savannah Bank versus
19 Stallard (ph). And in that case the borrower alleged that
20 the bank was negligent in processing and discovering false
21 information about the borrower's income contained in the
22 loan application -- excuse me. In that case they said the
23 bank should have discovered that the borrower made false
24 statements in the borrower's application. And the Court
25 said there's no duty

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1 And same thing in this case, Your Honor. The builder's
2 certificate, the bank is relying on it just like Mr. Johnson
3 Koola, the bank is relying on that builder's certificate
4 just like Mr. Koola. And there's no, we owe him no duty to
5 go behind and investigate that certificate That's it, Your
6 Honor. And excuse me, and the statute of limitations and
7 the bankruptcy issue as well. So we have three grounds
8 here.

9 THE COURT: Let me start with the merits. Let's
10 start with procedural aspects of it first and foremost.
11 There, in fact was a bankruptcy filing. That leads itself
12 to the dismissal of the deficiency But my question to you
13 is was there a discharge in bankruptcy?

14 MR. HAYES: I believe, Your Honor, I have the
15 bankruptcy file here. And I believe there was a discharge
16 in the bankruptcy court.

17 THE COURT: Discharge of debt, and then property
18 was released from the bankruptcy?

19 MR. HAYES: Yes, sir. He received a bankruptcy
20 discharge, Your Honor, it looks like in 2009.

21 MR. KOOLA: Your Honor, may I plead with the
22 bankruptcy case?

23 THE COURT: Mr. Koola?

24 MR. KOOLA: Yes.

25 THE COURT: You did file bankruptcy?

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1 MR. KOOLA: Yeah. I'm still updating it. In '09
2 I file for a Chapter 7 bankruptcy. At that time I didn't
3 know anything about the counter claims against the
4 plaintiff. And no counter claims were included in the
5 Schedule B of the bankruptcy petition. And during our
6 meeting I was research, and one year later the case was
7 closed. But in 2010 I discovered that the new claims that
8 they state Bank of America, of the plaintiff. And they
9 petition the bankruptcy court to reopen the, reopen the
10 bankruptcy case. And the Bank of America or the plaintiff
11 was given a notice to raise any objections to be raised.
12 They did in the raise any objections.

13 And the bankruptcy court reopened the bankruptcy case.
14 Bankruptcy case allowed me to input the claims against the
15 plaintiff in May, 2012. Shortly thereafter in 2013 the case
16 was closed. At that time the claims was reverted back to
17 the defendant. And today I have the rights for standing and
18 the absolute right to assert the counter claims against the
19 plaintiff.

20 THE COURT: So you're saying you did get a
21 discharge but post discharge you applied to the bankruptcy
22 court --

23 MR. KOOLA: To reopen the case.

24 THE COURT: To reopen the case and pursue these
25 claims. And you have an order to that effect?

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1 MR. KOOLA. Yes, sir. I filed it to the Court and
2 all the attachments were there. I wrote an extra copy for
3 the Court.

4 THE COURT. I might have one in front of me. Is
5 that your memorandum, or is it your affidavit?

6 MR. KOOLA: I have both affidavit and memorandum,
7 but I am talking about the memorandum with all the
8 attachment exhibits. It is Exhibit Number 10, Your Honor,
9 six pages.

10 MR. HAYES: And I believe, Your Honor, after I
11 filed my Motion for Summary Judgment they went back and
12 amended to try to avoid the grounds for, one of the grounds
13 for the Motion for Summary Judgment. But still, you still
14 have the statute of limitations --

15 THE COURT: Let me deal with the bankruptcy.
16 Let's see. Typically in a bankruptcy if you've been
17 discharged then you've been discharged of your liabilities
18 but also your claims.

19 MR. HAYES: That's correct.

20 THE COURT: There seems to be no dispute that he
21 was discharged from bankruptcy. But what Mr. Koola argues
22 is that post discharge he petitioned the Court to reopen the
23 case. Let me just look at that.

24 So just on the bankruptcy issue a motion was filed by
25 Michael Drose, defendants debtor's attorney to reopen the

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1 case, the bankruptcy case, Chapter 7, which was previously
2 discharged July 13, 2009. That was to allow him to file
3 various lawsuits as assets. Stated in the motion is the
4 debtor's right to file these suits existed prior to the
5 filing of the Chapter 7 case and were unknown to the debtor
6 at the time. And the purpose for the filing of the motion
7 is the debtor does not wish failure to list these claims in
8 bankruptcy to be a bar to his recovery in state court.

9 Then it specifically lists three pending state court
10 actions. And the amendment is to Schedule B, line 21 of his
11 schedule of Chapter 7. And the first claim listed is a
12 claim against BAC Home Loans and Country Wide for failure to
13 inspect. And all related claims hearing was set for May 22,
14 2012. And the Court issued it's order, David Duncan, US
15 Bankruptcy Judge on May 22, 2012 allowing the case to be
16 opened, that the motion be initiated within 15 days of the
17 entry of the order. The appointment of a trustee by the US
18 Trustee's Office and as stated a Chapter 13 bankruptcy is to
19 prevail.

20 So I don't know what happened in the bankruptcy court,
21 but on November 6th, 2013 the case trustee was discharged.
22 And the Chapter 7 case of the debtor was closed. That's
23 what happened in bankruptcy court. Was any litigation
24 pursued in the bankruptcy court itself?

25 MR. KOOLA: No. The judge heard my petition And

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1 there were no objections. And he approved the reopening of
2 the case. And that allowed me to include the claims against
3 the plaintiff.

4 THE COURT: When were the claims presented against
5 the plaintiff? When were the counter claims filed?

6 MR. KOOLA: Yeah. I filed my counter claim in
7 March of --

8 THE COURT: March of 2011?

9 MR. KOOLA: Yes.

10 THE COURT: Does that sound right?

11 MR. HAYES. That sounds correct, Your Honor. They
12 waited over a year to add them.

13 THE COURT: You had 15 days pursuant to Judge
14 Duncan's order of May, 2012. So that's the bankruptcy
15 status. But no action was filed in the bankruptcy court,
16 correct?

17 MR. KOOLA: Yeah, no specific action. Yeah.

18 THE COURT: Relief that the bankruptcy court was
19 giving you in this motion was to file an action with the
20 bankruptcy court. Evidently you already filed a case in the
21 state court.

22 MR. KOOLA: Yeah. But his argument is I cannot
23 raise the counter claim. Now, I believe I have the right to
24 preserve the counter claim, because the counter claim was
25 added in the Schedule B

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1 THE COURT. Well, we'll cross that bridge in a
2 second. Let's get to the facts of the matter. The second
3 basis for dismissal had to do with the timing of the claim,
4 right?

5 MR. HAYES. That's correct, Your Honor. He
6 purchased the condominium on February the 24th of 2004. The
7 counter claim where negligence was asserted in March, 2011,
8 seven years after the fact. And the homeowner's
9 association, which he also sued, and they've also gotten
10 summary judgment in their case, they sued the
11 builder/developer, seller/developer in June of 2008 for the
12 defects.

13 And Mr. Koola did nothing until -- and he acknowledges
14 being in default. In his memorandum in opposition he
15 acknowledges being in default on the payments of the
16 mortgage. And he said that, he just says he couldn't afford
17 it. He says he was trying to get rid of the condominium in
18 2008, but because of the destruction defects he could not do
19 so.

20 Again, construction defects are not Bank of America's
21 fault. He can't show a duty to Bank of America for failing
22 to find the construction defects. In the cases I cited
23 earlier the Court specifically found there is no duty
24 between a lender and a borrower. So there can be no
25 negligence.

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1 THE COURT. Was the mortgage taken out, is it a
2 purchase money mortgage?

3 MR. HAYES. That's correct, Your Honor. Yes, sir.

4 THE COURT: Was it construction, some sort of
5 construction loan?

6 MR. HAYES: It was converted from, I think it was
7 converted from apartments to condominiums.

8 THE COURT: It was a condo conversion.

9 MR. HAYES: Right. And that's the reason for the
10 builder's certificate which Mr. Koola himself said that Bank
11 of America required as part of the loan process. But just
12 like anything else Bank of America isn't required to go
13 behind it and check it to make sure it's correct.

14 THE COURT: And again, that all happened in 2004
15 at/or prior to the closing; is that right?

16 MR. HAYES: That's correct, Your Honor.

17 THE COURT: So permanent financing took place in
18 February of 2004?

19 MR. HAYES. That's correct, Your Honor.

20 THE COURT: And your argument is they had three
21 years to file?

22 MR. HAYES: Yes, sir. And three years was up in
23 2007. So that's the statute of limitations. Then you also
24 have the negligence, no duty ground for dismissal.

25 THE COURT The bankruptcy was filed in 2009.

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1 Statement by Mr. Drose was the right to file existed prior
2 to filing of Chapter 7. So it arose prior to 2009, but he
3 says they were unknown to the defendant at the time So
4 known or unknown on that question, known or should have been
5 known on the timing question. And then finally, three has
6 to do with a duty, whether or not a duty of care existed.

7 MR. HAYES. Right. There is no duty of care
8 between a lender and a borrower.

9 THE COURT: And on that you cite three cases,
10 Round Tree versus Kings Corporation, Regions Bank versus
11 Schmock and --

12 MR. HAYES: Yes, sir. And there's a recent case
13 that came out last month. It's an unpublished opinion.
14 It's Dr. Karoo (ph) versus RBC Sentura Bank. I know we're
15 not supposed to cite these for authority, but it cites Round
16 Tree, Hanson versus Scalese (ph) Builders of SC, and Regions
17 Bank versus Schmock. In that case the borrowers were
18 alleging that the bank acted negligently in monitoring the
19 construction of their home which resulted in the disbursal
20 of loan proceeds in an amount greater than the
21 completion percentage of the home in construction defects,
22 which is basically the same thing they allege in Round Tree,
23 Your Honor.

24 But the Court said we find their negligence claim fails
25 as a matter of law because the Karoos, the borrowers cannot

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1 establish that RBC, the bank, owed them a legal duty of
2 care. And I think I gave copies of all these documents to
3 Spencer. If you want to look at where these sites come from
4 I can, on the unpublished opinion case it comes from the
5 second page.

6 THE COURT: We're in the Karoo case?

7 MR. HAYES. Your Honor, the second page. If you
8 look at second paragraph the Karoos allege RBC acted
9 negligently in monitoring the construction. And in the
10 Karoo case the bank was given a summary judgment. And in
11 that case the Court said again that the borrower's
12 negligence claim fails as a matter of law because the
13 borrower cannot establish that the lender owed them a legal
14 duty of care.

15 So Mr. Koola in this case has to show that Bank of
16 America, the lender owed him a duty of care. And in the
17 cases I just cited the Courts did not find the duty of care
18 to the borrower by the lender. And if you want me to go
19 through the other cases I will.

20 THE COURT: No, that's fine. So let me hear from
21 you, Mr. Koola.

22 MR. KOOLA: Your Honor, how much time I have to
23 defend my case?

24 THE COURT: You've got five minutes.

25 MR. KOOLA: Okay.

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1 THE COURT: Let me just ask you some questions.

2 MR. KOOLA: Yes, Your Honor.

3 THE COURT: I'm just trying to figure out the
4 timeline. I want to make sure I'm correct on this. You
5 purchased your condominium in 2004?

6 MR. KOOLA: Yes.

7 THE COURT: At that time you got a loan from the
8 Bank of America?

9 MR. KOOLA: Yes, Your Honor. From Country Wide
10 actually.

11 THE COURT: Now owned by Bank of America. And you
12 allege, the substance of your complaint is that you allege
13 that the bank, Country Wide then, now Bank of America failed
14 to properly inspect the property for the condominium; is
15 that right?

16 MR. KOOLA: No. They did not tell the duty of
17 care to inspect the condominiums. May I explain to you the
18 whole situation?

19 THE COURT: No. You want to answer my question?

20 MR. KOOLA: Yeah. And they don't have a duty of
21 care to inspect it.

22 THE COURT: So you agree with Mr. Hayes on that?

23 MR. KOOLA: That statement, yes. But my question
24 is not on that point, Your Honor.

25 THE COURT: Well, the basis upon which you went to

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1 the bankruptcy court was to add a claim for failure to
2 inspect. I'm reading from your attorney's motion and
3 statement for a change in the schedule. So what was your
4 basis then?

5 MR. KOOLA. Yes, Your Honor.

6 THE COURT: What's the claim against the lender?

7 MR. KOOLA: They have what is called
8 investigate -- what is called a building certification. And
9 the building certification, the builder or the seller --
10 sorry. The builder and seller certify that it is a condo
11 conversion and that this condo conversion, the health and
12 safety, and the remodeling company. This is a question the
13 plaintiff asked the developer because the South Carolina
14 Household Property Act 27-31-430 demands the developer to
15 the disclosure of the structure of, the physical condition
16 of the report to the buyer.

17 THE COURT: Correct.

18 MR. KOOLA: And that certification was falsified.

19 Now, the question is in the case of --

20 THE COURT. Let me stop you there. It was done,
21 correct?

22 MR. KOOLA: It was done, yes.

23 THE COURT: Certification was done?

24 MR. KOOLA: Certificate was done.

25 THE COURT: And your claim is that it was done

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1 fraudulent?

2 MR. KOOLA: Fraudulent. Okay. That was
3 discovered only in 2010.

4 THE COURT: Let me stop you. Who made the false
5 representation?

6 MR. KOOLA: The developer/seller.

7 THE COURT: Who made the false representation?

8 MR. KOOLA: The developer and seller.

9 THE COURT: And that is the builder; is that
10 right?

11 MR. KOOLA: No, builder is different. It was a
12 apartment complex originally, and they converted to
13 condominiums. At that point a certification has to be by
14 the developer/seller under the Household Property Act.

15 THE COURT: So they make a false representation,
16 they made that to you and to the bank?

17 MR. KOOLA: Yes.

18 THE COURT: How does that implicate the bank?

19 MR. KOOLA: Okay. Now, if you look at the Exhibit
20 Number 2, the building certification, they ask this question
21 about the condo conversion and certification. And this
22 question is applicable to only condo conversion. The reason
23 is in condominium under the Household Property Act
24 everything the condominium owner occupy owns a portion of
25 the common elements.

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1 THE COURT: Correct.

2 MR. KOOLA: And because of that an individual
3 homeowner cannot inspect any of those common elements. That
4 is the reason that the legislature has mandated under the
5 Household Property Act the developer has to give the
6 disclosure report. He did not do that. And he falsified
7 it.

8 Now, the question is why the Bank of America or the
9 builder put that pursuing that in the builder certification
10 That is because of a federal statute. There is a financial
11 institutions reform enforcement act of 1989, which that
12 comes from the public law 107-73, which requires the bank to
13 keep a written loan policy and to conduct the operation
14 according to specific programs

15 And this appraisal should be in conformity with the
16 type of the real estate. In my case my real estate was the
17 converted condominiums. And therefore, the appraisal has to
18 be done as if it is converted according to the law or
19 converted not according to the law. That is the mistake
20 they made. And if this mistake I discovered --

21 THE COURT: How does that become the bank's
22 problem if it's converted not in conformity with the law?

23 MR. KOOLA: Because the bank has a duty to keep a
24 written loan policy about appraisal. I asked the bank where
25 is your written loan policy. There are to give me a copy of

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1 the written loan policy about the appraising condominiums,
2 converted condominiums. They fail to do that. At the same
3 time already put in my document. At the same time they
4 admitted in the discovery that they have a duty to appraise
5 according to the financial institutions reform recovery
6 enforcement act of 1989.

7 What they should have asked this question. They should
8 have asked the developer, did you provide a disclosure of
9 the physical condition of the building for the buyer. And
10 they have double checked it with the defendants, or they
11 could have asked the appraiser to ensure that the condos had
12 been converted to, converted under the Household Property
13 Act properly. That is the mistake they made. And this I
14 discovered only in September, 2010 or therefore.

15 THE COURT: September when?

16 MR. KOOLA: 2010.

17 THE COURT: Why did it take you until then to
18 discover it?

19 MR. KOOLA: Because before that there was no
20 information. Okay. The reason is the homeowner's
21 association filed the lawsuit only 2008. So before that
22 date I cannot get it. In '08 they did not allege the
23 violation of the Household Property Act. They alleged only
24 construction defects and the unfair trade practices

25 In 2010 I -- 2011 I file for bankruptcy. I try to sell

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1 the condominium. I could have sold it, but I could not do
2 that. And I was walking around with this builder
3 certification. What does it mean? And I consulted an
4 attorney. I talk to many attorneys. Nobody knows about
5 this certification. One attorney told me your, that the
6 discussions with -- in my document that's number six. He
7 advised me that the developer/seller has the duty to provide
8 a disclosure report under the Household Property Act. And
9 he also informed me that he violated or he falsified the
10 builder certification.

11 So I knew about this violations by developer/seller and
12 then subsequently by the bank only in September, 2010. That
13 is why I amended the counter claim in March, 2011 and the
14 bankruptcy case to be opened in May, 2012. And therefore,
15 Your Honor, my case is what is called under the statute of
16 limitation starting from 2010. I have also the relevant
17 federal statutes about the appraisal program. And I cited
18 what is called a standard of review for statute of
19 limitation. And one particular case --

20 MR. HAYES: Your Honor, I apologize, but may I
21 interrupt?

22 THE COURT: Yeah. Go ahead.

23 MR. HAYES: I'm looking for something that states,
24 citing statutes regarding something's good, but we need,
25 there has to be something that shows a duty, you know.

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1 There are regulations where a bank has to comply with HAMP,
2 but there's cases that says even if they do the borrower
3 doesn't have standing. So even if the bank has to comply
4 with certain regulations that doesn't mean there's a duty to
5 the borrower, your Honor. And in this case he can show no
6 duty. Mr. Koola can show no duty to him by the bank,
7 therefore, there's no negligence, Your Honor.

8 THE COURT: I think that's correct, Mr. Koola.

9 MR. KOOLA: Okay. But --

10 THE COURT: I'm going to stop you right there

11 MR. KOOLA: Okay. Thank you.

12 THE COURT: I'm looking at the builder
13 certification. The only thing of substance that's in here
14 is how many units there are, how many units were sold under
15 contract. That was ordered to get probably financing for
16 the whole project put together. That certification was made
17 by the builder/developer to the bank. That is not a
18 document that is intended for your use. You're not the
19 intended beneficiary of that. And even if you were if it
20 existed in 2004 then it's got to be discoverable within a
21 certain period of time. You either knew or should have
22 known. Well, clearly in 2008 when the homeowner's
23 association filed suit that's when you knew, in other words
24 was when you're a recipient of that. And you've got an
25 ownership interest in a condo, the homeowner's association

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1 is it entity entitled to enforce those rules as it relates
2 to those common elements that you were referring to under
3 the condominium regime statute that we have in this state.

4 Going at it, going back in time from where we are as
5 indicated in your own documents that you've got here, you've
6 got representation from your attorney saying that in 2012
7 you knew prior to the filing of your bankruptcy petition in
8 2009 about this claim, this potential for this claim. So
9 right then and there you're already three years out

10 And then now you have filed in action in 2011. What
11 happened in the bankruptcy court was this would have been an
12 attempt for you to have filed your action within the
13 bankruptcy court proceedings, what they call a court
14 proceeding over there. Your action should have been filed
15 with the bankruptcy court not in state court, because this
16 claim unfortunately does not belong to you individually. It
17 would belong to your trustee. By filing bankruptcy you turn
18 over your assets to a trustee. That's why I asked the
19 questions about the trust, about the filing of the
20 bankruptcy.

21 MR. KOOLA: Yes, I understand.

22 THE COURT: Your assets belong to a third party, a
23 trustee who's empowered to bring those assets together in
24 order to satisfy your creditors under bankruptcy. So what
25 we discovered today is that you had previously filed the

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1 counter claim. You clearly didn't have permission to do
2 that, so you did go to the proper step of getting permission
3 to do that. But that claim should have been brought in the
4 bankruptcy court not outside the bankruptcy court And so
5 when the bankruptcy court issued it's final order in 2013
6 discharging you from bankruptcy it foreclosed your ability
7 to collect on this

8 So what I'm going to find is that your bankruptcy
9 filing and discharge forecloses your ability to bring this
10 action individually That's finding number one. Finding
11 number two, I find that the timing of the claim is too late,
12 and therefore, the statute of limitations has run.
13 You either knew or should have known prior to the filing of
14 this claim. And therefore, the statute of limitation has
15 run.

16 And then finally, three, and this gets to the substance
17 of the matter as Mr. Hayes has repeatedly said today,
18 nothing in these documents brings to the lender a duty which
19 flows to you arising out of this builder's certification.
20 There's no duty of care arising from that. And I'm going to
21 cite you directly to the Round Tree Villas Association
22 versus 4701 Kings Corporation case, which is cited in 282
23 South Carolina 415, opinion of Chief Justice Littlejohn in
24 April of 1984. So this case is now right at 30 years old.

25 At that time the Court states, on previous occasions in

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1 recent years imposed new duties and responsibilities upon
2 the sellers of real estate They cite Lane versus Trena
3 (ph) Building Company. We have not heretofore been
4 confronted with a case wherein the purchaser has attempted
5 to impose liability upon a lending institution because of
6 faulty construction. We refuse to extend such liability
7 now. That is the status of the law in this state since 1984
8 and has not appeared to have changed.

9 The basis for your petition to the bankruptcy court was
10 for just that claim that you were seeking to assert claims
11 against the lender for faulty construction.

12 MR. KOOLA: No, sir. I did not ask for faulty
13 construction. I asked for what is called a -- it's a
14 fault -- building certification, Your Honor.

15 THE COURT: Failure to inspect is what you claim.
16 I don't see a distinction. And I think that's what those
17 other cases are that have been cited by Mr. Hayes. So
18 Mr. Koola, I don't believe that we're going to get where you
19 want to get to today.

20 MR. KOOLA: May I ask you one question please?

21 THE COURT: You may.

22 MR. KOOLA: That other part of the memorandum, the
23 motion to sanction, will you please look at that?

24 THE COURT: Motion for sanctions?

25 MR. KOOLA: Yes, for the loan modification.

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1 THE COURT. All right. Tell me why I should grant
2 that motion. Why should I grant that motion?

3 MR. KOOLA: The Hope for Homeowners program
4 demands that the mortgages give a loan modification to
5 homeowners either by reducing the principal and then what is
6 called reducing the interest rate and re-appraising the
7 property at the time of application.

8 THE COURT: I'm not aware of any law that requires
9 any lender to reduce principal. You point me to some
10 language in some --

11 MR. KOOLA: I have cited all the laws in my
12 memorandum, Your Honor.

13 THE COURT: Take me directly to it.

14 MR. KOOLA: That's on page ten, Title 12.

15 MR. HAYES: Your Honor, may I interrupt?

16 THE COURT: Okay.

17 MR. HAYES: There has been, as a matter of fact I
18 think I touched on this previously, the courts have held
19 there's no, the borrowers have no standing to, they don't
20 have standing to assert the bank failed to give me a loan
21 modification. I know there's the Weber case. That's
22 W-E-B-E-R, a case from the South Carolina District Court
23 that's fairly recent that addressed that issue. I think the
24 last time I was in court here I had a copy of that opinion.
25 And I can send it to the Court if you'd like, but it's

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1 almost universal. Especially in South Carolina it's clear
2 there is no duty, or you have no standing, a borrower has no
3 standing to sue a lender for failure to give them a loan
4 modification.

5 THE COURT: All right I'm with you Motions
6 under Hope for Homeowners program, 12 US Code. And then you
7 cite --

8 MR. KOOLA: Yes, and also supreme order. And
9 there is also a settlement between the mortgage banks and
10 the federal authorities and the state authorities for the
11 building that was specifically meant for a
12 modification either by reducing the interest rate as well as
13 by reducing the principal amount. And our state order
14 clearly states that if the plaintiff or the mortgage bank
15 fails to do, negotiate the loan modification in good faith
16 then I can what is called petition the Court to sanction the
17 plaintiff

18 THE COURT: I'm with you on that. I think that
19 authority is provided under the Chief Justice's 2011 Order.
20 Tell me what's happened. In reading your memoranda looks
21 like in 2009 you were provided with a special forbearance
22 agreement. That must have fallen through.

23 MR. KOOLA: That is the first time. And then I
24 apply several times later.

25 THE COURT: How many times?

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1 MR. KOOLA. Three, four times later.

2 THE COURT: So in February of 2010 they offered a
3 loan modification which reduced it, looks like \$40.

4 MR. KOOLA: See, that is actually not right, Your
5 Honor. I can explain to you why that application looks
6 like.

7 THE COURT: Hold on a second. So according to
8 this there was a 2009 modification and again an offer in
9 2010 for modification.

10 MR. KOOLA: I applied in 2010, 2011, and 2012.
11 Even 2013 I applied for the loan modification. They still
12 say I'm not qualified. They did not tell how much they will
13 reduce the amount by reducing the principal, reducing the
14 interest rate. I believe that is still the Hope for
15 Homeowners program, the administrative order, and the
16 settlement between the federal and the state authorities.

17 THE COURT: Mr. Hayes, tell me what the
18 modifications were, what was offered.

19 MR. HAYES: Your Honor, I'm not sure what the
20 modifications were or what was offered. I mean, Mr. Koola
21 himself admits that he's been given modifications, defaulted
22 on them, then been provided another modification. I think
23 his statement is they should, they had a duty to reduce the
24 principal and interest to lower it to a payment that he
25 could afford. And there is, again there's no duty on the

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1 bank to do that, Your Honor. And there's no, I'm aware of
2 no case that requires a lender to reduce the principal and
3 interest on a loan modification to suit the borrower

4 THE COURT: Mr. Koola, have you been employed
5 throughout this whole process?

6 MR. KOOLA: No, no, Your Honor.

7 THE COURT Are you currently employed today?

8 MR. KOOLA No, I am not -- I am 70 years old.

9 THE COURT How would you propose to pay the
10 mortgage?

11 MR KOOLA: No. I get only Social Security
12 benefit, a part of it I would pay for the mortgage. And if
13 they offer a reasonable thing, and if there's a small amount
14 of difference I can ask for the other help with South
15 Carolina HELP. They will offer some help. But you know,
16 that is all possible only for the reasonably affordable
17 mortgage payment plan. And I believe I am ready for the
18 motion to sanction, Your Honor.

19 THE COURT What's your income?

20 MR. KOOLA: I receive \$1,200 a month.

21 THE COURT: And what's your mortgage payment
22 currently?

23 MR. KOOLA: If I were paying on it, close to \$800

24 THE COURT: Do you have any debt figures today,
25 Mr. Hayes?

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1 MR. HAYES Your Honor, I do not have the total
2 debt figures. I was looking at the principal and interest
3 payment.

4 THE COURT: Your motion today is just defensive as
5 to his counter claim, is that right?

6 MR. HAYES: That's correct, Your Honor. The
7 amount will come at a further hearing.

8 THE COURT: Here's what I'm going to do. Mr.
9 Koola, based on the circumstances I'm hearing I do not find
10 the basis upon which to grant sanctions under Rule 11. I
11 understand your frustration. Have you been in contact with
12 the SC HELP program?

13 MR. KOOLA: Yeah, but they don't let it -- this
14 case, as long as it is ongoing they will not do anything,
15 and that they are not offering affordable mortgage, and what
16 the difference is there which I cannot afford and between
17 the affordable mortgage they offer, they will pay the
18 difference. But before that the bank has to make a good
19 faith loan modification. That's a precondition for that.
20 And they're willing to do that.

21 THE COURT: I understand. And in fact, there's a
22 total amount of \$36,000 they can pay. They can pay it in
23 either a lump sum or they can pay it in monthly installments
24 to help you with your payment.

25 MR. KOOLA: So if that is compliment with some

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1 interest rate reduction and some principal reduction I
2 should be able to do that. And another thing, Your Honor, I
3 did not buy a sub prime mortgage.

4 THE COURT: Well, what's your interest rate? Do
5 you know?

6 MR. KOOLA: It is 5.75.

7 THE COURT: What I'm going to do for today is I'm
8 going to grant Mr. Hayes' motion. And that's going to
9 dismiss the counter claims. I'm going to deny your motion
10 for sanctions under Rule 11 and the Chief Justice's Order
11 But I will make that referral to you. Do you have a contact
12 person at SC HELP, or have you dealt with the Home Ownership
13 Resource Center? Have you dealt with those people?

14 MR. KOOLA: Yeah, but you know, all they say is
15 they did not make any offer. They cannot do anything.

16 THE COURT: I understand that. Do you have any
17 idea what his debt figures are?

18 MR. HAYES: I can probably ballpark it, Your
19 Honor.

20 THE COURT: I'm just trying to figure out how far
21 behind we are.

22 MR. HAYES: The last payment was May, 2009. So
23 we're four and a half years down the road. And at \$800
24 that's just the principal and interest basically, \$800 for,
25 what's that, 54 months.

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1 THE COURT: \$48,000?

2 MR. HAYES: Yeah.

3 THE COURT: Mr. Koola, I don't know if there's
4 anything they can do to help you or not. What's got you is
5 you're in arrears, substantially in arrears. According to
6 those figures it could be close to \$50,000. That doesn't
7 include escrows and anything else. So you might could get
8 some help on your payment, but you're not eligible to make a
9 payment until you get out of arrearage. So it may be that
10 they would be willing to put something on the back. They're
11 not obligated to do that. Evidently they tried to do that,
12 looked like in February, 2010

13 So I would suggest you go back to the drawing board
14 with SC HELP. I would suggest the Home Ownership Resource
15 Center and see if they have any wiggle room with the Bank of
16 America. They are not the easiest bank to deal with. I'm
17 well aware of that. But there's up to \$36,000 available. I
18 don't know if you've been squirrelling any money aside since
19 you've not been making the payment for the last five years
20 or not. But if you've got a source of some funds and you
21 can couple those funds with funds available from Home
22 Ownership Resource Center or the hardest hit fund then you
23 may be able to get yourself out of arrears and moving
24 forward with trying to save your home.

25 MR. KOOLA: Yeah. I do not know what other extra

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1 help, Your Honor So I depend upon the loan modification
2 first, SC HELP. That is all I can do.

3 THE COURT. I understand. I think that's going to
4 take us where we need to be today. I'm going to grant their
5 motion. And I will look to see you again. I suggest you
6 keep trying

7 (Hearing concluded at 3:30 o'clock p.m.)

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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,
5 certify that I did have The Honorable Judge Mikell
6 Scarborough to appear before me at 3:00 o'clock p.m. on
7 Thursday, March 20, 2014, at the Charleston County
8 Courthouse, 100 Broad Street, Charleston, South Carolina;
9 that the witness was sworn and cautioned to tell the truth,
10 the pages constitute a true and accurate transcript of the
11 testimony given at that time and place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 30th day of June, 2014.

17

18

19

20

Stacey L. Scoggan

21

Notary Public for South Carolina

22

My Commission Expires: February 23, 2021

23

24

25

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NOTE

FEBRUARY 20, 2004
[Date]MT PLEASANT
[City]SOUTH CAROLINA
[State]1587 CAMBRIDGE LAKES DRIVE, MOUNT PLEASANT, SC 29464
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 136,192.00 (this amount is called "Principal"), plus interest, to the order of the Lender The Lender is COUNTRYWIDE HOME LOANS, INC.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the FIRST day of each month beginning on

APRIL 01, 2004 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal If, on MARCH 01, 2034 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

P.O. Box 660694, Dallas, TX 75266-0694
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 794.78

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment .

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

VMP MORTGAGE FORMS - (800)521-7291

-5N (0207).01

CHL (03/03)(d)

Page 1 of 2

Initials 
Form 3200 1/01

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

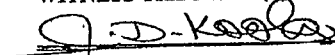
10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


JOHNSON D. KOOLA

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
PHYLLIS E. RAWLINS

Certified to be a true copy

[Space Above This Line For Recording Data]

0005253274002004
(Doc ID #)

MORTGAGE

MIN 1000157-0003245067-4

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated FEBRUARY 20, 2004, together with all Riders to this document.

(B) "Borrower" is
JOHNSON D KOOLA

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is
COUNTRYWIDE HOME LOANS, INC.

Lender is a CORPORATION
organized and existing under the laws of NEW YORK
Lender's address is

4500 Park Granada, Calabasas, CA 91302-1613

(E) "Note" means the promissory note signed by Borrower and dated FEBRUARY 20, 2004. The Note states that Borrower owes Lender
ONE HUNDRED THIRTY SIX THOUSAND ONE HUNDRED NINETY TWO and 00/100

Dollars (U.S. \$ 136,192.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MARCH 01, 2034.

SOUTH CAROLINA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

6A(SC) (0005).02 CHL (08/02)(d) VMP MORTGAGE FORMS - (800)521-7281
CONV/VA

Initials: *gok*
Form 3041 1/01



* 2 3 9 9 1 *



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(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☒ Other(s) [specify]

LEGAL DESCRIPTION

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

COUNTY of CHARLESTON
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number. 5591400157 which currently has the address of
1587 CAMBRIDGE LAKES DRIVE, MOUNT PLEASANT
[Street/City]
South Carolina 29464 ("Property Address"):
[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note, (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item.

Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender, (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all

sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the

notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

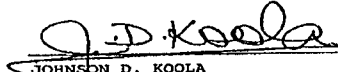
25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.** This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:


Eric J. Davidson


JOHNSON D. KOOLA (Seal)
-Borrower


Julie E. Thrush

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF SOUTH CAROLINA,
County of Charleston

Personally appeared before me Eric J. Davidson
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver
the within written Mortgage; and that he/she with Julie E. Thrush
, witnessed the execution thereof.

Eric J. Davidson

Sworn to before me this 20th day of
My Commission Expires 8/19/2007

February, 2004

Julie E. Thrush
Notary Public for South Carolina
Julie E. Thrush

JULIE E. THRUSH
Notary Public, State of South Carolina
Commission Expires August 19, 2007



BP0142770

[WHEN RECORDED RETURN TO:]
KORN LAW FIRM
1300 PICKENS STREET
P.O. BOX 11264
[COLUMBIA, SC 29211-1264]

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

ASSIGNMENT OF MORTGAGE
 BOOK B485 PAGE 011

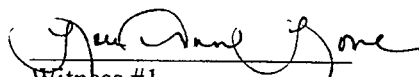
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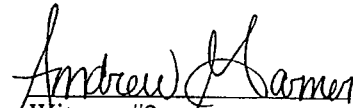
FOR VALUE RECEIVED, the undersigned, Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for Countrywide Home Loans, Inc., does hereby transfer, assign, set over and convey to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP 7105 Corporate Drive, PTX-C2-35, Plano, TX 75024, their successors and assigns, all beneficial interest under that certain mortgage executed by Johnson D. Koola, to Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for Countrywide Home Loans, Inc. which mortgage is recorded on February 24, 2004, in the Office of the RMC for Charleston County, South Carolina, in Mortgage Book B485 page 011, together with all the notes and indebtedness secured by said mortgage, the money due and to become due thereon with interest, and all rights accrued or to accrue, and the undersigned does hereby remise, release, quit claim and convey to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP its rights in and to the property described in and conveyed by said mortgage.

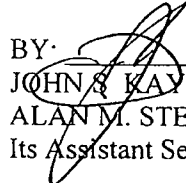
PROPERTY ADDRESS. 1587 Cambridge Lakes Drive, Mount Pleasant, SC 29464

IN WITNESS WHEREOF, the undersigned, Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for Countrywide Home Loans, Inc., on August 17, 2010 has hereunto set its hand and seal.

Mortgage Electronic Registration Systems, Inc., acting
 solely as a nominee for Countrywide Home Loans, Inc.


 Witness #1


 Witness #2

BY: 
 JOHN B. KELCHNER,
 ALAN M. STEWART
 Its Assistant Secretary

Fair Debt Collections Practices Act and State Law Notice

The servicing of your home loan was transferred to Bank of America, N.A., effective July 1, 2011. Bank of America, N.A. is required by law to advise you of the following:

(1.) Under the federal Fair Debt Collections Practices Act and certain state laws, Bank of America, N.A. is considered a debt collector. Bank of America, N.A. must provide certain information to you in order to make sure you are informed when a communication is related to a debt. The purpose of this letter is therefore to provide you with information required by law, including the amount of the debt.

(2) Debt Validation Notice:

- a) The amount of the debt As of June 29, 2011, you owe \$126,210.64. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Therefore, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you or your agent before accepting the payment for collection. For further information, write to the address provided below or call 1 877 488 7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.
- b) The name of the creditor to whom the debt is owed: FNMA ACT/ACT
Please note that unless Bank of America, N.A. is listed in 2(b) as the creditor of your loan, Bank of America, N.A. does not own your loan and only services your loan on behalf of your creditor, subject to the requirements and guidelines of your creditor.
- c) Unless you, within thirty (30) days after receipt of this letter, dispute the validity of the debt or any portion of the debt, Bank of America, N.A. will assume the debt to be valid.
- d) If you notify Bank of America, N.A. in writing, at the address provided below within the thirty (30) day period, that the debt, or any portion thereof, is disputed, Bank of America, N.A. will obtain verification of the debt and mail it to you.
- e) Upon your written request within the thirty (30) day period, Bank of America, N.A. will provide you with the name and address of the original creditor if it is different from the current creditor.

Bank of America, N.A.
Customer Service, CA6-919-01-41
Attention: DVN
P.O. Box 1140
Simi Valley, CA 93062-1140

If you have any questions regarding this notification, please call Bank of America, N.A. Customer Service at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector attempting to collect a debt, and any information obtained will be used for that purpose. Notwithstanding the foregoing, if you are currently in a bankruptcy proceeding or have received a discharge of the home loan debt referenced above, this statement is being furnished for informational purposes only. It should not be construed as an attempt to collect against you personally, Bank of America, N.A. will take no steps to collect from you personally or against the property securing this loan while the bankruptcy's automatic stay remains in effect. In the future, you may receive a discharge in bankruptcy. Under those circumstances, by operation of law, Bank of America, N.A. will retain the ability to enforce its rights against the property securing this loan should there be a default under the terms of your loan documents. If you are represented by an attorney, please provide this notice to your attorney.

SEE REVERSE SIDE

1-800-669-6607
cust service 1-800-669-6607?
cust service 1-866-767-4104
Freddie 1-800-669-6650

PO Box 6172
Rapid City, SD 57709-6172

Tel 1-855-675-1030
GTServicing.com

+ 0425906 000075590 096TR9 0056673 X

JOHNSON D KOOLA
1587 CAMBRIDGE LAKES DR
MOUNT PLEASANT SC 29464-7300

April 23, 2013



Bank of America N.A. ("Bank of America") Account Number: 52532740
New Green Tree Account Number: 687346403

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Dear Valued Customer

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from Bank of America N A ("Bank of America") to Green Tree Servicing LLC ("Green Tree") effective May 1, 2013

The assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present servicer is Bank of America. If you have any questions relating to the transfer of servicing from your present servicer, call Customer Service toll-free at 1-800-669-6607 between 7 00 a.m. and 7 00 p.m., Monday through Friday, all US time zones.

Your new servicer will be Green Tree. The business address for your new servicer is PO Box 6172, Rapid City, SD 57709-6172. To ensure timely posting of your payments, please send payments to the address indicated below.

If you have any questions relating to the transfer of servicing to your new servicer, call Customer Service toll free at 1-855-675-1030 between 7 00 a.m. and 8 00 p.m. CST, Monday through Friday or between 7 00 a.m. and 1 00 p.m. CST, on Saturday.

The date that your present servicer will stop accepting payments from you is April 30, 2013. The date that your new servicer will start accepting payments from you is May 1, 2013. **SEND ALL PAYMENTS DUE ON OR AFTER MAY 1, 2013 TO YOUR NEW SERVICER:**

**Green Tree Servicing LLC
PO Box 7169
Pasadena, CA 91109 - 7169**

The transfer of servicing will affect the terms of or the continued availability of any optional insurance (i.e., mortgage life, disability insurance, etc.) or optional products that you may have on the loan. You will need to contact the company providing the insurance or other product directly for continued coverage or enrollment.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing LP,

PLAINTIFF,

vs

Johnson D Koola,

DEFENDANT(S)

F10-04188

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO 2010-CP 10-6060

DEFICIENCY WAIVED

FILED
2010 JUL 27 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P O Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY.

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to

enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999

KORN LAW FIRM, P A
1300 Pickens Street
P O Box 11264
Columbia, S C 29211-1264
(803) 252-5817

PETER D KORN / JOHN S KAY
ALAN M STEWART / JOHN B KELCHNER
H GUYTON MURRELL / MEREDITH S LEE
Attorneys for Plaintiff

Columbia, South Carolina
July 26, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing LP,

PLAINTIFF,

vs

Johnson D Koola,

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO 2010-CP-10-6060

DEFICIENCY WAIVED

BY JULIE J. ARISTON
CLERK OF COURT

2010 JUL 27 PM 4:48

FILED

GA

F10-04188

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New York, and that the Defendant(s) Johnson D Koola, is/are upon information and belief, is/are citizen(s) and resident(s) of the County of Charleston, State of South Carolina

2 Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S C Code of Laws (1976) as amended

3 That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Charleston, State of South Carolina

4 That on or about February 20, 2004, for value received, Johnson D Koola, did execute and deliver to , a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Johnson D Koola promised to pay to the sum of One Hundred Thirty-Six Thousand One Hundred Ninety-Two And 00/100 Dollars (\$136,192 00), together with interest thereon at the rate of Five And 75/100 per cent (5 75%) per annum

5 That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Johnson D Koola, did execute and deliver on February 20, 2004 unto , its successors and assigns, a mortgage covering the following described property

Legal description and property address:

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 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 owners 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

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

THIS being the same property as conveyed to Johnson D Koola by Deed of Cambridge Two, LLC A SC Limited Liability Company, dated February 20, 2004 and duly recorded in the Office of the RMC for Charleston County, South Carolina, simultaneously herewith
1587 Cambridge Lakes Drive, Mount Pleasant, SC 29464
TMS # 559-14-00-157

6 Thereafter said mortgage was recorded in the office of the Register of Deeds of Charleston County

7 The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described

8 According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby

9 That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

10 Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

11 According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage

12 The monthly payments due on said note and mortgage are in default since November 1, 2009, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of November 1, 2009 the sum of One Hundred Twelve Thousand Three Hundred Ninety And 48/100 Dollars (\$112,390.48), together with interest at the rate of five and 75/100 per cent (5 75 %) per annum from October 1, 2009 and also for the costs and disbursements of this action, including attorney's fees

13 That the Plaintiff waives its rights to a deficiency judgment on the event that sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including the costs and attorney fees

14 That the servicer is participating in the Home Affordable Modification Program (HMP) The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower failed to respond to the HMP solicitation

15 That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any

16 The notice of consumer's right to cure, as contemplated under S C Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action

(2) That the said Plaintiff's mortgage be declared a purchase money mortgage and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows

First, to the costs and expenses of the within action and sale

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law, and

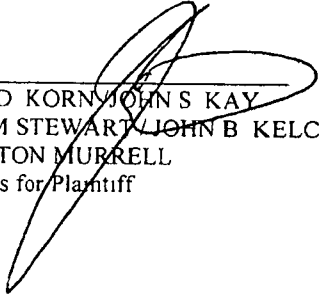
(4) For an Order directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency

- (7) For such other and further relief as may be just and proper
- (8) For an order satisfying any prior liens that may be of record, but have been paid in full

KORN LAW FIRM, P A
1300 Pickens Street
P O Box 11264
Columbia, S C 29211-1264
(803) 252-5817



PETER D KORN JOHN S KAY
ALAN M STEWART JOHN B KELCHNER
H GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
July 26, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing LP,

PLAINTIFF,

vs

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

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS

AMENDED SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO 2010-CP-10-6060

DEFICIENCY WAIVED

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 SEP -1 PM 4:47

FILED

F10-04188

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P O Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint

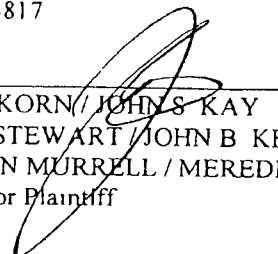
TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to

enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999

KORN LAW FIRM, P A
1300 Pickens Street
P O Box 11264
Columbia, S C 29211-1264
(803) 252-5817



PETER D KORN / JOHN S KAY
ALAN M STEWART / JOHN B KELCHNER
H GUYTON MURRELL / MEREDITH S LEE
Attorneys for Plaintiff

Columbia, South Carolina
August 17, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing LP,

PLAINTIFF,

vs

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

DEFENDANT(S)

F10-04188

IN THE COURT OF COMMON PLEAS

AMENDED COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO 2010-CP-10-6060

DEFICIENCY WAIVED

P.V.

JULIE J. ARMSTRONG
CLERK OF COURT

2010 SEP -1 PM 1:48

FILED

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court

1 That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New York, and that the Defendant, Johnson D Koola, is upon information and belief, a citizen and resident of the County of Charleston, State of South Carolina That the Defendant, First Citizens Bank and Trust Company, Inc , f/k/a First-Citizens Bank and Trust Company of South Carolina, is upon information and belief a business organized and existing under the laws of South Carolina That the Defendant, Cambridge Lakes Condominium Homeowners Association, Inc , f/k/a Cambridge Lakes Horizontal Property Regime, is upon information and belief a business organized and existing under the laws of South Carolina

2 Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S C Code of Laws (1976) as amended

3 That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Charleston, State of South Carolina

4 That on or about February 20, 2004, for value received, Johnson D Koola, did execute and deliver to Countrywide Home Loans, Inc , a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Johnson D Koola promised to pay to Countrywide Home Loans, Inc the sum of One Hundred Thirty-Six Thousand One Hundred Ninety-Two And 00/100

Dollars (\$136,192 00), together with interest thereon at the rate of Five And 75/100 per cent (5 75%) per annum

5 That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Johnson D Koola, did execute and deliver on February 20, 2004 unto Mortgage Electronic Registration Systems, Inc , acting solely as a nominee for Countrywide Home Loans, Inc , its successors and assigns, a mortgage covering the following described property

Legal description and property address.

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 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 owners 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

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

THIS BEING the same property conveyed to Johnson D Koola by virtue of a Deed from Cambridge Two, LLC, a SC Limited Liability Company, dated February 20, 2004 and recorded February 24, 2004, in Book 484 at Page 818, in the ROD office for Charleston County, South Carolina

1587 Cambridge Lakes Drive, Mount Pleasant, SC 29464

TMS# 559-14-00-159

6 Thereafter said mortgage was recorded in Book B485 at page 011 on February 24, 2004 in the office of the Register of Deeds of Charleston County

7 The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described

8 Thereafter, by virtue of an assignment to be recorded, Mortgage Electronic Registration Systems, Inc , acting solely as a nominee for Countrywide Home Loans, Inc assigned said mortgage unto BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP making BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP the present lien holder and Plaintiff herein

9 That the Defendant, First Citizens Bank and Trust Company, Inc , f/k/a First-Citizens Bank and Trust Company of South Carolina, is made a party by virtue of a Mortgage, dated February 23, 2005, and recorded March 17, 2005, in Book J529 at Page 512 in the amount of Forty-Two Thousand And 00/100 (\$42,000 00)

10 That Cambridge Lakes Condominium Homeowners Association Inc , f/k/a Cambridge Lakes Horizontal Property Regime, is made a party by virtue of

(a) a Notice of Lien, dated May 24, 2010 and recorded May 25, 2010, in Book 0124 at Page 400 in the RMC Office for Charleston County, South Carolina in the amount of One Thousand Nine Hundred Sixty-Three And 52/100 (\$1,963 52), and

(b) any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future

11 According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands

of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby

12 That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises

13 Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage

14 According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage

15 The monthly payments due on said note and mortgage are in default since November 1, 2009, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of November 1, 2009 the sum of One Hundred Twelve Thousand Three Hundred Ninety And 48/100 Dollars (\$112,390 48), together with interest at the rate of five and 75/100 per cent (5 75 %) per annum from October 1, 2009 and also for the costs and disbursements of this action, including attorney's fees

16 That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees

17 That the servicer is participating in the Home Affordable Modification Program (HMP) The HMP modification process as specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower failed to respond to the HMP solicitation

18 That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any

19 The notice of consumer's right to cure, as contemplated under S C Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action

(2) That the said Plaintiff's mortgage be declared a purchase money mortgage and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows

First, to the costs and expenses of the within action and sale

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law

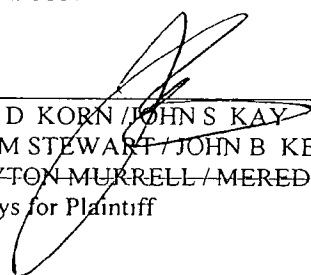
(4) For an Order directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency

- (7) For such other and further relief as may be just and proper
- (8) For an order satisfying any prior liens that may be of record, but have been paid in full

KORN LAW FIRM, P A
1300 Pickens Street
P O Box 11264
Columbia, S C 29211-1264
(803) 252-5817



PETER D KORN / JOHN S KAY
ALAN M STEWART / JOHN B KELCHNER
H GUYTON MURRELL / MEREDITH S LEE
Attorneys for Plaintiff

Columbia, South Carolina
August 17, 2010

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE # 2010-CP-10-6060

BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loans Servicing LP

Plaintiff

ANSWER AND CROSSCLAIM OF
DEFENDANT JOHNSON D KOOLA
AGAINST PLAINTIFF BAC HOME
LOANS SERVICING LP f/k/a
COUNTRYWIDE HOME LOANS
SERVICING LP

v

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

Defendant

FILED
2010 NOV 29 PM 3:02
JULIE J. ARMSTRONG
CLERK OF COURT

1 On November 1, 2010, defendant Johnson D. Koola received a copy of the amended summons related to foreclosure filed by BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP

2 Defendant Johnson D. Koola wishes to inform the Honorable Court that he will represent himself before the court as legal assistance is unaffordable

3 Defendant Johnson D Koola acknowledges that the case is related to foreclosure Defendant Johnson D Koola, however, wishes to bring to the kind attention of the Honorable Court that the defendant Johnson D Koola is forced to foreclosure of his home because of certain practices, which are described in paragraphs below, committed by.

- a BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP,
- b The developer/seller who sold the condominiums to me as a buyer and,
- c Cambridge Lakes HOA, which manages the condominiums.

4 In February 2004 defendant Johnson D. Koola purchased a condominium in Cambridge Lakes Subdivision in Mt Pleasant, SC The condominiums under reference were previously an apartment complex The apartments were converted into condominiums by the developer/seller as condo conversion and then sold to the public. **The developer/seller blatantly violated various provisions of The Horizontal Property Act, South Carolina Code 27-31-10 et seq., specifically Para 27-31-430, related to "Disclosure of Physical Condition of Building".**

5. Further, the developer/seller certified in writing that he has followed the directives of SC Horizontal Property Act in what is known as Builders' Certification and submitted to mortgage lender, BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP for the purpose of mortgage loan approval **The developer/seller falsified the Builders' Certification, and this is an act of fraud committed by the developer/seller**

6. **BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP did not independently verify the accuracy/truthfulness of the statements in the Builders' Certification with special reference to the directives of SC Horizontal Property Act under reference** It was later discovered that the condominiums have several construction defects This caused severe financial loss to the defendant

4 **Plaintiff BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP agreed, through a contract signed with the defendant Johnson D. Koola, to undertake an appraisal of the condominium before approval of the mortgage loan** Defendant Johnson D Koola was required to pay for this service to the plaintiff BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP The appraisal was meant to identify any construction defects and to determine whether the developer/seller had followed though the provisions of the SC Horizontal Property Act under reference **The appraisal did not expose various construction defects. The appraisal did not find out whether the developer/seller had followed through the directives of SC Horizontal Property Act 27-31-10, specifically Para 27-31-430.** It was later discovered that the condominiums have several construction defects This caused severe financial loss to the defendant

5 In June 2008, Cambridge Lakes HOA filed a lawsuit against the developer/seller and related parties alleging massive construction defects The lawsuit is still active (2008-CP-10-3506) **Cambridge Lakes HOA filed the lawsuit under reference without authorization from homeowners and without informing the homeowners about the lawsuit, thus violating the fiduciary responsibilities of the HOA**

6 Because of the construction defects and an active lawsuit filed by the HOA against the developer/seller, the real estate activity in the subdivision is practically frozen The only sales taking place during the last two years are short sales and foreclosure sales The defendant Johnson D Koola is now unable to sell his condominium for these reasons Unless the condominium is sold, the defendant is unable to pay off the mortgage loans

7 **The defendant Johnson D. Koola wishes to request the Honorable Court to determine whether the failures of the BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP:**

- a. To independently verify the statements in the Builders' Certification,
- b. To determine whether the Developer/seller has followed through the provisions of SC Horizontal Property Act 27-31-10, specifically Para 27-31-430 and,
- c. The failure of the BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP to unearth the construction defects in the condominium buildings

were violations of FHA laws related to mortgage loan approval.

8 The defendant Johnson D Koola requests the Honorable to Court to direct BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP to compensate the defendant Johnson D Koola for his losses in buying the condominium, if it is determined by the Honorable Court that BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP has violated the directives of FHA in mortgage loan approval

9 The defendant Johnson D Koola wishes to inform the Honorable Court that

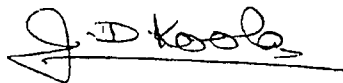
- a He was a genuine, honest homebuyer,
- b That he made 10% down payment at the time of purchase of the condominium,
- c That he paid an additional \$5,000 toward the principal within 30 days of purchase of the condominium,
- d That he paid an additional \$2,030 toward the principal within two years of purchasing the condominium and
- e That he spent about \$7,000 to upgrade the condominium

10 The defendant Johnson D Koola wishes to inform the Honorable Court that he had submitted valid applications for mortgage loan modification to BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP three times, but did not receive any loan modification

11 The defendant Johnson D Koola wishes to bring to the attention of the Honorable Court that social security benefits are the only source of regular income for him

12 The defendant Johnson D Koola wishes to bring to the attention of the Honorable Court that he lost his primary job in late 2004, and that he is currently unemployed

13 The defendant Johnson D Koola wishes to bring to the attention of the Honorable Court that he had filed for Chapter 7 Bankruptcy, which was successfully discharged in July 2009



Nov. 29, 2010

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

v)

Johnson D. Koola, First Citizens Bank and)
Trust, Inc and Cambridge Lakes Homeowners)
Association, Inc)
)
Defendants)

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

AMENDED ANSWER AND COUNTERCLAIM
OF DEFENDANT JOHNSON D. KOOLA
Against BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loans Servicing, LP

FILED
2011 MAR 24 PM 1:57
JULIE J. ARMSTRONG
CLERK OF COURT

1 On November 1, 2010, defendant Johnson D Koola (hereinafter, defendant Koola) received a copy of the amended summons related to foreclosure filed by BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP (hereinafter, Plaintiff). On November 29, defendant Koola served the Plaintiff with his answer and counterclaim. The Plaintiff replied to defendant Koola with a **General Denial response incorporating several new defenses to the foreclosure case**. Consequently, defendant Koola is now serving the Plaintiff with an amended answer and counterclaims.

Defendant Koola made an error in paragraph 7 of his answer dated November 29, 2010 to the Plaintiff, which stated that certain failures of the Plaintiff at the time of mortgage loan approval "**were violations of FHA laws related to mortgage loan approval**". Defendant Koola apologizes to the Honorable Court for this error. The error now stands corrected as follows. The laws regarding appraisal and mortgage loan approval are derived not just from FHA, but a consortium of Federal Lending Agencies and the Office of the State Bank Commissioner and is known as **Interagency Real Estate Appraisal Regulations, final revisions (FIL-41-94) and Interagency Appraisal and Evaluation Guidelines dated October 27, 1994, adopted pursuant to Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.**

2 Defendant Koola denies each and every allegation of Plaintiff's amended complaint filed in the Court on Sep 1, 2010 and Plaintiff's reply dated December 27, 2010 to defendant Koola's answer and counterclaim, not hereinafter specifically admitted, modified or explained.

3 Defendant Koola admits that he purchased the real property at 1587 Cambridge Lakes Dr., Mt Pleasant, South Carolina, as stated in Plaintiff's amended complaint dated Sep 1, 2010.

4 The Plaintiff's amended complaint dated Sep 1, 2010 does not refer to various actions of the Plaintiff, which took place before sale of the property was closed on February 20, 2004. Defendant Koola repeats his allegation that some of these actions (as explained in para 5, 6, 7, and 8 of this amended answer) on the part of the Plaintiff and other related parties as named below.

- a) Plaintiff (BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP),
- b) The developer/seller who sold the condominium to defendant Koola and,
- c) Cambridge Lakes Homeowners Association

were fraudulent and against the laws of South Carolina and various Federal Lending Agencies. These actions made defendant Koola financially insolvent and forced defendant Koola to bankruptcy in 2009 and to default on mortgage related payments and now to foreclosure of his home. Defendant Koola further states to the Honorable Court that he has never delayed nor defaulted on any mortgage related payments before the foreclosure related case.

5 The condominium, which defendant Koola purchased, was previously an apartment complex. The apartments were converted into condominiums by the developer/seller as condo conversion and then sold to the public. **The developer/seller blatantly violated various provisions of The Horizontal Property Act, South Carolina Code 27-31-10 *et seq.*, specifically section 27-31-430, related to "Disclosure of Physical Condition of Building".** Further, the developer/seller certified in writing to the Plaintiff in what is known as Builders' Certification that "the condominium being sold is a "condo conversion" and "the structural, health & safety repairs and remodeling have been completed". The developer did not do any of these repairs and remodeling and is in violation of SC Horizontal Property Act, 27-31-10 *et seq.*, specifically para 27-31-430 and **SC Unfair Trade Practices Act, Section 35-5-40 *et seq.*** **The developer/seller also falsified the Builders' Certification, which is an act of fraud.**

6 The Plaintiff was negligent and willful in its failure to verify the accuracy/truthfulness of the statements in the Builders' Certification (**Exhibit 2**). Defendant Koola alleges further that this willful negligence is an act of fraud. Defendant Koola lost all his investments in his only and primary residence. Mortgage loans are further sold as securities to investors and finally to Lending Agencies like Fannie Mae. All these and related actions caused the financial and mortgage crisis of the last three years. Defendant Koola alleges further that the Plaintiff defrauded me in particular and other individual homeowners and U S taxpayers in general.

7 Defendant Koola believes that he had signed a contract with the Plaintiff **to complete an appraisal of the condominium before approval of the mortgage loan.** Defendant Koola was required to pay for this service to the plaintiff. The guidelines for the real estate appraisal are derived from a consortium of Federal Lending Agencies and the Office of the State Bank Commissioner and is known as **Interagency Real Estate Appraisal Regulations, final revisions (FIL-41-94) and Interagency Appraisal and Evaluation Guidelines dated October 27, 1994, adopted pursuant to Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.** Among other things, these guidelines require the Plaintiff to have a written loan policy incorporating guidelines and procedures, which establish an effective real estate appraisal and evaluation program. The Plaintiff is also required to determine the appropriate type and content of appraisal for different lending transactions. In the present context, the appraisal should have taken into account that the property being appraised is a "condo conversion" and the appraiser should be alerted to developer/seller's certification that "the structural, health & safety repairs and remodeling have been completed". Had the Plaintiff followed through the guidelines for appraisal, then it would have discovered that the developer/seller is in violation of the SC Horizontal Property Act, specifically section 27-31-430, and that the developer/seller had falsified the "Builders Certification" provided to the Plaintiff, and it would have discovered the construction defects. Defendant Koola alleges that the Plaintiff violated the appraisal guidelines, which ultimately led defendant Koola to financial insolvency and forced defendant Koola to bankruptcy in 2009 and to default on the mortgage related payments and now to foreclosure of his home. Defendant Koola prays to the Honorable Court to hold the Plaintiff responsible for the defendant Koola's foreclosure.

8 In June 2008, Cambridge Lakes Homeowners Association (hereinafter, Association), which is also a party as a defendant to this foreclosure case (# 2010-CP-10-6060), filed a lawsuit against the developer/seller and related parties alleging massive construction defects. Association does not own anything in the Cambridge Lakes subdivision, and therefore, has no standing in the lawsuit. Association filed the lawsuit under reference without authorization from homeowners and without informing the homeowners about the lawsuit, these actions are violations of the provisions in the Master Deed and violations of the fiduciary responsibilities toward the homeowners. Association violated the rights of defendant Koola as a homeowner and the rights of the Plaintiff since the condominium is mortgaged to the Plaintiff. Because of the construction defects and an active lawsuit, the real estate activity in the subdivision is practically frozen. The only sales taking place during the last two years are short sales and foreclosure sales. Defendant Koola kept his condominium for sale three times since 2008, but could not sell it. Defendant Koola is now unable to sell his condominium. Unless the condominium is sold, the defendant Koola is unable to pay off the mortgage loans. Furthermore, the Association obstructed defendant Koola's efforts to a short sale of the property to avoid a foreclosure.

9 Defendant Koola states to the Honorable Court that these actions on the part of the developer/seller as explained in para 5, on the part of the Plaintiff as explained in para 6 and 7 and on the part of Cambridge Lakes Homeowners Association as explained in para 8, made defendant Koola financially insolvent which led defendant Koola to Bankruptcy in 2009 and caused him to default on mortgage related payments and now to foreclosure. Defendant Koola prays to the Honorable Court to hold these parties accountable for their violations of South Carolina Laws and regulations by various Federal Lending Agencies and offer relief to defendant Koola.

10. The developer/seller of the condominium submitted a falsified Builder's Certification to the Plaintiff. It is an action of fraud. The Plaintiff approved a mortgage loan based on a fraudulent certification, which caused financial losses to defendant Koola, to the Plaintiff itself as mortgage lender and ultimately to the US tax payers. Upon information and belief, the Plaintiff has not initiated any legal action against the developer/seller. Defendant Koola prays to the Honorable Court to direct the Plaintiff to initiate legal action against the developer/seller.

11 Cambridge Lakes Homeowners Association filed a lawsuit against the developer/seller, builder and a host of related parties alleging construction defects. Association has no standing in the lawsuit. Association filed the lawsuit without the approval of homeowners as required in Master Deed. The Association violated defendant Koola's right as a homeowner as well as that of the Plaintiff since the condominium is mortgaged to the Plaintiff. Defendant Koola prays to the Honorable Court to direct the Plaintiff to initiate legal action against the Association.

12 Defendant Koola lost his investments in his only and primary residence because of the negligent and fraudulent practices of the Plaintiff. Defendant Koola requests the Honorable Court to direct the Plaintiff to compensate defendant Koola for his losses, if it is determined by the Honorable Court that the Plaintiff is in violation of various rules as explained in para 6 and 7.

13. The defendant Koola wishes to inform the Honorable Court that.
- a He was a genuine, honest homebuyer,
 - b That he made 10% down payment at the time of purchase of the condominium,
 - c That he paid an additional \$5,000 toward the principal within 30 days of purchase of the condominium in March 2004 (**Exhibit A page 1**),
 - d. That he paid an additional \$2,030 toward the principal within two years of purchasing the condominium in December 2006 (**Exhibit A page 19**),
 - e That he spent about \$7,000 to upgrade the condominium and
 - f. That he did not commit any fraud to receive the mortgage loan.

The Plaintiff claims in paragraph 7 of its reply dated Dec. 27, 2010 that the Plaintiff is without knowledge or information sufficient to form a belief as to truth of advance payment to the Plaintiff toward principal balance. The Plaintiff has in its possession all the payment history Defendant Koola requests the Honorable court to rule that the denial of advance payment to the Plaintiff toward the principal balance is paramount to obstruction of justice

14 Defendant Koola wishes to inform the Honorable Court that he had submitted valid applications for mortgage loan modification to Plaintiff three times Defendant Koola also submitted a valid application for mortgage loan modification through Plaintiff's attorney, Korn Law firm, on July 15, 2010. Defendant Koola recognizes that he has no right to mortgage loan modification. Mortgage loan modification was recommended and/or mandated by Federal Government as a result of the financial and mortgage crisis during the last three years. Defendant Koola alleges that he did not receive any mortgage loan modification, which limits the mortgage related payments to 33% of his income The Plaintiff claims in paragraph 8 of its reply dated Dec. 27, 2010 that the Plaintiff is without knowledge or information about the mortgage loan modification applications by defendant Koola Defendant Koola requests the Honorable court to rule that the Plaintiff's denial of information about the mortgage loan modification applications submitted by defendant Koola is paramount to obstruction of justice

15 Defendant Koola wishes to bring to the attention of the Honorable Court that social security benefits are the only source of regular income for him This information has been conveyed to the Plaintiff in writing and over telephone several times The same information was also conveyed to the Plaintiff's attorney, Korn Law Firm, in writing on July 15, 2010. The Plaintiff claims in paragraph 9 of its reply dated Dec. 27, 2010 that the Plaintiff is without knowledge or information about the income resources of defendant Koola Defendant Koola requests the Honorable court to rule that the denial of information about the income resources of defendant Koola is paramount to obstruction of justice

16 Defendant Koola wishes to bring to the attention of the Honorable Court that he lost his primary job in late 2004, and that he is currently unemployed and/or retired This information has been conveyed to the Plaintiff in writing and over telephone several times The same information was also conveyed to the Plaintiff's attorney, Korn Law Firm, in writing on July 15, 2010 The Plaintiff claims in paragraph 9 of its reply dated Dec. 27, 2010 that the Plaintiff is without knowledge or information about the income resources of defendant Koola Defendant Koola requests the Honorable court to rule that the denial of information about the income resources of defendant Koola is paramount to obstruction of justice

17 The defendant Koola wishes to bring to the attention of the Honorable Court that he had filed for Chapter 7 Bankruptcy, which was successfully discharged in July 2009 (**Exhibit 4**) As soon as the bankruptcy application was filed, the Bankruptcy Court officially informed the Plaintiff about the defendant Koola's bankruptcy application Defendant Koola conveyed this information to the Plaintiff in writing and over telephone several times The same information was also conveyed to the Plaintiff's attorney, Korn Law Firm, in writing on July 15, 2010 The Plaintiff claims in paragraph 9 of its reply dated Dec. 27, 2010 that the Plaintiff is without knowledge or information about defendant Koola's bankruptcy. Defendant Koola requests the Honorable court to rule that the denial of information of defendant Koola's bankruptcy is paramount to obstruction of justice

18 Defendant Koola has clearly stated that the Plaintiff has received the Builder's Certification, that the Builder has falsified the Builder's Certification, that the Plaintiff did not make any effort to verify the accuracy and truthfulness of the statement in Builder's certification, that the Plaintiff did not follow through the established guidelines for the appraisal of real estate under reference as a condo conversion project. Defendant Koola alleges that the actions of the Plaintiff are clear violations of South Carolina Laws and Federal Appraisal and Lending guidelines In doing so, the Plaintiff defrauded not only defendant Koola, but also U S taxpayers.

19 Defendant Koola further requests the Honorable Court to dismiss Plaintiff's request as stated in para 10, 11 and 12 of the Plaintiff's reply dated December 27, 2010, to dismiss defendant Koola's counterclaims under Rule 12(b)(6), SCRCP. Defendant Koola alleges that his foreclosure was caused by the actions of the Plaintiff and related parties.

20 Defendant Koola states to the Honorable Court that he has done everything possible under his capability to mitigate the alleged damages and avoid foreclosure actions. This included several mortgage modification applications. Defendant Koola alleges further that the foreclosure action could have been eliminated if defendant Koola had been offered mortgage loan modification under Federal guidelines. Henceforth, defendant Koola requests the Honorable Court to dismiss Plaintiff's defense of Failure to Mitigate Damages by defendant Koola as stated in Para 13 of the Plaintiff's reply dated Dec 27, 2010 to defendant Koola.

21 Defendant Koola became aware of the falsification of Builder's Certification only in 2010 and of the violations of the Federal appraisal and lending guidelines by the Plaintiff during the second half of 2010 and 2011. Therefore, Defendant Koola denies the claim of Plaintiff that Defendant Koola's claims are barred by the statute of limitations as stated in para 16 of the Plaintiff's reply to the defendant. Furthermore, if the violations of Federal appraisal and lending guidelines are cases of fraud, then those charges are not subjected to statute of limitations.

22 Defendant Koola again presents before the Honorable Court that the foreclosure actions are forced on defendant Koola by the actions of Plaintiff and other parties as stated in para 5, 6, 7 and 8 of this amended answer. Henceforth, defendant Koola prays to the Honorable court to deny Plaintiff's defense that Defendant Koola's claims are barred in whole or part by the doctrine of estoppel based on his failure to comply with the agreement, including his failure to make timely mortgage payments as stated in para 18 of the Plaintiff's reply dated Dec 27, 2010 to defendant Koola.

23 Defendant Koola requests the Honorable Court to award damages to defendant Koola to the full extent as allowed by South Carolina Laws if the allegations against the Plaintiff are established in the Honorable Court. Defendant Koola states to the Honorable Court that Plaintiff's claim in para 20 of the Plaintiff's reply dated Dec 27, 2010 to defendant Koola is redundant.

24 Defendant Koola requests the Honorable Court to deny Plaintiff's claim in para 22 of the Plaintiff's reply to defendant Koola that defendant Koola's claims are barred in whole or part by the doctrine of laches. Defendant Koola again states to the Honorable Court that he has done every possible action to avoid foreclosure. The actions included mortgage loan modification applications, several written and telephone contacts with the Plaintiff to determine the status of loan modification applications, and an attempt to avoid foreclosure by a short sale of the property.

25 Defendant Koola prays to the Honorable Court to deny Plaintiff's claim in para 24 of the Plaintiff's reply to the defendant that Defendant's claims are barred in whole or part by the doctrine of unclean hands. Defendant Koola again states to the Honorable Court that he was a genuine and honest homebuyer and that he did not commit any fraud to receive mortgage loan. Defendant Koola again presents before the Honorable Court that the foreclosure action is forced on defendant Koola by the actions of Plaintiff and other parties as stated in para 5, 6, 7 and 8 of this amended answer.

26. The Plaintiff has stated several times that the Plaintiff is without knowledge or information sufficient to form a belief as to the truth of various allegations contained in para 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the defendant Koola's answer and crossclaim dated Nov. 29, 2010. Defendant Koola alleges that the foreclosure documents were signed off by "robo-signers" or "back-office employees" without adequately reviewing the documents and without supervision.

27 Under information and belief, **defendant Koola alleges that the Plaintiff has not yet stated that the Plaintiff currently owns the mortgage under foreclosure and hence may not have a standing in the foreclosure case.**

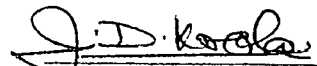
28 Defendant Koola presents to the Honorable Court that the Plaintiff has been and is part of various civil actions during the last two to three years. Specifically:

- a) During the period Nov. 2010 to March 2011, the Plaintiff paid almost \$3 billion to lending agencies, Fannie Mac and Freddie Mac, to compensate the lending agencies for their losses resulting from the purchase of mortgage loans from the Plaintiff.
- b) During the period Nov. 2010 to March 2011, certain executive officers, who were or are in the service of the Plaintiff, were ordered to pay a fine of about \$73 million to settle charges stemming from lending practices, the civil action was initiated by Securities and Exchange Commission in a Federal Court. The Plaintiff also agreed to an \$8.4 billion settlement with State regulators over Plaintiff's lending practices.
- c) In December 2010, Allstate Cp. filed a lawsuit against the Plaintiff in Manhattan Federal Court alleging lack of underwriting standards in mortgage loans, which were sold as mortgage backed securities to Allstate Cp. by the Plaintiff.
- d) In January 2011, a group of investors including TIAA-CREF Life Insurance Co. filed a lawsuit against the Plaintiff in New York State Supreme Court alleging "massive fraud" over its mortgage backed securities which the group of investors purchased from the Plaintiff.

Defendant Koola requests the Honorable Court to consider these issues while hearing the current foreclosure case.

29 Defendant Koola prays to the Honorable Court that:

- a) Judgment be entered in favor of defendant Koola on all his causes of action herein.
- b) Defendant Koola recovers actual damages, consequential damages, statutory damages, and punitive damages as determined by the Honorable Court and
- c) Defendant Koola receives all reasonable costs and expenses related to his foreclosure defense.


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

Date: March 23, 2010

Copy to:
Attorney Mr. John B. Kelchner
Korn Law Firm
1300 Pickens St
P O Box 12369
Columbia, SC 29211-2369

Encl. Exhibit A page 1 and page 19 (provided to defendant Koola by Plaintiff)
Exhibit 2 and Exhibit 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL
	)	CIRCUIT
BAC Home Loans Servicing, LP FKA	)	
Countrywide Home Loans Servicing, LP,	)	C/A NO 2010-CP-10-6060
	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S REPLY TO
vs	)	DEFENDANT'S AMENDED
	)	ANSWER AND COUNTERCLAIM
Johnson D. Koola,	)	
	)	
Defendant	)	
	)	

The plaintiff, BAC Home Loans Servicing, LP, replying to Amended Answer and Counterclaim of the defendant, Johnson D Koola ("defendant"), would show unto this honorable court

AS A FIRST DEFENSE TO DEFENDANT'S COUNTERCLAIM
(General Denial)

1 Each allegation of the defendant's answer and counterclaim not specifically admitted is denied

2 The allegations contained in paragraphs 1 through 3 of the amended answer and counterclaim require no response

3 Plaintiff denies the allegations set forth in paragraph 4 of the amended answer and counterclaim.

4 Plaintiff admits the allegation in paragraph 5 of the amended answer and counterclaim that alleges defendant purchased a condominium, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 5 of the amended answer and counterclaim

5 Plaintiff denies the allegations set forth in paragraph 6 of the amended answer and counterclaim

6 Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the amended answer and counterclaim with

regard to Defendant Koola's belief Plaintiff denies the remaining allegations set forth in paragraph 7 of the amended answer and counterclaim with regard to Defendant Koola's assertion that Plaintiff violated the appraisal guidelines and the allegation that the alleged violation caused Koola's financial insolvency, bankruptcy, and default on the mortgage.

7 Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 8 and 9 of the amended answer and counterclaim

8 Plaintiff denies the portions of the allegations set forth in paragraph 10 of the amended answer and counterclaim alleging that the Plaintiff approved a mortgage loan based on a fraudulent certification Plaintiff admits that it has not initiated any legal action against the developer/seller

9 As to the allegations set forth in paragraph 11 of the amended answer and counterclaim, Plaintiff admits the website for the Charleston County, South Carolina Clerk of Court shows an active case designated as civil action number 2008-CP-10-3506 Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 11 of the amended answer and counterclaim

10 Plaintiff denies the allegations set forth in paragraph 12 of the amended answer and counterclaim

11 As to the allegations set forth in paragraph 13 of the amended answer and counterclaim, Plaintiff admits the payment history reflects a miscellaneous posting of \$5,000 to the loan account Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 13 of the amended answer and counterclaim

12 Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 14, 15 and 16 of the amended answer and counterclaim

13 Plaintiff admits the Defendant Koola's filing of Chapter 7 Bankruptcy, bankruptcy petition number 2009-02104-dd. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 17 of the amended answer and counterclaim

14 Plaintiff denies the allegations set forth in paragraphs 18, 19, and 20 of the amended answer and counterclaim

15 Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the amended answer and counterclaim

16 Plaintiff denies the allegations set forth in paragraphs 22, 23, 24 and 25 of the amended answer and counterclaim

17 As to the allegations set forth in paragraph 26 of the amended answer and counterclaim, Plaintiff admits it alleged in its Reply to the Answer and Counterclaim of Defendant Koola that it is without information sufficient to form a belief as to the truth of various allegations asserted in Defendant Koola's Answer. Plaintiff denies the truth of the remaining allegations set forth in paragraph 26 of the amended answer and counterclaim

18 Plaintiff denies the allegations set forth in paragraphs 27 and 28 of the amended answer and counterclaim

AS A SECOND DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Dismissal pursuant to Rule 12(b)(6), SCRPC)

19 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

20. Defendant has failed to state facts sufficient to constitute a cause of action, therefore, any counterclaim asserted by defendant should be dismissed pursuant to Rule 12(b)(6), SCRPC

21 By pleading this 12(b)(6) dismissal defense in its reply, plaintiff does not intend to waive any right to have the court hear a motion for dismissal. This dismissal defense is included for notice purposes and to preserve plaintiff's right to move for a dismissal at any time before trial.

AS A THIRD DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Failure to Mitigate Damages)

22 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

23 Defendant has failed to mitigate his alleged damages, therefore, his claims against plaintiff should be reduced accordingly.

AS A FOURTH DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Statute of Limitations)

24 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

25 Defendant's claims are barred by the statute of limitations

AS A FIFTH DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Estoppel)

26 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

27 Defendant's claims are barred in whole or part by the doctrine of estoppel based on his failure to comply with the agreement, including his failure to make timely mortgage payments

AS A SIXTH DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Set-Off / Offset / Recoupment)

28 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

29 If Plaintiff is found liable to Defendant, then any damages should be reduced by the doctrines of set-off, offset, or recoupment

AS AN SEVENTH DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Laches)

30 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

31 Defendant's claims are barred in whole or part by the doctrine of laches.

AS A EIGHTH DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Unclean Hands)

32 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

33 Defendant's claims are barred in whole or part by the doctrine of unclean hands

AS A NINTH DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Lack of Standing)

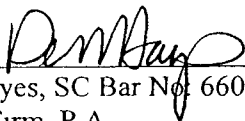
34 To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim

35 In Defendant's bankruptcy schedules, he failed to list any counterclaims against

Plaintiff as assets in Schedule B Therefore, he lacks standing to assert these counterclaims against Plaintiff at this time.

WHEREFORE, having fully responded to the allegations contained in the answer and cross-claim of the defendant, plaintiff prays for the following

- (a) That the defendant's counterclaim be dismissed with costs,
- (b) That plaintiff be granted the relief requested in the complaint, and
- (c) For such other and further relief as the court may determine to be just and proper.



Dean A Hayes, SC Bar No. 66066
Korn Law Firm, P A
Post Office Box 12369
Columbia, South Carolina 29211-2369
Telephone (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

April 21, 2011
Columbia, South Carolina
File # F10-04188

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BAC Home Loans Servicing, LP FKA Countrywide
Home Loans Servicing LP,

PLAINTIFF,

vs

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

DEFENDANTS

F10-04188

IN THE COURT OF COMMON PLEAS

MOTION AND MANDATORY
ORDER OF REFERENCE

(NON-JURY MORTGAGE
FORECLOSURE)

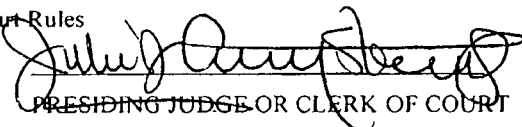
C/A NO 2010-CP-10-6060

DEFICIENCY WAIVED

FILED
2011 FEB - 1 AM 8:58
JULIE J. HIGHTSHAW
CLERK

2011-1439
It appearing pursuant to Rule 53, SCRPC that this action is one for the foreclosure of a mortgage and as such may be mandatorily referred to Mikell R Scarborough, as Master in Equity for the above-entitled county, and that the Master in Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff,

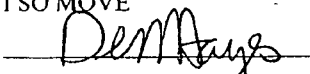
IT IS ORDERED that this case be referred to Mikell R Scarborough as Master in Equity to direct entry of final judgment in this action under Rule 53 (b), SCRPC Any appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules

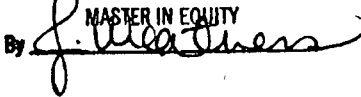

PRESIDING JUDGE OR CLERK OF COURT

Charleston, South Carolina

1/31, 2011

I SO MOVE


Dean A Hayes, SC Bar No 66066
Post Office Box 12369
Columbia, SC 29211-2369
Telephone (803) 231-2022
Facsimile (803) 231-2060
ATTORNEYS FOR PLAINTIFF

Date 1-24-2011
Amount \$125.00
PAID
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By 



Account Number: 52532740
 Statement Period: 02/2004 - 01/2011
 Date Prepared: 01/20/2011

Property Address:
 1587 CAMBRIDGE LAKES
 DRIVE

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				136,192.00		.00				.00
02/23/2004	MISC POSTING	214 50	03/2004	00	214 50	00	00	00	00	00
				136,192.00		.00			.00	.00
02/23/2004	FHA INS CREDIT	38 59	03/2004	00	00	38 59	00	00	00	00
				136,192.00		38.59			.00	.00
02/23/2004	INITIAL TAX DEP	295 60	03/2004	00	00	295 60	00	00	00	00
				136,192.00		334.19			.00	.00
03/29/2004	REGULAR PAYMENT	892 49	04/2004	142 19	652 59	97 71	00	00	00	00
				136,049.81		431.90			.00	.00
03/29/2004	MISC POSTING	5,000 00	04/2004	5,000 00	00	00	00	00	00	00
				131,049.81		431.90			.00	.00
04/20/2004	PMI PMT MONTHLY	-77 18	04/2004	00	00	-77 18	00	00	00	00
				131,049.81		354.72			.00	.00
04/26/2004	REGULAR PAYMENT	895 67	05/2004	166 83	627 95	100 89	00	00	00	00
				130,882.98		455.61			.00	.00
05/07/2004	MISC POSTING	224 00	05/2004	00	00	00	00	00	00	224 00
				130,882.98		455.61			.00	224.00
05/14/2004	MISC POSTING	224 00	05/2004	00	00	00	00	00	00	224 00
				130,882.98		455.61			.00	448.00
05/14/2004	PMI PMT MONTHLY	-38 59	05/2004	00	00	-38.59	00	00	00	00
				130,882.98		417.02			.00	448.00
05/21/2004	MISC POSTING	224 00	05/2004	00	00	00	00	00	00	224 00
				130,882.98		417.02			.00	672.00
05/28/2004	MISC POSTING	224 00	05/2004	00	00	00	00	00	00	224 00
				130,882.98		417.02			.00	896.00
06/01/2004	REGULAR PAYMENT	895 67	06/2004	167 63	627 15	100 89	00	00	00	00
				130,715.35		517.91			.00	.00
06/01/2004	MISC POSTING	-896 00	06/2004	00	00	00	00	00	00	896 00
				130,715.35		517.91			.00	-896 00
06/01/2004	MISC POSTING	33	06/2004	33	00	00	00	00	.00	.00
				130,715.02		517.91			.00	.00

EXHIBIT A PAGE 1 OF 29

Bank of America


Home Loans

Page 25

 Account Number 52532740
 Statement Period: 02/2004 - 01/2011
 Date Prepared: 01/20/2011

 Property Address
 1587 CAMBRIDGE LAKES
 DRIVE

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
04/27/2009	REGULAR PAYMENT	838 69	05/2009	247 77 113,910.51	547 01	43 91 253.11	00	00	00 .00	00 .00
05/28/2009	REGULAR PAYMENT	850 30	06/2009	248 96 113,881.55	545 82	55 52 308.83	00	00	.00 .00	00 .00
06/29/2009	REGULAR PAYMENT	850 30	07/2009	250.15 113,411.40	544 63	55 52 364.15	00	00	.00 .00	00 .00
07/29/2009	REGULAR PAYMENT	850 30	08/2009	251 35 113,160.05	543 43	55 52 419.67	00	00	00 00	00 00
08/31/2009	REGULAR PAYMENT	850 30	09/2009	252.55 112,907.50	542 23	55 52 475.19	00	00	00 .00	00 .00
09/15/2009	MISC POSTING	20 00	09/2009	.00 112,907.50	00	00 475.19	00	00	00 .00	20 00 20.00
09/25/2009	MISC POSTING	-20 00	09/2009	00 112,907.50	00	00 475.19	00	00	00 .00	-20 00 .00
09/25/2009	MISC POSTING	263 00	09/2009	263 00 112,644.50	00	.00 475 19	00	00	00 .00	00 00
10/27/2009	MISC POSTING	243 00	09/2009	00 112,644.50	00	00 475.19	00	00	00 .00	243 00 243 00
11/27/2009	MISC POSTING	-243 00	09/2009	00 112,644.50	00	00 475.19	00	00	00 .00	-243 00 .00
11/27/2009	MISC POSTING	486 00	09/2009	00 112,644.50	00	00 475.19	00	00	00 .00	486 00 486.00
12/16/2009	COUNTY TAX PMT	-629 51	09/2009	00 112,644.50	00	-629 51 -154 32	00	00	00 .00	00 486 00
01/12/2010	MISC POSTING	243 00	09/2009	00 112,644.50	00	00 -154.32	00	00	00 .00	243 00 729.00
02/10/2010	MISC POSTING	243 00	09/2009	00 112,644.50	00	00 -154.32	00	00	00 .00	243 00 872.00

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EXHIBIT A PAGE 23 OF 2

Bank of America



Home Loans

Page 26

Account Number: 52532740
Statement Period: 02/2004 - 01/2011
Date Prepared: 01/20/2011

Property Address
1587 CAMBRIDGE LAKES
DRIVE

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
02/19/2010	MISC POSTING	-243 00	09/2009	00	00	00	00	00	00	-243 00
				112,644.50		-154.32			.00	729.00
03/16/2010	MISC POSTING	243 00	09/2009	00	00	00	00	00	00	243 00
				112,644.50		-154.32			.00	972 00
03/30/2010	MISC POSTING	243 00	09/2009	00	00	00	00	00	00	243 00
				112,644.50		-154.32			.00	1,215 00
05/04/2010	REGULAR PAYMENT	1,215 00	10/2009	254 02	540 76	55 52	00	00	00	364 70
				112,390.48		-98 80			.00	1,579.70
05/04/2010	MISC POSTING	-1,215 00	10/2009	00	00	00	00	00	00	-1,215 00
				112,390.48		-98.80			.00	364.70
05/24/2010	INVESTOR REVRSA	-794 78	09/2009	-254 02	-540 76	00	00	00	00	00
				112,644.50		-98.80			.00	364.70
05/24/2010	INVESTOR PAYMENT	794 78	10/2009	254 02	540 76	00	00	00	00	00
				112,390.48		-98.80			.00	364 70
12/23/2010	COUNTY TAX PMT	-413 71	10/2009	00	00	-413 71	00	00	00	00
				112,390.48		-512.51			.00	364.70

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EXHIBIT A PAGE 24 OF 24

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

RE-RECORD, E.T. T437PG047

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

E.T. Z442PG433

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").

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL
	)	CIRCUIT
BAC Home Loans Servicing, LP FKA	)	
Countrywide Home Loans Servicing, LP,	)	C/A NO: 2010-CP-10-6060
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S RESPONSES TO
	)	DEFENDANT KOOLA'S
	)	FIRST SET OF REQUESTS
	)	FOR ADMISSION
Johnson D. Koola, First Citizens Bank and	)	
Trust Company, Inc., f/k/a First-Citizens	)	
Bank and Trust Company of South Carolina,	)	
And Cambridge Lakes Condominium	)	
Homeowners Association, Inc., f/k/a	)	
Cambridge Lakes Horizontal Property	)	
Regime,	)	
	)	
Defendants	)	

TO: JOHNSON D. KOOLA, PRO SE DEFENDANT:

REQUESTS FOR ADMISSION

1. ~~Admit or deny that the Plaintiff is obligated to follow the Real Estate Appraisal Policies and Guidelines known as "Interagency Real Estate Appraisal Regulations, final revisions (FIR-41-94) and Interagency Appraisal and Evaluation Guidelines" dated October 27, 1994, adopted pursuant to Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, laid down by various Federal lending Institutions.~~

RESPONSE: ~~Admitted~~

2. ~~Admit or deny that the Plaintiff has to order an appraisal appropriate for different lending transactions depending on whether the real estate under appraisal is~~

condo conversion (apartments converted to condominiums) or a new condominium or a single family unit or a residential or non-residential unit.

RESPONSE: Admitted.

3 Admit or deny that the Plaintiff has received the "Builder's Certification" from the developer/seller of the condominium attached as **Exhibit 2**.

RESPONSE: Admitted.

4. Admit or deny that the Plaintiff required the developer/seller to provide the information contained in the Builder's Certification attached as **Exhibit 2** to Plaintiff for approval of the mortgage loan to defendant Koola.

RESPONSE: Denied. Plaintiff admits it required the developer/seller to provide a completed Builder's Certification form.

5. Admit or deny that the Plaintiff required the developer/seller to certify (a) whether the real estate under sale was a condo conversion (meaning apartments converted into condominiums for sale) and whether "the structural, health & safety repairs and remodeling have been completed" in the case of condo conversions.

RESPONSE: Denied. Plaintiff admits it required the developer/seller to provide a completed Builder's Certification form and that the developer/seller certified on the form that that real estate was a condo conversion and that "the structural, health & safety repairs and remodeling have been completed"

6. Admit or deny whether the Plaintiff required the developer/seller to provide the information in the Builder's certification to the Plaintiff to ensure that the real estate transaction followed through the provisions of the South Carolina Horizontal Property Act, 27-31-430

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP,

Plaintiff,

v.

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

Defendants

IN THE COURT OF COMMON PLEAS

C/A No 2010-CP-10-6060

**PLAINTIFF'S RESPONSES TO
DEFENDANT JOHNSON D. KOOLA'S
FIRST SET OF REQUESTS FOR
PRODUCTION**

TO: JOHNSON D. KOOLA, PRO SE DEFENDANT:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Plaintiff responds to Defendant Johnson D Koola's Requests for Production as follows

REQUEST 1

All documents which the Plaintiff proposes to introduce at the trial of the case

RESPONSE 1:

Please see attached the following documents:

- a) Mortgage, dated February 20, 2004 and recorded February 24, 2004;
- b) Note, dated February 20, 2004,
- c) Assignment of Mortgage, dated August 17, 2010 and recorded September 9, 2010,
- d) Payment history,
- e) Appraisal, dated February 11, 2004,
- f) Appraisal Disclaimer.
- g) Settlement statement, dated February 20, 2004,
- h) Buyer/Seller Certification;

- i) Builder's Certification;
- j) Uniform Residential Loan Application,
- k) Loan Application Disclosure Acknowledgements.
- l) Proposed Modification Letter and Agreement dated February 4, 2010, and
- m) HAMP solicitation packet dated April 14, 2011

Plaintiff reserves the right to introduce additional documents at trial. If Plaintiff intends to rely upon any additional documents at trial, Plaintiff will inform Defendant in compliance with the South Carolina Rules of Civil Procedure.

REQUEST 2

All documents which the Plaintiff received from the Defendant to get the mortgage loan approved

RESPONSE 2:

Please see attached the following documents from Plaintiff's predecessor-in-interest:

- a) Uniform Residential Loan Application; and
- b) Loan Application Disclosure Acknowledgements.

Plaintiff objects to providing any additional information in response to this Request as the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST 3

All documents which the Plaintiff provided to the appraiser when the appraiser was engaged by the Plaintiff to get the appraisal done

RESPONSE 3:

Plaintiff objects to this Request on the basis that the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST 4

All documents which the Plaintiff sent to the mortgage loan originator to get the mortgage loan approved.

RESPONSE 4:

None

REQUEST 5

All documents which the Plaintiff received from the Defendant at the time of the mortgage loan closing

RESPONSE 5:

Plaintiff objects to this Request as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome taking into account the needs of the case and the issues involved in the case.

REQUEST [6]

Plaintiff's written loan policy incorporating guidelines and procedures, which establish an effective real estate appraisal and evaluation program.

RESPONSE [6]:

Plaintiff objects to this Request on the basis that the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence

REQUEST [7]

All documents which the Plaintiff received from Defendant Koola with respect to loan modification

RESPONSE [7]:

Documents which the Plaintiff received from the Defendant at the time of the mortgage loan modification been have requested, and upon receipt, Plaintiff will make those documents available for inspection by the Defendant upon the Defendant's request

REQUEST [8]

All documents which the Plaintiff sent to Defendant Koola in connection with his mortgage loan application.

RESPONSE [8]:

Plaintiff objects to this Request as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome taking into account the needs of the



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.

ca! Davidson	The Condominium Declaration (aka Master Deed) was recorded on _____, document # _____.
Bennett-Wigger	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>Gavin M. Pugh</u>	Date:	<u>2/17/04</u>
Title:	<u>HOA Accountant</u>	Ph:	<u>891-1390</u>
Company:	<u>Cambridge Lakes</u>	Fx or email:	<u>891-1341</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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiffs,

vs

BOSTIC BROTHERS CONSTRUCTION, INC ,

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

2010 JUN 23 PM 12:50
JULIE J. AP-AS-ONG
CLERK OF COURT

FILED

SECOND
AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

seq , concealing construction defects and consequential damages once discovered, and failing to honor warranty obligations, and these acts constitute unfair and deceptive practices in the conduct of the Defendants' trade, and such acts are capable of repetition and are injurious to the public, because the Defendants are capable of continuing such acts

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

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

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

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

83 Upon information and belief, Superseal, MWM, VWD, and PWI (collectively referred to as Window Defendants) are in the business of designing, manufacturing, marketing, distributing, selling and/or installing windows Defendants Superseal, MWM, VWD, and PWI marketed the windows as products that would provide a safe and durable barrier from the elements Defendants Superseal, MWM, VWD, and PWI further untruly marketed and misrepresented to the public in general, and to the Plaintiffs in particular, that their windows require little or no maintenance

84 The Window Defendants' windows were installed in Plaintiffs' properties, and they were defectively designed and manufactured in that they allow water to intrude into the

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiffs,

vs

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

Page 1 of 33

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

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

THIRD
AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

as described and defined in the Horizontal Property Act, South Carolina Code Section §§ 27-31-10 et. seq. and pursuant to the provisions thereof, thereby enabling Estee, individually, and Cambridge Two, LLC to convert Cambridge Lakes and engage in the sale of these condominiums in the State of South Carolina.

100 Estee is personally responsible for any gross negligence, incompetence and/or misconduct in the practice of his profession and/or the conversion and sale of the condominiums pursuant to the Horizontal Property Act.

101 Estee, in supervising the conversion and sale of Cambridge Lakes, was grossly negligent and incompetent in the manner in which he converted and sold the units at Cambridge Lakes and that he breached the duty of due care owed to the Plaintiffs herein and to the public in general in the conversion and sale of individual units at Cambridge Lakes as is herein set forth.

102. The Cambridge Lakes units converted and sold by Estee were defective and unsafe as a direct and proximate result of Estee's gross negligence, incompetence, and misconduct, and the Plaintiffs herein have suffered actual, special, incidental, direct, indirect and consequential damages and are entitled to punitive damages in amounts to be determined at trial as hereinabove set forth.

**FOR A NINTH CAUSE OF ACTION
Piercing the Corporate Veil/Alter Ego Liability
(As to Albert Estee, Individually, and Cambridge Two, LLC)**

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

104 Estee incorporated and/or caused to be incorporated Cambridge Two, LLC under the Laws of the State of South Carolina for the purpose of converting and

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A ,

PLAINTIFF,

vs

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

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS

C/A NO 2010-CP-10-6060

NOTICE OF DENIAL

DEFICIENCY WAIVED

F10-04188

TO: SHAWN M. FRENCH, ATTORNEY FOR DEFENDANT JOHNSON D. KOOLA

PLEASE TAKE NOTICE THAT this is an action for the foreclosure of owner occupied real property Pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, that

1. the Mortgagors have been served with a notice of the Mortgagors' right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;

2. the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagors to evaluate eligibility for foreclosure intervention,

3 the Mortgagors have been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagors' loan or personal circumstances for consideration by the Mortgagee; and

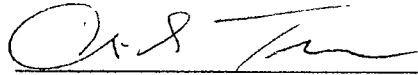
4 after completion of the foreclosure intervention process, the Mortgagors do not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines of the Mortgagee applicable to the mortgage loan, and the parties

have been unable to reach any other agreement concerning the foreclosure process

5. the Mortgagors have been denied for loss mitigation due to the conclusions that the post-modification Payment-to-Income Ratio is greater than fifty-five (55) per cent or less than ten (10) per cent of Gross Income

You have thirty (30) days from the date of the mailing of this Notice to file and serve an answer or other response to the Summons and Complaint

KORN LAW FIRM, P A
1300 Pickens Street
P O. Box 11264
Columbia, SC 29211-1264



Dean A. Hayes, SC Bar No. 66066
Chris S. Truluck, SC Bar No: 77289
Attorneys for Plaintiff

Columbia, South Carolina
May 21st, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N A ,

PLAINTIFF,

vs

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

DEFENDANT(S)

F10-04188

IN THE COURT OF COMMON PLEAS

**NOTICE OF MOTION AND MOTION TO
DISMISS OR FOR SUMMARY
JUDGMENT AS TO DEFENDANT
KOOLA'S COUNTERCLAIM**

C/A NO 2010-CP-10-6060

**TO: SHAWN M, FRENCH, SR., HARRY V. RAGSDALE, AND S. NELSON WESTON,
JR., ATTORNEYS FOR DEFENDANTS:**

YOU WILL PLEASE TAKE NOTICE that the attorney for Plaintiff will, on the 10th day after service hereof, or as soon thereafter as counsel may be heard, move before the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting the plaintiff summary judgment or dismissing the counterclaim(s) asserted by the defendant, Johnson D Koola

This motion is made on the grounds there is no genuine issue as to any material fact and the plaintiff is entitled to judgment as a matter of law This motion is based on the attached memorandum with accompanying exhibits, pleadings in this case, and applicable South Carolina and federal case and statutory law

[SIGNATURE PAGE TO FOLLOW]



Dean A. Hayes, SC Bar No 66066
KORN LAW FIRM, P.A.
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile (803) 231-2060
dean.hayes@kornlawfirm.com
ATTORNEY FOR PLAINTIFF

April 13, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N A ,

PLAINTIFF,

vs

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

DEFENDANTS

F10-04188

IN THE COURT OF COMMON
PLEAS

C/A NO. 2010-CP-10-6060

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OR
DISMISSING THE
COUNTERCLAIM OF
DEFENDANT KOOLA**

I. INTRODUCTION AND FACTS

This is an action for the foreclosure of a mortgage on real estate generally described as 1587 Cambridge Lakes Drive, Mount Pleasant, South Carolina and owned by the defendant, Johnson D Koola. There is no dispute the note and mortgage at issue in this case were executed on February 20, 2004. In response to the plaintiff's summons and complaint, Johnson D. Koola, on March 24, 2011, filed an amended answer and counterclaim alleging, inter alia, negligence and fraud on the part of Plaintiff in that it failed to verify the accuracy and truthfulness of the condominium's builders' certification and appraisal. A copy of Koola's answer and counterclaim is attached as exhibit A. Plaintiff is moving for summary judgment as to the counterclaim or counterclaims set forth in Koola's amended answer and counterclaim.

II. DISCUSSION

A. KOOLA LACKS STANDING TO ASSERT COUNTERCLAIM(S) AGAINST PLAINTIFF BECAUSE KOOLA FAILED TO SET FORTH THE COUNTERCLAIM(S) IN HIS BANKRUPTCY SCHEDULES

Johnson D Koola filed a Chapter 7 bankruptcy petition on March 20, 2009, and his bankruptcy was given case number 09-02104. Attached as exhibit B is a copy of Koola's bankruptcy petition and schedules. In paragraph 21 of Schedule B, Koola was required to set forth "[o]ther contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims." Next to this paragraph is an "X" under the "None" category, so Koola clearly stated he had no such claims. As can be seen by looking at page 29 of exhibit B, Koola made this statement under penalty of perjury. On July 13, 2009, Koola received a discharge in his bankruptcy case.

A review of Koola's amended answer and counterclaim shows that any counterclaim or counterclaims asserted by him against plaintiff relate to plaintiff's alleged "failure to verify the accuracy/truthfulness of the statements in the Builder's Certification." The Builder's Certification, which is attached to Koola's amended answer and counterclaim as exhibit 2, is dated February 17, 2004, and a review of the amended answer and counterclaim clearly shows that plaintiff's alleged negligence occurred prior to February 20, 2004, the date the loan in question was closed.

When a debtor files for bankruptcy, an estate is created that is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. §541(a). Unless the bankruptcy court orders otherwise, the debtor is required to file a list of all creditors and a schedule of assets and liabilities. *Id.* § 521(a)(1)(A)-(B)(i). "Legal and equitable interests" has been broadly defined and includes causes of action. *In re Educators Group Health*

Trust, 25 F 3d 1281, 1283-84 (5th Cir 1994) “If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim ” *Id* at 1284

When the bankruptcy case is closed, “any assets, including claims, that were scheduled by the debtor but not disposed of are deemed abandoned and revert to the debtor ” *Tyler House Apartments, Ltd v US*, 38 Fed. Cl 1, 6 (1997) Claims that are not set forth on the schedules, however, remain under the control of the bankruptcy trustee. *Id* “If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim ” *Educators Group Health Trust*, 25 F 3d at 1284

In the present case, Koola’s cause of action against plaintiff is that plaintiff was negligent in February 2004 in failing to verify the accuracy of a certification made by the builder of the home covered by the mortgage. When Koola filed bankruptcy in March 2009, he failed to list any claims regarding this allegation in his bankruptcy schedules. Therefore, when he received his bankruptcy discharge in July 2009, his cause of action against plaintiff remained under the control of the bankruptcy trustee, and only the bankruptcy trustee has standing to assert the claim against plaintiff. Because Koola lacks standing to assert the claim, plaintiff is entitled to summary judgment as to the counterclaim(s) asserted in Koola’s amended answer and counterclaim, or to have the counterclaim(s) dismissed for Koola’s lack of standing.

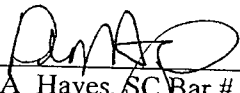
B. KOOLA’S COUNTERCLAIM(S) ARE BARRED BY THE STATUTE OF LIMITATIONS

Koola’s allegations against plaintiff relate to actions that occurred in February 2004, and Koola did not assert these claims until March 2011. South Carolina Code § 15-3-530 provides for a three year statute of limitations for claims such as those asserted by Koola. The counterclaim or counterclaims asserted by Koola are therefore barred by the statute of

limitations For this reason, the plaintiff is entitled to summary judgment as to the claims asserted by Koola against the plaintiff

III. CONCLUSION

Evidence propounded by plaintiff establishes that there is no genuine issue as to any material fact as to the counterclaim or counterclaims asserted by Koola against the plaintiff. Because Koola failed to set forth the claim(s) in his bankruptcy case, Koola lacks standing to assert the claim against the plaintiff Furthermore, the claim(s) are barred by the statute of limitations.



Dean A. Hayes, SC Bar # 66066
KORN LAW FIRM, PA
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

April 13, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-10-6060

BAC Home Loans Servicing, LP a/k/a
Countrywide Home Loans Servicing, LP,

PLAINTIFF

v.

Johnson D. Koola; First Citizens Bank and
Trust, Inc and Cambridge Lakes
Homeowners Association, Inc.

DEFENDANT

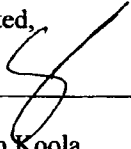
FILED
2012 AUG 15 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY
Motion for Sanctions

TO: Dean Hayes, Attorney for the Plaintiff,

The Defendant in this action, Johnson Koola will move within 10 days from the date of this motion under South Carolina Supreme Court Administrative Order 2011-05-02-01 for sanctions against the plaintiff in this matter for failing to participate in the loan modification and loss mitigation process in good faith. Mr. Koola has provided all requested information to the Plaintiff and/or its representatives and she has sufficient income to qualify for a HAMP Modification, yet the Plaintiff has denied his modification

Defendant contends that this is bad faith and asks that this court dismiss the complaint of the Plaintiff with prejudice and award the defendant his attorney's fees in this action.

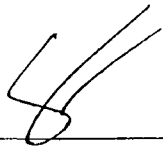
Respectfully submitted,


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

10-6062

I, the undersigned, so hereby certify that I have this 15th day of August, 2012 caused the Motion for Sanctions for Defendant Johnson D. Koola to be served on the Attorneys of record by depositing in the US MAIL, postage prepaid, addressed as follows;

Korn Law Firm, P.A.
Attn: Dean Hayes
PO Box 12369
Columbia, SC 29211-2369


Shawn M. French

FILED

2012 AUG 15 PM 4:30

JULIE J ARMS TRONG
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-10-6060

BAC Home Loans Servicing, LP a/k/a
Countrywide Home Loans Servicing, LP,

PLAINTIFF

v

Johnson D. Koola, First Citizens Bank and
Trust, Inc. and Cambridge Lakes
Homeowners Association, Inc

DEFENDANT

2013 NOV 18 PM 3:56
FILED
BY JULIE J. ARMSTRONG
CLERK OF COURT
Motion to Reinstate

Comes now defendants Johnson Koola and requests that this court Reinstate this action to the active roster. It was dismissed from the active roster without notice to the Defendant. There are counterclaims as well as the foreclosure complaint that the defendant wishes to have heard by this court. He is uncertain why this action was dismissed and desires that the dismissal be vacated and the action be restored to the active roster

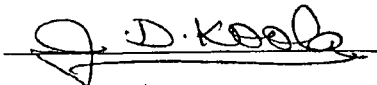
November 13, 2013


Shawn M. French
Attorney for Defendants
SC BAR No.: 75007
1476 Ben Sawyer Blvd, Ste 3
Mt. Pleasant, SC 29464
843-606-6440

CERTIFICATE OF SERVICE

I, the undersigned, so hereby certify that I have this 18th day of November, 2013 caused the foregoing Motion to be served on the Attorneys of record by depositing in the US MAIL, postage prepaid, addressed as follows.

The Korn Law Firm
1300 Pickens Street
Columbia, SC 29201



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Bank of America, N A ,)
Plaintiff,)
vs)
Johnson D Koola, First Citizens Bank)
and Trust Company, Inc , f/k/a First)
Citizens Bank and Trust Company of)
South Carolina, and Cambridge Lakes)
Condominium Homeowners Association,)
Inc f/k/a Cambridge Lakes Horizontal)
Property Regime,)
Defendants)

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

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OR
DISMISSING THE COUNTERCLAIM
OF DEFENDANT KOOLA AND
IN SUPPORT OF DEFENDANT'S
MOTION TO SANCTION**

2014 MAR 14 PM 3:59
CLERK OF COURT

Defendant Johnson D Koola, hereinafter ("Koola"), presents his Memorandum in Opposition to Plaintiff Bank of America's f/k/a Countrywide Home Loans Servicing, LP, (hereinafter "Plaintiff") Motion for Summary Judgment or Dismissing the Counterclaim of Koola and in Support of Koola's Motion to Sanction

I. INTRODUCTION AND FACTS

In January 2004, Koola contracted to buy a condominium for \$152,300 subject to loan approval in Cambridge Lakes subdivision in Mt Pleasant, South Carolina, which was previously converted from apartments to condominiums (condo conversion) under South Carolina Horizontal Property Act, S C Code Ann § 27-31-10 et seq. (1976) (hereinafter, "HPA") as has been stated in the Master Deed of the condominium regime Exhibit 1 Plaintiff insisted that Koola produce a builder's certification from the developer/seller in a format prescribed and provided by Plaintiff before loan approval The developer/seller issued a "Builder's Certification" to Plaintiff which stated "For Condo

Conversions The structural, health & safety repairs and remodeling have been completed" Exhibit 2 By mid-February, Plaintiff completed the appraisal and approved the loan Koola purchased the condominium on February 24, 2004 paying 10% down payment at closing and additional down payments for \$5,000 in March 2004 and \$2,030 in Dec 2006 to make up the down payment to 20%

In June 2008, Cambridge Lakes Homeowners Association (hereinafter, "HOA") filed a construction defects lawsuit¹ against developer/seller and others alleging construction defects, negligence, and Unfair Trade Practices The HOA claimed \$8 million as the cost to repair the construction defects This translates into damages of \$92,307 for the 3-bedroom condominium Koola purchased The HOA filed the Second and Third Amended Complaints² in June 2010 and July 2010, respectively Exhibits 3 and 4 Because of the lawsuit^{1,2} and alleged construction defects, real estate transactions in the subdivision were impossible except for short sales and foreclosure sales

In June 2008, Koola was also attempting to sell his condominium to clear off his mortgage related debts Because of the alleged massive construction defects and the stated potential liability of \$92,307 per condo, Koola could not sell his unit in 2008 S C Code Ann § 27-50-65 (1976) further obligated Koola to inform the potential buyers of the aforementioned construction defects in the buildings In 2009, Koola became insolvent and filed for Chapter 7 Bankruptcy, he was discharged from Bankruptcy in July 2009

¹ Cambridge Lakes Homeowners Association, Inc et al vs Bostic Brothers Construction Inc et al , Complaint, Case No 2008-CP-10-3506, June 19, 2008

² Cambridge Lakes Homeowners Association, Inc et al vs Bostic Brothers Construction Inc et al Second Amended Complaint, Case No 2008-CP-10-3506, June 28, 2010 and Third Amended Complaint, Case No CP-10-3506, July 14, 2010

In July 2009, Koola applied for a loan modification to Plaintiff. In August 2009, Plaintiff approved a 3-months forbearance agreement agreeing to make a decision on loan modification before Dec 1, 2009. By November 2009, Koola had neither income nor any resources to continue to pay regular mortgage related payments and defaulted on those payments. In Feb 2010, Plaintiff offered a loan modification, changing the monthly payment from \$838.69 as of Jan 2009 to \$797.14. Plaintiff *determined the new payment by taking out an unspecified amount of principal from total principal amount and making it payable as a lump sum on the loan maturity date*, there was no reduction in the interest rate and principal balance and no change in the original maturity date. Exhibit 5. In fact, Koola's total payments would increase considerably after the offer of loan modification. Koola could not accept this unfavorable and harmful loan modification.

In April/May 2010, Koola, on the advice of Plaintiff, listed his unit for short sale. Short sale was *the only and best means for Koola for Loss Mitigation*. In July 2010, Plaintiff filed Lis Pendens. In July/September 2010, Plaintiff initiated foreclosure proceedings³, which prompted HOA and the second mortgagee to file foreclosure proceedings and other civil actions against Defendant Koola. Koola filed his Answer and Counterclaim in Nov 2010 and Amended Answer and Counterclaim⁴ in March 2011.

In September 2010, Koola searched the case dockets of HOA's construction defects lawsuit^{1,2} and learned that HOA's amended complaints filed in 2010 included violation of HPA against the developer/seller. Exhibit 3 at 19 and Exhibit 4 at 24. Koola consulted many attorneys, one of them advised Koola, Exhibit 6, that the developer/seller

³ BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP vs. Johnson D. Koola et al. Case No. 2010-CP-10-6060, Sep 1, 2010,

⁴ Amended Answer and Counterclaim of Defendant Johnson D. Koola against BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

had violated HPA, specifically HPA § 27-31-430, and falsified the “Builder’s Certification” issued to Plaintiff

Clearly, Koola knew about the violation of HPA and HPA § 27-31-430 and falsification of the “Builder’s Certification” only in September 2010⁵ Consequently, Koola realized that Plaintiff did not verify the truthfulness and accuracy of the statements in the “Builder’s Certification”, and that Plaintiff completed the appraisal based on a falsified “Builder’s Certification” This gave rise to new causes of actions and fresh claims of negligence and fraud against Plaintiff

Financial Institutions Reform, Recovery and Enforcement Act of 1989 (hereinafter, FIRREA Federal Appraisal guidelines), PL 101-73, mandates the Board of Directors of mortgage banks to maintain bank’s written Loan Policy incorporating guidelines and procedures and establishing an effective real estate appraisal program *The written Loan Policy should determine the appropriate type and content of appraisal for different lending transactions* In the case of converted condominiums, the mortgagees have to ensure that the appraisal of converted condominiums is in compliance with HPA § 27-31-430 It is for this reason that Plaintiff asked the developer/seller to certify in the “Builder’s Certification” whether the lending transaction is a “condo conversion” and if so, “whether the structural, health and safety repairs have been completed” *Plaintiff, who has a duty*

⁵ Condominiums under the purview of HPA distinguish themselves from other types of real estate like single family homes All condominium owners own a share of the common elements, for this reason, a condominium owner cannot inspect these common elements for construction defects before buying it To protect the condominium buyer, HPA § 27-31-430 mandates the developer/seller of converted condominiums to provide all prospective condominium buyers with the “Disclosure of the physical condition of the building” This is an absolute legislative mandate This disclosure report should be prepared by an independent architect or engineer Violation of HPA § 27-31-430 automatically attracts violation of South Carolina Unfair Trade Practices Act, S C Code Ann 39-5-10 et seq The developer/seller of Cambridge Lakes condominiums violated HPA § 27-31-430, and Unfair Trade Practices Act and also falsified “Builder’s Certification”, a fraud

of care to Koola, should have asked the developer/seller whether he delivered the "Disclosure of the physical condition of the building" Report as per HPA § 27-31-430 to Koola and then confirm this information with Koola Plaintiff failed in this duty of care to Koola and completed the appraisal on the basis of a falsified "Builder's Certification" Plaintiff completed the appraisal as if Cambridge Lakes condo conversion has strictly followed HPA § 27-31-430, while it was not Because of this failure, Plaintiff is in violation of FIRREA Federal Appraisal guidelines

In its reply to Koola's First Set of Requests for Admission, Plaintiff has admitted that Plaintiff is obligated to follow the FIRREA Federal Appraisal guidelines, and that Plaintiff has to order an appraisal appropriate for lending transactions depending on whether the real estate under appraisal is a condo conversion or not Exhibit 7 at 1, 2 In his Request for Production, Koola asked Plaintiff to produce Plaintiff's written *Loan Policy* and *all documents*, which the Plaintiff provided to the appraiser before appraisal Exhibit 8 at 2, 3 Plaintiff refused to answer under what authority it asked the developer/seller to certify the question related to condo conversion Plaintiff' failure to produce these documents would show to the Honorable Court that Plaintiff didn't have a functional, written Loan Policy, and that Plaintiff was colluding with the appraiser, both violations of FIRREA Appraisal guidelines Violation of FIRREA Federal Appraisal guidelines, which Koola discovered through his own diligent work since September 2010, gave rise to new causes of actions and fresh claims of negligence and fraud against Plaintiff⁶

⁶ Federal and State authorities, Federal lending agencies and many investors in mortgage-backed securities had filed numerous lawsuits against Plaintiff alleging violations and fraudulent practices in lending transactions In at least two instances, Plaintiff was found liable for fraud In many other instances, Plaintiff settled the cases Since 2010, Plaintiff has paid more \$50 billion in fines and settlements In October/November 2013, a New York jury found Plaintiff guilty of fraud related to mortgages made and sold to Fannie Mae and Freddie Mac under Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA)

The Bankruptcy Court, by an Order dated May 22, 2012, reopened the Chapter 7 Bankruptcy case, Exhibit 9, to allow Koola to include the newly discovered causes of actions and claims in Schedule B against Plaintiff. In 2013, the Bankruptcy Court, on the advice of the Bankruptcy trustee, closed the Bankruptcy case. Exhibit

In April 2012, Plaintiff filed a "Motion for Summary Judgment or Dismissing Counterclaim of Defendant Koola." In August 2012, Koola filed a "Motion to Sanction" Plaintiff for its repeated denial of loan modification.

II. ARGUMENTS

A. KOOLA HAS STANDING AND EXCLUSIVE RIGHT TO ASSERT COUNTERCLAIMS AGAINST PLAINTIFF AFTER HE REOPENED THE CHAPTER 7 BANKRUPTCY CASE AND ADDED CLAIMS AGAINST PLAINTIFF IN SCHEDULE B OF THE BANKRUPTCY CASE

On April 13, 2012 Plaintiff filed a Motion for Summary Judgment or Dismissing the Counterclaim(s) of Koola arguing that Koola lacked standing to assert counterclaim(s) against Plaintiff because (1) Koola failed to set forth the counterclaim(s) in the schedules filed with his Chapter 7 Bankruptcy case in 2009, and (2) These claims remain under the control of the Bankruptcy trustee, who has exclusive standing to assert those claims.

In 2004, Koola knew that the developer/seller issued a "Builder's Certification" to Plaintiff, which Plaintiff accepted without any reservation. When Koola filed for Chapter 7 Bankruptcy in March 2009, he had no knowledge or information that the developer/seller provided a falsified "Builder's Certification" to Plaintiff, and that Plaintiff completed the appraisal based on a falsified "Builder's Certification." Therefore, Koola did not include any claims against Plaintiff in the schedule B filed with the Chapter 7 Bankruptcy petition. In September 2010, Koola learned that the developer/seller provided a falsified "Builder's

Certification” to the Plaintiff, and realized that Plaintiff completed the appraisal based on a falsified “Builder’s Certification” and therefore violated FIRREA Federal Appraisal guidelines, *supra*, at 4,5 This gave rise to new causes of actions and fresh claims of negligence and fraud against Plaintiff Plaintiff was grossly negligent in its duty of care to Koola Koola’s Amended Answer and Counterclaims⁴ filed on March 24, 2011 include these claims against the Plaintiff

In May 2012 Koola filed a Motion to Reopen the Chapter 7 Bankruptcy case to include claims against Plaintiff in Schedule B pursuant to 11 U S C § 350(b) Plaintiff did not raise any objection to reopen the Bankruptcy case The Bankruptcy Court by an Order dated May 22, 2012, reopened the Bankruptcy case On Nov 6, 2013, the Bankruptcy Court, on the advice of the Bankruptcy Trustee, closed the Bankruptcy case Exhibit 9 Consequently, the assets were reverted to debtor, Koola Koola has now standing and exclusive right to press the counterclaims against the Plaintiff

B. KOOLA’S COUNTERCLAIMS ARE NOT BARRED BY STATUTE OF LIMITATIONS

Plaintiff argues further that Koola’s Counterclaims are barred by the Statute of Limitations S C Code Ann § 15-3-530 provides for a three-year Statute of Limitations⁷ In 2004, Koola knew that the developer/seller issued a “Builder’s Certification” Only in September 2010, Koola learned that the developer/seller issued a falsified “Builder’s Certification” In March 2011, Koola discovered that Plaintiff completed the appraisal based on a falsified “Builder’s Certification”, and that Plaintiff violated FIERRA Federal Appraisal guidelines, *supra*, at 4,5 Koola asserted these claims as counterclaims in his

⁷ Violations under Federal Financial Reform, Recovery and Enforcement Act of 1989 have a ten-year Statute of Limitations

Amended Answer and Counterclaims filed in March 2011⁴ The Bankruptcy Court by an Order dated May 22, 2012, reopened the Bankruptcy case and allowed Koola to include claims against Plaintiff in Schedule B pursuant to 11 U.S.C. § 350(b). Exhibit 9 Koola's actions and counterclaims are thus within the three-year statute of limitations.

The Statute of Limitations "begins to run when the underlying cause of action reasonably ought to have been discovered." *Martin v. Companion Health Care Corp.*, 357 S.C. 570, 575, 593, S.E.2d 624, 627 (Ct. App. 2004). Under the discovery rule, the statute of limitations does not run from the date of the negligent act, but from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *McClain v. Jarrad*, 354 S.C. 218, 580 S.E.2d 763 (S.C. App. 2003), *Holly Woods Association of Residential Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787 (Ct. App. 2004) (Quoting *Martin v. Companion Health Care*, *supra*). The test before the trial court is whether the circumstances of the case would have put a person of common knowledge on notice that "some right of his has been invaded or that some other claim against another party might exist." *Holly Woods Association v. Hiller*, *Id.* at 183-84, citing *Young v. Dept. of Corrs.* 333 S.C. 174, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). In *Gibson v. Bank of America, N.A.*, 383 S.C. 399, 680 S.E.2d 778 (S.C. App. 2009), the Court of Appeals of South Carolina has established the criterion how to compute the three-year period of statute of limitations.

The doctrine of equitable tolling may also be applicable to Koola's claims against Plaintiff under the facts of the case. In *Magnolia North Property Owner's Association v. Heritage Communities, Inc.*, the Appellate Court of South Carolina held that a defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that would otherwise give operation to the statute has been induced

by the defendant's conduct " *Id.*, 397 S C 348, 372, 725 S E 2d 112, 115 (Ct App 2012)
"Equitable tolling" is a nonstatutory tolling theory, which suspends a limitations period
Hooper v Ebenezer Sr Services and Rehabilitation Center, 386 S C 108, 687 S E 2d 29
(2009)

In *Hancock v Mid-South Management Co* , 381 S C 326, 330-331, 673 S E 2d
801, 803 (2009), the Supreme Court of South Carolina upheld the application of the
"scintilla standard" governing the determination of motions for summary judgment where,
as here, plaintiff's claims must be met by the preponderance of evidence

"[We] hold that in cases applying the preponderances of the evidence burden
of proof, the non-moving party is only required to submit a mere scintilla of
evidence to withstand summary judgment "

Koola has repeatedly stated here that he knew that the developer/seller issued a
"Builder's Certification" to Plaintiff in 2004, that in Sep 2010, he discovered that the said
"Builder's Certification" was falsified, that in Sep 2010 or thereafter, he realized that
Plaintiff completed the appraisal on the basis of a falsified "Builder's certification, and that
Plaintiff violated FIRREA Appraisal guidelines A trial court would have sanctioned Koola
if he had brought a lawsuit against Plaintiff in 2004 based on "Builder's Certification" for
filing a frivolous lawsuit *For the Plaintiff to allege that Koola knew in 2004 that the
"Builder's certification" was falsified implies that Plaintiff had this information in 2004, and
did not act on it while completing the appraisal.* Plaintiff has not produced any evidence,
let alone preponderance of evidence to conclude that Koola knew that the "Builder's
Certification" was fraudulent in 2004 or even before September 2010 Koola's actions on
his causes of actions and claims against the Plaintiff are not barred by the Statute of
Limitations

C. PLAINTIFF HAS NOT PRESENTED ANY EVIDENCE TO SHOW TO THE COURT THAT KOOLA KNEW ABOUT THE FALSIFIED "BUILDER'S CERTIFICATION" AND FIRREA FEDERAL APPRAISAL GUIDELINES BY PLAINTIFF BEFORE SEPTEMBER 2010

Plaintiff has admitted that it received a falsified "Builder's Certification" from developer/seller, that it completed the appraisal based on a falsified "Builder's Certification", and that Plaintiff has to follow FIRREA Federal Appraisal guidelines. Plaintiff's only argument is that Koola knew about the falsified "Builder's Certification" in 2004.

Koola has repeatedly stated here that he knew about the violation of HPA § 27-31-430 and falsified "Builder's Certification" in Sep 2010 while he searched the case dockets of HOA's construction defects lawsuit^{1,2}. Exhibits 3, 4. Further, an attorney confirmed these facts in September 2010. Exhibit 6. Therefore, the Statute of Limitation began to run from September 2010.

Plaintiff has not produced any evidence to show to the Honorable Court that Koola knew about these facts before September 2010.

III. KOOLA'S MOTION TO SANCTION

Title 12 U.S.C.A. §1752z-23 et seq., HOPE for Homeowners Program, mandates mortgagees that they (1) allow homeowners to avoid foreclosure by reducing the principal balance outstanding and interest rate charged on their mortgages, (2) target mortgage assistance to homeowners for their principal residence, (3) determine the principal obligation amount of the refinanced eligible mortgage by the reasonable ability of the mortgagor to make his or her mortgage payments so that it does not exceed 90% of the appraised value of the property, (4) ensure that eligible mortgages shall have originated

on or before Jan 1, 2008, and (5) complete the appraisal based on the current value of the property which is conducted in accordance with title XI of the Financial Institutions Reform, Recover and Enforcement Act of 1989

Title 12 U S C A § 3331 et seq , Financial Institutions Reform, Recovery and Enforcement Act, preempted homeowners' state unfair competition law claims against real estate developers and mortgage lenders who allegedly conspired to inflate home prices by generating fraudulent appraisal standards

Title 12 U S C A § 1710(a)(2) authorizes the Secretary of FHA to pay insurance benefits to the mortgagee to recompense the mortgagee for all or part of any costs of the mortgagee for taking loss mitigation actions that provide an alternative to foreclosure of a mortgage that is in default

Chief Justice of South Carolina Supreme Court, through an Administrative Order No 2011-05-02-01 dated May 2, 2011, has given clear and unambiguous guidelines to streamline loan modification and foreclosure procedures and other alternate dispute resolution procedures including mediation.

In February 2012, Plaintiff and four other mortgage banks entered into a \$25 billion settlement with Federal and 49 state officials to provide relief to homeowners in the form of lower mortgage interest rates, principal reductions and other relieves According to published reports, homeowners received relief for an average of about \$76,615 each during the four-month period from March 1 through June 30, 2012

In July 2009, Defendant Koola applied to Plaintiff for a mortgage loan modification In August 2009, Plaintiff approved a special forbearance agreement agreeing to make a decision on loan modification before Dec 2009 By November 2009, Defendant Koola had neither income by means of wages nor any resources to continue

to pay regular mortgage related payments and defaulted on those payments. In Feb 2010, Plaintiff offered a "*loan modification*", changing the monthly payment from \$838.69 at the beginning of 2009 to \$797.14 after loan modification. This was done by taking out an unspecified amount of principal balance out of the total balance and making it payable at the maturity date of the mortgage. There was *no reduction in the interest rate, no reduction in the principal balance and no change in the original maturity date*. In fact, Koola's total payments through the life of the loan would increase considerably after the offer of loan modification. Exhibit 5. Koola could not accept this unfavorable and more harmful loan modification. Koola represents to the Court that this offer of loan modification violated the regulations for loan modification, *supra*, at 10,11. Further Plaintiff acted in bad faith when it did not inform Koola whether Plaintiff considered a reduction in interest rate or principal balance while offering him the loan modification under reference.

After Plaintiff initiated foreclosure proceedings, Koola applied for loan modification several times requesting a loan modification consistent with his income, which would have involved reduction in the interest rate as well as principal balance; *supra*, at 10, 11. Each time Plaintiff denied a loan modification. Koola represents to the Court

- (1) the Plaintiff is obligated to inform Koola how much reduction in the interest rate as well as principal balance was considered to create an affordable payment
- (2) Plaintiff could have offered an affordable loan modification especially after the five mortgage banks including Plaintiff settled with the U.S. and 49 state officials for \$25 billion specifically intended for loan modification by reduction in interest rate and principal balance, *supra* at 11

- (3) Koola had about 30% equity in his home at the time he defaulted on the mortgage payments. Koola's mortgage was never an under-the-water mortgage. Plaintiff intentionally denied Koola a loan modification because Plaintiff would lose practically no money in a foreclosure. Data analyses show that Plaintiff preferred underwater mortgages for affordable loan modification to avoid potential big losses.

The Administrative Order of the Chief Justice of the Supreme Court of South Carolina, *supra* at 11, has ordered that

[I]n the event the Court, having jurisdiction over the foreclosure action, determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this Order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party.

For the aforementioned reasons, Koola respectfully prays to the Honorable Court to grant him his Motion to Sanction.

IV. CONCLUSION

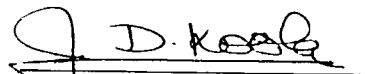
Koola has shown to the Honorable Court that Koola has standing and exclusive right to assert counterclaims against Plaintiff after he reopened the Chapter 7 Bankruptcy case and added claims against Plaintiff in Schedule B of the Bankruptcy case in May 2012. Koola has further shown to the Honorable Court that his counterclaims are not barred by Statute of Limitations, he has proved that he knew about the causes of actions and claims against Plaintiff only in September 2010, and he initiated actions against Plaintiff within the 3-year Statute of Limitations.

Koola has represented to the Honorable Court that Plaintiff denied his loan modification applications repeatedly without informing him whether Plaintiff considered a

reduction in the interest rate and principal balance, *Plaintiff's acted in bad faith in these actions*

For the aforementioned reasons, Koola prays the Honorable Court to dismiss Plaintiff's Motion for Summary Judgment or Dismissing Koola's Counterclaims and to grant Koola his Motion to Sanction as ordered by Chief Justice of Supreme Court of South Carolina

Respectfully submitted,


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

March 13, 2014
Mt Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Bank of America, N A ,)
)
Plaintiff,)
)
vs)
)
Johnson D Koola, First Citizens Bank)
and Trust Company, Inc , f/k/a First)
Citizens Bank and Trust Company of)
South Carolina, and Cambridge Lakes)
Condominium Homeowners Association,)
Inc f/k/a Cambridge Lakes Horizontal)
Property Regime,)
)
Defendants)

IN THE COURT OF COMMON PLEAS

CASE # 2010-CP-10-6060

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION**

FILED
2014 APR -4 PM 1:19
JULIE J. ANTHONY
CLERK OF COURT
BY

TO Hon Mikell Scarborough and Dean Hayes, Esq Attorney for the plaintiff

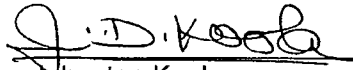
PLEASE TAKE NOTICE that defendant Johnson D Koola, pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, will move this Court at such time and place as is convenient for the Court for an Order granting reconsideration of the Form 4 Order of the Hon Mikell Scarborough which denied defendant's motion for sanctions against the plaintiff and granted plaintiff's motion for summary judgment dismissing defendant's counterclaims against the plaintiff The grounds of this motion are that the court failed to apprehend the material facts at issue, which are relevant to the determination of said motions and failed to apply the applicable laws governing the determination of said motions

Continued next page

Defendant anticipates filing further memoranda and affidavits in advance of the hearing date of this Motion

Dated Mount Pleasant, S C
April 4, 2014

Respectfully submitted,

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

Johnston Koola
1587 Cambridge Lakes Drive
Mount Pleasant, S C 29464
(843) 849-9241

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Bank of America, N A ,)
Plaintiff,)
vs)
Johnson D. Koola, First Citizens Bank)
and Trust Company, Inc , f/k/a First)
Citizens Bank and Trust Company of)
South Carolina, and Cambridge Lakes)
Condominium Homeowners Association,)
Inc f/k/a Cambridge Lakes Horizontal)
Property Regime,)
Defendants)

IN THE COURT OF COMMON PLEAS

CASE # 2010-CP-10-6060

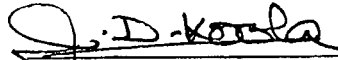
MOTION TO RECONSIDER

FILED
CLERK OF COURT
MAY 13 2014

PLEASE TAKE NOTICE that Defendant Koola ("Koola"), pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, will move the Court of Master in Equity at such time as is convenient for the Court to reconsider the April 24, 2014 Order of the Honorable Mikell R Scarborough, Master in Equity for Charleston County, which granted Plaintiff Bank of America's ("Plaintiff") Motion for Summary Judgment, dismissed Koola's Counterclaims against the Plaintiff and denied Koola's Motion for Sanctions. The grounds for this motion are that the Court failed to apprehend the conclusions of law and findings of fact in dispute, which precludes the grant of Summary Judgment to the Plaintiff under Rule 56 of the South Carolina Rules of Civil Procedure denial of Motion for Sanctions. On May 1, 2014, Koola received the Notice of Entry of Judgment/Order from the Office of Clerk of the Court thorough mail.

Dated: May 5, 2014

Respectfully submitted,



Johnson Koola
1587 Cambridge Lakes Drive
Mount Pleasant, S C. 29464
(843) 849-9241

Proof of Service

I, Johnson Koola, defendant pro se, certify under penalty of perjury that I caused a copy of the defendant's Notice of Motion and Motion for Reconsideration of this Court's April 24, 2014 Order to be served on the 5th day of May, 2014 by mailing a true copy to the following persons

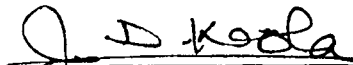
The Hon. Mikell R. Scarborough
Master in Equity for Charleston County
100 Broad Street, Ste 266
Charleston, S.C 29401

Dean Hayes, Esq.
Korn Law Firm
P.O Box 12369
Columbia, S.C 29211-2369

Harry V Ragsdale, Esq
Corrigan & Chandler, LLC
12 Exchange Street
Charleston, S C 29401

S Nelson Weston, Jr
P.O. Box 7788
Columbia, S C 29202

Dated: May 5, 2014



Johnson Koola

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Bank of America, N A ,)
Plaintiff,)
vs)
Johnson D. Koola, First Citizens Bank)
and Trust Company, Inc , f/k/a First)
Citizens Bank and Trust Company of)
South Carolina, and Cambridge Lakes)
Condominium Homeowners Association,)
Inc f/k/a Cambridge Lakes Horizontal)
Property Regime,)
Defendants)

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

**MEMORANDUM AND EXHIBITS
IN SUPPORT OF KOOLA' MOTION
FOR RECONSIDERATION OF
MASTER'S APRIL 24, 2014 ORDER**

FILED
2014 MAY -8 PM 3:56
JULIE A. HARRIS
CLERK OF COURT

Defendant Johnson Koola ("Koola" or defendant) respectfully submits this Memorandum of Points and Authorities and attached exhibits in support of defendant's Motion for reconsideration of this Court's April 24, 2014 Order which granted summary judgment dismissal of Koola's counterclaims against the plaintiff Bank of America ("BAC" or sometimes "Countrywide/BAC")

RELEVANT FACTS AND PROCEDURAL HISTORY

In January of 2004, Koola contracted to buy a Mount Pleasant, S C condominium in the "Cambridge Lakes" subdivision for \$152,300.00, subject to loan approval upon a satisfactory real estate appraisal. The condo in question had been previously converted from apartments to condominiums (a "condo conversion") under South Carolina Horizontal Property Act, S C Code Ann. § 27-31-10 et seq. (1976) (the "HPA") Exhibit "1" (Master Deed of the Condominium Regime at 1) As part of the loan approval process, the predecessor in interest to the plaintiff Bank of America ("BAC"),

Countrywide Home Loans Servicing, LP, required that Koola produce a "Builder's Certification" from the condo conversion developer/seller in a format prescribed and provided by the lender prior to any loan approval. The developer/seller issued a "Builder's Certification", which stated in pertinent part *"For Condo Conversions The structural, health & safety repairs and remodeling have been completed"*. Exhibit "2" Plaintiff accepted the "builder's Certification" without any reservation or question.

By mid-February of 2004, BAC completed an appraisal and approved the Koola loan. Koola purchased the condominium on February 24, 2004 paying 10% down payment at closing. Koola paid additional payments toward principal of \$5,000 in March 2004 and \$2,030 in December of 2006 such that Koola had 20% equity by Dec 2006.

In June of 2008, Cambridge Lakes Homeowners Association ("HOA") filed a construction defects lawsuit¹ against developer/seller and others alleging construction defects, negligence, and Unfair Trade Practices. The HOA claimed \$8 million as the cost to repair the construction defects. This translates into damages of \$92,307 for the 3-bedroom condominium Koola purchased. Because of the lawsuit¹ and alleged construction defects, the condominiums in the Cambridge Lakes condo subdivision became unmarketable except for short sales and foreclosure sales.

In June of 2008, Koola placed his condominium on the market to clear off his mortgage debt. Because of the alleged massive construction defects and the stated potential liability of \$92,307, Koola could not sell his unit in 2008. By 2009, Koola had become insolvent and filed for Chapter 7 Bankruptcy. In July 2009, Koola received discharge from Bankruptcy. After discharge, Koola again tried to sell the condo, but

¹ *Cambridge Lakes Homeowners Association, Inc. et al vs. Bostic Brothers Construction Inc et al*, Complaint, Case No. 2008-CP-10-3506, June 19, 2008.

could not. At time, Koola's condominium was worth less than the \$152,000.00 purchase price originally paid by Koola.

In July of 2009, Koola applied for a loan modification to BAC. By November 2009, Koola had neither income nor any resources to pay the regular mortgage payments and was behind on those payments. In Feb. 2010, Plaintiff offered Koola a purported "loan modification", whereby the monthly payment would be reduced from \$838.69 as of January 2009 to \$797.14. There was ***no reduction in the interest rate and principal balance and no change in the original maturity date.*** Exhibit "3." In fact, Koola's total payments would increase considerably after the offer of loan modification. Koola could not accept this unfavorable loan modification.

In April/May of 2010, Koola, acting on the advice of Plaintiff, listed his unit for short sale. Short sale was *the only and best means for Koola for Loss Mitigation*. In July 2010, Plaintiff filed Lis Pendens. In July/September 2010, Plaintiff initiated foreclosure proceedings², which prompted HOA and the second mortgagee to file foreclosure proceedings and other civil actions against Defendant Koola. Because of these multiple adversarial civil actions, Koola could not proceed with the short sale of his condominium.

In September of 2010, Koola searched the case dockets of HOA's construction defects lawsuit¹ and learned that HOA filed the Second and Third Amended Complaints³ in June 2010 and July 2010, respectively, which included allegations against

² *BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP vs. Johnson D. Koola et al*, Case No. 2010-CP-10-6060, Sep. 1, 2010,

³ *Cambridge Lakes Homeowners Association, Inc. et al vs. Bostic Brothers Construction Inc. et al*, Second Amended Complaint, Case No. 2008-CP-10-3506, June 28, 2010 and Third Amended Complaint, Case No. CP-10-3506, July 14, 2010.

the developer/seller that it had fraudulently represented its compliance with § 27-31-430 of the S C Horizontal Property Act (the "HPA") by falsely affirming in its Builder's Certificate that it had completed all repairs to the common areas of the condominiums Exhibit "4" at 19 and Exhibit 5 at 24

Only at this time in September of 2010 did Koola discover or have reason to discover that the signed Builder's Certificate he had obtained in 2004 at the direction of Plaintiff was false and fraudulent. This discovery caused Koola to realize that BAC had done either nothing to verify the truthfulness and accuracy of the statements in the "Builder's Certification" in approving Koola's loan or otherwise had approved said loan as a proximate result of its own negligence or gross negligence in not investigating and verifying the accuracy and truthfulness of said Builder's Certificate. Koola also realized that the Plaintiff violated the FIRREA Federal Appraisal guidelines⁴. This discovery caused Koola to amend his Answer⁵ against BAC in the instant action to assert new claims for negligence and fraud

In April of 2012, BAC filed a "Motion for Summary Judgment or Dismissing Counterclaim of Defendant Koola." This motion asserted, *inter alia*, that Koola lacked standing to assert claims against BAC because Koola had not listed such claims as assets in his 2009 Chapter 7 Bankruptcy Petition. Koola filed a Motion to reopen his Chapter 7 Bankruptcy case to include such claims on the schedules of the debtor's assets for the Trustee's consideration. By Order dated May 22, 2012, the Bankruptcy

⁴ "Interagency Real Estate Appraisal Regulations, final revisions (FIL-41-94) and Interagency Appraisal and Evaluation Guidelines dated Oct 27, 1994, adopted pursuant to Title XI of the Federal Financial Reform, Recovery, and Enforcement Act of 1989" is designated here as FIERRA Federal Appraisal guidelines

⁵ Amended Answer and Counterclaim of Defendant Johnson D Koola against BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Mar 24, 2011

Court granted Koola's Motion and reopened the Chapter 7 Bankruptcy case to allow Koola to include the newly discovered causes of actions and claims against BAC in Schedule B. Exhibit "6"

In August of 2012, Koola filed a "Motion to Sanction" BAC in this instant action for its repeated bad faith denial of Koola's application for loan modification. In 2013, BAC sold the servicing rights⁶ to Koola's loan to Green Tree Financial. Exhibit "7" On March 14, 2014, Koola filed a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment or Dismissing the Counterclaims of Defendant Koola and in support of Defendant Koola's Motion to Sanction ("Koola's Memorandum"). On March 20, 2014, the Honorable Master in Equity heard Plaintiff's Motion for Summary Judgment and Koola's Motion for Sanctions, the Honorable Master in Equity granted Plaintiff's Motion for Summary Judgment, denied Koola's Counterclaims against the Plaintiff and denied Koola's Motion for sanctions.

ARGUMENT

I. KOOLA HAS STANDING AND EXCLUSIVE RIGHT TO ASSERT COUNTERCLAIMS AGAINST PLAINTIFF AFTER REOPENING HIS CHAPTER 7 BANKRUPTCY CASE AND THE TRUSTEE'S DECLINING TO RETAIN SUCH CLAIMS.

In its Motion for Summary Judgment seeking dismissal of Koola's counterclaims, BAC argued that Koola lacked standing to assert counterclaim(s) because (1) Koola failed to set forth the counterclaim(s) in the schedules filed with his Chapter 7 Bankruptcy case in 2009; and (2) these claims remain under the control of the Bankruptcy trustee after the Bankruptcy case is closed, who has then exclusive standing

⁶ Plaintiff had already sold Koola's mortgage loan to Fannie Mae as early as March 2004. BAC Informed Koola that it sold the loan to Fannie Mae in 2011. Exhibit "8"

to assert those claims. *E.g., In re Educators Group Health Trust*, 25 F.3d 1281, 1283-84 (5th Cir. 1994), *Tyler House Apartments, Ltd. v. U.S.*, 38 Fed. Cl. 1, 6 (1997).

When Koola filed for Chapter 7 Bankruptcy in March 2009, he had no knowledge or information that the developer/seller violated HPA §27-31-430 and falsified the "Builder's Certification." Therefore, Koola could not have known at such time that he had claims against BAC negligently approving Koola's mortgage loan for the purchase of his condo in 2004 by not investigating and verifying the truthfulness of the Builder's Certificate that BAC's predecessor in interest, Countrywide, required Koola to obtain as a precondition to loan approval. Countrywide's failure to verify the accuracy and truthfulness of said Builder's Certificate is a violation of the "FIRREA" Federal appraisal guidelines. Accordingly, the appraisal that Countrywide obtained based upon the falsified Builder's Certificate was baseless and never should have been accepted as a precondition to approving Koola's loan.

In May 2012 Koola filed a Motion to Reopen the Chapter 7 Bankruptcy case to include the new causes of action and fresh claims of negligence and fraud against Plaintiff in Schedule B pursuant to 11 U.S.C. § 350(b). The Bankruptcy Court by an Order dated May 22, 2012, reopened the Bankruptcy case. On Nov. 6, 2013, the Bankruptcy Court, on the advice of the Bankruptcy Trustee, closed the Bankruptcy case. Exhibit 6. Consequently, the assets were reverted to debtor, Koola. Koola has now exclusive right to assert counterclaims against Plaintiff. This point of law and procedural history has not been reflected in the April 24, 2014 Order of the Honorable Master in Equity dated April 24, 2014. The Honorable Master in Equity has not issued a written Order on this matter. Koola prays to the Honorable Master in Equity to reconsider its Order to address this point.

II. THE PLAINTIFF OWED KOOLA A DUTY OF CARE, WHICH WAS CREATED THROUGH THE STATUTORY PROVISIONS OF FIRREA FEDERAL APPRAISAL GUIDELINES.

'Converted Condominiums' under the purview of HPA § 27-31-430 distinguish themselves from other types of real estate. In all real estate transactions except 'Converted Condominiums', the seller and the seller's broker have a statutory duty to disclose all the defects to the prospective buyer. S.C. Code Ann. §27-50-40, § 27-50-65. The prospective buyer of such real estate as well has an equal statutory duty to inspect the property for any obvious defects. S.C. Code Ann. § 27-50-80. Buyers of converted condominiums are covered by HPA. A condominium owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with other co-owners, in the common elements of the condominium property. S.C. Code Ann. § 27-31-60. For this reason, a prospective buyer of a condominium owner *cannot* inspect these common elements for any defects before buying it.

To protect the condominium buyer, HPA § 27-31-430 mandates the developer/seller of *converted condominiums* to provide all prospective condominium buyers with the "Disclosure of the physical condition of the building" report. This is an absolute legislative mandate. The Legislature did not mandate the prospective buyer to inspect the common elements, which is not allowed due to the horizontal ownership or to ask the developer/seller for a copy of the "Disclosure of the physical condition of the building" report. The developer/seller shall provide a copy of the "Disclosure of the physical condition of the building" report to all prospective buyers. The developer/seller of Cambridge Lakes condominiums violated HPA § 27-31-430 by falsely certifying that the condominium under sale is a "Condo Conversion" and that "the structural, health & safety repairs and remodeling have been completed." *Id*

In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") was enacted to protect the public interest and interest of Federal financial institutions in real estate transactions. Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA Federal Appraisal guidelines), codified into various sections of Title 12 of the U.S. Code and Title 12 of the Code of Federal Regulations, mandates the Board of Directors of mortgage banks to maintain a written Loan Policy incorporating guidelines and procedures and establishing an effective real estate appraisal program. The written Loan Policy should determine the appropriate type and content of appraisal for different lending transactions 12 C.F.R. § 34.62 and § 564.1

Under FIRREA Federal Appraisal guidelines and 12 C.F.R. § 34.62, § 564.1, the mortgagees must maintain a written Loan Policy consistent with the public interest requirements mandated by FIRREA. It is Koola's contention and position that the legal mandates found in the FIRREA Federal Appraisal guidelines created a duty of care on the part of Countrywide/BAC Plaintiff to Koola to ensure that Countrywide/BAC's loan approval process of Koola's original mortgage loan met and followed the mandated FIRREA loan policy requirements and appraisal guidelines. In discovery, Koola requested production of the applicable loan policy that Countrywide/BAC had at the time and relevant for approval of a converted condominium. Counsel for the BAC in this case has wrongfully objected to production of the Countrywide/BAC loan policy.

In the case of converted condominiums in South Carolina, Countrywide/BAC owed a duty of care to Koola to ensure that its appraisal of converted condominiums complied with S.C. law, HPA § 27-31-430. It can be inferred that it was for this reason that Countrywide/BAC asked the developer/seller to certify in the "Builder's Certification" whether the lending transaction is a "Condo Conversion" and if so, "whether

the structural, health and safety repairs have been completed” Simply put, that Countrywide/BAC required a “Condo Conversion Builder’s Certification” as a precondition to approving Koola’s loan is the affirmative evidence that Countrywide/BAC owed Koola a duty of care to ensure that the condominium being appraised has been converted from apartments in compliance with HPA § 27-31-430

Had Countrywide/BAC complied with the FIRREA Federal Appraisal guidelines, the Plaintiff ought to have (1) asked the developer/seller whether he provided the “Disclosure of the Physical Condition of the Building” report to Koola and then confirm this information with Koola, (2) or, alternatively, asked Koola whether he received the “Disclosure of the Physical Condition of the Building” Report from the developer/seller; and/or (3) ask the appraiser to appraise the condominium under transaction depending upon whether it has been converted from apartment in compliance with HPA § 27-31-430 or not BAC was negligent in failing to do any of these requirements as part of its loan approval process These failures proximately caused Koola significant damage when it became known that the condominium Koola purchased and Countrywide/BAC had appraised and approved its loan for Koola’s purchase was materially overvalued due to uncompleted repairs falsely certified as having been completed in the Builder’s Certificate.

In its reply to Koola’s First Set of Requests for Admission, Plaintiff has *admitted* that Plaintiff is obligated to follow the FIRREA Federal Appraisal guidelines, and that Plaintiff has to order an appraisal appropriate for different lending transactions depending on whether the real estate being appraised is a condo conversion or a new condominium or a single family unit or a residential or non-residential unit Exhibit “9” at 1, 2 These admissions acknowledge that Countrywide/BAC had a duty of care to ensure

that the mandates of FIRREA Federal Appraisal guidelines were followed for the approval process of Koola's loan

As set forth above, in its responses to Koola's Request for Production, BAC objected to Koola's requests for production of all documents, which the Plaintiff provided to the appraiser when the appraiser was engaged by the Plaintiff to get the appraisal done, as well as, for production of BAC/Countrywide's written "Loan Policy" incorporating its guidelines and procedures for real estate appraisal and evaluation program Exhibit "10" at 2 and 3 In answer to Koola's First set of Interrogatories, BAC objected to answer under what authority BAC required the developer/seller to provide the information in the "Builder's Certification" related to condo conversion Exhibit "11" at 1. It can be inferred, and Koola argues that these objections are evidences of an effort by BAC to conceal its negligence Koola respectfully submits and requests that this Court order BAC to fully answer Koola's discovery and provide documentation of its "Loan Policy" and FIRREA guidelines to Koola in advance of any decision by this Court, and that Koola be permitted to submit further arguments based on BAC's production of this documentation.

It is well established that "Negligence is the breach of a duty of care owed to the plaintiff by the defendant To state a cause of action for negligence, the plaintiff must allege facts which demonstrate (1) a duty of care owed by the defendant, (2) a breach of that duty by a negligent act or omission, (3) a negligent act or omission resulted in damages to the plaintiff, and (4) that damages proximately resulted from the breach of duty In determining whether a particular act is negligent, the test depends on what a person of ordinary reason and prudence would do under those circumstances at that time and place" *Savannah Bank, N A. v Stalliard*, 400 S C 246, 734 S E.2d 161 (Internal citations omitted).

Koola has clearly established here that (1) BAC owed a duty of care to Koola under the statutory mandates in FIREEA Federal Appraisal guidelines; and (2) that duty of care under South Carolina rules consists of appraising the condominium in compliance with HPA § 27-31-430. The inclusion of "Condo Conversion" certification mandate in the "Builder's Certification," and BAC's admissions to Koola's Request to Admit are affirmative evidences of this duty of care. Koola respectfully submits that BAC breached that duty of care by a negligent action when Countrywide completed an appraisal without verifying the truthfulness and accuracy of the "Builder's Certification." In doing so, the Plaintiff perpetuated the fraud committed by the developer/seller. Koola was proximately damaged when the aforesaid negligence caused Koola to purchase a condominium riddled with construction defects, and which was further rendered unmarketable for years after discovery of these defects.

The Order of the Honorable Master in Equity does not make any reference to the alleged violations of FIERRA Federal appraisal guidelines and 12 § C F R 34.62, § 564.1 as well as, BAC's admissions that it is obligated to follow the FIERRA Federal Appraisal guidelines. Instead, the Honorable Master in Equity cites *Stalliard*, *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct App 2003), and *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984) to contend that Koola has not established that BAC owes him a duty of care.

Stalliard distinguishes contrastingly from Koola's case. In *Stalliard*, the plaintiff argued that the bank was negligent in processing and discovering false information about his income in the loan application, which would have made him ineligible for the loan. In *Stalliard*, plaintiff did not cite any authority or statute establishing a duty of care that the bank had to discover the plaintiff's falsely stated income in his loan

application "At the head of each part [of the brief], the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority " Rule 208 (b) (1) (D), SCACR. Rule 16 (a) (8) (2), SCRCP, mandates the parties in a [civil] action to "[s]tate the questions of law involved, with *citations of legal authority* substantiating the party's position, . " In the absence of citations of authority, a Court cannot make a decision on a particular issue Therefore, in *Stalliard*, the Supreme Court held that the bank did not have a duty to inform the borrower of information that the borrower could have discovered by reading the loan application himself

Regions Bank also distinguishes contrastingly from Koola's case. In *Regions Bank*, the appellant asserted that the bank owed a duty of care because the appellant was particularly vulnerable and depended on the bank for guidance On vulnerability issue, the Court noted the appellant was listed as having over thirty years of experience in the marine business and held that appellant was not in a vulnerable position, [and, therefore was knowledgeable about her business decisions], and the bank owed her no special duty of care The appellant did not cite any legal authority to establish that the Regions Bank owed the appellant a duty of care in guiding her in her business decisions, and therefore, the Court held that the appellant's case did not establish an overall duty of care between the Bank and the appellant

Reference to *Roundtree Villas Ass'n, Inc* is not warranted First, *Roundtree Villas Ass'n, Inc* was decided in 1984, some five years before FIRREA Federal Appraisal guidelines were enacted and codified in 1989 Koola's claims rose out of Countrywide/BAC's 2004 violations of FIRREA Federal Appraisal guidelines. Second, the plaintiff alleged in that case that the Lender and its advisor were liable for

construction defects. The Supreme Court held that there is no applicable statutory law to hold the lender and its advisor liable for construction defects.

Koola's case is based on Countrywide/BAC's statutory violation of FIRREA Federal Appraisal guidelines. In addition, there was no privity of contract between the lender and builder in *Roundtree Villas Ass'n, Inc.* In the absence of a contractual privity, there is no common law duty between the lender and builder to protect each other. For this reason only, the Supreme Court held that the Lender and the Lender's advisor had no duty of care to Plaintiff-Respondent. Finally, the Supreme Court held that in the circumstances surrounding the case, the lender and the lender's advisor may be held liable for any damages proximately caused by the alleged negligent repair of the common elements of the property, and therefore, the Lender had a common law duty to use due care to Plaintiff-Respondent and ordered a new trial. This holding by the Supreme Court negates the argument that BAC has no duty of care to Koola.

In Koola's Memorandum, he represented to the Honorable Court that Federal, and State authorities, various Federal agencies and many investors in mortgage-backed securities had filed numerous lawsuits against Plaintiff alleging violations and fraudulent practices in lending transactions. In at least two instances, Plaintiff was found liable for fraud. In many other instances, Plaintiff settled the cases. Between 2010 and 2013, Plaintiff had paid more than \$50 billion in fines and settlements. Exhibit "12" In October/November 2013, a New York jury found Plaintiff guilty of fraud related to mortgages made and sold to Fannie Mae and Freddie Mac under Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIERRA"). The Plaintiff is equally liable to Koola under these statutory provisions.

III. KOOLA'S COUNTERCLAIMS ARE NOT BARRED BY STATUTE OF LIMITATIONS.

BAC argues further that Koola's Counterclaims are barred by the Statute of Limitations S C Code Ann. § 15-3-530 provides for a three-year Statute of Limitations⁷ In 2004, Koola knew that the developer/seller issued a "Builder's Certification" Only in September 2010, Koola learned that the developer/seller issued a falsified "Builder's Certification" In March 2011, Koola discovered that Plaintiff completed the appraisal based on a falsified "Builder's Certification", and that Plaintiff violated FIERRA Federal Appraisal guidelines Koola asserted these claims as counterclaims in his Amended Answer and Counterclaims filed in March 2011. Koola's actions and counterclaims are thus within the three-year statute of limitations

The Statute of Limitations "begins to run when the underlying cause of action reasonably ought to have been discovered" *Martin v Companion Health Care Corp* , 357 S C. 570, 575, 593, S.E 2d 624, 627 (Ct App. 2004) Under the discovery rule, the statute of limitations does not run from the date of the negligent act, but from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence *McClain v Jarrad*, 354 S C 218, 580 S.E.2d 763 (S.C App 2003), *Holly Woods Association of Residential Owners v Hiller*, 392 S C 172, 183, 708 S E 2d 787 (Ct/App 2004) (Quoting *Martin v Companion Health Care, supra*) The test before the trial court is whether the circumstances of the case would have put a person of common knowledge on notice that "some right of his has been invaded or that some other claim against another party might exist" *Holly Woods*

⁷ Violations under Federal Financial Reform, Recovery and Enforcement Act of 1989 have a maximum of ten-year Statute of Limitations depending on state jurisdictions

Association v. Hiller, *Id* at 183-84, *citing Young v. Dept of Corrs.* 333 S C 174, 719, 511 S E 2d 413, 416 (Ct App. 1999)

The doctrine of equitable tolling may also be applicable to Koola's claims against Plaintiff under the facts of the case. In *Magnolia North Property Owner's Association v. Heritage Communities, Inc*, the Appellate Court of South Carolina held that a defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that would otherwise give operation to the statute has been induced by the defendant's conduct " *Id*, 397 S C 348, 372, 725 S.E.2d 112, 115 (Ct App. 2012) "Equitable tolling" is a nonstatutory tolling theory, which suspends a limitations period. *Hooper v. Ebenezer Sr Services and Rehabilitation Center*, 386 S C.108, 687 S E 2d 29 (2009).

In *Hancock v Mid-South Management Co.*, 381 S C. 326, 330-331, 673 S E 2d 801, 803 (2009), the Supreme Court of South Carolina upheld the application of the "scintilla standard" governing the determination of motions for summary judgment where, as here, plaintiff's claims must be met by the preponderance of evidence

"[We] hold that in cases applying the preponderances of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand summary judgment."

Koola has repeatedly stated here that he knew that the developer/seller issued a "Builder's Certification" to Plaintiff in 2004; that in September of 2010, he discovered that the said "Builder's Certification" was falsified, that in September of 2010 he had reason to know that Plaintiff completed the appraisal on the basis of a falsified Builder's Certification and that Plaintiff violated FIRREA Appraisal guidelines. For the Plaintiff to allege that Koola knew in 2004 that the "Builder's certification" was falsified implies that Plaintiff had this information in 2004, and did not act on it while completing

the appraisal Plaintiff has not produced any evidence, let alone preponderance of evidence, to conclude that Koola knew that the Builder's Certification was fraudulent in 2004 or before September 2010 Koola's claims against the BAC are not barred by the Statute of Limitations

IV. KOOLA'S MOTION FOR SANCTIONS

Title 12, U.S.C.A. §1752z-23 et seq., the "HOPE for Homeowners Program," mandates mortgagees that (1) they allow homeowners to avoid foreclosure by reducing the principal balance outstanding and interest rate charged on their mortgages, (2) they target mortgage assistance to homeowners for their principal residence; (3) they determine the principal obligation amount of the refinanced eligible mortgage by the reasonable ability of the mortgagor to make his or her mortgage payments so that it does not exceed 90% of the appraised value of the property; (4) they ensure that eligible mortgages shall have originated on or before Jan 1, 2008, and (5) they complete the appraisal based on the current value of the property which is conducted in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, *Id*

Title 12 U.S.C.A. § 1710(a)(2) authorizes the Secretary of FHA to pay insurance benefits to the mortgagee to recompense the mortgagee for all or part of any costs of the mortgagee for taking loss mitigation actions that provide an alternative to foreclosure of a mortgage that is in default

Chief Justice of South Carolina Supreme Court, through an Administrative Order No 2011-05-02-01 dated May 2, 2011, ("Administrative Order") has given clear and unambiguous guidelines to streamline loan modification and foreclosure procedures and other alternate dispute resolution procedures including mediation In February 2012,

BAC and four other mortgage banks entered into a \$25 billion settlement with Federal and 49 state officials to provide relief to homeowners in the form of lower mortgage interest rates, principal reductions and other relieves. According to published reports, homeowners received relief for an average of about \$76,615 each during the four-month period from March 1 through June 30, 2012

In July 2009, Koola applied to BAC for a mortgage loan modification. In August 2009, BAC approved a special forbearance agreement agreeing to make a decision on loan modification before Dec. 2009. By November 2009, Koola lacked the resources to continue to pay regular mortgage related payments and fell behind on such payments. In February of 2010, BAC offered a "*loan modification*", changing the monthly payment from \$838.69 at the beginning of 2009 to \$797.14 after loan modification. Exhibit 3. There was *no reduction in the interest rate, no reduction in the principal balance and no change in the original maturity date*. The apparent reduction in the mortgage payments was not due to any loan modification, but because of the adjustment of the principal balance as Koola had paid two additional payments for \$7030.00 within about two years toward the principal balance, and Koola paid the mortgage dues weekly for few years. These two factors caused the downward adjustment of monthly payment from \$839.69 to \$797.14 and not due to loan modification. In fact, Koola's total payments through the life of the loan would increase considerably after the offer of loan modification. Koola could not accept this unaffordable and unfavorable and more harmful loan modification. Further Plaintiff acted in bad faith when it did not inform Koola whether Plaintiff considered a reduction in interest rate or principal balance while offering him the loan modification under reference.

After BAC initiated foreclosure proceedings, Koola applied several times for loan modification under HOPE for Homeowners Program. Each time, BAC denied a loan modification. Koola respectfully submits to this Court

- (1) BAC was obligated to inform Koola how much reduction in the interest rate as well as principal balance was considered to create an affordable payment,
- (2) BAC could have offered to Koola an affordable loan modification especially after the five mortgage banks, including BAC, settled with the United States and 49 state officials for \$25 billion specifically intended for loan modification by reduction in interest rate and principal balance,
- (3) Koola had about 25% equity in his home at the time he defaulted on the mortgage payments. Koola's mortgage was never an under-the-water mortgage
- (4) The Administrative Order has ordered that

[I]n the event the Court, having jurisdiction over the foreclosure action, determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this Order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party

The Order of the Master in Equity makes a reference to a "loan modification" which the BAC offered in Koola in 2010 by reducing the monthly payment from \$838.69 as of Jan 2009 to \$797.14. There was no reduction in the interest rate and principal balance and no change in the original maturity date. Exhibit 3. Therefore, it cannot be called a "loan modification." The Order of the Master in Equity further makes a reference that "social security benefits" are the only source of regular income for Koola. Koola admits this fact. The "Hope for Homeowners Program" was designed to insure refinanced loans for distressed borrowers to support long-term sustainable

homeownership 12 U.S.C.A. § 1715z-23 (b) (1) (2009) "Hope for Homeowners Program" bans offering loan modification to wealthy individuals 12 U.S.C.A. § 1715z-23 (e) (12) (2009)

The April 24, 2014 Order, citing a foreclosure case, *Federal Nat. Mort. Ass'n v LeCrone*, 868 F.2d 190, 193 (6th Cir. 1989), mistakenly states that Koola "would not have a private right of action against BAC for violating specific servicing guidelines that require BAC to provide him with the loan modification he says he requires." What the Sixth Circuit Decision said was that "no express or implied right of action in favor of mortgage exist[ed] for violation of HUD servicing policies" because "no legal relationship exists between the FHA and individual mortgagors." A legal relationship exists between Koola as mortgagor and BAC, which is a pure private entity. Moreover, BAC, which is a private entity, does not enjoy any sovereign immunity. 12 U.S.C. § 1702 permits suits against HUD in Federal Courts, but not in State Courts.

The Honorable Master cites *Spaulding v Wells Fargo Bank*, 714 F.3d 769 (4th Cir. 2013), a Maryland case, in support of its decision to deny Koola's Motion to Sanction. All the lower courts and all the citizens and non-citizens of South Carolina have to obey the "Administrative Order" of the Chief Justice of the Supreme Court of South Carolina, irrespective of whether they agree or disagree with the Order. Also, a Federal Law is supreme all over the United States. Maryland law has no jurisdiction in South Carolina. Only in the absence of a Federal law and an Order of the Appellate Courts of South Carolina, a Maryland law has persuasive, but not mandatory authority in South Carolina. The Court also erred in application of the *Spaulding* case to Koola's Motion. The Fourth Circuit Court denied *Spaulding's* appeal among others because (1) that there is no a contract between *Spaulding* and Wells Fargo Bank under Maryland law for Wells

Fargo Bank to offer an affordable loan modification to Spaulding as Spaulding claimed; (2) Spaulding failed to submit requested additional documentation to the bank, and (3) Spaulding could not establish any misrepresentation and fraud on the part of the Bank to Spaulding

Koola argues that the (1) BAC agreed to consider Koola's application for loan modification under Hope for Homeowners Program', 12 U S C A § 1715z-23 (2009), (2) therefore, BAC has an obligation, *not a contract*, to consider Koola's application for loan modification under the guidelines of Hope for Homeowners Act, which include reduction in the interest rate as well as principal balance, determination of the principal obligation amount of the refinanced eligible mortgage limited to 90% of the appraised value of the property to which such mortgage relates, the said appraisal completed at the time of loan modification application, (3) and inform Koola what is the principal obligation amount that the Plaintiff determined under the guidelines of Hope for Homeowners Act

BAC did not offer to Koola a loan modification under these guidelines, and therefore BAC did not attempt to reach an agreement with Koola for foreclosure intervention in good faith. During the Motion Hearing, Koola informed the Honorable Master that any difference between principal obligation amount that the BAC determined under the guidelines of Hope for Homeowners Program and Koola's affordability of that principal obligation amount, if any, can be bridged by an assistance from S.C. Help, a federally funded program administered through the State of South Carolina to offer assistance for homeowners facing foreclosure. However, the Honorable Master refused to weigh Koola's eligibility for such assistance. Koola also presented to the Court that BAC could have offered an affordable loan modification to Koola especially after the five mortgage banks, including BAC, settled various litigations with the U S and 49 state

officials for \$25 billion specifically intended for loan modification by reduction in interest rate and principal balance

Koola has represented to the Court that he was a honest homebuyer, paid 10% down payment at the time of closing, made up the equity in home to 20% by paying additional \$7,030 00 within about 2 years and that he had about 25% equity at the time the Plaintiff initiated the foreclosure case Koola has alleged that BAC violated FIRREA Federal Appraisal guidelines and was negligent in not verifying the truthfulness and accuracy of the "Condo Conversion" clause in the "Builder's Certification" and caused irreparable damage to Koola.

For the aforementioned reasons, Koola respectfully prays to the Honorable Master to schedule an evidentiary hearing on Koola's Motion for Sanctions against BAC Alternatively, Koola respectfully prays to the Honorable Master to delineate the Motion for Sanctions from BAC's Motion for Summary Judgment and schedule an evidentiary hearing on said Motion.

V. HANDWRITTEN ORDER OF THE HONORABLE MASTER IN EQUITY

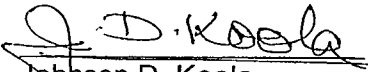
The Honorable Master in Equity, after completing the formal order, added a handwritten conclusion of law in between two sections on page 4, which stated. "Furthermore, Mr Koola received a Ch 7 Bankruptcy discharge in Ca # 09 - 01024⁸ on July 13, 2009 rendering Koola's claims moot" Koola could not comprehend which claims the Honorable Master referred to, and which section of the bankruptcy law rendered Kola's claims moot Koola prays to the Honorable Master to clarify his finding or ruling

⁸ The case number is 09-02104-DD

CONCLUSION

For the aforementioned reasons, Koola prays to the Honorable Court to vacate its April 24, 2014 Order, order BAC to answer Koola's discovery requests and allow Koola further opportunity to submit said responses for this Court's consideration of the issues raised in BAC's motion for summary judgment. Koola respectfully prays that the Honorable Master sever Koola's Motion for Sanctions from BAC's foreclosure claim and schedule an evidentiary hearing on the same.

Respectfully submitted,


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

May 8, 2014
Mt Pleasant, South Carolina

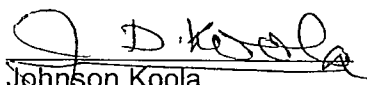
Proof of Service

On May 8, 2014, I, Johnson Koola, mailed, first class postage paid by the sender, a copy of this Memorandum and exhibits in support of Koola's Motion for Reconsideration to the following persons.

The Hon Mikell R. Scarborough
Master in Equity for Charleston County
100 Broad Street, Ste 266
Charleston, S C 29401

Dean A Hayes, Esq
Korn Law Firm
P O Box 11264
Columbia, S C 29211

Dated May 8, 2014


Johnson Koola

May 6, 2013

—Associated Press

Bank of America [BAC +5.02%], if you haven't heard, has had to settle a whole lot of legal claims over the past couple of years

WSJ has been keeping a running tally, and it looks like it's time to update once again. That's because BofA reached a broad settlement with mortgage-bond insurer MBIA today, paying \$17 billion and committing to some other deals to keep MBIA afloat and settle claims over mortgage-bonds

Since the beginning of 2010, when Brian Moynihan succeeded Ken Lewis as CEO, Bank of America has paid about \$45.87 billion in various agreements

Here's an updated rundown of the more prominent settlements that have been announced.

Today – \$17 billion to MBIA including \$16 billion in cash, along with some other compensation. The settlement also includes a \$500 million credit line and BofA will take a 5% stake in MBIA's holding company

April 17 – \$500 million to a group of pension funds includes Maine State Retirement System, to release BofA from claims on mortgage bonds that had a current outstanding principal of \$95 billion

April 2 – \$165 million to the National Credit Union Administration, for allegations that the bank played down the risks of poor-quality mortgages packaged into securities.

Jan. 7, Settlement 1 – \$11.6 billion to Fannie Mae [FNMA +0.49%] to settle repurchase claims, including \$3.6 billion in a cash payment, \$6.75 billion in repurchases and \$13 billion in fees to Fannie related to its role as a loan payment processor. The agreement covered loans with an outstanding principal balance of about \$300 billion

Jan. 7, Settlement 2 – \$2.9 billion as part of an \$8.5 billion settlement that 10 banks that reached with federal regulators over allegations of foreclosure abuses.

September 28, 2012 – \$2.43 billion to shareholders for the acquisition of Merrill Lynch.

February 2012 – \$11.8 billion under the 50 state attorneys general settlement, which included \$7.6 billion in payments for borrowers, \$1 billion for refinancings, \$2.25 billion paid to state and federal governments, and \$1 billion to the Federal Housing Authority.

December 2011 – \$335 million to settle allegations Countrywide discriminated against minority borrowers

June 2011 – \$8.5 billion for mortgage repurchase demands from a group of big-name bond holders including BlackRock and the New York branch of the Federal Reserve

May 2011 – \$20 million to Department of Justice over allegations Countrywide wrongly foreclosed on active-duty members of the military

April 2011 – \$16 billion for Assured Guaranty to settle breaches of representations and warranties on mortgage bonds.

February 2011 – \$410 million to checking-account customers who were charged overdraft fees

January 2011 – \$3 billion to Freddie Mac [FMCC -0.24%] and Fannie Mae to settle demands for mortgage repurchases

October 2010 – Part of a \$67.5 million settlement for former Countrywide CEO Angelo Mozilo was covered by the bank for civil fraud charges

June 2010 – \$108 million to the FTC for claims that Countrywide, before BofA owned it, inflated costs of foreclosure services for customers by up to 400%

May 2010 – \$600 million to pensions that lost money on Countrywide mortgage securities

February 2010 – \$150 million to SEC over the Merrill acquisition, reluctantly approved by the judge

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Bank of America, N A ,)

Plaintiff,)

vs)

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

Defendants)

IN THE COURT OF COMMON PLEAS

NINTH JUDICAL CIRCUIT

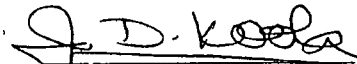
CASE # 2010-CP-10-6060

NOTICE OF APPEAL

FILED
2014 JUN -9 PM 3:17
JULIE J. MONTGOMERY
CLERK OF COURT
BY 

Defendant pro se, Johnson D Koola, hereby files Notice of Appeal of the Order of the Master in Equity, the Honorable Mikell R Scarborough, denying Defendant's Motion to Reconsider recorded on May 9, 2014, subsequent to the Order of the Honorable Mikell R Scarborough granting Plaintiff's Motion for Summary Judgment and denying the Defendant's Motion to Sanction and the consequent dismissal of Defendant's counterclaims against the Plaintiff

Respectfully submitted,



Johnson D Koola
Cambridge Lakes dr
Mt Pleasant, SC 29464
(843) 849-9241

Defendant pro se

Mt Pleasant, SC
June 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of the Master in Equity

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-6060 *je*

10-6060
FILED
2014 JUN 16 PM 2:43
JULIE C. HAYSTRONG
CLERK OF COURT
BY _____

Bank of America, N.A.,

Respondent,

vs

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

Of Whom Johnson D. Koola is

Appellant

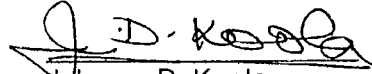
NOTICE OF APPEAL

Appellant pro se, Johnson D. Koola, ("Appellant") hereby appeals the Order of the Master in Equity, the Hon. Mikell R. Scarborough, denying Appellant's Motion to Reconsider recorded on May 9, 2014, subsequent to the Order of the Honorable Mikell R. Scarborough granting Respondent's Motion for Summary Judgment and the consequent dismissal of Appellant's counterclaims against the Respondent and denying the Appellant's Motion to Sanction. Appellant received the notification of the Order denying Motion to Reconsider through mail on May 15, 2014.

Defendant First Citizens Bank and Trust Company, Inc. dismissed its Crossclaim against the Appellant. Defendant Cambridge Lakes Condominium Homeowners Association, Inc. dismissed its Crossclaims in the case No. 2010-CP-10-6060 against the Appellant after consolidating these Crossclaims with another case. These defendants are no more parties to the case No. : 2010-CP-10-6060.

Dated Mt Pleasant, SC
June 16, 2014

Respectfully submitted,


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

Appellant pro se

Other Counsel of Record

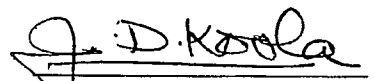
Dean A Hayes, Esq
Korn Law Firm, P A
P O Box 12369
Columbia, SC 29211-2369
Attorney for the Respondent
(803) 252-5817

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE # 2010-CP-10-6060
	)	
BAC Home Loans Servicing, LP f/k/a	)	
Countrywide Home Loans Servicing, LP	)	
	)	
Plaintiff	)	Reference to the administrative order
	)	# 2011-05-02-01 issued by the Chief Justice
	)	of South Carolina on May 2, 2011
	)	
	)	
Johnson D. Koola; First Citizens Bank and	)	
Trust, Inc and Cambridge Lakes Homeowners	)	
Association, Inc.	)	
	)	
Defendants	)	

To.
Attorney Mr Dean A Hayes
Attorney to Plaintiff BAC Home Loans Servicing, LP
f/k/a Countrywide Home Loans Servicing LP

Dear Mr Hayes.

As a defendant in the above mentioned foreclosure case, I bring to your kind attention to the administrative order issued by the Chief Justice of South Carolina # 2011-05-02-01 dated May 2, 2011 applicable to mortgage foreclosure actions and guidelines issued to the mortgagee's attorney to deal with loan modification applications and foreclosure prevention intervention process. Your immediate and urgent action on this matter is requested. Otherwise, I will raise this issue during the foreclosure hearing case


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

Mailed to.
Attorney Mr. Dean A Hayes
Korn Law Firm
P O Box 12369
Columbia, SC 29211-2369

Date: July 28, 2011

Making Home Affordable Program
Request For Modification and Affidavit (RMA)



REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) Page 1 COMPLETE ALL THREE PAGES OF THIS FORM

Loan ID Number 52532740 Servicer Bank of America

BORROWER		CO-BORROWER	
Borrower's name	Johnson D Koola	Co-borrower's name	
Social Security number	450-71-8113	Social Security number	
Date of birth	05-14-1944	Date of birth	
Home phone number with area code	(843) 849-9241	Home phone number with area code	
Cell or work number with area code		Cell or work number with area code	

I want to ☒ Keep the Property ☐ Sell the Property

The property is my ☒ Primary Residence ☐ Second Home ☐ Investment

The property is ☒ Owner Occupied ☐ Renter Occupied ☐ Vacant

Mailing address 1587 Cambridge Lakes Drive, Mount Pleasant, SC 29464

Property address (if same as mailing address, just write same) same E-mail address johnson.koola@msn.com

Is the property listed for sale? ☐ Yes ☒ No

Have you received an offer on the property? ☐ Yes ☒ No

Date of offer _____ Amount of offer \$ _____

Agent's Name _____

Agent's Phone Number _____

For Sale by Owner? ☐ Yes ☒ No

Have you contacted a credit-counseling agency for help? ☒ Yes ☐ No

If yes, please complete the following:

Counselor's Name _____

Agency Name _____ Family Services of America

Counselor's Phone Number _____

Counselor's E-mail _____

Who pays the real estate tax bill on your property?

☐ I do ☒ Lender does ☐ Paid by condo or HOA

Are the taxes current? ☒ Yes ☐ No

Condominium or HOA Fees ☒ Yes ☐ No \$ 275.00 per month

Paid to _____ Cambridge Lakes HOA

Who pays the hazard insurance premium for your property?

☐ I do ☐ Lender does ☒ Paid by Condo or HOA

Is the policy current? ☐ Yes ☒ No

Name of Insurance Co. _____

Insurance Co. Tel #: _____

Have you filed for bankruptcy? ☒ Yes ☐ No If yes ☒ Chapter 7 ☐ Chapter 13 Filing Date: 07-13-2009

Has your bankruptcy been discharged? ☐ Yes ☒ No Bankruptcy case number 09-02104-dd

Additional Liens/Mortgages or Judgments on this property

Lien Holder's Name/Servicer	Balance	Contact Number	Loan Number
First Citizens bank	Foreclosure case	(888) 207-3653	891020482808
Cambridge Lakes HOA	Foreclosure case	(843) 352-0300	1587 Cambridge Lakes Dr

HARDSHIP AFFIDAVIT

I (We) am/are requesting review under the Making Home Affordable program
I am having difficulty making my monthly payment because of financial difficulties created by (check all that apply)

- ☒ My household income has been reduced. For example unemployment, underemployment, reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower
- ☒ My monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt
- ☐ My expenses have increased. For example monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes
- ☒ My cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time

☐ Other Inability to sell the home due to a lawsuit filed by HOA against developer et al alleging construction defects

Explanation (continue on back of page 3 if necessary) Details of Hardship Affidavit attached

INCOME/EXPENSES FOR HOUSEHOLD

Number of People in Household

Monthly Household Income		Monthly Household Expenses/Debt		Household Assets	
Monthly Gross Wages	\$ 0	First Mortgage Payment	\$ 855 p m	Checking Account(s)	\$ 423 as on 8-31-11
Overtime	\$ 0	Second Mortgage Payment	\$ 0	Checking Account(s)	\$ 0
Child Support / Alimony / Separation ²	\$ 0	Insurance	\$ 0	Savings/ Money Market	\$ 0
Social Security/SSDI	\$ 1,126 p m	Property Taxes	\$ 0	CDs	\$ 0
Other monthly income from pensions, annuities or retirement plans	\$ 0	Credit Cards / Installment Loan(s) (total minimum payment per month)	\$ 50 p m	Stocks / Bonds	\$ 6,367 as on 8-31-11
Tips, commissions, bonus and self-employed income	\$ 0	Alimony, child support payments	\$ 0	Other Cash on Hand	\$ 11
Rents Received	\$ 0	Net Rental Expenses	\$ 0	Other Real Estate (estimated value)	\$ 0
Unemployment Income	\$ 0	HOA/Condo Fees/Property Maintenance	\$ 275 p m	Other _____	\$ 0
Food Stamps/Welfare	\$ 0	Car Payments	\$ 0	Other _____	\$ 0
Other (investment income, royalties, interest, dividends etc.)	\$ 0	Other Living, home, health-care, transportation etc	\$ 600 p m	Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc)	
Total (Gross Income)	\$ 1,126 p m.	Total Debt/Expenses	\$ 1780 p m	Total Assets	\$ 6,801 as on 8-31-11

INCOME MUST BE DOCUMENTED

¹Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower, please specify using the back of this form if necessary.

²You are not required to disclose Child Support, Alimony or Separation Maintenance Income, unless you choose to have it considered by your servicer.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

BORROWER	CO-BORROWER
☐ I do not wish to furnish this information	☐ I do not wish to furnish this information
Ethnicity: ☐ Hispanic or Latino ☒ Not Hispanic or Latino	Ethnicity ☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race: ☐ American Indian or Alaska Native ☒ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	Race ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex ☐ Female ☒ Male	Sex ☐ Female ☐ Male

To be completed by interviewer

This request was taken by ☐ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet	Interviewer's Name (print or type) & ID Number	Name/Address of Interviewer's Employer
	Interviewer's Signature Date	
	Interviewer's Phone Number (include area code)	

ACKNOWLEDGEMENT AND AGREEMENT

In making this request for consideration under the Making Home Affordable Program, I certify under penalty of perjury

- 1 That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure
- 2 I understand that the Servicer, the US Department of the Treasury, or their agents may investigate the accuracy of my statements and may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate Federal law
- 3 I understand the Servicer will pull a current credit report on all borrowers obligated on the Note
- 4 I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement under Making Home Affordable and may pursue foreclosure on my home
- 5 That my property is owner-occupied, I intend to reside in this property for the next twelve months, I have not received a condemnation notice, and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify
- 6 I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner
- 7 I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document
- 8 I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt
9. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the US Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan, (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s), (d) companies that perform support services in conjunction with Making Home Affordable, and (e) any HUD-certified housing counselor

J. D. Koala
Borrower Signature

September 2, 2011

Date

Co-Borrower Signature

Date

HOMEOWNER'S HOTLINE

*If you have questions about this document or the modification process, please call your servicer
If you have questions about the program that your servicer cannot answer or need further counseling,
you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about
the program and offers free HUD-certified counseling services in English and Spanish*

888-995-HOPE
Homeowner's HOPE™ Hotline

NOTICE TO BORROWERS

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that "Under penalty of perjury all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free) 202-622-4559 (fax) or www.sigtarp.gov. Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



AFFIDAVIT

BAC Home Loan # 52532740

Johnson D Koola

Currently, I am under foreclosure. The foreclosure action is brought upon me by the following reasons.

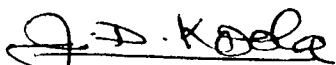
1 Permanent Loss of income

I am now past 67 years of age and retired. Thus, there is a permanent loss of income. Further, I lost my primary job in late 2004. Since then I was only able to take up some jobs intermittently. **My current income source is social security benefits.**

2. Because of my inability to sell the property and clear the mortgage related debts due to a civil case (# 2008-CP-10-3506) filed by the Homeowners Association against the real estate developer/seller, builder etc alleging construction defects

Additional information.

When I bought the condo in early 2004, I paid down 10% of the home price as down payment, I made an additional down payment of \$5,000 on March 29, 2004 and another additional down payment \$2,030 on December 13, 2006 toward the principal balance. I wish to state that I was and am an honest homebuyer. If foreclosed, I will be turned into a homeless man. I wish to keep the home, as this is my primary and only residence.



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

September 2, 2011



Home Loans

BAC Home Loans Servicing, LP
Attn: Home Retention Division
100 Beecham Drive Suite 104
Pittsburgh, PA 15205

JOHNSON D KOOLA
1587 Cambridge Lakes Dr
Mount Pleasant, SC 29464

Notice Date: February 4, 2010

Account No: 52532740

Property Address:
1587 CAMBRIDGE LAKES DRIVE
MOUNT PLEASANT, SC 29464

IMPORTANT MESSAGE ABOUT YOUR LOAN

Dear JOHNSON D KOOLA,

BAC Home Loans Servicing, LP is committed to helping our valued customers who may be having difficulty in making their mortgage payments. Enclosed is a proposed agreement to modify your loan.¹ This modification agreement will not be binding or effective unless and until it has been signed by both you and BAC Home Loans Servicing, LP. Further, in order for the loan modification to become effective, you must complete the actions in the "To Accept the Proposed Modification" section of this letter by no later than February 19, 2010.

SUMMARY OF PROPOSED MODIFICATION

Interest Rate:	5.750%
Unpaid Principal Balance ²	\$116,183.47
New Maturity Date:	March 1, 2034 ³
Effective Date of New Interest Rate:	March 1, 2010
Interest Rate Terms	Refer to Interest Rate Changes Section Below
First Payment Due Date under new terms:	April 1, 2010

A breakdown of your new monthly payment is as follows:

P&I Payment:	\$744.68
Escrow / Option ins :	\$52.46
New Monthly Payment:	\$797.14⁴

(must be included with modification agreement)

- ¹ The enclosed terms are based upon information you provided to us and may be subject to validation.
- ² Your "Unpaid Principal Balance" is calculated by adding the Delinquent Balance to your current Unpaid Principal Balance of \$112,644.50.
- ³ Your new maturity date may have changed from your current maturity date as a result of the modification terms. This agreement will bring the loan current; however, you are still required to pay back the entire unpaid principal balance by the maturity date for your loan.
- ⁴ Your first new monthly payment is due with the executed agreement. This payment is subject to change if your escrow payment changes. Escrow includes amounts to pay taxes and insurance on your home.

**TO ACCEPT THE PROPOSED MODIFICATION, COMPLETE THE FOLLOWING BY :
February 19, 2010**

1. **Carefully review all documentation enclosed⁶.** On the following pages, we have outlined important legal terms and notices of this change. It is very important that you read and understand these terms
2. **Sign and date the enclosed Loan Modification Agreement in the presence of a notary.** The notary acknowledgment must be in recordable form **All parties who own an interest in the property must sign the modification agreement as their name appears on the enclosed agreement.**

Special Requirement if the Loan Modification Agreement is being executed in California. If executing the Loan Modification Agreement in the state of California, you must also sign and execute the **California Notary Acknowledgement** in the presence of a notary. It will be utilized by a notary of the state of California in place of the notary section contained in the Loan Modification Agreement

3. **Remit the First Payment Due under the modified terms in the amount \$797.14 in CERTIFIED CHECK OR MONEY ORDER. Please use the enclosed self addressed envelope to provide payment.**

First New Monthly Payment:	\$797.14
Interest.	\$3,220.07
Fees*	\$0.00
Escrow	\$318.90

Total Amount Due with Executed Agreement: \$797.14

4. **Sign and date the enclosed Modification Bankruptcy Disclosure Rider (notary NOT required).** All parties who own an interest in the property must sign the Bankruptcy Disclosure as their name appears on the enclosed document. This disclosure confirms that you have had the opportunity to consult with an attorney regarding this modification agreement, that you are willingly entering this agreement and understand that it does not affect the discharge of your personal liability on the note
5. Using the pre-addressed, pre-paid FedEx envelope and the address label provided, **return all properly signed and notarized documents and first payment no later than February 19, 2010**

DID YOU REMEMBER?

- Loan Modification Agreement (See Item #2 above)
- California Notary Acknowledgement (if applicable. See above)
- Certified Check or Money Order for the Total Amount Due for First Payment
- Modification Bankruptcy Disclosure Rider (See above)

NOTE Failure to return all documents correctly signed, dated and notarized and the first payment as requested will result in processing delays.

⁶ BAC Home Loans Servicing, LP is required by law to inform you that this communication is from a debt collector

IMPORTANT TERMS OF PROPOSED MODIFICATION

Upon the modification agreement becoming binding and effective, the mortgage will be modified to reflect the following terms ***Please read this section carefully*** to understand the impact of this modification on your current mortgage

Delinquent Balance

The following shows your current delinquent balance as of 1st day of March, 2010. This reflects the total amount needed to bring your loan current. The proposed modification will cure the below delinquency and bring your loan current; however, it may also increase your monthly payment.

Delinquent Interest accrued from September 1, 2009 to March 1, 2010	\$3,220.07
Fees and Costs*	\$0.00
Delinquent Escrow	\$318.90
Total Amount to be added to your Principal Balance:	\$3,538.97

Fees and Costs are Estimated*

Fees may include but are not limited to property inspection fees, property preservation fees, legal fees, appraisal fees, BPO fees, title report fees, recording fees and/or subordination fees. We have made every attempt to estimate the amount of fees and costs that may have been incurred and not yet paid by Bank of America Home Loans, LP in the servicing of your loan. Fees and costs incurred but not yet billed and not included above will remain your responsibility following the modification.

You will not pay any modification fee in connection with this Agreement.

Notice of Interest Rate Changes

Your current interest rate is 5.750%.

Under the Terms of the modification, your loan remains a FIXED RATE LOAN and your rate of 5.750% will be effective as of the payment.

Other Conditions that May Apply

Upon request, you may be asked to provide a copy of your most recent supporting income receipts (pay stubs). If you are self-employed, please include the last two (2) quarters of your Profit and Loss Statements (P&L Statements). If you have recently secured new employment, please include a letter from your employer verifying net and gross income. Please do not send originals.

In some cases, a lender's title insurance policy or endorsement may be required. The policy insures the Modified Mortgage as a valid lien in accordance with our requirements. If you have any other encumbrances on the property, then you may be required to obtain agreements by which other secured creditors subordinate their interest to the Modified Mortgage.

If any issues arise between the date of this letter and the date on which all of the terms and conditions of this letter are finalized, including, but not limited to, deterioration in the condition of the property, lawsuits, liens, additional expenses and defaulted amount, then we may not sign the modification agreement and we may pursue all collection action, including foreclosure.

This letter does not stop, waive or postpone the collection actions, or credit reporting actions we have taken or contemplate taking against you and the property. **In the event that you do not or cannot fulfill ALL of the terms and conditions of this letter no later than February 19, 2010, we will continue our collections actions without giving you additional notices or response periods.**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of the Master in Equity

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

APPELLATE CASE No 2014-001323

Bank of America, N A ,

Respondent,

v

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

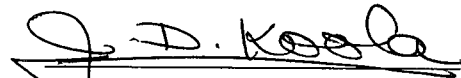
Of whom Johnson D Koola is the

Appellant

CERTIFICATION OF COUNSEL PURSUANT TO RULE 210(g)

The undersigned, Appellant pro se Johnson D Koola, certifies under penalty of perjury that the above Record on Appeal includes all matters to be included by any of the parties and not any other material

March 9, 2015



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

Appellant pro se

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

March 30, 2015

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

RECEIVED
APR 02 2015
SC Court of Appeals

Re Bank of America, v Johnson D Koola
Appellate Case No 2014-001323
Sub Record on Appeal

Honorable Ms Kitchings,

Appellant is filing the Appellant's Brief and Reply Brief and Record on Appeal with necessary proof of service. The respondent has been served with these filings. The documents are mailed to the Pendleton office.

I thank you in advance for your kind efforts.

Yours sincerely,


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

Copy to
Robert Powell Jackman, Esquire
Attorney for the Respondent