IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

CASE No.: _____

Bank of America, N.A., Plaintiff/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[1] Of whom Johnson D. Koola is the Defendant/Appellant.	**NOTICE OF REMOVAL**

Defendant/Appellant Johnson D. Koola (hereinafter referred to as "defendant Koola" or "Koola"), *pro se*, hereby gives Notice pursuant to 28 USCS § 1331, *Federal Question*, 28 USCS §1332, *Original Jurisdiction,* 28 USCS § 1334 and 28 USCS § 1452, *Bankruptcy Cases and Proceedings* and *Removal of Claims related to Bankruptcy cases*, and 28 USCS § 1367 and §1441(c), *Supplemental Jurisdiction* that he has removed the action entitled *Bank of America v. Johnson Koola et al.* in the South Carolina Court of Appeals, State of South Carolina, Appellate Case No.: 2014-001323

[1] First Citizens Bank and Trust Company, Inc. and Cambridge Lakes Condominium Homeowners Association, Inc. (the "HOA") have dismissed their claims in the case, and they are not parties in the case. The HOA, however is pursuing an independent action against defendant Koola which is currently under review by the Supreme Court of South Carolina; No. 2015-002400.

("the "State Court Action"), to the United States District Court for the District of South Carolina, Charleston Division.

A copy of this Notice of Removal is being filed with the Clerk of the Court, the South Carolina Court of Appeals and the Clerk of the Court, the Supreme Court of South Carolina in order to effect removal; the State Court Action shall proceed no further unless and until this case is remanded. A copy of this Notice of Removal and Proof of Service are served on the consuls of record for defendant/respondent Bank of America, N.A. (hereinafter referred to as "plaintiff BOA" or "BAC"). 28 U.S.C. § 1446(d).

STATEMENT OF FACTS

Koola's Purchase of a converted condominium

In January of 2004, defendant Koola applied for a mortgage loan from the predecessor in interest to plaintiff BAC, Countrywide Home Loans Servicing, LP, (hereinafter referred to as "lender"), to buy a condominium, which had been converted from apartments to condominiums (a "condo conversion"), in the "Cambridge Lakes" subdivision in Mount Pleasant, S.C. In the Master Deed the developer/seller certified that the condo conversion complied with South Carolina Horizontal Property Act, S.C Code Ann. § 27-31-10 et seq. (1976) (the "HPA"). (ROA Page 108). As part of the loan approval process, the lender required that Koola produce a "Builder's Certification" from the developer/seller. The developer/seller issued a "Builder's Certification" to Koola and the lender. (ROA Page 114). The Certification stated in pertinent part: "*For Condo Conversions: The structural, health & safety repairs and remodeling have been completed*". Countrywide/BAC accepted the "Builder's Certification" on its face value and without further inquiry. By mid-February of 2004, BAC completed an appraisal and Koola paid for the appraisal. Koola purchased the condominium on February 24, 2004.

The HOA's Construction defects lawsuit and Koola's Chapter 7 Bankruptcy

In 2008, Koola was unemployed and had limited financial resources. In May/June 2008 Koola placed his condominium in the market for sale to clear off his mortgage debts. In June of 2008, the Cambridge Lakes Homeowners Association, Inc. ("the "HOA") filed a construction defects lawsuit[2] against developer/seller and others alleging massive construction defects, negligence, and Unfair Trade Practices and claimed $8 million in damages. Because of the HOA lawsuit and alleged massive construction defects, Koola could not sell his condo in 2008. By 2009, Koola became insolvent and filed for Chapter 7 Bankruptcy. (ROA Page 15).

Koola's Applications for Mortgage Loan Modifications

In July of 2009, Koola applied to plaintiff BAC for a mortgage loan modification under "HOPE for Homeowners Program", 12 U.S.C.A. § 1715z-23. In August 2009, BAC and Koola signed a Forbearance Agreement or Trial Period Plan agreement whereby: (i) Koola is required to pay $243.00 per month for three months – September, October and November 2009; and (ii) at the end of the three-month Trial Period Plan payment, BAC would decide to offer a loan modification or not. Koola made the three agreed upon payments. BAC did not reciprocate its part of the agreement at the end of the Trial Period Plan payment. Koola continued paying the Trial Period Plan payment through March 2010. (ROA Page 105). In February 2010, BAC offered Koola a purported "loan modification" *reducing* the monthly payment from $838.69 as of January 2009 to $797.14 after loan modification. There was *no reduction in the interest rate and principal balance* and *no change in the original maturity date*. (ROA Page 180). Koola

[2] *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 accept this unfavorable loan modification. Since March 2010, Koola fell behind in his mortgage payments. Koola applied for mortgage loan modifications on four other occasions; all applications were denied/unsuccessful. (ROA Page 176). In August 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. (ROA Page 127).

Koola's efforts to short-sell his condominium to pay off mortgage related dues

In April/May of 2010 Koola listed his unit for short sale. Short sale was *the only means for Koola to pay off mortgage-related and condominium dues.* The HOA did not allow Koola to short sell his condominium and initiated a civil action to collect the condominium dues[3]. In July/September 2010, BAC also initiated foreclosure proceedings. (ROA Page 75, Page 82). The HOA and the second mortgagee also filed cross claims[4] against Koola in plaintiff's BAC's foreclosure action. Because of these multiple actions, Koola cancelled his efforts to sell his condominium through short sale.

Discovery of plaintiff BAC's violations of FIRREA Federal Appraisal Regulations

In September of 2010, Koola learned that in June and July 2010, the HOA filed Second and Third Amended Complaint in which it alleged that the developer/seller violated the HPA in the conversion of the apartments to condominiums. (ROA Page 115, 117). To be specific, developer/seller did not provide the "Disclosure of the Physical Condition of the Building Report" mandated by S.C. Code Ann. § 27-31-430 to Koola and any other condominium buyers. This information led to the realization that the Builder's Certification was also falsified.

---

[3] Summons, Cambridge Lakes HOA vs. Johnson Koola, Case No.: 2010-SC-87-1646, July 7, 2010

[4] First Citizens Bank and Trust Co., Answer and Crossclaim, 2010-CP-10-6060, September 30, 2010; Cambridge Lakes Homeowners Association, Inc., Answer and Counterclaim, 2010-CP-10-6060, Dec. 15, 2010.

In February/March 2011, Koola learned that the lender: (i) Did not appraise the converted condominium in compliance with the Interagency Real Estate Appraisal Regulations, and Interagency Appraisal and Evaluation Guidelines adopted pursuant to Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA 1989", and "FIRREA Federal Appraisal Regulations", 12 C.F.R. §§ 34.41, 34.43, 34.44, 34.45, 34.62, 564.1); (ii) Failed to verify the truthfulness of the statements in the "Builder's Certification"; (iii) Violated its own purported "Loan Policy" while completing the appraisal; (iv) Financed a fraudulent mortgage loan transaction; and (v) Was negligent or grossly negligent in its violation of FIRREA Federal Appraisal regulations. Koola amended his Answer and Counterclaim against BAC in the instant action to assert claims for negligence and fraud. (ROA Page 93).

Koola's Reopening of his Chapter 7 Bankruptcy case

In May 2012 the Bankruptcy Court reopened Koola's Bankruptcy 7 case to let Koola amend the Schedules in the original petition and to include the new causes of action and fresh claims of negligence and fraud against BAC in Schedule B pursuant to 11 U.S.C.A. § 350(b). (ROA Page 12, 13, 22, 23). In November 2013, the Bankruptcy Court closed the case after the trustee certified that the bankruptcy estate has been fully administered [pursuant to 11 U.S.C.A. § 554(c)]. (ROA Page 14).

Plaintiff BAC's Motion for Summary Judgment

In April 2012, BAC filed a "Motion for Summary Judgment" to dismiss Koola's counterclaims. (ROA Page 121). Koola filed responses in opposition. (ROA Page 130, 144, 146, 148). The Master in Equity granted BAC's Motion for Summary Judgment. (ROA Page 2). The Court of Appeals affirmed the Master's Order. (EX. Page 1). The Court also denied Petition for Rehearing. (EX. Page 4).

GROUNDS FOR REMOVAL

A. FEDERAL QUESTION

28 USCS § 1331, *Federal Question*, provides the authority for defendant Koola to remove the Appeal from State Court to this Court. Koola cites the following Authorities: *Grable & Sons Metal Products, Inc. v. Darue Eng'g and Mfg.*, 545 U.S. 308, 162 L. Ed.2d 257; *Resolution Trust Corp. v. BVS Dev., Inc. et al.*, 42 F.3d 1206; *Nieto v. Univ. of New Mexico*, 727, F.Supp.2d 1176; *In re Savers Federal Savings & Loan Assoc.*, 872 F.2d 963; *Anderson v. Khanna et al.*, 827 F.Supp.2d 970; *Goffney v. Bank of America, N.A., et al.*, 897 F.Supp.2d 520; *Gold-Washing & Water Co. v. Keyes*, 96 U.S. 199, 24 L.Ed. 656.

In April 2012, plaintiff BAC filed a 'Motion for Summary Judgment' in a foreclosure action against Koola in the Court of Master in Equity for Charleston County, South Carolina. Citing Bankruptcy codes, 11 U.S.C.A. § 521(a)(1)(A)-(B)(i) and § 541(a) and case laws, it argued that Koola has no standing to raise counterclaims against it. (ROA Page 121). Thus, plaintiff BAC raised a **Federal Question** related to Bankruptcy in the foreclosure case; the decision of the cause depends on the construction of the Bankruptcy codes. Defendant Koola argued in the Court and presented documents to the effect that pursuant to 11 U.S.C.A. § 350(b) and 11 U.S.C.A. § 554(c) he regained standing to raise claims against BAC. (ROA Page 130, 144, 146, 148). On April 25, 2014, the Master-in-Equity ruled that defendant Koola's claims are moot because he received a Chapter 7 bankruptcy discharge. the Master did not cite any specific Bankruptcy code. (ROA Page 2).

On Appeal to the South Carolina Court of Appeals, Koola presented documents to the Court that: (i) in May 2012, he filed a Motion to Reopen his Chapter 7 Bankruptcy

case pursuant to 11 U.S.C.A. § 350(b) to amend the Schedule B and to include claims against plaintiff BAC in the amended Schedule B, ROA Page 22, 23; (ii) the Bankruptcy Court by an Order dated May 22, 2012 reopened the Bankruptcy case, (ROA Page 12); (iii) on November 6, 2013, the Bankruptcy Court, on the advice of the trustee that the estate has been fully administered, closed the Bankruptcy case pursuant to 11 U.S.C.A. § 554(c), (ROA Page 14). Koola also filed complete docket text of his Chapter 7 Bankruptcy case for consideration of the Court. (EX. Page 32).

In support of his Appeal, Koola stated his claims in the Briefs filed with the Court, cited verbatim from 11 U.S.C.A. § 554(c), 8A C.J.S. Bankruptcy § 650 Deemed Abandonment at 552 (2006), 8A C.J.S. Bankruptcy § 650 Effect of Abandonment at 592 (2006), and Authorities in *Fedotov v. Peter T. Roach and Associates, P.C.*, 354 F.Supp.2d 471 (S.D.N.Y. 2005), *In re Paolella*, 85 B.R. 974 (Bank. E.D.Pa., 1988), and *Richards v. D.R. Horton, Inc.*, 320 Ga.App. 771, 740 S.E.2d 732 (Ga.App. 2013).

In an Unpublished Opinion No.: 2016-UP-071 filed on February 17, 2016, the South Carolina Court of Appeals denied Koola's 11 U.S.C.A. § 350(b) and § 554(c) arguments that he regained standing to raise claims against BAC. The Court based its Findings quoting: (i) "Once a bankruptcy case closes through administration of the estate, the debtor loses his rights in a cause of action he had at the time he sought bankruptcy protection but nevertheless failed to list on his schedule;" (ii) "Property stays with the bankruptcy estate if it was listed in the schedule but not formally abandoned by the trustee; and (iii) "Formal abandonment requires "*notice and opportunity for a hearing.*" (EX. Page 1).

The Court of Appeals erred because the Court: (i) did not consider Koola's Bankruptcy case reopening and amending the original Schedule B while deciding on his

Appeal; (ii) overturned the Bankruptcy Court's Order reopening Koola's closed Chapter 7 Bankruptcy case to amend the original Schedule B by adding new claims against BAC pursuant to 11 U.S.C.A. § 350(b); (iii) overturned the Bankruptcy Court's November 6, 2013 Order closing the Bankruptcy case pursuant to 11 U.S.C.A. § 554(c) after the trustee advised that the estate has been fully administered; (iii) misapprehended and erroneously determined that the "*after notice and a hearing*" language found only in U.S.C.A. § 554(a) (2004) and 11 U.S.C.A. § 554(b) (2004) Methods of Abandonment of the bankruptcy estate is also applicable to Administration of the Bankruptcy Estate by 11 U.S.C.A. § 554(c) (2004); and (iv) the Court's Order cites Bankruptcy codes, U.S.C.A. § 301(a),and § 541(a)(1) but the Court did not cite11 U.S.C.A. § 350(b) and § 554(c) relevant for adjudication of Koola's Appeal. The Court also cited an irrelevant case law, *In re Schmid*, 54 B.R. 78, 80 (Bank. D. Or. 1985), but did not cite the case laws – *Fedotov, supra, In re Paolella*, *supra*, and *D.R. Horton, Inc.*, *supra*, cited by Koola.

On April 21, 2016, the Court of Appeals also denied defendant Koola's Petition for Rehearing which is appealable to the Supreme Court of South Carolina through a Petition for Rehearing. (EX. Page 4). The Notice of Removal is appropriate and timely because BAC's Motion for Summary Judgment has to be reviewed *de novo* in view of the Federal Question related to Bankruptcy codes and possible violations of Constitutional provisions.

Plaintiff BAC's right to relief necessarily depends on resolution of Federal Questions under Bankruptcy codes.

B. ORIGINAL JURISDICTION

28 USCS § 1441(a) and 28 USCS § 1332(2) also provide the authority for defendant Koola to remove the Appeal from State Court to this Court.

Plaintiff BAC is a citizen of the State of North Carolina where it has registered office and also a citizen of the State of California where it has principal place of business. Koola is a citizen of the State of South Carolina. The Notice of Removal has claimed multiple REMOVAL STATUES.

Koola has claimed actual damages, consequential damages, statutory damages, punitive damages and legal expenses without specifying a fixed amount. In cases in which a party seeks to rescind a loan or prevent foreclosure, the amount in controversy is equal to the amount of the loan. *Busby v. Capital One, N. A.* 481 F.Suppl.2d 49. Koola's original loan amounts to $136,192.00. (ROA Page 59). The fair market value of the property also satisfies the amount for diversity jurisdiction. *Coffey v. Nationstar Mortg., LLC.,* 994 F.Suppl.2d 1881. In 2010, a real estate broker assessed the value of Koola's condominium at $129,000 when he placed it in the market for short sale

C. REMOVAL OF CASES RELATED TO BANKRUPTCY CASES

28 USCS § 1334 and 28 USCS § 1452 provide the authority for defendant Koola to remove the Appeal from State Court to this Court. Plaintiff BAC, defendant Koola and the State Courts have raised several chapters of Title 11 Bankruptcy in this State Court Action.

D. SUPPLEMENTAL JURISDICTION

28 USCS § 1441(c) and § 1452 provide the authority for defendant Koola to remove the Appeal from State Court to this Court. The State Court of Action includes

claims against plaintiff BAC arising under the laws of the United States. In support of his Notice of Removal under Supplemental Jurisdiction, Koola cites the following Authorities: *City of Chicago, et al. v. International College of Surgeons, et al.*, 522 U.S. 156, 139 L.Ed. 2d 525; *J. P. Creed v. Commonwealth of Virginia et al.*, 596 F.Supp.2d 930.

Supplemental Question I: BAC owed Koola Duty of Care which was created through the statutory provisions of FIRREA Federal Appraisal Regulations and S.C. Horizontal Property Act.

In response to plaintiff BAC's Motion for Summary Judgment, defendant Koola represented to the Master that Koola's counterclaims arose from BAC's negligence stemming from its breach of statutorily created duty of care to Koola for noncompliance with FIRREA Federal Appraisal guidelines (12 C.F.R. §§ 34.41, 34.43, 34.44, 34.45, 34.62, 564.1) and S.C. Code Ann. § 27-31-430. Without considering the merits of FIRREA Federal Appraisal Regulations, the Master in Equity denied Koola's claim stating that he considers appraisal of the real estate and inspection for construction defects the same process, and that under South Carolina laws lender has no duty to inspect construction defects. On Appeal, South Carolina Court of Appeals denied Koola's claim without considering the merits of FIRREA Federal Appraisal Regulations.

FIRREA Federal Appraisal regulations (12 C.F.R. §§ 34.41, 34.43, 34.44, 34.45, 34.62, 564.1) mandate: (i) Real estate appraisals by mortgagees are required to protect the interest of the public and Federal financial institutions; (ii) The Board of Directors of mortgagees shall maintain their own written Loan Policy establishing an effective real estate appraisal program consistent with the public interest requirements mandated by FIRREA Federal Appraisal guidelines; and (iii) The Loan Policy should determine the appropriate type and content of appraisal for different lending transactions.

The legal mandates found in the FIRREA Federal Appraisal regulations created a duty of care to Koola on the part of lender to ensure that lender's loan approval process of Koola's original mortgage loan complied with FIRREA Federal Appraisal regulations and lender's Loan Policy requirements. In South Carolina, lender owed an *additional duty of care* to Koola to ensure that its appraisal of converted condominiums also complied with South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-430 (the Disclosure of the Physical Condition of the Building [with strict liability clause]. It was *only* for this reason that lender 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 lender required a "Condo Conversion Builder's Certification" as a precondition to approving Koola's loan is the affirmative evidence that lender owed Koola a duty of care to appraise Koola's condominium under the provisions of FIRREA Federal Appraisal Regulations and to ensure compliance with S.C. Code Ann. § 27-31-430.

Lender's failure to appraise Koola's converted condominium in compliance with FIRREA Federal Appraisal regulations (12 C.F.R. §§ 34.41, 34.43, 34.44, 34.45, 34.62, 564.1), and its failure to verify the accuracy and truthfulness of the "Builder's Certification" to ensure compliance with S.C. Code Ann. § 27-31-430 constituted a negligent act and resulted in damages to Koola. Koola argues that BAC is liable to Koola for negligence *per se*.

Whether a particular Act is negligent depends on: (i) Foreseeability; (ii) A person of ordinary reason and prudence standard; and (iii) The burden or inconvenience caused by duty of care. While appraising Koola's condominium, BAC ought to have: (i) Asked the developer/seller whether he provided the Disclosure of the Physical

Condition of the Building report mandated by S.C. Code Ann. § 27-31-430 to Koola; (II) Or alternatively, verified with Koola whether he received the Disclosure of the Physical condition of the building report from the developer/seller; and/or (iii) Asked the appraiser to appraise the condominium after determining that the condo conversion complied with S.C. Code Ann. § 27-31-430. BAC failed in these duties which proximately caused Koola significant damage when it became known that the condominium he purchased and lender had appraised was materially overvalued due to uncompleted repairs falsely certified as having been completed in the "Builder's certification".

In its reply to Koola's First Set of Requests for Admission, BAC has *admitted* that BAC 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 not. (ROA Page 109). These admissions, which cannot be denied during trial, confirm that lender had a duty of care to ensure that the mandates of FIRREA Federal Appraisal regulations were followed. BAC objected to Koola's Request to Produce documents, which the lender provided to the appraiser when the appraiser was engaged by BAC to get the appraisal. (ROA Page 111).

Defendant Kola represents to this Court to interpret FIRREA Federal Appraisal Regulations and determine whether BAC violated statutory provisions of FIRREA Federal Appraisal Regulations and S.C. Horizontal Property Act and breached its Duty of Care to Koola for that failure.

Koola makes reference to *United States ex rel. O'Donnell v. Bank of Am. Corp.*, 33 F.Supp.3d 494 (2014) wherein the Court held BAC liable for violations of provisions of FIRREA.

Supplemental Question II: Plaintiff BAC breached its Duty of Care to Defendant Koola when it repeatedly denied Koola's application for an Affordable Loan Modification.

In August 2012, defendant Koola filed a "Motion to Sanction" BAC in this instant action for its repeated bad faith denial of Koola's applications for mortgage loan modification under Hope for Homeowners' Program, 12 U.S.C.S. §1715z-23 et seq. (ROA Page 127). (This Notice, *supra*, pp. 3-4).

"HOPE for Homeowners Program", 12 U.S.C.A. §1715z-23 et seq., states that: (i) Mortgagees allow homeowners to avoid foreclosure by reducing the principal balance outstanding and interest rate charged on their mortgages, 12 U.S.C.A. §1715z-23(a)(2); (ii) They target mortgage assistance to homeowners for their principal residence, 12 U.S.C.A. §1715z-23(a)4); (iii) 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 12 U.S.C.A. §1715z-23(e)(2)(A)(B); (iv) they complete the appraisal based on the current value of the property and in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C.A. §1715z-23(e)(8)(B); and (v) The eligible mortgages shall have originated on or before Jan. 1, 2008, 12 U.S.C.A. §1715z-23(s)(3)(B). (R. p. 140, lines 1-3, p. 050, lines 3-7).

Participation of the mortgagees in the "HOPE for Homeowners Program", 12, U.S.C.A. §1715z-23 et seq., is voluntary. But when mortgagees agree to participate in the program, mortgagees assume a duty of care to homeowners to offer a good faith loan modification within the guidelines of 12 U.S.C.A. §1715z-23 et seq. When the mortgagees accept compensation from the Secretary, FHA, under 12 U.S.C.A. § 1710(a)(2) for offering loan modification to homeowners, this duty of care becomes

mandatory. Courts have held that when an act is voluntarily undertaken, the actor assumes the duty to use due care. *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 504, 737 S.E.2d 512, 514 (2012).

BAC did not offer Koola an affordable loan modification in good faith under the provisions of "HOPE for Homeowners Program", 12 U.S.C.A. §1715z-23 et seq. after it had agreed to participate in the program and signed a three-Month Trial Period Plan Agreement. (ROA Page 180). Mortgage loan modification is for real as Loan Modification data compiled from Office of Comptroller of Currency's Quarterly Mortgage Metrics Reports. 12 U.S.C.A. §1715z-25; Ex. Page 46. (EX. Page 46).

The Authorities in *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 562, 564, 565, 569, 576 (7th Cir. 2012), *In re Bank of America Home Affordable Modification Program (HAMP) Contract Litigation*, U.S. Dist. Lexis 72079, 5, 11-17 (2011), and others would show to this Court that mortgagees have a contractual obligation to offer an affordable and a meaningful mortgage loan modifications to the those mortgagors who have signed Trial Period Plan Agreement. (Supplemental Citations, EX. Page 53). Without Court's intervention, Koola would never receive an affordable loan modification.

Supplemental Question III: Defendant Koola's claims against plaintiff BAC are not barred by Statute of Limitations.

Plaintiff BAC argues that defendant Koola's counterclaims occurred in February 2004 when he purchased the condominium; this is the date of the negligent act. Alternatively, BAC also argues that Koola knew that a claim could potentially exist when the HOA filed the construction defects lawsuit in June 2008. Koola did not assert his claims until March 2011, and hence these claims are barred by three-year Statute of Limitations. (Respondents Brief, EX. Page 88).

There are certain key dates: (i) Koola purchased a condominium in February 2004; (ii) the HOA's lawsuit filed in June 2008 alleged construction defects; (iii) the HOA's Amended Complaints filed in July 2010 alleged for the first time violation of the HPA; (iv) Koola knew about the HOA's allegation of HPA violations in September 2010; and (v) In March 2011, Koola realized that BAC did not appraise the condominium in compliance with FIRREA Federal Appraisal Regulations.

In view of the developer/seller's assertion in the Master Deed that: (i) The condo conversion complied with the provisions of the HPA, (ROA Page 108); (ii) His declaration in the "Builder's Certification" that he has complied with HPA § 27-31-430, (ROA page 114); and (iii) Lender's ready acceptance of the Builder's Certification, Koola didn't realize that he had claims against BAC in 2004. Therefore, the three-year Statute of Limitations could not run starting in 2004. For BAC to argue that Koola knew in 2004 that the "Builder's Certification" was falsified implies that BAC also had this information 2004 and did not act on it while completing the appraisal because both parties received copies of the "Builder's Certification. There is no reason to conclude that Koola knew in 2004 that "Builder's Certification" was falsified and fraudulent. BAC has not produced any evidence to support its argument.

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, 220, 580 S.E.2d 763, 764 (Ct.App. 2003); *Holly Woods Association of Residential Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 78, 793 (Ct.App. 2004). One could argue that Koola could have discovered the wrongful act of BAC when the HOA filed the

construction defects lawsuit in June 2008, and therefore the Statute of Limitations began to run from June 2008.

The Statute of Limitations begins to run when the injured party receives "*notice*". *Grillo v. Speedrite Products, Inc.* 340 S.C. 498, 532 S.E.2d a (Ct.App. 2000); *Snell v. Columbia Gun Exch. Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). Koola's injury is caused due to the violations of the HPA. Koola has stated previously that he received notice about the HPA violations in September 2010 after the HOA alleged HPA violations in its lawsuit in July 2010. In March 2011, he asserted his claims against BAC. Had the HOA not alleged HPA violations at all, Koola would not have known about the HPA violations, and he would not have raised a claim against BAC. Thus, Koola argues that the three-year Statute of Limitations began to rum from September 2010.

Whether the three-year Statute of Limitations began to run from June 2008 or September 2010, Koola's claims are not barred because he asserted his claims against BAC in March 2011 within the three-year period.

Supplemental Question IV: The State Courts' Orders potentially violated Constitutional Provisions.

The Court of Appeal's Order denying defendant Koola's Appeal raised the following potential violations of Constitutional provisions:

(i) The South Carolina Court of Appeals has no authority to reconstruct Bankruptcy codes 11 U.S.C.A. § 350(b) and § 554(c) and override Bankruptcy Court's Orders related to these codes. Bankruptcy Courts have exclusive Jurisdiction and the Courts' Decisions are appealable to U.S. Court of Appeals and U.S. Supreme Court only. A state court has to accept Bankruptcy court's Orders as is while deciding on a case in

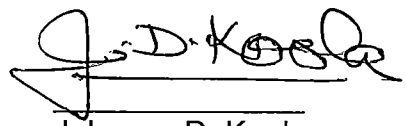
state court; (ii) The Court of Appeals' Order constituted a possible violation of U.S. Const. art. VI as the Judges in every State are bound by the Laws of the United States; (iii) The Court's Unpublished Opinion, which cannot be cited elsewhere, is limited to Koola. Thereby, other South Carolina citizens can avail of the protection of Bankruptcy codes 11 U.S.C.A. § 350(b) and § 554(c) but not Koola. The Court's Unpublished Order denies Koola the Equal Opportunity clause of the U.S. Constitution, U.S. Const. amend XIV; and (iv) The Court's Order denies the Congressional Intent in 11 U.S.C.A. § 350(b) and § 554(c) to provide Bankruptcy protection to defendant Koola.

Defendant Koola represents to this Court to determine whether these are indeed violations of Constitutional provisions, and if yes, offer Koola appropriate remedy.

CONCLUSION

For the reasons stated, defendant Koola prays to this Court to reverse the State Court's Order granting Summary Judgment to plaintiff BAC and to award damages to Koola for BAC's violations of FIRREA Federal Appraisal Regulations and for BAC's failure to offer Koola an affordable mortgage Loan modification.

Respectfully submitted,



May 19, 2016

Johnson D. Koola
1587 Cambridge Lakes Dr
Mt Pleasant, SC 29464
(843) 849-9241
johnson.koola@gmail.com

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

May 19, 2016

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

Re: **Appellate Case No.: 2014-001323; Bank of America, v. Johnson D. Koola**

Sub: **Notice of Removal**

Honorable Ms. Kitchings,

I am the appellant pro se in the above appeal under reference, Bank of America, v. Johnson D. Koola.

I am writing to inform you that I have filed "Notice of Removal" of the above referenced Appeal currently in the Court of Appeals to the United States District Court for the District of South Carolina, Charleston Division. I am filing herewith a copy of the Notice of Removal. A copy of this Notice of Removal is also filed with the Clerk of the Court, the Supreme Court of South Carolina. A copy of this Notice of Removal and Proof of Service are served on the consuls of record for defendant/respondent Bank of America, N.A.

I thank you in advance for your kind services.

Signature follows on the next page

Yours sincerely,

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

Copy to:

The Clerk of the Court
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Mr. Robert Powell Jackman, Esquire
PO Box 11006
Columbia, SC 29211
Attorney for Respondent

Mr. Dean Anthony Hayes, Esquire
PO Box 2262
Columbia, SC 29202
Attorney for Respondent

WRITE FIRMLY WITH BALL POINT PEN ON HARD SURFACE TO MAKE ALL COPIES LEGIBLE.

CUSTOMER USE ONLY

FROM: (PLEASE PRINT) PHONE ( )

J. Kooiman
1587 Cambridge Lakes Dr
Mt Pleasant, SC 29464

PAYMENT BY ACCOUNT (if applicable)

BC All 510

UNITED STATES POSTAL SERVICE®

PRIORITY ★ MAIL ★ EXPRESS™

DELIVERY OPTIONS (Customer Use Only)

☐ **SIGNATURE REQUIRED** *Note:* The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

Delivery Options

- ☐ No Saturday Delivery (delivered next business day)
- ☐ Sunday/Holiday Delivery Required (additional fee, where available*)
- ☐ 10:30 AM Delivery Required (additional fee, where available*)

*Refer to USPS.com® or local Post Office™ for availability.

TO: (PLEASE PRINT) PHONE ( )

THE CLERK OF COURT
THE S.C. COURT OF APPEALS
1220 SENATE ST
COLUMBIA, SC

ZIP + 4® (U.S. ADDRESSES ONLY)
29201

■ For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
■ $100.00 insurance included.

ORIGIN (POSTAL SERVICE USE ONLY)

☐ 1-Day ☐ 2-Day ☐ Military ☐ DPO

PO ZIP Code	Scheduled Delivery Date (MM/DD/YY)	Postage
29403	5/21/16	$ 22.95
Date Accepted (MM/DD/YY)	**Scheduled Delivery Time**	**Insurance Fee** / **COD Fee**
5/20/16	☐ 10:30 AM ☐ 3:00 PM ☐ 12 NOON	$ / $
Time Accepted	**10:30 AM Delivery Fee**	**Return Receipt Fee** / **Live Animal Transportation Fee**
4:52 ☑ AM ☐ PM	$	$ / $
Weight ☐ Flat Rate	**Sunday/Holiday Premium Fee**	**Total Postage & Fees**
5 lbs. ozs.	$	$ 22.95
	Acceptance Employee Initials	

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YY)	Time	Employee Signature
	☐ AM ☐ PM	
Delivery Attempt (MM/DD/YY)	**Time**	**Employee Signature**
	☐ AM ☐ PM	

LABEL 11-B, SEPTEMBER 2015 PSN 7690-02-000-9996 **3-ADDRESSEE COPY**

* Money Back Guarantee to U.S., select APO/FPO/DPO, and select International destinations. See DMM and IMM at pe.usps.com for complete details.

† Money Back Guarantee for U.S. destinations only.

RECEIVED
MAY 23 2016
SC Court of Appeals

EP13C July 2013
OD: 11.625 x 15.125

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

UNITED STATES POSTAL SERVICE®