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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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

Appellate Case No.: 2015-002400

Unpublished opinion No.: 2015-UP-391 (S.C. Ct.App.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

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

v.

Johnson Koola,.....Petitioner.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF FACTS AND STATEMENT OF THE CASE

In 2008, respondent filed a construction defects lawsuit against the developer/seller of the Cambridge Lakes condominiums and related parties. In 2008, petitioner was unemployed and was attempting to sell his condominium to pay off his mortgage related payments. Because of the lawsuit, petitioner could not sell his condominium in 2008, which rendered the petitioner insolvent. In 2009 petitioner filed for Chapter 7 Bankruptcy. By the end of 2009, petitioner became irrevocably insolvent and could not pay any of the mortgage related dues. (Petition, pp. 1-4).

In 2010, petitioner voluntarily offered to pay off any dues to the respondent through a short sale of his condominium. However, the respondent rejected petitioner's offer to pay off the regime dues through short sale and initiated legal proceedings to collect the dues. The litigation between petitioner and respondent is now before this Court. (Petition, p. 22, line 9-p.23, line 9).

Review of Charleston County RMC records shows that there were ten (10) foreclosures (Table 1) and twenty-one (21) short sales (Table 2) since 2008 in Cambridge Lakes.

Table 1. Foreclosure sales in Cambridge lakes beginning 2008

No.	C.L. No.	Deed No.	Master Order	Sale Date
1	1409 C.L. Dr	0026-383	7/11/2008	12/11/2008
2	1431 C.L. Dr	0353-510	4/14/2013	8/1/2013
3	1433 C.L. Dr	0112-174	7/16/2009	8/24/2010
4	1455 C.L. Dr	0202-152	4/11/2011	8/2/2011
5	1467 C.L. Dr	0246-565	2/2/2012	4/13/2012
6	1491 C.L. Dr	0249-524	12/12/2011	4/30/2012
7	1529 C.L. Dr	0034-569	5/19/2008	1/2/2009
8	1535 C.L. Dr	0329-466	11/30/2012	2/5/2013
9	1583 C.L. Dr	0112-266	10/15/2009	3/11/2010
10	1587 C.L. Dr	Petitioner	Foreclosure imminent	

Table 2. Short Sales in Cambridge Lakes since 2008

No.	C.L. No.	Deed No.	Sale Date
1	1405 C.L. Dr	0018-848	10/22/2008
2	1405 C.L. Dr	0345-494	7/3/2013
3	1409 C.L. Dr	0075-531	8/12/2009
4	1417 C.L. Dr	0480-476	6/2/2015
5	1419 C.L. Dr.	0259-770	6/14/2012
6	1433 C.L. Dr	0140-826	8/24/2010
7	1437 C.L. Dr	0321-100	4/1/2013
8	1485 C.L. Dr	0282-986	10/2/2012
9	1503 C.L. Dr	0332-585	5/13/2013
10	1515 C.L. DR	0425-141	8/15/2014
11	1519 C.L. Dr	0230-030	1/19/2012
12	1523 C.L. Dr	0395-065	3/21/2014
13	1525 C.L. Dr	0407-043	5/13/2014
14	1535 C.L. Dr	0334-440	5/10/2013
15	1539 C.L. Dr	0265-803	7/6/2012
16	1553 C.L. Dr	0287-655	10/23/2012
17	1573 C.L. Dr	0480-164	2/24/2015
18	1575 C.L. Dr	0150-231	10/10/2010
19	1599 C.L. Dr	0207-193	8/30/2011
20	1605 C.L. Dr	0365-435	10/2/2013
21	1607 C.L. Dr	0199-971	7/20/2011

Short sales are determined if the sale price is lower than the purchase price. Cambridge Lakes has one hundred and four (104) units. Thus, thirty (30) percent of the homeowners lost their homes in Cambridge Lakes to foreclosures and short sales after respondent initiated its construction defects lawsuit.

Charleston County RMC records are records kept by the county government and are authentic.

ARGUMENTS

Petitioner submits his Reply to respondent's Return to the Petition for Writ of Certiorari.

I. RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI DID NOT PRESENT ANY EVIDENCE TO THIS COURT THAT IT HAS A PRINCIPAL-AGENT RELATIONSHIP WITH ITS MANAGEMENT COMPANY AND ATTORNEYS.

In his Petition for Writ of Certiorari, petitioner has explicitly detailed a claim against the respondent for civil conspiracy among the members of the Board of Directors ("BOD") of the respondent, its Management Company (Ravenel Associates) and its attorneys for their obstruction of petitioner's short sale of his condominium alleging injury and special damages¹. (Petition, p. 5-p.10, line 12; A. p. 352-p.356, line 11). However, the Court of Appeals, citing *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886-87 (2006), erroneously ruled that respondent's Management Company and its attorneys are its agents although the Court did not find any evidences in the record to support its Opinion.

The Court of Appeals erred because the Court misapprehended the Supreme Court's definition of relationships between a principal and an agent and a master and a servant: an agent performing contractual services for the principal and a servant performing operative services for the master. *Goble v. American Railway Express Co.*, 124 S.C. 19, 30-31, 115 S.E. 900, 904 (1920). The Court also misapprehended *McMillan*. According to the statement of facts in *McMillan*, Anesthesiology Consultants of the Upstate, P.A. (Respondent/Appellant) was performing contractual services for Oconee Memorial Hospital (Appellant/Respondent), and they had principal-agent

¹ In order to maintain the Reply concise, petitioner avoids making multiple references to the record.

relationship. *McMillan*, 367 S.C. at 562, 626 S.E.2d at 885 (2006). Thus, the Court of Appeals erred in applying *McMillan* to petitioner's conspiracy claim.

In its Return to the Petition for Writ of Certiorari, respondent argues that the Court of Appeals did not err in the dismissal of petitioner's civil conspiracy claim, but did not provide any evidence to support its own argument and the Court's finding that respondent's Management Company and its attorneys are its agents. Since respondent failed to present any evidence to support the Court of Appeals' ruling, this Court should summarily dismiss respondent's argument that the Court of Appeals did not err in dismissing petitioner's conspiracy claim.

Respondent has presented various out-of-context arguments why this Court should dismiss petitioner's conspiracy claim. Petitioner addresses those arguments.

i **Respondent argues that petitioner asserted his claim of civil conspiracy against only the respondent.** (Return, p. 8, line 5).

Prima facie, respondent's argument is wrong because petitioner has pled a claim against the respondent for civil conspiracy among the members of the Board of Directors ("BOD") of the respondent, its Management Company and its attorneys for their obstruction of petitioner's short sale of his condominium alleging injury and special damages, but sued only respondent. (Petition, p. 5, lines 6-10; A. p. 352, lines 7-10). In *Exchange Bank of Meggett v. Bennett*, 193 S.C. 320, 326, 8 S.E.2d 515, 518 (1940), this Court ruled that:

"Each conspirator is jointly and severally liable for all damages resulting from the conspiracy....Since the liability of conspirators is joint and several, the action may be maintained against one only of the conspirators, or plaintiff may at his option join all the alleged conspirators as defendants in one action."

The fact that petitioner has not sued respondent's Management Company and its attorneys does not negate the conspiracy claim.

- ii. **Petitioner asserted his claim for civil conspiracy based upon respondent's decision to institute this litigation to recover petitioner's delinquent HOA fees and assessments.** (Return, p. 8, lines 5-7).

Again, prima facie, this is a false argument. Petitioner has pled a claim against the respondent for civil conspiracy among the members of the Board of Directors ("BOD") of the respondent, its Management Company and its attorneys for their obstruction of petitioner's short sale of his condominium in 2009 as short sale was the only means for him to pay off the HOA and mortgage dues. (Petition, p. 5, lines 6-10; A. p. 352. lines 7-10).

- iii. **Respondent argues that petitioner's assertion that the determination of whether "Respondent's Management Company and its attorneys are its agents is a question of fact" is moot and not supported by evidence in Record.** (Return, p. 8 20-22; p. 9, line 1).

It is question of law to determine who is an agent. *Goble*, 124 S.C. at 30-31, 115 S.E. at 904 (1920). It is question of fact to be determined by a factfinder whether respondent's Management Company and its attorneys are its agents. *Title Insurance Company of Minnesota*, 267 S.C. 71, 77, 226 S.E.2d 240, 243 (1976).

It is the Court of Appeals and then respondent, but not Petitioner, who raised the argument that respondent's Management Company and its attorneys are its agents. Therefore, respondent, not petitioner, should produce evidence in the record to support its claim.

- iv **Respondent argues that petitioner has not produced any evidence in the record to support conspiracy claim.** (Reply, p8. line 23-p.9, line 1).

"Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable by direct evidence". *Island Car Wash. Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App. 1987). Relationship between the parties and the

nature of acts they committed are evidence of a conspiracy. *Pridgen v. Ward*, 391 S.C. 238, 246-47, 705 S.E.2d 58, 63 (Ct.App. 2010).

The parties to the conspiracy were infuriated with petitioner: (i) As he did not join its construction defects litigation; (ii) As he asked the BOD and the Management Company about financial irregularities found in respondent's annual budgets; and (iii) Petitioner once challenged the BOD, the Management Company and its attorneys about respondent's new policy regarding renting the condominiums; they threatened petitioner with civil action, but withdrew the threat later. (A. p. 277, line 17-p. 278, line 3).

When respondent rejected petitioner's offer to pay off the regime related dues through short sale, it was its policy to collect the regime dues through short sale rather than foreclosure sale. (Petition, p. 22, lines 19-23; A. p. 099, lines 24-30). Respondent had previously allowed other homeowners to pay off their dues through short sales. (A. p. 280, line 19-p. 281, line 4; p. 281, lines 9-13). Respondent hasn't collected many judgments it has received in the past. (A. pp. 254-259). By S.C law – S.C. Code Ann. § 27-31-200 and Paragraph 16(1)(c) of the Master Deed, respondent cannot collect any unpaid assessments from *insolvent homeowners* after foreclosure. Therefore, they conspired among themselves to inflict special damage on petitioner. (Petition, p. 8, line 21-p. 9, line 21, A. p. 354, line 3-p. 355, line 11).

It was a manifest error for the Court to dismiss petitioner's claim for conspiracy ruling that respondent's Management Company and its attorneys are its agents. Respondent who have argued that respondent's Management Company and its attorneys are its agents has not shown to this Court that they are its agents.

Petitioner respectfully submits to this Court to reverse the Court of appeal's Order denying petitioner's Claim for Conspiracy and grant Petition for Writ of Certiorari.

II. **RESPONDENT ADMITTED IN ITS RETURN TO PETITION FOR WRIT OF CERTIORARI THAT PETITIONER RAISED THE ISSUE OF ENFORCEABILITY OF THE *AB INITIO* INVALID MASTER DEED IN HIS REPLY TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT – AN ADMISSION CONTRADICTING THE COURT OF APPEAL'S FINDING.**

In his reply to respondent's Motion for Summary Judgment (A. p. 47, line 22-p. 050, line 24) and all other court filings since then, petitioner has raised the issue of the enforceability of the *ab initio* invalid Master Deed. He has detailed why the Master Deed is *ab initio* invalid and why respondent cannot use an *ab initio* invalid Master Deed to enforce its provisions on petitioner. (Petition, p. 10, line 13- p. 13, line 17; A. p. 356, line 12-p. 358).

The Court of Appeals' Order stated that "Koola showed the master deed was unenforceable", but denied petitioner's appeal stating that petitioner ***raised the issue of enforceability of the Master Deed for the first time in the Motion to Reconsider*** and cites to *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). *Prima facie*, this is an erroneous ruling from the Court, because petitioner had, indeed, raised the issue of enforceability of the Master Deed in his Reply to respondent's Motion for Summary Judgment (A. p. 47, line 22-p. 050, line 24). The Court of Appeals also misapprehended the *gravamen* of the Supreme Court's Opinion in *Sonoco Prods. Co.* (Petition, p. 12, lines 1-11).

In its Return to Petition for Writ of Certiorari, respondent admits that petitioner raised the issue of the enforceability of the *ab initio* invalid Master Deed "in his Response to the HOA's Motion for Summary Judgment (R. pp. 47-50)". (Return, p. 10, lines 9-10). This admission is sufficient for this Court to grant the Petition for Writ of Certiorari. Nevertheless, respondent argues that the Court of Appeals did not err in its ruling because:

i. **The Court of Appeals was not required to review every issue raised by the petitioner (Rule 220 C, SCACR).**

Respondent misapprehends Rule 220 and Rule 220(c), SCACR. Under the provisions of Rule 220, SCACR, the appellate court: (i) Shall make its decisions in writing by published opinions or memorandum of opinions; and (ii) Need not address a point, which is manifestly without merit. But in every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason of the court's decision, be preserved in the record of the case.

ii. **Petitioner's argument is without merit and was harmless.**

'Whether petitioner's argument is without merit and was harmless' are conclusions of law to be rendered by the Court. The Court of Appeals did not render these Opinions. In making this argument, respondent is standing in the shoes of the Appellate Court Judges.

iii. **There is no evidence supporting Petitioner's arguments that the Master Deed is unenforceable.**

The unenforceability of the Master Deed arose because the developer/seller and Cambridge Lakes Horizontal Property Regime sold a condominium to petitioner in noncompliance with SCHPA – failure to provide S.C. Code Ann. § 27-31-430-mandated Disclosure report. (Petition, p. 14, line 24-p. 15, line 19; A. p. 201, lines 8-14). The S.C. Code Ann. § 27-31-430-mandated Disclosure report does not exist, and petitioner cannot produce this as *real evidence* in support of his argument.

Petitioner has referred to various *direct and circumstantial evidences* in the Appendix to support his argument: (i) Respondent has stated in the Second and Third Amended Complaints filed in the Court in its construction defects lawsuit that the

developer/seller sold Cambridge Lakes condominiums in violation of South Carolina Horizontal Property Act². This is the most critical *direct evidence*; (ii) The members of the BOD and *some* of the Cambridge Lakes condominium buyers received the "Notice of Condominium Conversion and Offer to purchase" from the developer/seller which notified them that they would receive S.C. Code Ann. § 27-31-430-mandated Disclosure report, but they never received it. (A. pp. 377-78; Petition, p. 15 lines 4-19). This is another *direct evidence* that the developer/seller did not comply with the provisions of SCHPA; and (iii) Citing case laws, petitioner has explicitly stated that respondent is the true successor of Cambridge Lakes Horizontal Property Regime. (Petition, p. 13, lines 8-17). Respondent employs the same Master Deed registered by its predecessor, Cambridge Lakes Horizontal Property Regime; this is the best evidence that the respondent is the true successor. (Petition, p. 13, lines 15-1).

Master Deed is legally void, as it did not comply with the provisions of SCHPA as stated in the Master Deed. Master Deed is unenforceable as it is legally void. Respondent cannot enforce a legally void Master Deed on petitioner

iv Respondent's reference to Petitioner's lawsuit against developer/seller

Respondent argues that petitioner's lawsuit³ against the developer/seller for violation of SCPHA and other issues was unsuccessful stating that lawsuit involved the issue of enforceability of the Master Deed. Petitioner lost that case because of Statute of Limitations; the enforceability of the Master Deed was not at all an issue in the said case.

² *Cambridge Lakes HOA, et al. v. Bostic Brothers Construction, et al*, Case No. 2008-CP-10-3506, June 19, 2008; ditto, Third Amended Complaint, July 14, 2010

³ *Koola v. Cambridge Two, LLC, et al.*, 2010-CP-10-9158.

Since respondent has admitted that petitioner has raised the issue of enforceability of Master Deed in his Reply to Respondent's Motion for Summary Judgment, petitioner respectfully submits to this Court to reverse the Court of Appeal's Order denying petitioner's Claim for Conspiracy and grant Petition for Writ of Certiorari.

III. RESPONDENT MAKES A FALSE ARGUMENT THAT THERE ARE NO EVIDENCES THAT IT BREACHED FIDUCIARY DUTY AND ACTED IN BAD FAITH AND DISHONESTY OR INCOMPETENTLY.

In the Petition for Rehearing, petitioner has explicitly argued respondent's Breaches of Fiduciary Duty and showed that respondent's BOD acted in bad faith and dishonesty or incompetently. (Petition, pp. 14-21; A. p. 359, line 1-p.368, line 11). Respondent argues that there is no evidence that respondent breached Fiduciary Duty, and the BOD acted in good faith without addressing petitioner's claims. (Return to the Petition, p. 12, line 9-p.13, line 10). Petitioner incorporates fully by reference all of his arguments presented in the Petition for Writ of Certiorari (Petition, pp. 14-21) and evidences presented in the Appendix. Furthermore, petitioner highlights here respondent's most serious Breaches of Fiduciary Duty and *intra vires* actions.

A. Fiduciary Duty

(i) Duty to investigate construction defects and violation of SCHA

In his Petition, petitioner has shown to this Court that respondent was aware of construction defects and SCHA violations as early as 2003. (Petition, p. 14, line 24-p. 15, line 19). In early 2003, at least three members of the BOD [and early buyers of Cambridge Lakes condominiums] received a letter entitled "Notice of Condominium Conversion and Offer to Purchase" (A. pp. 377-378) from the developer/seller which notified them that they would receive with S.C. Code Ann. § 27-31-430-mandated "Disclosure of the physical condition building report" before they buy their units. Those

who bought the condominiums in late 2003 and later, including petitioner, did not receive this letter. ***Developer/seller did not provide S.C. Code Ann. § 27-31-430-mandated Disclosure report to any Cambridge Lakes homebuyers.*** This documented Notice is the *real evidence* that the respondent had actual and constructive knowledge in 2003 that there are construction defects and SCHPA violations in Cambridge Lakes.

The BOD took control of Cambridge Lakes in the fall of 2004, (A. p. 152, lines 11-12), and then in 2004, they should have investigated any potential construction defects and violation of SCHPA § 27-31-430, and pursued recovery action against the developer/seller but they failed in their duties to investigate and breached Fiduciary Duty. *Fisher v. Shipyard Vill. Council of Co-owners, Inc.*, 409 S.C. 164, 179, 760 S.E.2d 121, 129 (Ct.App.2014).

(ii) The respondent's BOD did not authorize its attorney to file the construction defects lawsuit.

The respondent maintains that its BOD: (i) First learned of potential construction defects in Cambridge Lakes during March-April 2008, (A. p. 152, lines 13-14); (ii) Retained attorney John C. Hayes, IV, to file a construction defects lawsuit, (A. p. 152, lines 21-22; p. 184, lines 14-16); and (iii) Filed the construction defects lawsuit in June 2008. (A. p. 153, lines 9-12; p. 187, lines 19-20; p. 191, lines 13-15). **The minutes of BOD meetings for April, May and June 2008 make no references that the BOD authorized Mr. Hayes to file the construction defects litigation.** (A. pp. 101-102; pp. 379-382). Petitioner represents to this Court that Hayes was not *officially* authorized by the BOD to file the lawsuit. This is a very serious breach of Fiduciary Duty by the respondent.

(iii) **The respondent's construction-defects lawsuit without the approval of two-thirds majority of the Cambridge Lakes Homeowners was an *ultra vires* act.**

After initiating the construction defects lawsuit⁴, respondent asked the homeowners to agree to collection of special assessments in future and received *promissory notes* from them with the intention of collecting the special assessments if it lost its construction defects lawsuit. (A. p. 018, lines 10-15). Collection of special assessments require the ***assent of two-thirds (2/3) of the vote of the Co-Owners voting in person or by proxy at a meeting duly called for this purpose.*** Paragraph (16)(6), Master Deed. (A. 212, line 43-p. 213, line 8). Collection of special assessments in contravention of a homeowners association's Bylaws and Restrictive covenants is an *ultra vires* act. *Lovering v. Seabrook Island Property Owners Ass'n*, 291 S.C. 201, 202-03, 352 S.E.2d 707, 708 (1987)

The rights and duties of the BOD and the individual homeowners must be determined by examining all relevant provisions of Horizontal Property Act, master deed and allied documents. *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 421, 321 S.E.2d. 46, 49 (1984). *Harrington v. Love*, 319 S.C. 1, 5 459 S.E.2d 309, 311 (Ct.App.1995); vacated because the parties settled the case and the case became redundant.

B. Business Judgment Rules

Under S.C. Laws, respondent cannot justify its *intra vires* acts when it acted in bad faith and dishonesty or incompetently. (Petition, p. 19, lines 8-15; A. p. 365, line p. 368, line 11). *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 603, 538 S.E.2d 15, 27 (Ct.App. 2000).

⁴ *Cambridge Lakes HOA, Inc. v. Bostic Bros.*, 2008-CP-10-3506, June 8, 2008

(i) Dismissal of Claims against Developer/seller in the Construction-Defects Lawsuit

In its construction-defects lawsuit^{2,4} filed in June 2008, respondent held the developer/seller liable for construction defects and violation of SCHPA § 27-31-430. In 2011, respondent's attorney John Hayes *quietly dismissed* all the claims against Albert Estee and Cambridge Two, LLC; they walked away from the lawsuit free. In the Petition for Writ of Certiorari and Petition for Rehearing, petitioner has explicitly detailed the *potentially fraudulent* circumstances under which respondent's attorney dismissed the construction defects lawsuit against developer/seller. (Petition, p. 19, line 19-p. 20, line 18; A. p. 366, line 9-p. 367. line 11; p. 383). As a result respondent defrauded the homeowners for several million dollars, which they would have received after successful completion of the litigation^{2,4}.

The respondent's liability insurance (A. p. 384) covers the BOD for their actions, which is an *affirmative proof* that the BOD might or would act in bad faith and dishonesty and incompetently.

C. Respondent's Breaches of Fiduciary Duty and *ultra vires* and *intra vires* actions severely affected the Public Policy of the State.

As a result of respondent's Breaches of Fiduciary Duty and *ultra vires* and *intra vires* actions, thirty (30) percent of the homeowners lost their homes in Cambridge Lakes to foreclosures and short sales after respondent initiated its construction defects lawsuit. (This Reply to Return, *supra*, pp.1-2). This is a massive destruction of homeownership affecting the Public Policy of this State.

Petitioner respectfully submits to this Court to order an inquiry by the State's Attorney General to investigate how respondent's Breaches of Fiduciary Duty and *ultra vires* and *intra vires* actions adversely affected the Public Policy of this State.

Petitioner respectfully submits to this Court to grant Petition for Writ of Certiorari because of respondent's Breaches of Fiduciary Duty and *intra vires* actions.

IV. THE COURT OF APPEALS ERRED WHEN THE COURT DECIDED ON QUESTIONS OF FACT – JURY QUESTIONS AND AFFIRMED THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT TO RESPONDENT.

In his Petition for Writ of Certiorari, petitioner raised two specific jury questions for review by this Court, which are fully incorporated here. (Petition, p. pp. 22-24). *Title Insurance Company of Minnesota*, 267 S.C. at 77, 226 S.E.2d at 243 (1976). Respondent did not address these specific questions, but irrelevantly argue that there are no evidences that respondent's directors acted in bad faith, were dishonest or incompetent. (Return, p. 13, lines 11-22).

A. Petitioner's voluntary offer to pay off any regime related dues through short sale to the respondent was a legitimate and legal tender.

In May/June 2010, petitioner offered to pay off his regime dues, if any, to the respondent through a voluntary short sale of his condominium. (A. p. 025, lines 10-13). The policy of the HOA was/is to collect any unpaid regime dues from insolvent homeowners through short sale as recorded in August 2009 BOD meeting. (A. p. 099, lines 24-30):

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

Nevertheless, it rejected petitioner's offer to pay off the dues though short sale. (Petition, p. 22, lines 9-23; A. p. 368, line 20-p. 369, line 14), initiated legal actions to collect dues, obstructed his short sale efforts and forced petitioner to foreclosure.

It is a question of fact to be determined by a jury whether petitioner's voluntary offer of payment of any regime related dues through short sale was a legitimate and legal tender to clear off respondent's claims against petitioner.

B. The Annual Budgets presented by the respondent to the homeowners show no dues from any homeowners, and hence the respondent has no legal standing to sue petitioner for regime related dues.

The annual budgets of the respondent presented to the homeowners for approval show no dues outstanding from any homeowners, which include petitioner. (Petition, p. 23, line 10-p. 24, line 11; A. p. 371, line 1-p. 372, line 13, pp. 385-386). If the financial statements presented to the homeowners are true, then there are no regime related dues from any homeowner, and hence, the respondent has no legal standing to sue petitioner for regime related dues.

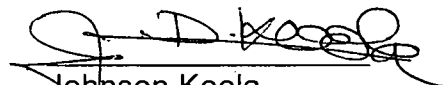
Any inconsistency in the budgets is not a matter of law, but a question of fact. The Court of Appeals erred when the Court failed to remand the matter to a jury trial and affirmed the Order of the Trial Court granting Summary Judgment to the Respondent.

CONCLUSION

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

Respectfully submitted,

January 14, 2016


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Petitioner pro se

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JAN 15 2016

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC SUPREME COURT

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

APPELLATE CASE NO.: 2015-002400

Cambridge Lakes HOA,.....Respondent,

v.

Johnson Koola,.....Appellant.

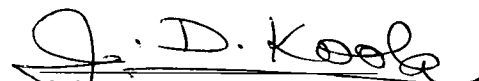
PROOF OF SERVICE

I, appellant pro se, under penalty of perjury, certify that on January 14, 2016, I served a copy of petitioner's Reply to the Return to the Petition for Writ of Certiorari, by mailing a true copy of the same, on the following counsels of record for the respondent:

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January 14, 2016


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